

## **Politics of Human Rights Protection in An Era of Global Terrorism**

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### **ABSTRACT**

Human rights protection has been a major concern to States all over the world owing to the prominence it has enjoyed globally. The attainment of human right protection through several legal safeguards has not enhanced the protection of human rights on account of global terrorism. In September 2001, the world watched in horror as four passenger airlines all departed from the U.S East coast airport were hijacked by 19 Al-Qaeda terrorist and flown into public buildings in the United States. Two of the planes crashed into the world trade center, a third hit the United State pentagon building and the fourth which was initially headed for Washington crashed into a nearby field. According to official reports, in total, the attack resulted in the loss of 2,996 lives, \$10 billion in property and infrastructure, and attracted total cost of \$3 trillion. The United States responded by quickly launching a war against terror and invading Afghanistan with the objective of deposing the Taliban which it believed harbored Al-Qaeda. Many countries also responded by strengthening their anti-terrorism laws and giving wider powers to law enforcement and security agencies to prevent or neutralize terrorist attack. The focus of this paper is to examine the impact of terrorism on human rights as well as to critically review the measures put in place by the State and its security agencies in countering terrorism. It is evidently the use of threat or violence to intimidate and cause panic especially as a means of forcing government to do or refrain from doing certain acts that is generally known as terrorism which erode the fundamental rights of the citizens of a State irrespective of legal measures for the protection of such inalienable rights.

**KEYWORDS:** Politics, Human Rights, Violence, Protection, Terrorism.

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### **INTRODUCTION**

In an era of global security threat and terror attacks, terrorism has impacted negatively on the enjoyment of human rights and freedom of individuals. Countries that have encountered one form of terrorist attack or the other, have had to grapple with the provisions of both international and domestic laws on terrorism and human rights as well as the need to protect and secure the lives and properties of their citizens. There is a general misconception that there does not exist a common definition of terrorism as an international crime. This is not correct because the concept has evolved under international customary law<sup>1</sup>. Terrorism in this regard may be classified either as a war crime (in time of armed conflict i.e attack on persons not taking active part in armed hostilities, with the major objective of spreading terror) or as a crime against humanity (if it amounts to a wide spread and systematic attack on civilian population)<sup>2</sup> or as discrete international crime (in time of peace which is international in nature i.e going beyond the boundaries of the State with transnational connections)<sup>3</sup>. It is noted that the definition of terrorism is very important because it fulfills multiple functions. First it helps to target a particular crime which ought to be regarded as taboo<sup>4</sup>. It also helps to identify

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<sup>1</sup> A. Cassese, 'The Multifaceted Criminal Notion of Terrorism in International Law' Journal of International Criminal Justice, Vol., 4 (2006), Pp. 334-338

<sup>2</sup> E. Schwelb, 'Crimes Against Humanity', British Year book of international law (1946) p. 195

<sup>3</sup> See article 13(2) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflict of 12 December 1977. (hereinafter referred to as AP II)

<sup>4</sup> G.P. Fletcher, 'The indefinable concept of terrorism' Journal of International Criminal Justice, Vol 4, (2006)p.894

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certain organizations as terrorist and then to impose sanction against funding and freezing of assets of these organization”<sup>5</sup> which therefore has direct impact on the social, economic and cultural rights of the individuals. However, one of the major problems of defining the crime of terrorism is the problem of identifying which acts qualify as criminal acts, distinct from act of war. For example, how do you classify the Palestinian-Israeli conflict that necessitated several suicide bombings in Tel Aviv, Jerusalem and other Israeli cities? It has been noted that whereas the government is obligated to arrest individuals suspected of crime and bring them to trial with respect to act of war, however, the Government is allowed to employ deadly force and violence, including bombings, to neutralize the perceived attack. The definition of which acts are “terrorist” therefore entitles the other party to apply deadly force<sup>6</sup>. It has been noted that terrorism constitutes a special brand of crime that has the characteristics of warfare. Terrorism has at least eight primary characteristics: the factor of violence; the required intention; the nature of the victims; the connection of the offender to the State; the justice and motive of their cause; the level of organization; the element of threat and the absence of guilt<sup>7</sup>. Despite the aforesaid, there is a problem of providing a single globally accepted definition of the crime of terrorism. This is because the definition of terrorism has far reaching implications both for the perpetrators of violent acts, the State and human right of its citizens. Human rights are deemed to be innate and are the basic entitlement of all human beings in any society<sup>8</sup>. It has been noted that human rights are rights which stand above the ordinary laws of the land and which in fact are antecedent to the political society itself. They are therefore a primary condition to a civilized existence<sup>9</sup>. In view of the fact that terrorist threats and actions are often sophisticated and clandestine, it is difficult to distinguish a terrorist from a freedom fighter, as well as determine which right must be foregone by individuals in order to ensure general peace and security.

### MEANING AND SCOPE OF TERRORISM

As earlier noted, there is no universally accepted definition of the term “Terrorism”. However, learned authors have defined it from various perspectives. George P. Fletcher<sup>10</sup> notes that the definition of terrorism serves different purposes with regards to international relations and national security. Apart from the fact that the definition of the crime of terrorism has the effect of stigmatizing certain organization as it renders the financing of the organization illegal, it also has a more serious effect with regards to the justification of extra-judicial killings called targeted assassination. According to Fletcher, because of the multiple functions of the definition of terrorism, it might be naïve to consider a single definition of the crime. Therefore, the better way to think of terrorism is to regard it as a different and higher form of crime, a kind of “super-crime” that incorporates some of the characteristics of warfare. The pursuit of a precise definition of terrorism may be superfluous especially since the international community has come to concur that the events of 9/11 in the US, 7/7 in the UK, 3/11 in Spain and 7/11 in Mumbai constitute terrorist incidents. If it is agreed that these core cases constitute terrorism, perhaps there is no point in coming up with a set of words that qualify as a “definition” of terrorism<sup>11</sup>. It is submitted however, that the definition of terrorism is vital because without an appropriate and holistic definition of terrorism, it is impossible to enforce international obligations against terrorism. For example, despite the fact that many countries have signed bilateral and multilateral agreements covering extradition of criminals, these agreements often rule out political crimes as a basis for extradition. Yet, offences bordering on terror often have political undertones. This loophole therefore makes it possible for some countries to refuse extraditing terrorists on the grounds that such extradition is political. According to Fletcher, in searching for a definition for terrorism, it is not the boundaries of the crime that need to be speculated, rather scholars must take terrorism as the concept is actually used. This means focusing on the criteria agreed by consensus about the attack on the Twin Towers, suicide bombers in Israel and setting off bombs in commuter trains. It is however submitted that this is a simplistic approach as Fletcher’s approach does not take into consideration the incidence of state-sponsored terror attacks on civilian population. On the other hand, Antonio Cassese<sup>12</sup> notes that contrary to the widely accepted conception that there does not exist a definition of the crime of terrorism, customary international law has evolved a definition of the crime. Cassese distinguishes terrorism as an international crime, a specific war crime or crime against humanity. According to him, the classification of the crime of terrorism would depend on whether the attacks are in time of peace or during armed conflict. It should however be noted that while the position of Cassese that international customary law has already defined acts that constitute terrorism, the actual definition of the crime is left to individual States. This therefore means that a person classified as terrorist by one State might be seen as a freedom fighter by another, thereby

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<sup>5</sup> The United States of America publishes a list of Foreign Terrorist Organizations (FTO) on its web page pursuant to section 219 of the Immigration and Nationality Act. See <http://www.state.gov/j/ct/rls/other/des/123085.htm>

<sup>6</sup> G.P. Fletcher, ‘The Indefinable Concept of Terrorism’ *Journal of International Criminal Justice*, Vol. 4, (2006) p. 898.

<sup>7</sup> G.P. Fletcher, ‘Special Issue Criminal law Responses to Terrorism after September 11’, *Journal of International Criminal Justice*, (2006) p. 353

<sup>8</sup> A.A. An-Naim, *Universal rights Local Remedies* (Germany: Interights, Afronet, GTZ, (1997) p.7

<sup>9</sup> *Ransome Kuti & Ors v Attorney-General of the Federation* (1985) 5NWLR (pt. 10) 211 at 230

<sup>10</sup> G.P. Fletcher, ‘The indefinable Concept of Terrorism’. *Journal of International Criminal Justice*, Vol 4, (2006) P. 900

<sup>11</sup> Alex P. Schmid. “*The Revised Academic Consensus Definition of Terrorism.*” *Perspectives on Terrorism*, vol. 6, no. 1, 2012.

<sup>12</sup> A. Cassese, ‘The Multifaceted Criminal Notion of Terrorism in International Law’. *Journal of International Criminal Justice*, Vol., 4 (2006) p. 933

making prosecution of the offence difficult. Another main issue with regards to international law response to the crime of terrorism is with regards to whether the actions of freedom “fighters should” be defined as terrorist or lawful. Cassese opines that there are three main political trends evolving in the international community. First, to simply exempt freedom fighters actions from the category of terrorism, without specifying what law would regulate their actions or whether such actions are in any case always lawful. Second, exclude attacks against civilians in armed conflict from the legal regulation of the international rules on terrorism and thus assign such legal regulation to international humanitarian law alone. Finally, a combination of international norms on terrorism and international humanitarian law to actions in armed conflict, and in this regard classifying attacks on civilians carried out in the course of such conflict as terrorist since its aim is to spread fear. It is however submitted that while it may be effective to identify the crime of terrorism by the ultimate objective of the attacker, it is not in all cases that the attacks against civilians are deemed terrorist. For example in certain situations while the State may appear to be carrying out attacks on civilians, it may be argued that such attacks are merely attempt of the State to ward off insurgency. A globally accepted definition of terrorism also helps to foster cooperation in the international community, in ensuring peace and security. Cassese notes that the Framework Decision on the European Union (EU) passed on 13<sup>th</sup> June 2002 is an example of the need for cooperation among nations. By this decision, terrorism is one of the offences for which arrest warrants can be issued in one member state of the EU and can be expeditiously executed in another member State. He further goes on to identify the specific ingredients of international terrorism as a discrete international crime in time of peace, and also in time of armed conflict. It is submitted that these ingredients not only provide a fulcrum for attempting a globally accepted definition of terrorism, but also distinguish terrorism from other types of crime.

### INTERNATIONAL SAFEGUARDS ON HUMAN RIGHTS PROTECTION

There are international laws and treaties for the protection of human rights which have been ratified by various States as overriding such domestic laws in the event of any conflict. In his book, “Improving Judicial protection of Human Rights in Nigeria”, Yemi Akinseye George<sup>13</sup> traces the attempt at ensuring the protection of human rights of individuals at the international level, to the period after the Second World War. Following the gross violations of human rights during the war, it became clear that in order to ensure peace and meaningful cooperation among States, there was a need to ensure due respect for and observance of human rights. This was reverberated in the creation of United Nations vide its enabling Charter<sup>14</sup>. The provisions of the United Nations Charter which was adopted on 26 June 1945 promote and encourage respect for human rights and for fundamental freedoms for all individuals without any distinction as to race, sex, language or religion. According to Akinseye-George, it was the conviction of the Allied Forces during the war that necessitated the protection of the four basic freedoms: freedom of speech, freedom of assembly, freedom from fear and freedom from want. These rights are embodied in the Universal Declaration of Human Rights (UDHR)<sup>15</sup> and can be classified into civil rights, political rights and social, economic and cultural rights. The book further contains several principles with regards to the role of the court in domestic application of international human rights norms<sup>16</sup>. For example, Akinseye-George notes that a valid municipal jurisdiction defence cannot be allowed as a defence for how the State treats its citizens. Therefore, a State that violates the human rights of its nationals will be taken to have violated its obligations under the United Nations Charter. This means that international law deems the subject of human rights not as an inherently domestic matter<sup>17</sup>. Another major dimension to this perspective is the fact that certain human rights norms have attained the status of *jus cogens*. **Jus cogens** are mandatory or peremptory norms of general international law accepted and recognized by the international community as norms which cannot be derogated from<sup>18</sup>. For example, the UDHR is generally regarded as *jus cogens*, to be complied with by all actors in the world<sup>19</sup>. It is submitted that such arrangement presents a vacuum with regards to counter-terrorism measures because it would appear that in certain situations involving threat to security, these rights may in certain cases be derogated from. For instance, the facilitation of data gathering by international and domestic security agencies in order to track potential terrorists threats or attacks<sup>20</sup>. The courts also have a role to play in the enforcement of international human rights standards within its domestic jurisdiction. This is so even with respect to rights that are only recognized at the international level. The principle of complementarity gives the national courts the jurisdiction to try crimes created by the Statute of the International Criminal Court<sup>21</sup>.

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<sup>13</sup> Y. Akinseye-George, *Improving Judicial Protection of Human Rights In Nigeria* (Abuja: Centre for Socio-Legal Studies (2011) p. 1

<sup>14</sup> Charter of the united Nations available at <http://www.un.org/en/charter-united-nations/index.html>

<sup>15</sup> The UDHR was adopted by members of the United Nations in 1948

<sup>16</sup> Y. Akinseye-George, *Improving Judicial Protection of Human Rights in Nigeria* (Abuja: center for Socio-Legal studies (2011) 356-376

<sup>17</sup> M. Haleem, ‘The domestic application of international Human Right Norms’ in (ed.) Commonwealth secretariat (ed) *Developing Human Rights Jurisprudence* (Judicial Colloquim in Bangalore 1998) p. 92

<sup>18</sup> Black’s Law Dictionary (Thomson Reuters 2009) 9<sup>th</sup> edition

<sup>19</sup> M. Haleem, ‘The domestics application of international Human Rights Norms’ in (ed) Commonwealth secretariat (ed) *Developing Human Rights Jurisprudence* (Judicial Colloquim in Bangalore 1998) p. 92

<sup>20</sup> Article 17 ICCPR

<sup>21</sup> Article 17 and 53 International Criminal Court Statute

### TERRORISM AND FREEDOM FIGHTING

The cliché “one man’s terrorist is another man’s freedom fighter” is one of the obstacles that resonates with defining the crime of terrorism<sup>22</sup>. The terrorist Abu Iyad, who was responsible for carrying out a number of lethal attacks including the killing of Israeli athletes during the 1972 Olympics, had attempted to justify his actions thus:

By nature, and even on ideological grounds, I am firmly opposed to political murder and, more generally, to terrorism.

Nevertheless, unlike many others, I do not confuse revolutionary violence with terrorism, or operations that constitute political acts with others that do not<sup>23</sup>.

There is often a general erroneous attempt to lump up all armed attack as terrorism, and this makes it difficult distinguishing actual terrorists from those fighting for national liberation. In North-Eastern Nigeria, the Jama’at Ahl as-Sunnah lid-Da’wah wa’l-Jihad sect also known as Boko haram has ravaged the country since 2009. The sect which started in 2002 was led by Mohammed Yusuf and established a religious complex and school which became a breeding ground for Islamic radicals with the goal of establishing an Islamic State in the region<sup>24</sup>. It has employed the use of deadly attacks including suicide bombings, mass murders and the use of sophisticated weaponry. The Boko haram attacks have led to the death of thousands of persons and over two million persons displaced from their homes. Boko haram is ranked as the world’s deadliest terror group<sup>25</sup>. It has however been noted that the sect conducted its activities peacefully in the initial seven years of its existence, until its leader was killed extra-judicially by security operatives<sup>26</sup>. Similarly, the Indigenous People of Biafra is a group led by Nnamdi Kalu, a self-professed political activist. According to its official website, the Indigenous People of Biafra<sup>27</sup> (IPOB) are the original inhabitants and owners of the Land and Communities of Biafra spanning centuries of tradition and historical ancient cultural ties. These areas include the South East, some parts of South and the Middle Belt of Nigeria. The IPOB group claims they are under occupation, servitude and modern day slavery by the Hausa-Fulani controlled Nigerian establishment<sup>28</sup>. Nnamdi Kalu is reported to have threatened violence against Nigeria by 30<sup>th</sup> December, 2025 if the wishes of the group to secede were not acceded to by the Nigerian authorities<sup>29</sup>. He was subsequently arrested and has been charged with offences bordering on treasonable felony, maintaining unlawful society and illegal possession of items<sup>30</sup>. The above scenarios present far reaching implications for drafters of anti-terrorism legislation. The Terrorism Act clearly identifies deliberate malicious act done to compel government from doing or refraining from doing an Act<sup>31</sup>. On the one hand, Government has a duty to ensure peace and security of its territory and prevent terror attacks, on the other hand, citizens have the constitutionally guaranteed rights to associate and to practice whatever religion they choose. It is however submitted that not until anti-terrorism legislations as well as counter-terrorism measures adopted by the State are thoroughly examined, the attempt to distinguish between peaceful protest for national liberation and terrorism, would remain a subject of controversy considering the fact that both terrorists and freedom fighters begin their demands through agitations.

### IMPACT OF TERRORISM ON HUMAN RIGHTS

The impact of global terrorism on human rights cannot be fully appreciated without reference to contemporary armed conflicts currently ravaging the world particularly the wars between Israel and Gaza, Russia and Ukraine as well as internal conflict in Sudan.

#### i. Israel - Hamas war

Since 2017, Israel and Hamas alongside other Palestinian militant groups based in Gaza, have engaged in conflict including four wars in 2008 – 2019, 2012, 2014 and 2021. These conflicts have resulted in the deaths of approximately 6,400 Palestinians and 300 Israelis. Palestinians militants have targeted a number of military bases and civilians towns in Southern Israel. Since 2001, Palestinian militants have launched thousands of rocket and mortar attacks on Israel from the Gaza strip, killing, injuring and traumatizing Israeli civilians. Gaza has been under violent blockade for over 16 years and eighty percent of the Gaza population, rely on international assistance for survival<sup>32</sup>. The Arab-Israeli war of 1948 broke out when five Arab nations invaded territory in

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<sup>22</sup> B. Ganor, ‘Defining Terrorism – is one man’s terrorist another man’s freedom fighter?’ (2010)

<http://www.ict.il/Article/1123/Defining-Terrorism-Is-One-Mans-Terrorist-Another-Mans-Freedom-Fighter>

<sup>23</sup> A. Iyad, *Without a Homeland* (Tel-Aviv: Mifras, 1983) p. 146

<sup>24</sup> M.A Sergie & T. Johnson, ‘Backgrounder – Boko Haram’ Johnson, Toni (27 December 2011). “Blackgrounder – Boko Haram”. (2011) <http://www.cfr.org/nigeria/bokoharam/p25739>

<sup>25</sup> Global Terrorism Index <http://economicsandpeace.org/wp-content/uploads/2015/11/Global-Terrorism-Index-2015.pdf>

<sup>26</sup> D. Cook, “the Rise of Boko Haram in Nigeria”. <http://www.ctc.usma.edu/posts/the-rise-of-boko-haram-in-Nigeria>, (2011)

<sup>27</sup> Hereinafter referred to as IPOB

<sup>28</sup> Website of the Indigenous People of Biafra (IPBO) <http://www.ipob.org/p/blog-page-18.html>

<sup>29</sup> Nnamdi Kalu – if They don’t give us Biafra, No human Being will remain Alive in Nigeria

<http://www.informationng.com/2014/06/if-they-dont-give-us-biafra-no-human-being-will-remain-alive-in-nigeria-biafra-movement-leader-nnamdi-kalu.html>

<sup>30</sup> <http://www.premiumtimesng.com/news/headlines/195557-biafra-nigeria-slams-fresh-charges-aganist-nnamdi-kanu.html>

<sup>31</sup> Section 1 (2) (b) Terrorism (Prevention) Act 2011

<sup>32</sup> <https://en.wikipedia.org>Wiki>

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the former Palestinian mandate immediately after the announcement of the independence of the State of Israel on 14<sup>th</sup> May 1948. Airstrikes have destroyed food infrastructure such as bakeries, mills and food stores. This has caused starvation for more than half a million Gazans and is part of a broader humanitarian crisis in the strip. Around twelve thousand rockets were fired since October 2021 towards Israel killing 15 people. During the year, Palestinian authorities in the West Bank and Gaza Strip repressed the rights to freedom of expression, association and assembly. Torture and other ill treatments have been reported in Palestinian detention centers<sup>33</sup>. In Gaza, reports reveal that issues of arbitrary or unlawful killings, including extra-judicial killings; torture or cruel, inhuman or degrading treatment or punishment by government officials, arbitrary arrest and detention are very rampant. Human rights violators and war criminals have engaged in acts of genocide, torture, rape, extra judicial killings, recruitment of child soldiers, violations of religious freedom and other forms of persecution aimed at abridging the fundamental rights of the citizens. The ongoing conflict, bombardment and blockade have also led to catastrophic humanitarian suffering as more than two million Palestinians; half of them being children are without clean water, food and vital medical services<sup>34</sup>.

### **ii. Russia - Ukraine War**

The ongoing war between Russian and Ukraine began in February 2014 when Russia occupied and annexed Crimea from Ukraine and supported pro-Russian separatists fighting the Ukrainian military in Donbas War. The armed conflict between Russia and Ukraine resulted in the occupation of Crimea, parts of Donetsk, Kharkiv, Luhansk, Mykolayiv and Zaporizhzhya Oblasts hitherto under the Ukrainian sovereignty<sup>35</sup>. The conflict has led to the displacement of over six million people in Ukraine and another eight million Ukrainians have fled the country as refugees. Russia has denied relief organizations access to Ukrainian prisoners of war under its control. Torture, ill-treatment, summary executions, mock executions, beatings and electrocution of prisoners and the civil populace have become so prevalent in the conflict between Russia and Ukraine. The suppression of human rights in the armed conflict between Russia and Ukraine continued to surge. As at September 2022, over 9,614 civilians had been killed and more than 17,535 injured. The atrocities committed by Russia in the deployment of antipersonnel landmines and cluster munitions to kill, disfigure and displace innocent citizens of Ukraine, propelled the International Criminal Court to issue arrest warrants against Russia's President Vladimir Putin and Russia's children's rights commissioner for unlawful deportation and transfer of Ukrainian children from occupied areas of Ukraine to Russia. Since the commencement of the unfortunate war, Russian forces have continued to carry out attacks using explosive weapons in populated areas against civilians. Russian forces have also attacked Odesa with missiles and drones killing and injuring civilians and destroying grain terminals, historical buildings and cultural monuments. On their part, Ukrainian forces have also carried out indiscriminate attacks against civilians under the Russian territory which the United Nation's Commission qualify as war crimes. The onslaught against human rights occasioned by the armed conflict between Russia and Ukraine has also resulted in conflict related sexual violence by Russia forces in occupied territories of Ukraine as 251 cases of such sexual abuses have been documented by Ukrainian authorities<sup>36</sup>.

### **iii. Armed Conflict in Sudan**

The armed conflict in the Arab nation of Sudan was ignited on the 15<sup>th</sup> of April 2023 when violent clashes erupted between the Sudanese Armed Forces and the paramilitary Rapid Support Forces. Since the armed struggle began in Sudan, over 10.2 million people have been affected including internally displaced persons, asylum seekers and refugees. The ongoing conflict has left hundreds of people dead, thousands more wounded and hundreds of thousands displaced<sup>37</sup>. The war in Sudan has resulted in rampant violations of human rights and humanitarian law with mass civilian casualties, gender based violence and internet shut down which has affected the delivery of humanitarian aid to millions of civilians who are without food and water. The internal conflict in Sudan has claimed the lives of over 14,000 people and over 10 million people displaced<sup>38</sup>. There is an increased risk of sexual violence against women and girls in Sudan as cases of rape, sexual slavery and other forms of sexual molestation have escalated. The scenario playing out in Sudan as it relates to human rights abuses is against the tenets of international humanitarian law relating to the protection of human rights. It is therefore submitted that the actors in the Sudan crises who are currently embroiled in terror acts, have subjected the sacrosanct rights of the Sudanese citizens to the dignity of the human person, to violent subjugation and suppression.

As earlier shown in the ticking time-bomb scenario, certain situations may arise which may necessitate the need to restrict the human rights of certain individuals. International law<sup>39</sup> provides for the principle of strict proportionality wherein the State is entitled to

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<sup>33</sup> Data on casualties" United Nations Office for the coordination of Humanitarian Affairs – occupied Palestinian territory (OCHAoPt). United Nations. Archived from the Original on 12 October 2023. Retried 12 October 2023

<sup>34</sup> <https://en.Wikipedia.org>WiKi>

<sup>35</sup> <https://en.Wikipedia.org>>

<sup>36</sup> <https://www.britannica.com>

<sup>37</sup> [www.cfr.org](http://www.cfr.org)

<sup>38</sup> [www.unrefugees.org](http://www.unrefugees.org)

<sup>39</sup> See Article 4 (1) of the International Covenant on Civil and Political Rights, and Article 15(1) of the European Convention on Human Rights

take measures which effectively derogate from its legal obligations in a time of emergency. This is however limited to the extent strictly required by the exigencies of the situation, and provided that the State provides remedies for any violation of these rights<sup>40</sup>. Similarly, restriction and derogation from fundamental rights are also contained in the Nigerian Constitution<sup>41</sup>. The Constitution allows the National Assembly to make laws that limit the rights of Nigerian citizens, subject to certain conditions. The problem with the right of the State to derogate from its legal obligations to uphold human rights is with regards to the determination of the proportionality of the actual measures taken in a time of emergency as well as guiding against excessive or abusive use of emergency measures. The test for reasonable justifiability in time of emergency was considered by the Nigerian Supreme Court in *Williams V Majekodunmi*<sup>42</sup> where it was held that the restriction order on the Legal Adviser of the Action Group was not reasonably justifiable by the Emergency. The Court however noted that whether a state of emergency existed was a matter for the parliament to decide. As such, the court is therefore not entitled to look beyond the provisions of the Constitution in determining whether or not the state of emergency declared by the parliament was valid<sup>43</sup>. In Europe however, the European Court of Human Rights has the duty of ascertaining whether a State has acted proportionately in response to a public emergency. This is despite the wide powers given to parliament<sup>44</sup>. In *Lawless V Ireland*<sup>45</sup>, the court held that it could assess the government's appraisal of the given situation in order to determine whether the use of emergency powers was justified. It is also pertinent to note that some rights may be derogated upon by legislation in peace times. The Nigerian Constitution also provides that some of the rights contained therein are not absolute. These rights include right to private and family life<sup>46</sup>, right to freedom of thought, conscience and religion<sup>47</sup>, right to freedom of expression and the press<sup>48</sup>, right to peaceful assembly and association<sup>49</sup> and right to freedom of movement<sup>50</sup>. On the other hand, there are also rights which may be derogated from at any time. These include the right to dignity of human person<sup>51</sup>, the right to fair hearing<sup>52</sup> and the right to freedom from discrimination<sup>53</sup>. Flowing from the above, it becomes a matter of debate whether the actions of the United States and most of the western world post 11<sup>th</sup> September 2001 were reasonably justifiable given the set of peculiar circumstances of the time, especially with regards to claims of acquisition of weapons of mass destruction.

### CONCLUSION

Terrorism has not only had devastating effect on millions of lives and properties destroyed by the terror acts, but has also destabilized governments, undermined civil society, jeopardized peace and security and threatened economic and social development. The indirect effect of terror attack has also led government to engage in act that would otherwise be regarded as violation of human rights, especially right to privacy and dignity of the human person. This is even more compounded by the problem of properly identifying who a terrorist is as one party's received terrorist may be another person's freedom fighter. Terrorism has also affected government policies with regards to migration aid and foreign policy. For example the countries that make up the European Union have battled between assisting persons displaced by the war in Syria by affording them decent living standards and protection of their rights on the one hand, and ensuring peace and security of Europe on the other hand. The thinking was that some of the persons escaping from Syria may be linked to terrorism and this has shaped the European union policy for Syrian migrant as the union devised means of limiting migrant's entry. While the international community and States have struggled to prevent terrorist attack, there has been a need to also ensure that citizens are not forced to live in perpetual fear borne out of counter-terrorism measures adopted by the State. This would defeat the objective of the fight against terrorism and the protection of human rights in the midst of terrorism. According to the United Nation's High Commissioner for Human Right<sup>54</sup>, terrorism has scuttled the global enjoyment of human rights of individuals. Terrorism threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardize fundamental freedoms and aims at the destruction of human rights. The activities of terrorists have adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society and destabilizes legitimately constituted

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<sup>40</sup> Article 2(3) of the International Convent on Civil and Political Rights

<sup>41</sup> Section 45 CFRN, 1999

<sup>42</sup> (1962) ALL NLR 413

<sup>43</sup> See also *Adegbenro v A.G Federation* (1962) WNLR 150

<sup>44</sup> Y. Akinseye-George, *Improving Judicial Protection of Human Rights in Nigeria* (Abuja: center for socio-legal studies (2011) p. 356

<sup>45</sup> (1961) 1 EHRR 15

<sup>46</sup> Section 37 constitution of the Federal Republic of Nigeria (CFRN), 1999

<sup>47</sup> Section 38 CFRN, 1999

<sup>48</sup> Section 39 CFRN, 1999

<sup>49</sup> Section 40 CFRN, 1999

<sup>50</sup> Section 41 CFRN, 1999

<sup>51</sup> Section 37 CFRN, 1999

<sup>52</sup> Section 36 CFRN, 1999

<sup>53</sup> Section 42 CFRN, 1999

<sup>54</sup> UN Fact Sheet No. 32 Human Rights, Terrorism and Counter-Terrorism

Governments. As noted by Akinseye-George, while human rights are sacrosanct and have in certain cases achieved the status of *jus cogens*<sup>55</sup>, it would appear that these rights are not absolute and there is a need to adopt new international rules that would guarantee these freedoms while also ensuring peace and security. In proposing these international rules, the first step is a globally accepted definition of the crime, since the definition has severe impact not only in combating the crime but also the rights of both victims and suspects. Another aspect of terrorism which this paper has examined, is the impact of counter-terrorism measures on the rights of citizens. As noted above, while there is need for the State to deplore counter-terrorism measures in order to ensure peace and security, it is also imperative to ensure that the rights of citizens are not unnecessarily breached and eroded under the guise of fighting terrorism.

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