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Besieged but not relenting

Ensuring fair trials for Nigeria's terrorism suspects

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Nigeria's criminal justice system is dealing with thousands of people in mass trials related to terrorism offences – including those committed by suspected Boko Haram members. Having conducted three phases of trials between 2017 and 2018, with each phase lasting no more than five days, the system is struggling to ensure fair trials for terrorism suspects who have been arrested and detained by Nigeria's military. The seemingly siloed response to the fight against terrorism by the criminal justice system and the military compounds the problem.

Key findings

- Nigeria's criminal justice system faces a massive challenge in dealing with thousands of suspects of terrorism offences as such fair trials were not upheld.
- Not enough time was given to the three phases of mass trials for thousands of suspects to ensure thorough investigation. This was compounded by the challenge of having to review thousands of files linked to each terror suspect and procedural handicaps related to arrest and detention procedures. Most arrests were by security forces in contravention of suspects' human rights and suspects are detained for unduly prolonged periods.
- Numerous military personnel who conducted arrests in the north-east zone were redeployed to other parts of the country, and thus were no longer available for the criminal justice process.
- Prosecutors had insufficient time to present comprehensive cases against suspects and legal defence through the Legal Aid Council of Nigeria was insufficiently resourced.
- Nearly all cases reflected a weak evidence base, with mostly confessional statements.
- Witness protection was lacking.
- Numerous discharged detainees and convicts who have served their sentences remain in military detention but the Nigerian Correctional Service has little or no role in the rehabilitation and reintegration of terrorism offence convicts.
- Nigeria's government hasn't instituted reparation measures for victims or damages for those wrongly or unduly detained for their participation in terrorism offences.
- Trials have endured poor court infrastructure and logistical challenges.

Recommendations

- Continuous knowledge and technical capacity building are needed for prosecutors, investigators and other law enforcement personnel.
- The military needs special training in mainstreaming human rights into its operations and its contribution to the criminal justice response to terrorism. Designated military officers should collaborate and cooperate with civilian law enforcement to help with the effective arrest of suspects, for criminal justice process purposes, including the collection and use of evidence in court.
- Sufficient time is needed for terror trials to enable investigations to be conducted and permit prosecutors and judges to perform their functions while respecting suspects' rights.
- Trials should be conducted on a strong evidence base, going beyond confessional statements. Witness protection should be provided.
- Conducive infrastructure and facilities are needed for trials including proficient interpreters in cases where suspects can't communicate and defend themselves.
- Children's courts should be established to try juvenile offenders so that justice is served in all matters regardless of age in line with the Child Rights Act, 2003.
- Judicial authorities should ensure that suspects aren't detained beyond the legally stipulated period.
- Legislative reform around terrorism is needed to address the challenges of investigating, prosecuting and adjudicating terrorism offences.
- Due to the multiplicity of issues required for a holistic response to terrorism in Nigeria, a multidisciplinary approach is required.

Introduction

Nigeria has been in the spotlight over the past 10 years most notably because of the violence caused by the terror group Boko Haram.[1] Along with its breakaway Islamic State West Africa Province (ISWAP) faction, Boko Haram has devastated the country's north-east zone. Nigeria's neighbours in the Lake Chad Basin including Cameroon, Chad and Niger, have also suffered under Boko Haram and ISWAP violence.

The predominant and often sole response of most governments to the terror threat has been the use of force. The impact of this response has not always been positive, and lessons from this approach suggest the need for complementary efforts grounded in the rule of law.

A key tool in the fight against terrorism is states' criminal justice systems. Recent academic and policy literature show the importance of effective criminal justice frameworks as part of efforts to counter violent extremism. A criminal justice system founded on the respect for the rule of law is a viable and complementary option in the toolbox to address terrorism.

To what extent has the Nigerian criminal justice system been effective in addressing the threat of terrorism in the country? A 2017 United Nations Development Programme (UNDP) report notes that a striking 71% of individuals who have joined terror groups in Africa have done so as a result of the arrest or killing of a family member or friend.[2]

The aftermath of extrajudicial killings has been the tipping point for many people. The well-known case of Mohammed Yusuf's death – Boko Haram's first leader – is a case in point.

This study interrogates the extent to which counter-terrorism legislative frameworks, processes and operations in Nigeria comply with international human rights norms on fair trial guarantees.

Beyond presenting an analysis of key findings, it investigates ways to strengthen state and non-state actors' capacities regarding respect for human rights in terror offence trials and counter-terrorism operations. Where there are gaps in the criminal justice system, recommendations are made. Their implementation

Figure 1: Map of Nigeria

Source: Authors

is crucial for the next phases of trials by the Nigerian criminal justice system and if progress in the fight against terrorism is to be made.

This report is divided into five main parts. Following this introduction is an analysis of the Boko Haram crisis, offering a sense of the political, socio-economic and criminal justice contexts. The next part guides readers through normative frameworks comprising global, regional and national counter-terrorism laws.

The question of fair trial rights in the adjudication of terrorism offences is addressed in the third part through pre-trial, trial and post-trial stages of criminal proceedings. Further analyses are presented in the fourth part under the broader theme of challenges faced by Nigeria's criminal justice system.

The fifth part presents key findings and recommendations that aim to enhance the capacity of the criminal justice system in Nigeria. These recommendations are proposed in line with the specific functions of investigators, prosecutors, judicial authorities and the military.

This study's methodology employs a blend of primary and secondary sources. Fieldwork by the authors entailed collecting data through interviews with civil society organisations, law enforcement officers, prosecutors and judicial officers in Nigeria. Interviews also reflected a balance of gender perspectives as this is an important factor shaping a holistic understanding of the themes under enquiry in this study.

A range of secondary data complemented field sources. These included documents on the different counter-terrorism legislative frameworks in Nigeria, the region and globally. Relevant books and articles on different themes in this study were helpful. Reports on trials in Nigeria, including decisions from court cases involving terror offence suspects, also proved invaluable.

Background and context

Boko Haram and violent extremism in Nigeria

The Lake Chad Basin is the centre of the Boko Haram crisis, with Nigeria's north-east as the epicentre. An understanding of the dynamics and trajectory of the crisis is vital in order to examine Nigeria's counter-terrorism legislative framework and its link with international human rights norms on fair trial guarantees.

The Boko Haram crisis is not the first case of violent extremism in Nigeria and this must be understood within the broader narratives of the phenomenon in the country's history. A prominent reminder of violent extremism in the country is the Maitatsine crisis of the 1980s. Mohammed Marwa was the arrowhead of the movement linked to the Maitatsine crisis, inspiring mass riots and the death of at least 4 000 people between 1980 and 1985.

There are striking parallels between the Maitatsine uprising and the current context. The case of Boko Haram however is more intense in terms of fatalities, devastation and the group's resilience. Boko Haram introduced suicide attacks and a style of brutality previously alien to the Nigerian terrorism landscape.

At its height in 2014, Boko Haram was ranked as the deadliest terror group globally, responsible for over 6 000 deaths in that year alone.[3] The most recent Global Terrorism Index listed Boko Haram among the four deadliest terror groups in the world.[4]

Like most terror groups, Boko Haram's lethal profile has a bearing on the perception it creates in the eyes of communities. It also reinforces the propaganda of the group and the perpetuation of violence in many other forms.

> At its height in 2014, Boko Haram was considered the deadliest terror group globally

The group provoked global outrage when it abducted over 200 schoolgirls from the Nigerian town of Chibok in April 2014 and over 100 from Dapchi in February 2018.[5] Prior to the two mass abduction episodes in Nigeria, Boko Haram is known to have specifically targeted children as it was witnessed in February 2014 when 59 boys were killed at a federal government college in Buni Yadi, Yobe state. Several buildings of the college including staff quarters were razed.[6] These mass abductions are in addition to numerous other cases where the group has forcefully conscripted boys and men into its ranks.

Victims of abductions have also been coerced into perpetrating suicide attacks in communities.

Guerrilla-style hit-and-run attacks are regular occurrences and the group executes this indiscriminately against Muslims and Christians as much as it targets military formations and civilian populations

The transnational character of the Boko Haram crisis cannot be ignored. Over the years, the group has drawn support from individuals in neighbouring countries adjoining the Lake Chad Basin. This explains why numerous attacks have occurred in countries like Cameroon, Chad and Niger,[7] but also the reason that efforts to address the crisis have required a Multinational Joint Task Force (MNJTF) from these affected countries.

> The transnational character of the Boko Haram crisis cannot be ignored. The group has drawn support from individuals in countries adjoining the Lake Chad Basin

In March 2015 Boko Haram declared allegiance to the Islamic State of Iraq and Syria (ISIS), and this connection has afforded the group some leverage, particularly in terms of propaganda.

In August 2016 some Boko Haram members split to form another faction which till date is referred to as ISWAP. Both factions claim to disagree on ideological matters but ISWAP also maintains a particular focus on attacking the military.

ISWAP also appears to be less indiscriminate with attacks compared to the Boko Haram faction led by Abubakar Shekau which targets the military and civilians alike. Nevertheless, the faction maintains a deadly reputation. According to the Africa Center for Strategic Studies, events linked to ISWAP more than trebled in 2018 compared to 2017, and fatalities increased by nearly 60%.[8]

Splintering is not new to Boko Haram. In 2012 a breakaway faction claimed to take exception to the group's targeting of Muslims. This faction called itself the Jama'atu Ansarul Muslimina Fi Biladis Sudan, also known as Ansaru. Translated, the faction's name means 'Vanguard for the Protection of Muslims in Black Africa'.

Beyond the dynamics of the different factions, a core objective of Boko Haram's ideological agenda is the establishment of an Islamic caliphate to replace the secular Nigerian state. The motivation for this objective is not only driven by ideology. It can also be understood in the wider context of socio-economics, politics and an ineffective criminal justice system in Nigeria.

With this context of violent extremist groups conducting onslaughts against the Nigerian state and its citizens, it is easy to see why a militarised response is necessary. While necessary, this response alone or an overreliance of this form of response to the exclusion or little attention of others cannot be sufficient to effectively deal with the threat of terrorism.

March 2015

BOKO HARAM DECLARES ALLEGIANCE TO ISIS

Where we are today

In July 2009 a major uprising led to violent clashes between Boko Haram members and security forces. These clashes lasted several days across numerous states such as Bauchi, Borno, Kano and Yobe in northern Nigeria. In addition to hundreds of deaths, particularly of Boko Haram adherents, the aftermath of the uprising was characterised by mass arrests and detention of both perpetrators and suspects.

The immediate post-2009 period was relatively calm. Many followers of Boko Haram's first leader Mohammed Yusuf, who was extrajudicially killed, were inconspicuous, only to resurface with more lethal violence under the leadership of Shekau.

Mass arrests of Boko Haram suspects continued from 2009 until 2013 and beyond. As will be discussed in this report, many of these arrests weren't carried out in accordance with the criminal procedure laws of the country and have led to significant challenges to the criminal justice system.

In addition, the mass arrests have been criticised for including people who aren't necessarily members or affiliates of Boko Haram, but found themselves in the vicinity of military operations aimed at quelling the group. These include merchants and community members in allegedly Boko Haram-controlled areas.

In May 2013 a state of emergency was declared in the country to underline the seriousness of increasing threats posed by Boko Haram. The emergency rule covered the three most affected north-eastern states of the country –Adamawa, Borno and Yobe. The emergency rule created a situation where security agencies acquired additional powers to impose curfews, and arrest and detain suspects for prolonged periods.

This report will discuss the application of states of emergency arising for counter-terrorism efforts and their implications for the protection and promotion of the rights of citizenry, including trial rights.

The huge followership of Boko Haram, particularly in its early years, can partly be understood in the context of numerous 'push' factors. One major such factor is the socio-economic context in which many people find themselves vulnerable, and are drawn to groups that promise a fundamental reformation of the state.

There are of course additional factors that 'pull' individuals towards violent extremism and these include elements of ideological teachings. Mohammed Yusuf was well-known for his radical doctrines that appealed to some. However, socio-economic vulnerabilities cannot be ignored. Based on data provided by Nigeria's National Bureau of Statistics in 2010, the absolute and relative poverty figures for the state most affected by Boko Haram, Borno, were 55.1% and 61.1% respectively.[9] In addition, the absolute and relative poverty indicators for the entire northern region in Nigeria were the highest compared to other regions in the country.

The violence, mass arrests and detention of terror suspects since 2009 have also occurred over a period typified by political uncertainties. The massive gaps in governance at the local, state and federal levels collectively played a role in the insidious maturation of Boko Haram.

In recalling the political currents during Boko Haram's early years, one could view the interaction between Boko Haram and politics in Borno State as one of compromises and concessions. Boko Haram played with local politics, and in its love-hate relationship with the Nigerian state it both manipulated and was manipulated by its political sponsors.

> Mass arrests began in 2009 and reached a peak in 2013

It is on record that a former governor of Borno State used Boko Haram to win state elections in 2003, and in exchange, certain members of the group were rewarded.[10] The intrusion of 'dirty politics'[11] and exploitation of religion which is further complicated by socio-economic insecurities has produced a cocktail of terrorist violence that persists to date.

The cumulative impact of these factors over the years has affected the criminal justice system in several ways. The most prominent is the overwhelming number of cases of terror suspects, many of whom have been detained beyond the stipulated period under the law.

Interviews for this study reveal that at least 5 000 cases of terror suspects have been subjected to a criminal justice system besieged by numerous and longstanding capacity challenges.

Three phases of mass trials have been conducted – the first in October 2017, and had 575 defendants. The second and third phases in February and July 2018 in Wawa Cantonment, Kainji, Niger State. Details of the three phases of mass trials in Nigeria have already been documented[12] and there is little need to reproduce them here. Although these challenges are discussed at length in subsequent sections of this report, an overview is helpful.

First, the sheer number of cases exposed weaknesses in technical capacity in areas such as record keeping. In some instances, suspects' case files are either misplaced or non-existent, and security personnel – the military in some cases – who conducted arrests during a given period are difficult to trace due to official redeployment. The question is also raised as to whether the military has the mandate to carry out lawful arrests within the context of a criminal proceeding.

A second problem is inadequate resources available to defence attorneys, some of whom work for the Legal Aid Council of Nigeria. This is also evident in the number of judges – only four were assigned to adjudicate the first three phases of mass trials for at least 5 000 individuals.

A third area of challenges is the limited timeframe given to conduct proper investigations, effective prosecutions, defences against the offences or time to thoroughly adjudicate the offences. Thorough preparation prior to cases was not the norm during trials and the actual case proceedings were hurriedly conducted. In addition, court hearings took place in military camps, and in physical conditions devoid of conducive facilities for both officers of the court and suspects.

Much of the evidence examined during the trials was based on confessional statements, while weak interrogation of the cases constituted one of the major criticisms of the process.

There appears to be a weak sense of urgency, evident in the slow response from the state, with regards to plugging these gaps in the criminal justice system. However it is necessary to acknowledge the role of civil society actors who play an oversight role during trials. While the ability to be a societal watchdog comes with its own challenges, it remains the responsibility of the state to address the aforementioned concerns.

Normative framework

International legal framework on counter-terrorism

The international community has adopted 19 international treaties to address the threat of terrorism.[13] These international legal instruments form the normative framework on counter-terrorism.

They are concerned with civil aviation,[14] the protection of international staff,[15] the taking of hostages,[16] nuclear material,[17] maritime navigation,[18] explosive materials,[19] terrorist bombings,[20] the financing of terrorism[21] and nuclear terrorism.[22] As shown in Table 1, Nigeria is a party to most of the instruments related to counter-terrorism.

MOST EVIDENCE EXAMINED DURING THE TRIALS WAS BASED ON CONFESSIONAL STATEMENTS

Table 1: Treaties and dates of signature, ratification or accession

International/regional treaty	Nigeria
International Convention for the Suppression of the Financing of Terrorism *Adopted: 9 December 1999* *Entered into force: 10 April 2012*	Signed 1 June 2000 Ratified 16 June 2003
International Convention for the Suppression of Acts of Nuclear Terrorism *Adopted: 13 April 2005* *Entered into force: 7 July 2007*	Acceded 25 September 2012
International Convention for the Suppression of Terrorist Bombings *Adopted: 15 December 1997* *Entered into force: 23 May 2001*	Acceded 24 September 2013
Convention on the Making of Plastic Explosives for the Purpose of Detection *Adopted: 1 March 1991* *Entered into force: 21 June 1998*	Acceded 10 May 2002
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf *Adopted: 10 March 1988* *Entered into force: 1 March 1992*	Acceded 18 June 2015
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation *Adopted: 10 March 1988* *Entered into force: 1 March 1992*	Acceded 24 February 2004
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation *Adopted: 23 September 1971* *Entered into force: 23 January 1973*	Acceded 3 July 1973
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 (Airport Protocol) *Adopted: 24 February 1988* *Entered into force: 6 August 1989*	Acceded 25 March 2003
Convention on the Physical Protection of Nuclear Material *Three phases of trials for terrorism offences related to suspected Boko Haram militants in Nigeria 8 February 1987*	Acceded 4 May 2007
International Convention against the Taking of Hostages *Three phases of trials for terrorism offences related to suspected Boko Haram militants in Nigeria: three phases of trials for terrorism offences related to suspected Boko Haram militants in Nigeria 3 June 1983*	Acceded 24 September 2013
Convention for the Suppression of Unlawful Seizure of Aircraft *Adopted: 16 December 1970* *Entered into force: 14 October 1971*	Acceded 3 July 1973
Convention on Offences and Certain Other Acts Committed on Board Aircraft *Adopted: 14 September 1963* *Entered into force: 4 December 1969*	Acceded 29 June 1965
OAU Convention on the Prevention and Combating of Terrorism *Adopted: 14 July 1999* *Entered into force: 26 December 2002*	Signed 26 April 2002 Ratified 28 April 2002
African Convention on the Conservation of Nature and Natural Resources *Adopted: 15 September 1968* *Entered into force: 16 June 1969*	Signed 15 September 1968 Ratified 2 April 1974

Source: Treaties Database, SHERLOC, UNODC and authors

These international legal instruments that govern counter-terrorism do not operate in isolation. The normative legal framework on counter-terrorism includes international human rights law, international humanitarian law (*jus in bello*), international criminal law and international refugee law.

Embedded in these sets of laws is customary international law and peremptory norms, such as the prohibition of torture, which are relevant to the discussions in this report. It is noted here that the law governing the use of force (*jus ad bellum*) and in the context of counter-terrorism, the use of military force, remains exceptional.

As such this report focuses mainly on the criminal justice response to terrorism, and specifically on fair trial guarantees within the national criminal justice system and within the confines of the rule of law.

The normative framework on counter-terrorism includes the UN Global Counter-Terrorism Strategy, which was adopted by all member states on 8 September 2006 and is reaffirmed on a biannual basis, lastly by the General Assembly resolution 72/284 of 26 June 2018.[23]

The strategy reaffirms the respect for human rights and the rule of law as the fundamental basis for the fight against terrorism. The strategy recognises that the protection and respect for human rights is a complementary and mutually reinforcing goal to that of counter-terrorism.

Lexicon of the criminal justice and rule-of-law approach to counter-terrorism

For the purposes of this report and in understanding the legal aspects of counter-terrorism, it is useful to have the following terms defined and briefly discussed:

Rule of law: The United Nations General Assembly reaffirmed in the Global Counter-Terrorism Strategy that one of the objectives of terrorism is to erode the rule of law together with human rights, fundamental freedoms and democracy.[24]

Former UN Secretary-General Kofi Annan in a report on the Rule of Law and Transitional Justice in Post Conflict States defined the rule of law as 'a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards'.[25]

The respect for human rights in the context of countering terrorism is not only a legal obligation on states but is intricately woven into the fabric of the rule of law. The respect for the rule of law in the context of countering terrorism means that the state takes steps to adequately and effectively legislate against nefarious activities that support, propel and sustain acts of terrorism.

Individuals alleged to contravene these laws must therefore be held to account and processed through the criminal justice system. This includes agents of the state who, in efforts to counter terrorism, contravene the law. The indivisibility of the rule of law and human rights regulates what is acceptable and unacceptable in the fight against terrorism.

> Respect for the rule of law and human rights in counter-terrorism are obligations on all states

Customary international laws are rules of law derived from consistent state practice, i.e. a widespread repetition of similar acts over time, and acting out of a sense of obligation (*opinion juris*).[26] International humanitarian law (*jus in bello*), which regulates armed conflict, has long been recognised as a constituent part of customary international law. These have been codified in various international treaties including the 1949 Geneva Conventions and their Additional Protocols.[27] All states are bound by customary international law.

Peremptory norms are fundamental principles in international law accepted by states and in which no derogation is permissible. These norms are sacrosanct and place a duty on states to either prosecute or extradite individuals who violate these norms.[28]

The international community has recognised that no circumstances, including states of emergency[29] or immunities under customary international law, including that for heads of state, permit any state from deviating from the obligation to prosecute or extradite.

In the context of counter-terrorism, peremptory norms applicable include the prohibition of torture, unlawful use of weapons, racial discrimination and taking of civilian

hostages.[30] All states have an obligation to prosecute individuals alleged to have committed these crimes or extradite the suspect to a third state for prosecution.[31]

International humanitarian law (jus in bello) seeks to ensure that parties to an armed conflict have the same rights and obligations to ensure equal protection to protected persons and objects affected by a conflict.

In the context of counter-terrorism, states' military forces are in combat with violent extremist groups, which adopt warfare tactics such as the use of civilians as shields, and attacks against civilians and infrastructure that civilians need for survival, such as hospitals and schools. In terms of counter-terrorism these are soft targets,[32] and such attacks are contrary to international humanitarian law.

One can then empathise with states' efforts from a military perspective, where the enemy combatants' tactics are to subvert the rule of law. States' responses, even from a military perspective, remain regulated and subject to the respect for human rights. This is why a criminal justice response within the rule-of-law framework complements other efforts to counter-terrorism.

Regional framework on counter-terrorism

The Constitutive Act of the African Union (AU) in Article 4 (o) provides that African states 'condemn and reject acts of terrorism'. The African region through the AU has elaborated on numerous treaties that relate to the fight against terrorism. The chief regional instrument on counter-terrorism is the 1999 Algiers Convention.[33]

It provides for a definition of acts of terrorism and requests African states to undertake to ratify or accede to international counter-terrorism instruments discussed in section 3.2 above and to undertake to review national laws and establish criminal offences for acts of terrorism. In 2002 the AU adopted a Plan of Action on the Prevention and Combating of Terrorism[34] which aims to strengthen the existing commitments and obligations of state parties, including to implement and enforce the 1999 Convention.

A Protocol[35] to the Algiers Convention was adopted in 2004 which gives effect to Article 3(d) of the Protocol Relating to the Establishment of the Peace and Security Council of the AU to further the objective of coordinating and harmonising 'continental efforts in the prevention and combating of international terrorism in all its aspects'.

The African human rights framework is founded in the African Charter on Human and Peoples' Rights. The treaty has been ratified by 54 African states. The right to a fair trial is rooted in its Article 7. Nigeria, as a party to these instruments, has an obligation to ensure that the right to a fair trial is offered to its citizens in every criminal proceeding.

Constitution, court system and anti-terrorism laws

Nigeria is a federation of 36 states. It practises a federal system of government under a constitution, that proclaims itself as supreme and binding on all authorities in the country, and on which all other legal frameworks hinge.[36]

Although the constitution is silent on the sources of law in the Nigerian legal system, legal scholars and the courts agree that there are five main sources of law in Nigeria: the constitution; legislation (acts of the National Assembly, laws of the states' Assemblies, by-laws of the Local Government Councils, and delegated legislation); received English law (comprising common law, principles of equity, and statutes of general application in England as at 1 January 1900); customary law and Islamic law; and judicial precedents as developed by the Nigerian courts.

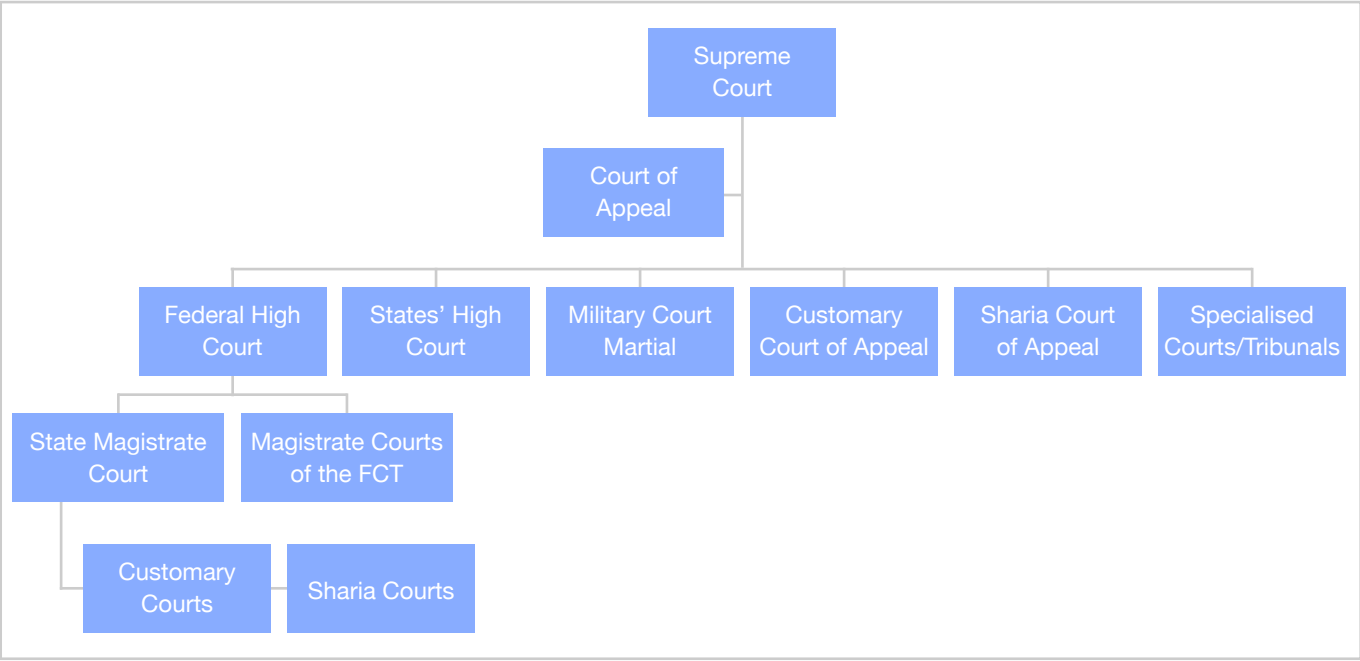
> Nigeria has an obligation to ensure that citizens have the right to a fair trial in every criminal proceeding

The constitution is supreme by virtue of Section 1(3) of the Constitution. The Nigerian courts (such as the high and appellate courts) have the power of judicial review to declare the unconstitutionality of other laws and the actions of authorities where the latter are inconsistent with any provision of the constitution.

Next in hierarchy are acts of the National Assembly and then laws of the States Assembly (both of which can trump received English law). Customary law (and arguably Islamic law)[37] is however subject to received English law and the requirement to pass the repugnancy test.

The position of customary law in Nigeria is particularly important in this debate. The Nigerian authorities will

Figure 2: The court system in Nigeria



Source: Authors

need to reflect on this discourse due to the particular challenges that the criminal justice system faces in the investigation, prosecution and adjudication of terrorism offences, discussed later in this report.

Currently Nigeria's constitution allows a person to be tried only for an offence defined in a written law.[38] There is no customary criminal law in Nigeria and customary courts and customary courts of appeal have no criminal jurisdiction.

Sharia courts exercise criminal jurisdiction based on sharia law, which is founded on the written Qur'an and other Islamic texts. They represent the lowest courts of criminal jurisdiction in Nigeria, and are only in the northern part of the country where most residents are Muslim. The sharia courts of appeal don't have appellate or original jurisdiction.

Currently the Federal High Court has original jurisdiction, and is the designated court for terrorism offences.

A holistic response to the threat of terrorism in Nigeria, as in other parts of the Lake Chad Basin and the Sahel, would necessarily include a range of mechanisms and processes that may be useful in complementing the criminal justice system. The use of traditional (hence customary courts and the customary court of appeal) or religious systems (hence sharia courts and the sharia court of appeal) might be useful in some contexts, especially when dealing with low-level perpetrators of terrorism offences and their successful rehabilitation and reintegration as contributing members of society.

Chapter IV of the Nigerian constitution provides for fundamental rights, including the right to a fair hearing[39] and restriction on and derogation from fundamental human rights.[40] These fundamental rights are essential to bring meaning to human rights standards and norms that are universal to all human beings and that protect Nigerian citizens and residents.

> Traditional and religious systems of law each have something useful to offer

Section 12(1) of the Nigerian constitution provides that:

> No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.

In terms of the global counter-terrorism legal framework, Nigeria's implementation of this framework is formalised through the Terrorism Prevention Act, 2011 and

Terrorism (Prevention) (Amendment) Act, 2013. This law is complemented by the 2016 National Counter-Terrorism Strategy and the 2017 Policy Framework and National Action Plan for Preventing and Countering Violent Extremism.

The 2013 Terrorism Act provides for the prevention, prohibition and combating of acts of terrorism and the financing of terrorism in Nigeria. A major objective of the act is to provide for effective implementation of the Convention on the Prevention and Combating of Terrorism and the Convention on the Suppression of the Financing of Terrorism. The Act criminalises acts and conducts of terror and prescribes penalties for them.

In terms of criminal trials in Nigeria, the Administration of Criminal Justice Act, 2015 promotes the efficient management of criminal justice institutions, speedy dispensation of justice, protection of society from crimes and protection of the rights and interests of the suspect, the defendant and victims in Nigeria.[41]

> Nigeria's 2013 Terrorism Act criminalises acts of terrorism and prescribes penalties for them

It regulates arrests,[42] the issuing of warrants,[43] charges,[44] convictions,[45] witnesses and their testimonies,[46] plea bargains and pleas generally,[47] detention time limits[48] including in suitable places other than prison or mental health asylums,[49] the conduct of trials including the presentation of the case by the prosecution and defence,[50] and children in conflict with the law.[51]

With this extensive legislative framework, there can be no doubt that the Nigerian criminal justice system is able to effectively conduct terrorism trials within the confines of the rule of law. It should be noted though that according to the National Counter-Terrorism Strategy, the Nigerian military is primarily responsible for combating terrorism in the country.

The Office of the National Security Adviser (ONSA) is responsible for coordinating counter-terrorism efforts between security and law enforcement agencies, including the Office of the Attorney-General of the Federation. The AG's Office ensures that Nigeria's counter-terrorism framework is in line with international counter-terrorism legal instruments.

The ONSA is the central body for coordination, control and supervision of national security in Nigeria. ONSA manages national security on behalf of the President through the three agencies created by the National Securities Agencies Act.[52] The National Security Advisor is the principal officer of the National Security Council and advices the President on national security issues. Although it doesn't have statutory executive functions, the ONSA's primary responsibility is to harmonise and ensure synergy among security forces operating in the realm of counter-terrorism – the Department of State Services, the National Intelligence Agency, Defence Intelligence Agency (DIA), the police, the army, and other government authorities.

Fair trial rights in a counter-terrorism context

The right to a fair trial is a fundamental right that is embedded in several international and regional human rights treaties.[53] Fair trial guarantees are a constituent part of Pillar IV of the UN Global Counter-Terrorism Strategy that requires member states to ensure human rights and the rule of law.

States are therefore under obligation to ensure that the rights of terror suspects as well as those of victims and witnesses are upheld. This report will confine itself to fair trial guarantees in terrorism cases in Nigeria. The International Covenant on Civil and Political Rights (ICCPR) is the point of departure as to what constitutes fair trial guarantees.[54] The Bill of Rights in the Nigerian Constitution espouses these rights in the ICCPR.

Fair trial rights under the ICCPR

A summary of the fair trial rights in Article 14, of ICCPR, and how they apply to terrorism cases is discussed below.

Equal treatment of people before the court

Regardless of their nationality, statelessness, or other status, individuals must have access to justice and be treated equally by the law.

A fair and public hearing by a competent, independent and impartial court established by law

The press and public may be excluded from the trial for moral, public order or national security reasons in a democratic society; for interests of the private lives of the parties; or where in the opinion of the court in special circumstances, publicity would prejudice the interests

of justice. Despite the application of exceptions to the requirement of a public hearing, the judgment rendered must be public, except in the case of juveniles.

Presumption of innocence until proven guilty according to law

Minimum guarantees applicable to every individual suspected of having committed terrorism offences:

- They must be informed of the nature and cause of terrorism-related charges promptly and in detail in a language they understand.
- There must be adequate time and facilities for the preparation of their defence and for communicating with their choice of counsel.
- They must be tried without undue delay.
- The trial must take place in their presence.
- They must be able to defend themselves through legal aid of their choice.
- In the event of indigency, they must be informed of the right to legal aid, should be assigned it, and shouldn't be required to pay for it.
- They should be able to examine witnesses against them and obtain the attendance of witnesses on their behalf.
- They should receive free help from an interpreter if they cannot understand or speak the language of the court.
- They shouldn't be compelled to testify against themselves or to confess guilt.

Criminal procedures for children suspected to be in conflict with terrorism prevention laws

Remedies for a convict erroneously convicted on terrorism offences, where a miscarriage of justice has occurred

Prohibition of double jeopardy

No one is liable to be tried or punished again for an offence they've already been finally convicted for or acquitted of in accordance with the law and penal procedure of each country.

Nigeria acceded to the ICCPR on 29 July 1993. A number of these fair trial guarantees constitute customary international law. The Nigerian government is therefore obliged under international law to ensure that these guarantees are available to all suspects of terrorism offences.

The ICCPR does provide for circumstances under which certain rights could be derogable. The right to a fair trial is not listed in Article 4(2) of ICCPR as one of the rights under which derogation is possible. The right to a fair trial is however derogable where it would circumvent the protection of non-derogable rights.[55]

In cases where a state has invoked a state of emergency, the following minimum requirements must be followed at trial:

- Only a court of law may try and convict a person for a criminal offence.
- The presumption of innocence must be respected.
- The right to take proceedings before a court to decide without delay on the lawfulness of detention.[56]

In cases where the death penalty is applicable, as provided in Section 4(2) of the Terrorism (Prevention) Act of Nigeria, for terrorist acts that result in death, there is still no derogation from fair trial safeguards. Ultimately all trials must remain fair, and adhere to the principles of legality and the rule of law.

> The ICCPR provides for circumstances under which certain rights could be derogable

The engaged parties in criminal proceedings from the pre-trial, trial and appellate phases include the police, investigators, the prosecution, the defence and the judicial officers. In Nigeria, for terrorism-related offences, there is an additional actor, the military, which often arrests suspects of these offences and detains suspects awaiting trial. The Nigerian state must ensure that all its public officials promote and respect the rights of the accused.

Nigeria's legislative framework, as read with the international and African regional legal frameworks to which Nigeria is a party, has the obligation to ensure that a fair trial be accorded to individuals appearing before properly constituted courts in the country.

This obligation necessarily extends to terrorism trials in Nigeria. The peculiar context of thousands of suspects of terrorism offences, as is the case in Nigeria, puts extra strain on any criminal justice system.

The conduct of criminal trials relating to terrorism offences is not business as usual. The subversive nature of terrorism and the interests of the state to ensure national security affect the efforts in ensuring the minimum guarantees for a fair trial are maintained.

> The conduct of criminal trials relating to terrorism offences is not business as usual

These peculiar circumstances don't allow a state to derogate from the obligation to respect the fair trial guarantees, but they do require a state to take extraordinary measures to balance national security interests and human rights obligations, including the obligation to ensure fair trials in terrorism cases.

States such as Nigeria have an exceptional task in addressing mass trials relating to terrorism offences while ensuring the respect for the rights of all involved in these trials.

The following section relates to some good practices that could be adopted by states like Nigeria in ensuring fair trials in terrorism cases.

Basic human rights reference guide

Right to fair trial and due process in the context of counter terrorism

This section discusses the following principles and guidelines by the Working Group on Protecting Human Rights while Countering Terrorism of the Counter-Terrorism Implementation Task Force, a multi UN agency and international entity that aims to help legislators, decision makers in the areas of policy and practice, judges, lawyers and prosecutors, and law enforcement concerning the right to a fair trial and due process in the context of countering terrorism.[57]

It is a useful restatement of good practices that the Nigerian criminal justice system can adopt to ensure fair trial guarantees in terrorism cases.

- Regardless of nationality, statelessness or other status, all individuals must have effective access to justice.
- Criminal charges, or a person's rights and obligations in a suit at law, must be determined by a competent, independent and impartial tribunal established by law. Trial by military or special tribunals must comply with human rights standards in all respects, including legal guarantees for the independent and impartial functioning of such tribunals.
- The right to a fair trial involves the right to a public hearing. Any restrictions on the public nature of a trial, including for the protection of national security, must be both necessary and proportionate, as assessed on a case-by-case basis. Any such restrictions should be accompanied by adequate mechanisms for observation or review to guarantee the fairness of the hearing.
- Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to the law.
- Anyone charged with a criminal offence cannot be compelled to testify against herself or himself, or to confess guilt.
- The right to a fair hearing, in both criminal and non-criminal proceedings, involves the right to a trial 'without delay' or 'within a reasonable time'. The right to a timely hearing includes the right to a timely judgment.
- Everyone charged with a criminal offence, including a terrorist offence, has the right to be tried in his or her presence. Trials in absentia should occur only in exceptional circumstances and only if all due steps have been taken to inform the accused of the proceedings sufficiently in advance.
- All people have the right to representation by competent and independent legal counsel of their choosing, or to self-representation. The right to representation by legal counsel applies to all stages of a criminal process, including the pre-trial phase. Any restrictions on the right to communicate privately and confidentially with legal counsel must be for legitimate purposes, must be proportional, and must never undermine the overall right to a fair hearing.
- In criminal proceedings and other proceedings initiated by the state, every person shall have the right to

adequate time and facilities to prepare his or her case. In criminal proceedings, the prosecution must disclose any relevant material in its possession, or to which it may gain access, including exculpatory material. Restrictions on the disclosure of information may be justified in certain cases and subject to conditions that sufficiently guarantee the right of the person to respond to the case.

- Every person shall have the right to call and examine witnesses, including expert witnesses. The use of anonymous witnesses must be restricted to cases where this is necessary to prevent intimidation of witnesses or to protect their privacy or security and must in all cases be accompanied by sufficient safeguards to ensure a fair trial.
- Any person convicted of a terrorist offence shall have the right to a genuine review of the conviction and/or sentence by a higher tribunal established by law.
- Violation of fair trial rights must result in the provision of effective remedies to the person whose rights have been violated. Compensation must be provided where a conviction has resulted from a miscarriage of justice.[58]

Challenges in dealing with terrorism offences

Key terrorism cases in Nigeria

Before 2011, improvised explosive devices (IEDs) were not commonly used in Nigeria. There was also limited legislation that dealt with terrorism offences. It included the following:

- Criminalising acts inimical to humanitarian assistance in the Criminal Code of the South and the Penal Code of the North.
- Section 15 of the Economic and Financial Crimes Commission Act 2004.[59]

Section 15 of the Money Laundering (Prohibition) Act of 2011. A select number of cases were successfully prosecuted in Nigeria under these laws.[60] From 2009 with the Boko Haram uprising there was a recognition within the Office of the Attorney General of the Federation that these legislative provisions weren't sufficient to address the prevalence of terrorism-related acts in Nigeria.

The Terrorism (Prevention) Act, 2011 was enacted for the prevention, prohibition and combating of acts of terrorism, the financing of terrorism in Nigeria and for the effective implementation of the Convention on the Prevention and Combating of Terrorism and the Convention on the Suppression of the Financing of Terrorism.

The first case prosecuted under the Terrorism (Prevention) Act, 2011 related to the April 2012 Kaduna massacre where Boko Haram insurgents, through a suicide car bombing, killed 38 people attending an Easter Day church service. While the accused was convicted and sentenced to life imprisonment with hard labour and directed to pay damages, there were inadequacies in the Terrorism (Prevention) Act, 2011 relating to the acts of terrorism.

The 20 January 2012 attacks in which over 180 people were killed in Kano and the Christmas Day 2012 bombing in Madalla, Niger State, highlighted the inadequacies of the Terrorism (Prevention) Act, 2011. These included provisions related to the criminalisation of acts of terrorism committed by anyone in or outside of Nigeria; inadequate punishment; escape from lawful detention; and a lack of proscription of Boko Haram and other entities as terrorist groups for purposes of application of the law. The Terrorism (Prevention) (Amendment) Act, 2013 remedied these gaps.

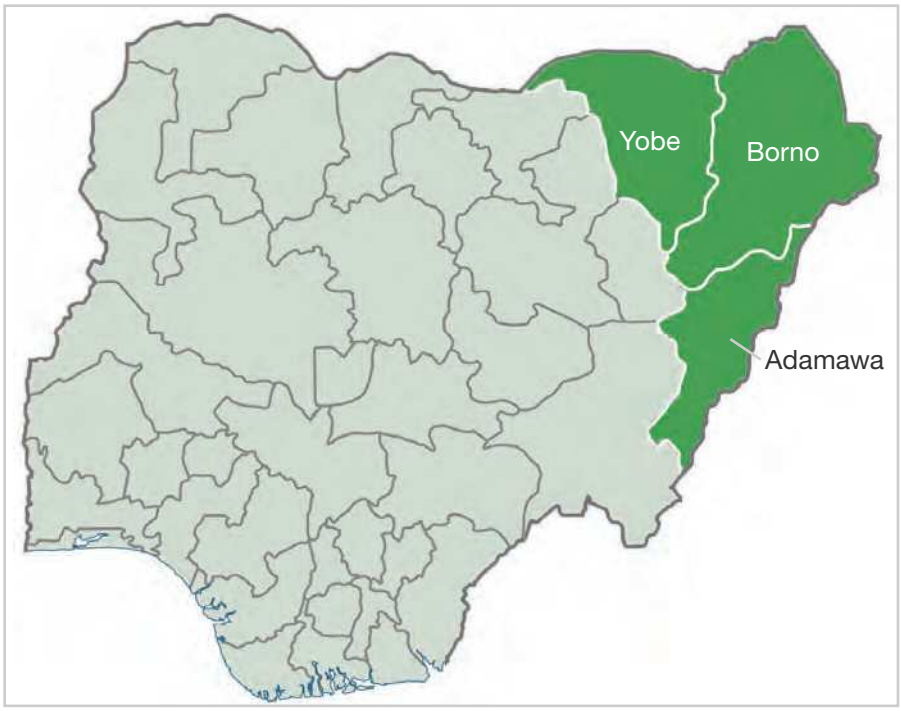
2013 saw the mass arrest of individuals suspected to belong to Boko Haram in the northern states, particularly in Adamawa, Borno and Yobe. Thousands of people were detained in Giwa barracks in Maiduguri, Borno.

> Before 2011, improvised explosive devices were not commonly used in Nigeria

A joint investigation team comprising immigration officials, intelligence agents and representatives of the Office of the Attorney General of the Federation were mandated by the Department of State Services (DSS), Chief of Defence Staff, to move to the northern states, review files and categorise the suspects in detention.[61]

The team was requested to determine whether there was (1) a *prima facie* case against the suspects, and if there was no case to answer, (2) make recommendations for release and (3) deportation of foreign nationals.

Figure 3: Most-affected states in Nigeria – Adamawa, Borno and Yobe



Source: Voice of Nigeria

On the ground there was no possibility of investigations as the circumstances of the arrests were unknown. It is reported that the Nigerian military was involved in the mass arrests and the identity of individual officers who conducted the arrests were not noted.[62] The joint investigation team then conducted enquiries with the suspects between August and December 2013 to ascertain the circumstances of their arrests.

The Complex Case Working Group within the Office of the Attorney-General of the Federation (OAG), which specialises in the prosecution of terrorism and complex crime offences, spent the better part of 2014 conducting evaluations in (1) and (2) described above. In the same year over 600 of these suspects broke away from detention at Maiduguri's Giwa barracks.

A decision was taken to move all suspects of terrorist offences to Wawa Cantonment, Kainji Detention Facilities. The Complex Case Working Group had the difficult task of identifying in the thousands of case files who of the 600 suspects had fled and how many were killed. An unprecedented set of circumstances and unavailability of proper data collection methods hampered efforts to triage the suspects as intended.

IN 2014 OVER

600 suspects

BROKE AWAY FROM DETENTION AT MAIDUGURI'S GIWA BARRACKS

A second joint investigation team was set up in 2015 by the Chief of Defence Staff, with the OAG included. A total of 1 669 files were prepared with various charges.

Challenges experienced in investigation and prosecution of terrorism offences

The Nigerian criminal justice system faces a massive task in dealing with thousands of suspects. Any criminal justice system would be overwhelmed

by these volumes. There is no precedent in the world where thousands of cases are simultaneously being processed. For all the challenges that the Nigerian criminal justice system has registered, the willingness to use the criminal justice system to address violent extremism in the country should be supported, strengthened and enhanced.

Mass arbitrary arrests

The primary challenge in Nigeria regarding the arrests of suspected Boko Haram suspects is that the Nigerian military is involved in conducting arrests. There have been cases where suspects have been arrested by the Nigerian military on suspicion of supporting Boko Haram militants. These include people arrested in marketplaces, places of worship and villages where Boko Haram militants operate.[63]

For purposes of a criminal trial, the Nigerian legislative framework doesn't provide for the mandate of the Nigerian military to include arresting powers. The military police are mandated to carry out functions related to the work of courts martial, which are exclusive to the country's armed forces.

> Arbitrary arrests took place in market-places, places of worship and villages where Boko Haram militants operate

It is also not the primary function of the military to conduct arrests on the battlefield. There is certainly an advantage to the military engaged in battle collecting evidence that can be used in a court of law. Battlefield evidence has proved useful in criminal trials in other jurisdictions. For example, evidence related to terrorist offences committed by the Islamic State in Iraq and Syria. However this practice doesn't pertain to Nigeria.

The Nigerian military maintains an important role in the fight against terrorism. As the military is on the frontline and can arrest Boko Haram militants, it must have training in human rights and criminal procedures, and military officers must be mandated to collaborate and cooperate with civilian law enforcement.

In the course of a criminal trial, as is expected, the identity and conduct of the arresting officer is required as part of the criminal inquiry. This appears to be absent in Nigeria's terrorism trials because the arrests were performed largely by the military, mostly arbitrary, and with some of the military personnel unavailable and unidentifiable in the criminal trial.

Unlawful detention

Evidence suggests that individuals who were arrested as early as 2013 weren't presented before a properly constituted criminal court within the timeframe established by the Administration of the Criminal Justice Act of Nigeria. Arrests and detention of Boko Haram suspects has continued since 2013, bringing the numbers of those in detention to at least 5 000.[64] There is also little evidence of classification and separation of detainees from low-level perpetrators who allegedly provided support to Boko Haram (e.g. food supplies) to high-level perpetrators who allegedly commanded sections of Boko Haram.

In the three phases of mass trials conducted, it was clear that there were individuals who were radicalised to violence and occupied senior levels of command within the Boko Haram militant group. Yet these individuals were detained without distinction within the same facilities as low-level perpetrators.

There is also evidence from the first three phases of the trial to suggest that there were individuals who were detained, for prolonged periods, simply because they were rounded up by the military. They were essentially victimised for having been in the wrong place at the time of arrest. In the phases of trial where this last category of individuals was acquitted, procedures for remedies for wrongful arrest have not been instituted, further entrenching a failure of the criminal justice system to ensure the right to a remedy in line with international good practice.[65]

Absence of legal aid throughout trials

All three phases of the mass terrorism trials were closed off to the public. Only a select group of civil society and media were invited. Many of the observations in this report are as a result of engagement with people who observed the trials. The trials took place in military camps, normally inaccessible to the public.

The Nigerian authorities say the reason for closed trials is the threat of retaliation attacks on court officers and the public by Boko Haram for the arrests and detention of its members by the Nigerian military.

Figure 4: Movement of detainees from Maiduguri, Borno State, to Kainji, Niger State

Source: Authors

The last phase of trials was held in Kainji, Niger State. Suspects had to be airlifted, at great expense, from Maiduguri, Borno State, to the location of the trial in order to avert any reprisal attacks during the trials.

With the distant and secret location of the detainees, it was impossible to provide the thousands of suspects with legal aid. The Legal Aid Council of Nigeria, an entity established by an Act of the Nigerian National Assembly, lacks the human and operational resources to be able to meet the legal defence needs of each of the suspects. Its duty among others is to provide free legal representation to indigent Nigerians.

Defence Counsel from the Legal Aid Council of Nigeria, in the three phases of trials had access to the case files and their clients only a few days before the trials, making it extremely difficult to offer a proper defence. In many instances, suspects opted to confess to terrorism offences just to end their detention.

Evidence

All phases of trials of Boko Haram suspects in Nigeria have followed a confession-based conviction model.

While this has helped address the thousands of case files and dockets before the criminal justice system, it really is just a way to decongest the system of unprocessed files.

The accuracy of the accusations of criminal conduct haven't been tested by the national counter-terrorism laws, and so this could end up wrongfully punishing people who haven't committed terrorism offences. It also provides an opportunity for hardcore terrorists to receive lenient sentences, if any.

There is certainly a role for Nigeria's military authorities in the fight against terrorism, and particularly against Boko Haram. This military role requires an increase in scope, which would need to be legislated as an authoritative framework for counter-terrorism operations in Nigeria and in keeping with the constitutional framework discussed in section four of this report. The Armed Forces Act, Evidence Act and Administration of Criminal Justice Act would require amendments to allow for this role of the designated military officers.

Terrorism is a serious offence. In the conduct of investigation, prosecution and adjudication, the criminal

justice system must be supported by a witness protection regime that goes beyond in-court protection measures. Witness protection legislation that establishes an independent witness protection agency will support the evidence collection and use in court.

Detention post-trial

In the three phases of trials for terrorism offences related to suspected Boko Haram militants in Nigeria, some suspects were found not guilty on the basis of insufficient evidence. Others were found guilty and their sentences deemed to have been served following the time of their arrest and detention. Others were juveniles and sentences involved their rehabilitation.

There is little evidence that these individuals have been released from military detention. Where this is the case, it is a further violation of their rights to freedom.

In cases where individuals were detained for several years and eventually their cases dismissed for want of prosecution, the state is obligated to pay damages as a result of the unlawful detention. This aspect of state responsibility for damages and reparations, as well as a fund to help these discharged individuals and/or victims and survivors of terrorism offences, requires the attention of the Nigerian authorities.

Rehabilitation and reintegration

Boko Haram militants who were convicted in the three phases of the trials should have been released into the custody of the Nigerian Correctional Service. Section 14 of the Nigerian Correctional Service Act, 2019 provides for the reformation and rehabilitation of inmates in Nigeria. This has so far not been an entrenched practice for terror offence convicts in the country.

> The criminal justice system must be supported by a witness protection regime that goes beyond in-court protection measures

Operation Safe Corridor initially aimed to provide a defectors' programme for 'repentant' low-risk male Boko Haram combatants and a rehabilitation programme for low-risk women, such as those married to Boko Haram militants, and for children involved (in)voluntarily with Boko Haram.

The extent of the involvement of low-risk males, females and children convicted of terrorism offences in the three phases of mass trials in Operation Safe Corridor wasn't clear. It is reported that as many as 1 800 women have returned to their communities under the rehabilitation programme.[66]

Operation Safe Corridor remains shrouded in secrecy and the success of the process hasn't been subjected to robust evaluation. Without empirical evidence to support the programme's outcomes, it is difficult to know whether there has been successful rehabilitation of these individuals. Rehabilitation would include deradicalisation and reintegration of individuals

AS MANY AS

1 800 women

HAVE RETURNED TO THEIR COMMUNITIES UNDER THE REHABILITATION PROGRAMME

back into their communities, as well as an active role played by affected communities.

For effective rehabilitation and reintegration, the Nigerian government should integrate Operation Safe Corridor activities with those of the legislated authority, the Nigerian Correctional Service. This would ensure the application of constitutional protection to all (low-, medium- and high-risk) convicts of terrorism offences, and respect for their human rights.

Conclusion

The multiple problems faced by Nigeria's criminal justice system are not entirely new. Weaknesses in the system have surfaced before. However, the Boko Haram crisis in the country has reinforced these challenges in ways that call for new approaches.

Understanding the spectrum of the problems is key, and this report attempts to explain them relating specifically to the trials of terror suspects. The context of the Boko Haram crisis is explained together with Nigeria's political, socio-economic and criminal justice issues. Normative frameworks relating to global, regional and national counter-terrorism laws are also highlighted to offer a sense of existing multi-layered legal instruments and frameworks.

While fair trial rights in Nigeria deserve recognition, there are many problems including investigation gaps, arbitrary arrests, unlawful detention and the absence of legal aid and evidence that were revealed during the terror trials discussed in this report.

> Nigeria has the opportunity to provide good practices for other jurisdictions in the mass adjudication of terrorism cases

This study aims to contribute to the enhancement of the capacity of Nigeria's criminal justice system, and thus goes beyond identifying gaps. It makes recommendations for the consideration of stakeholders such as investigators, prosecutors, judicial authorities and the military.

Lessons must be learnt from the unfolding impact of the crisis on the criminal justice system. The aforementioned stakeholders have an opportunity to show leadership in such a way that Nigeria could provide good practices for other jurisdictions to learn from and serve as a positive model both regionally and globally.

Notes

1 'Boko Haram' is a combination of two words. The Hausa word 'boko' refers to secular 'Western education' and the Arabic word 'haram' refers to something that is 'unlawful' or 'forbidden'. Over the years, several titles have been attributed to the group. Some of these include: the Yusufiyya, referring to followers of Mohammed Yusuf; the Nigerian Taliban; and the Jama'atu Ahlis -Sunnah Lidda'awati Wal Jihad. However, in this study the group will simply be referred to as 'Boko Haram'.

2 United Nations Development Programme, Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point for Recruitment, UNDP, 5, 2017.

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4 Institute for Economics and Peace, Measuring the Impact of Terrorism, Global Terrorism Index, 14, 2019.

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6 J Hemba, Nigerian Islamists Kill 59 Pupils in Boarding School Attack, *Reuters*, 26 February, 2014, https://www.reuters.com/article/us-nigeria-violence/nigerian-islamists-kill-59-pupils-in-boarding-school-attack-idUSBREA1P10M20140226

7 A Ngari and H Cissé, Lutte contre le terrorism au Niger : offrir la guarantir d'un procès équitable aux présumés terroristes, *Rapport de l'Afrique de l'Ouest*, Insitut d'études de sécurité, 2020.

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10 M-A Pérouse de Montclos, Boko Haram and Politics: From Insurgency to Terrorism, in *Boko Haram: Islamism, Politics, Security and the State in Nigeria*, (ed.) M-A Pérouse de Montclos, Leiden: African Studies Centre, 148, 2014.

11 The term 'dirty politics' can be understood as referring to a wide range of political practices and behaviour that are generally unscrupulous, dishonourable, and in some cases, violent. Such political expressions in this regard can entail the use of: smear campaigns to tarnish the image of political opponents and leaders; sabotage against political parties; recruitment of local groups, and in some instances, religious sects with a view to garnering mass support for electoral victory; and in the case of incumbent political candidates, the exploitation of funds associated with political office for the purpose of financing political activities.

12 For details see Human Rights Watch, 'Nigeria: Flawed trials of Boko Haram suspects', 17 September 2017; Amnesty international report, Nigeria: 'They betrayed us': Women who survived Boko Haram raped, starved and detained in Nigeria, 24 May 2018.

13 United Nations Office of Counter-Terrorism, International Legal Instruments, https://www.un.org/counterterrorism/international-legal-instruments

14 International Civil Aviation Organisation (ICAO), Convention on Offences and Certain Acts Committed on Board Aircraft, 14 September 1963, http://treaties.un.org/doc/db/Terrorism/Conv1-english.pdf; UN General Assembly, Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970, https://treaties.un.org/doc/db/Terrorism/Conv2-english.pdf; UN General Assembly, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, https://treaties.un.org/doc/db/Terrorism/Conv7-english.pdf; UN General Assembly, 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, 24 February 1988, https://treaties.un.org/doc/db/Terrorism/Conv7-english.pdf; ICAO, Protocol Supplementary to the Convention for the Unlawful Seizure of Aircraft, 10 September 2010, www.icao.int/secretariat/legal/Docs/beijing_protocol_multi.pdf; ICAO, Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft, 4 April 2014, www.icao.int/secretariat/legal/list%20of%20parties/montreal_prot_2014_en.pdf

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16 UN General Assembly, International Convention against the Taking of Hostages, 17 November 1979, No. 21931, https://treaties.un.org/doc/db/Terrorism/english-18-5.pdf

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18 UN General Assembly, Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 10 March 1988, No. 29004, https://treaties.un.org/doc/db/Terrorism/Conv8-english.pdf; International Maritime Organisation (IMO), Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 14 October 2005, https://www.refworld.org/docid/49f58c8a2.html; UN General Assembly, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 10 March 1988, UNTS 1678, I-29004, https://treaties.un.org/doc/db/Terrorism/Conv9-english.pdf; IMO, Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 14 October 2005, https://www.refworld.org/docid/49f58cee2.html

19 UN General Assembly, Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1 March 1991, https://treaties.un.org/doc/db/Terrorism/Conv10-english.pdf

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21 UN General Assembly, International Convention for the Suppression of the Financing of Terrorism, 9 December 1999, No. 38349, https://treaties.un.org/doc/db/Terrorism/english-18-11.pdf

22 UN General Assembly, International Convention for the Suppression of Acts of Nuclear Terrorism, 13 April 2005, A/59/766, https://treaties.un.org/doc/db/Terrorism/english-18-15.pdf

23 United Nations, General Assembly, Global Counter-Terrorism Strategy, 2006, A/RES60/288, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/288

24 Ibid.

25 United Nations Security Council, The Rule of Law and Transitional Justice in Post Conflict States, 2004, S/2004/616, para. 6, www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/

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27 International Committee of the Red Cross (ICRC), Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949, 75 UNTS 31; ICRC, Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949, 75 UNTS 85; Geneva Convention (III) Relative to the Treatment of Prisoners of War, August 12, 1949, 75 UNTS 135; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Times of War, August 12, 1949, 75 UNTS 287; Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 UNTS 3; and Protocol II Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 UNTS 609.

28 MC Bassiouni, International Crimes: 'Jus Cogens' and 'Obligatio Erga Omnes', *Law and Contemporary Problems*, Vol 59, No 4, p 63, 1996; See also, MC Bassiouni and EM Wise, *Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law*, Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1995.

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30 For a list of peremptory norms see MC Bassiouni, International Crimes: Digest/Index of International Instruments, 1815–1985, New York, London, Rome: Oceana Publications Inc., 1986, Vol 2: pp. xl, 46 – (1) the prohibition against aggression, (2) war crimes, (3) unlawful use of weapons, (4) crimes against humanity, (5) the prohibition against genocide, (6) racial discrimination and apartheid, (7) slavery and related crimes, (8) the prohibition against torture, (9) unlawful human experimentation, (10) piracy, (11) aircraft hijacking and related offenses, (12) crimes against the safety of international maritime navigation, (13) use of force against internationally protected persons, (14) taking of civilian hostages, (15) drug offenses, (16) international traffic in obscene publications, (17) protection of national and archaeological treasures, (18) environmental protection, (19) theft of nuclear materials, (20) unlawful use of mails, (21) interference with submarine cables, (22) counterfeiting, (23) corrupt practices in international commercial transactions and (24) mercenarism.

31 The extradition of Aminu Sadiq Ogwuche from Sudan to Nigeria in June 2014 to face terrorism charges in Abuja relating to the bomb attack on Nyanya bus terminal, Abuja, in 2014, is an example of the obligations to prosecute or extradite. These processes are also governed by extradition treaties and mutual legal assistance procedures between states. The prosecution before South African courts of Henry Okah, a Nigerian national and leader of the Movement for the Emancipation of the Niger Delta, which was responsible for a number of deaths following bombings in various locations in Nigeria is illustrative of mutual legal assistance between states on prosecution or terrorism cases.

32 For more information on soft targets, see the Global Counterterrorism Forum Soft Target Protection Initiative, www.thegctf.org/Initiatives/Soft-Targets-Protection.

33 African Union, OAU Convention on the Prevention and Combating of Terrorism, https://au.int/en/treaties/oau-convention-prevention-and-combating-terrorism, 14 June 1999.

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59 Section 15 of the Economic and Financial Crimes Commission (Establishment) Act of 2004 provides that (1) A person who willfully provides or collects by any means, directly or indirectly, any money by any other person with intent that the money shall be used for any act of terrorism commits an offence under this Act and is liable on conviction to imprisonment for life. (2) Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits an offence under this Act and is liable on conviction to imprisonment for life. (3) Any person who makes funds, financial assets or economic resources or financial or other related services available for use of any other person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act is liable on conviction to imprisonment for life.

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