Africa Development, Volume XLIV, No. 2, 2019, pp. 5-25

(ISSN: 0850 3907)

Financing Terrorism in Nigeria: Cutting off the Oxygen

Christiana Ejura Attah*

Abstract

The growth and continued spread of terrorism world-wide has been accentuated by the important role played by finance. Terrorist organisations will not survive for long without finance because terrorism is an expensive venture which requires constant supply of money for its sustenance. While the terrorists of old relied on crude implements such as daggers and knives which could easily be sourced, today's terrorists often need more sophisticated weapons for their operations. Terrorist organisations also require money to run their camps, feed their members and plan and carry out attacks on their targets. Although it may be conceded that cutting off the source of terror financing may not completely eradicate terrorism, it may affect the frequency and magnitude of attacks undertaken by terrorist groups. This article analyses the role of finance in the activities of terrorist organisations, with emphasis on the Boko Haram terrorist group in Nigeria and the attempts by the Nigerian government to curb the activities of this and other similar groups in the country through the use of law. Relying on doctrinal sources, the article concludes that more needs to be done to effectively cut off the various sources of finance open to terrorist organisations in Nigeria.

Résumé

L'avancée et la propagation du terrorisme dans le monde entier ont été accentuées par le rôle important joué par la finance. Les organisations terroristes ne survivront pas longtemps sans finances, car le terrorisme est une entreprise coûteuse qui doit être alimentée en permanence, car les terroristes d'antan comptaient sur des instruments archaïques tels que des dagues et des couteaux faciles à trouver, mais les terroristes d'aujourd'hui ont souvent besoin d'armes plus sophistiquées pour leurs opérations. Les organisations terroristes ont également besoin d'argent pour gérer leurs camps, nourrir leurs membres et

* Department of Jurisprudence and Public Law, College of Law, Joseph Ayo Babalola University, Ikeji-Arakeji, Osun State, Nigeria. Email: ejuata@yahoo.co.uk

planifier et mener des attaques sur leurs cibles. La suppression de la source du financement du terrorisme ne permettra peut-être pas d'éradiquer complètement ce phénomène, mais elle pourrait affecter la fréquence et l'ampleur des attaques perpétrées par des groupes terroristes. Cet article analyse le rôle de la finance dans les activités des organisations terroristes en mettant l'accent sur le groupe terroriste Boko Haram au Nigéria et les tentatives du gouvernement nigérian d'endiguer, par des moyens légaux, les activités de ce groupe et de groupes similaires. S'appuyant sur des sources doctrinales, l'article conclut qu'il reste encore beaucoup à faire pour efficacement couper les différentes sources de financement ouvertes aux organisations terroristes au Nigéria.

Introduction

Terrorism thrives on finance provided mainly by illicit sources. The regular supply of cash to terrorist groups in turn ensures the continued existence of such groups and by extension a continuation of their terrorist activities. The Palestinian Liberation Organisation has been credited with establishing a precedence for financing violence which other terrorist groups have adopted (Ehrenfeld 2003: 1). Sources of terrorist financing today are multifarious and include money laundering, ransom from kidnapping, robbery, drug trafficking, 'protection fees', illegal arms trade, donations from wealthy sympathisers and contributions from other terror groups. This list is not exhaustive but it goes to show the multitude of channels of funding open to terrorist groups. A striking feature of this list is the fact that nearly all the activities contained therein are criminal in nature.

In Nigeria, the Terrorism (Prevention) Act 2011 (as amended) expressly prohibits the funding of terrorism. Section 1 (1) stipulates that 'All acts of terrorism and financing of terrorism are hereby prohibited'. To get around this law, terrorists have to rely on crime for the finances necessary for funding their activities. The sources of funding available to Boko Haram are as diverse as they are illegal and criminal. Unconfirmed reports claim that between 2006 and 2011, the group was able to secure approximately US$70 million in funding from various illicit sources. Boko Haram depends, for most of its funding, on such proceeds of crime as kidnapping for ransom, bank robbery, and the payment of 'protection fees' by individuals and state governments. Boko Haram has been fingered as the culprit in several incidents of kidnapping of not only prominent Nigerians but also Europeans and Americans, especially in Cameroon. Some of these include:

1. the kidnapping of a French priest, Georges Vandebeusch, in November 2013 (McCoy 2014);
2. the kidnapping of seven members of a French family (*ibid.*).

The victims were only released after the payment of ransoms to the terrorists. In the case of the French family, a ransom of US$3 million was paid (*ibid.*).

Attacks on banks by Boko Haram are also a frequent occurrence which serve to provide much-needed cash for the terrorists. Bank robberies are believed to have yielded an estimated US$6 million to the group (McCoy 2014). Some state governments in the northern part of Nigeria have allegedly paid regular 'protection fees' to Boko Haram. For instance, Isa Yuguda as Governor of Bauchi and Ibrahim Shekarau as Governor of Kano State allegedly paid regular 'protection money' to Boko Haram so that the organisation would not launch attacks in their states (Weber 2014). Additional funding for the group also comes from like-minded foreign terrorist groups such as al-Qaeda, in the Islamic Maghreb (AQIM) and the Somali group al-Shabaab (Blanchard 2014:7). Boko Haram was one of the major beneficiaries of the sum of US$3 million sent to terror groups in Africa by the founder of al-Qaeda, Osama bin Laden, in 2002 (McCoy 2014).

The Nigerian legal framework and the financing of terrorism

Terrorism (Prevention) (Amendment) Act 2013

The Nigerian Terrorism (Prevention) (Amendment) Act 2013 specifically prohibits all acts of terrorism and the financing of terrorism (Section 1 (1)). The emphasis placed on the financing of terrorism has been informed by the key role finance plays in terrorism. Terrorists need money to carry out their activities, including 'money to finance training, recruit members, support global travel, support and sustain global communications, purchase instruments of terror (including biochemical and other weapons of mass destruction), and sustain and support terrorist cells' (Gurule 2004: 114). Thus, cutting off the source of terror finance inhibits the capacity of terror groups to carry out terror attacks. It is in recognition of this that Section 13 specifically criminalises the provision of funds for terror groups by providing that any person or entity who, in or outside Nigeria:

(i) solicits, acquires, provides, collects, receives, possesses or makes available funds, property or other services by any means to either terrorists orterrorist groups, directly or indirectly with the intention or knowledge or having reasonable grounds to believe that such funds or property will be used in full or in part in order to commit an offence under this Act or in breach of the provisions of this Act;

(ii) possesses funds intending that they be used or knowing that they will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act by terrorist or terrorist groups, commits an offence under this Act and is liable on conviction to imprisonment for life.

The requisite *mens rea* for the commission of the offence of financing of terrorism under this section is the intention or knowledge that the funds so provided would be used for the purpose of committing or facilitating the commission of a terrorist act by the terrorist group to whom such funds have been provided. This offence is further strengthened by the latter arms of Section 13 which provides that 'any person who knowingly enters into, or becomes involved in an arrangement':

(i) which facilitates the acquisition, retention or control by or on behalf of another person of terrorist fund by concealment, removal out of jurisdiction, transfer to a nominee or in any other way, or

(ii) as a result of which funds or other property are to be made available for the purposes of terrorism or for the benefit of a specified entity or proscribed organization, commits an offence under this Act and is liable on conviction for life imprisonment.

For an act to constitute an offence under this section, it is not necessary that the funds or property were actually used to commit any offence of terrorism.

By the provisions of Section 13 (3), it would not be a defence to claim that the funds provided by an accused person to a terrorist organisation were not used by that group for the commission of any offence of terrorism. What is important to ground an offence under this section is proof that such funds were provided by the accused person to the terrorist group with the intention and knowledge that they would be used for the commission of a terrorism offence. Effectively, the intention behind the provision of funds to a terrorist group would suffice even when such funds had not been utilised for the purpose for which they had been provided. A similar provision is contained in Article 421-2-2 of the French Terrorism Law prohibiting the financing of terrorism, which provides as follows:

> It also constitutes an act of terrorism to finance a terrorist organization by providing, collecting or managing funds, securities or property of any kind, or by giving advice for this purpose, intending that such funds, security or property be used, or knowing that they are intended to be used, in whole or in part, for the commission of any of the acts of terrorism listed in the present chapter, irrespective of whether such an act takes place.

Turkey has made similar provisions in Article 8 of its Financing of Terrorism Act which also prohibits the funding of terrorism as follows:

> Whoever knowingly and willfully provides or collects fund for committing partially or fully terrorist crimes, shall be punished as a member of an organization. The perpetrator is punished in the same way even if the fund has not been used. Fund cited in the first paragraph of this article shall mean money or all types of property, right, credit, revenue and interest, value of

> which may be presented by money, and benefit and value that was collected as a result of conversion thereof.

Section 13 of the Nigerian Terrorism (Prevention) (Amendment) Act, is in line with the provisions of the 1999 United Nations Convention for the Suppression of the Financing of Terrorism.

The Convention also enjoined state parties to not only criminalise the financing of terrorism but to also provide for the forfeiture of funds provided or collected for terrorist purposes by adopting measures to discourage such financing and punish perpetrators. The offence of financing of terrorism according to the Convention, is committed by any person who by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(i) an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex;

(ii) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or international organisation to do or to abstain from doing any act.

While making comprehensive provisions prohibiting the financing of terrorism, the Nigerian Anti-Terror Act is however silent on the consequences of withholding or diverting public funds meant for preventing terrorism. It is obvious that terrorists need adequate funding to carry out their acts of terrorism. It is equally obvious that when public funds meant for the purchase of equipment, arms and ammunitions needed to physically fight terrorists are diverted, such diversion aids the cause of the terrorists as much as the provision of funds to such terrorists and terrorist groups. A case in point is that involving a former Nigerian National Security Adviser, Sambo Dasuki, who allegedly diverted about US$32 billion meant for the procurement of arms for the military's fight against Boko Haram terrorists (Anaedozie 2016: 16). I argue here that such illegal diversion should be criminalised and penalised under the Terrorism (Prevention) (Amendment) Act because it causes as much damage as the direct provision of funds to terrorist groups. Although it may be argued that this scenario has been captured by the provisions of Section 1(2) (c) of the Terrorism (Prevention) (Amendment) Act, which criminalises omission 'to do anything that is reasonably necessary to prevent an act of terrorism', the legislation can be better strengthened by specific prohibition of the withholding or diversion of funds meant for the fight against terrorism.

While it is noted that terrorists require financing to carry out attacks, the amount required in some cases is not much and can be provided by the terrorists themselves. An example has been cited of the terrorist bombings which took place in London on 7 July 2005. According to a report prepared by the United Nations Office on Drugs and Crime (Costa 2010: 31), these bombings were self-financed by terrorists led by Mohammed Kahn while the operations 'cost less than £8,000' (*ibid.*). Terrorists who passionately believe in the group's cause would be prepared to go to any length to get funds for their operations – without necessarily relying on financing from people outside the terrorist cell or group. The detection of such financing may therefore prove a herculean task for investigators.

The Money Laundering (Prohibition) Act

The laundering of money for the financing of terrorism is an important source of funds used by terrorist groups for their operations. Virtually all activities of terrorists depend on the availability of money obtained through illegal means. It has been asserted that 'terrorists cannot terrorize without money, without resources; training costs money, planning costs money, and explosives cost money, plane tickets cost money' (Arabinda 2009: 7). In the same vein, the Financial Action Task Force (FATF) has noted that for a terrorist group to successfully carry out its terrorist activities, the group has to 'build and maintain an effective financial infrastructure to generate income, launder the proceeds and make them available for committing terrorist acts' (Barber 2011: 3). This has informed the enactment of legislation to curb the menace of money laundering.

The initial legislation on money laundering in Nigeria was the Money Laundering (Prohibition) Act 2004. This Act was later repealed and replaced by the Money Laundering (Prohibition) Act of 2011 and is an important constituent of the legal framework put to curb the financing of terrorism in Nigeria. The importance of this Act lies in the fact that the financing of terrorism is often facilitated through money laundering. The Act, in its preamble, therefore prohibits and criminalises the laundering of the proceeds of crimes and the financing of terrorism. Money laundering has been described as the process whereby:

> illegal, or dirty, money is put through a cycle of transactions, or washed, so that it comes out the other end as legal, or clean, money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income (Robinson 1994: 3).

Money laundering is defined in Part II Section 15 of the Nigerian Money Laundering Act, as referring to the conversion or transfer of resources or properties derived directly from:

(i) illicit traffic in narcotic drugs and psychotropic substances; or

(ii) participation in an organised criminal group and racketeering, terrorism, terrorist financing, trafficking in human beings and migrants smuggling, tax evasion, sexual exploitation, illicit arms, trafficking in stolen and other goods, bribery and corruption, counterfeiting currency, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, illegal restraints and hostage taking, robbery or theft, smuggling, extortion, forgery, piracy, insider trading and market manipulation… with the aim of either concealing or disguising the illicit origin of the resources or property, or aiding any person involved to evade the legal consequences of his action.

An offence committed under this section attracts a penalty of imprisonment for a term not less than five and not more than ten years.

The provisions of this Act prohibiting the laundering of the proceeds of crime or illegal act for the purposes of financing terrorism are detailed and in line with the recommendations of the Financial Action Task Force (FATF). The United Nations Security Council, through its Security Council Resolution 1617 of July 2005 had recommended that 'the standard-setting, coordination, and capacity-building efforts of FATF constitute a model for crippling finances of terrorist groups' (Gardner 2007: 326). On issues relating to money laundering, the FATF has been identified as the 'lead institution' (*ibid.*) in the 'fight to detect and counteract terrorist financing' (*ibid.*) through money laundering.

In furtherance of this mandate, the FATF has drawn up Nine Special Recommendations expected to be adopted by all states and applied universally. These recommendations inter alia seek to:

(i) make the act of money laundering and financing terrorism a crime;

(ii) give investigative agencies the authority to trace, seize, and confiscate criminally derived assets;

(iii) build a framework for cross-national information sharing;

(iv) extend anti-money laundering requirements to alternative remittance systems;

(v) ensure that non-profit organisations cannot be misused to finance terrorism(Gardner 2007: 331).

These recommendations were also intended to eliminate the danger posed by money laundering to the fight against terrorism. This danger would be better appreciated through the following analysis in the aftermath of the 11 September 2001 terrorist attacks on targets in the United States (US):

> Of the more than $2 trillion transferred by wire in 700,000 daily transactions, it is estimated that .05 to .1 per cent is laundered, amounting to around $300 million. Sufficient money is laundered daily to fund 600 to 750 operations similar to the attacks conducted on September 11 (*ibid.*).

It is noteworthy that the 2004 Money Laundering Act established the Economic and Financial Crimes Commission (EFCC), and also in Section 6(b) conferred upon the Commission powers to investigate all suspected acts of financial crimes, including money laundering. This Act, also in Section 24, made provisions for what it termed 'Designated Non-Financial Institution' made up of:

(i) dealers in jewelleries, cars and luxury goods;
(ii) chartered accountants, audit firms, tax consultants;
(iii) clearing and settling companies;
(iv) legal practitioners;
(v) hoteliers;
(vi) casinos, super markets;
(vii) such other businesses as the Federal Ministry of Commerce or appropriate regulatory authorities may from time to time designate.

A common feature with all these groups is that they come into regular contact with cash transactions by virtue of their professional calling or business. They are therefore required under the Act to keep and maintain proper records of certain categories of transactions, while the regulatory bodies (including the EFCC) have the right to demand and receive such information from them. This power was confirmed by the Federal High Court sitting in Kaduna in the case of YakubuLekjo and others v. Economic and Financial Crimes Commission (Unreported Suit No FHC/KD/CS/117/2209). The plaintiffs in this case were car dealers (designated non-financial institution under the Money Laundering (Prohibition) Act) and had urged the court to declare that the EFCC acted outside its powers when it served some documents on some car dealers demanding information on their activities. The court held on this issue that the action of the EFCC was in the proper exercise of the powers conferred on it by Section 24 of the Money Laundering (Prohibition) Act 2004.

The Act required financial institutions to take steps to verify the identity of their customers prior to opening accounts with them by requesting them to provide vital personal information as well as one of the following documents in verification of their identity:

(i) international passport;
(ii) driver's license;

(iii) National Identity Card; or
(iv) any other document bearing the customer's photograph.

All transactions in excess of 500,000:00 naira or its equivalent (in case of an individual) or 2,000,000:00 naira or its equivalent (in the case of a body corporate) had to be done through a financial institution. Transactions and international transfer of funds and other forms of security in excess of US$10,000 or its equivalent must be reported to the Central Bank of Nigeria and the Securities and Exchange Commission. Designated non-financial institutions were equally required to immediately notify the EFCC and the National Drug Law Enforcement Agency of all financial transactions in excess of 1,000,000 naira or its equivalent in the case of an individual, and 5,000,000 naira or its equivalent in the case of a corporation, as provided for under Section 10 of the Act.

The 2004 Act was not without its shortcomings – one of which was brought to the fore in the case of the Federal Republic of Nigeria v Ibori & others (Unreported FHC/ASB/IC/09). The first defendant was accused of looting public funds when he served as Governor of Delta State between 1999 and 2007. The allegations against him by the EFCC bordered on alleged money laundering through certain individuals and bodies, both in Nigeria and in the UK, in contravention of the provisions of the Money Laundering (Prohibition) Act 2004. In the course of the trial, the court was called upon to interpret Section 14 of the Money Laundering (Prohibition) Act of 2004 which provides that any person who:

> converts or transfers resources or properties derived directly or indirectly from illicit traffic in narcotics drugs and psychotropic substances or any other crimes or illegal act with the aim of either concealing or disguising the illicit origin of the resources or property, or aiding any person involved in the illicit traffic in narcotic drugs or psychotropic substances, or any other crime or illegal act to evade the legal consequences of his action, or… collaborates in concealing or disguising the genuine nature, origin, location, disposition, movement or ownership of the resources property or right thereto derived directly or indirectly from psychotropic substances or any other crime or illegal act, commits an offence under this section and is liable on conviction to a term of not less than two years or more than three years.

It was the contention of the defence that this section, especially the phrase 'any other crime or illegal act' should be interpreted using the Ejusdem Generis rule of interpretation of statutes, which provides that where specific words in a statute are followed by some general words, then those general words must be interpreted in line with the words specifically mentioned in the statute. In this case, the general words were 'any other crime or illegal act' while the specific words were 'the illicit traffic in narcotic drugs or psychotropic substances'. This argument was rightly opposed by the prosecuting counsel. The court however held that the phrase 'any other crime or illegal act', as contained in that section of the law, was restricted to the proceeds of crime from narcotic drugs and psychotropic substances only; and could not be stretched beyond such, as the prosecution had failed to clearly establish a link or connection between the funds over which the accused were prosecuted and dealings in narcotic drugs. According to the court, since the allegation against the first defendant was not in any way related to the illicit traffic in narcotics drugs, psychotropic substances or any other drug-related offence, it would not be proper to apply that section in the present case because:

> the words – any other crime or illegal act in Section 14 (1) of the money laundering Act are to be construed Ejusdem Generis with those which preceded them and are to be restrictive or limited to funds even remotely connected to illicit traffic in narcotic drugs or psychotropic substances. For a charge under section 14 (1) of the Money Laundering (Prohibition) Act, 2004 to be sustained, the prosecution must first and foremost establish that, or at least link such funds to those directly or remotely made or obtained in the course of illicit traffic in narcotic drugs and psychotropic substances.

The court judgment in this case grossly limited the application of the Money Laundering (Prohibition) Act to funds obtained from illicit traffic in drugs. With all due respect, this reading of Section 14 (1) of the Money Laundering (Prohibition) Act by the court does not reflect the spirit of the law. It is my contention here that this section of the Money Laundering (Prohibition) Act was intended to capture all illegally obtained funds –not merely funds obtained from illicit trafficking in drugs as narrowly interpreted by the court in the case under reference.

Under Section 6 (1) of the 2004 Act, financial institutions are under an obligation to obtain information from their customers on the origin and destination of the funds which are the subject of the financial transaction. The financial institutions are expected to thereafter forward a report of that transaction to the Central Bank, the EFCC, the Securities and Exchange Commission or such other appropriate authorities as provided for under Section 6(2). Since this provision infringed upon professional banker – customer confidentially, the Act expressly overrules this defence by bankers by making it mandatory for them to divulge such information, especially where the source of the funds appears questionable.

The Money Laundering (Prohibition) Act 2011 contains some innovative provisions that set it apart from the 2004 Act which it repealed and replaced. The new, subsisting Act sets out not only to prevent money laundering but equally to curb the financing of terrorism. The Explanatory Memorandum of the Act states that this Act:

(i) provides for the repeal of the money laundering Act 2004 and enactment of money laundering (prohibition) Act, 2011;

(ii) makes comprehensive provisions to prohibit the financing of terrorism, the laundering of the proceeds of a crime, or any other related illegal act; and

(iii) provides appropriate penalties and expands the scope of supervisory and regulatory authorities, so as to address the challenges faced in the implementation of the anti-money laundering regime in Nigeria.

This explanation and the specific reference to 'the financing of terrorism, the laundering of the proceeds of a crime, or an illegal act' clearly seek to avoid the loophole in the 2004 Act, which was exploited by the defence in Ibori's case. Section 15 of the Act expanded the scope of crimes beyond the specific mention of drug-related offences as found under the 2004 Act. The list of crimes contained therein appears endless and cover virtually all sources of illicit funds. This section provides that any person who:

(a) converts or transfers resources or properties derived directly from:

(i) illicit traffic in narcotic drugs and psychotropic substances; and

(ii) participation in an organised criminal group and racketeering, terrorism, terrorist financing, trafficking in human beings and migrant smuggling, tax evasion, sexual exploitation, illicit trafficking in stolen and other goods, bribery and corruption, counterfeiting currency, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, illegal restraint and hostage taking, extortion, forgery, piracy, insider trading and market manipulation and any other criminal act specified in this Act or any other legislation in Nigeria which is predicate to money laundering with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved to evade the illegal consequences of his action and;

(b) collaborates in concealing the genuine nature, origin, location, disposition, movement or ownership of the resources, property or right thereto derived directly or indirectly from the acts specified in paragraph 9 (a) of this subsection commits and offence under this section and is liable on conviction to imprisonment for a term not less than five years but not more than ten years.

The Money Laundering (Prohibition) Act 2011 in Section 1(a)–(b) provides that no person or body corporate shall, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding:

(i) 5,000,000.00 naira in the case of an individual; or

(ii) 10,000,000.00 naira in the case of a body corporate.

This is more than the limit set under similar circumstances in the 2004 Act which sets the limit of cash payment that can be made or received by an individual at 500,000.00 naira and 2,000,000.00 naira for corporate entities.

Another innovative provision in the 2011 Act is contained in Section 6(10) which grants immunity from civil and criminal liability to directors, officers and employees of both financial and designated non-financial institutions. This immunity removes the cloak of banker–customer confidentiality, thereby making it possible for such officers to report suspicious transactions to the relevant authorities for appropriate follow-up action, including deferring such transactions. The verification of the identity of customers by both financial and designated non-financial institutions is accorded great importance under the Act. This is in line with the need for such institutions to know their customers, in order to keep track of suspicious transactions. The Act therefore provides in Section 3(1) that 'Financial Institution and a designated Non-Financial Institution shall':

(a) verify its customer's identity and update all relevant information on the customer,

(i) before opening an account for, issuing a passbook to, entering into fiduciary transaction with, renting a safe deposit box to or establishing any other business relationship with the customer; and

(ii) during the course of the relationship with the customer;

(b) scrutinise all ongoing transactions undertaken throughout the duration of the relationship in order to ensure that the customer's transaction is consistent with the business and risk profile.

The ability of a financial or designated non-financial institution to keep track of its customers' transactions helps in 'the reconstruction of events once a suspicious situation is identified' (Costa 2010: 33). Citing an example of how the reconstruction of a financial transaction has been linked to the funding of terrorism, Costa referred to the case of Rachid Ramda, editor of the *Al-Ansar* journal in London, who was convicted for his association with subway bombings in Paris in 1995. Part of the evidence consisted of a Western Union money order receipt for a transfer of £5,000 to one of the bombers, which was found in Ramda's lodging and bore his fingerprint (*ibid.*). Before such tracking can be effectively done however, the financial institutions must be able to verify the identity of both prospective and existing customers. Every customers is required under the provisions of Section 3 to supply the following information:

(i) a valid original copy of an official document bearing his names and photograph or any other identification documents as the relevant regulators may from time to time approve;

(ii) his residential address, by presenting the originals of receipts issued within the previous three months by public utilities or any other documents as the relevant regulatory authorities may from time to time approve;

(iii) the certificate of incorporation and other valid official documents attesting to the existence of the body corporate.

The 2011 Act, in Section 2(1) and (2), also imposes a duty to report any international transfer of funds and security to the Central Bank of Nigeria, Securities and Exchange Commission or the EFCC within seven days from the date of such transaction. The Section specifically provides as follow:

> A transfer to or from a foreign country of funds or securities by a person or body corporate including a Money service business of a sum exceeding US$10,000.00 or its equivalent shall be reported to the CBN, SEC or the Commission in writing within 7 days from the date of the transaction.

This section further provides that the report shall include information such as the nature and amount of the transfer, the names and addresses of the sender and receiver of the funds and securities. However, the noble aim behind the provisions of this section has been defeated by the failure to specify whose duty it is to make the report. Is it the duty of the sender, receiver or financial institution? This is a lacuna that can easily be exploited, especially by parties who want to evade making this disclosure, while hiding under the cover that they had expected the other parties to make the report. This omission in the Act becomes glaring when contrasted with the provisions in sub-sections 3 and 4 of the same section. These sub-sections provide as follows:

(3) Transportation of cash or negotiable instruments in excess of US$10,000 or its equivalent by individuals in or out of the country shall be declared to the Nigerian Customs Service.

(4) The Nigerian Customs Service shall report any declarations made pursuant to subsection (3) of this section to the Central Bank and the EFCC.

These sub-sections made it clear that the Nigerian Customs Service has a duty to report all declarations made to it by individuals transporting, in or out of the country, money in excess of US$10,000. The reports of all such transactions are to be made to the Central Bank and the EFCC by the Nigerian Customs Service. This duty is clear and unambiguous – in contra-distinction with the provisions of sub-sections (1) and (2) of the same section which fail to spell out whose duty it is to make reports to the Central Bank and the EFCC. The EFCC has been empowered to, upon receipt of such disclosure report or information, demand such additional information as it may deem necessary to enable it carry out further investigations. If, at the conclusion of investigations, the EFCC is unable to ascertain the origin of the fund sought to be transferred, the Commission may defer that financial transaction for a period not exceeding 72 hours. At the expiration of this period, if the Commission is still unable to verify the source of such funds, it may approach the Federal High Court for an order to block the funds, accounts or securities concerned.

The Act, in Section 10(1)(a) and (b), also makes it mandatory for banks and other designated financial institutions to report to the EFCC in writing within seven days (in the case of individuals) and 30 days (in the case of corporate bodies) information of any single transaction, lodgement or transfer of funds in excess of 5,000,000 naira or its equivalent (individuals) and 10,000,000 naira or its equivalent (corporate bodies). This duty to report is also made mandatory for designated non-financial institutions. On the other hand, a person other than a financial institution or a designated non-financial institution can under Section 10(2) volunteer information on any transaction, lodgement or transfer of funds in excess of 1,000,000 naira for individuals and 5,000,000 naira for body corporates. The detailed provisions on the filing of reports by financial institutions, designated non-financial institutions and individuals as contained in Section 10 of this Act creates a sense of responsibility for everyone with relevant information on such transactions. This laudable provision goes a long way in ensuring that the Act fulfils its objective to prevent the laundering of proceeds of crime and the financing of terrorism.

The false declaration or failure to make a declaration on the transportation of cash or negotiable instruments in excess of US$10,000 or its equivalent by individuals, in or out of the country, to the Nigerian Custom Service is an offence under sub-section (5) of Section 2. This offence is punishable on conviction by imprisonment for a term of not less than two years and forfeiture of not less than 25 per cent of the undeclared funds or negotiable instrument, or to both imprisonment and forfeiture. In the case of FRN v Aminu Lamido, the court held that the accused contravened Section 5(2) of the Money Laundering Act 2011 by failing to declare the cash he had on him at the Aminu Kano International Airport, on his way out of the country. The court therefore ordered that he should forfeit 25 per cent of the total amount he had on him at the time of his arrest. Similarly, in the cases of FRN v Bashir Abdu (Unreported FHC/KN/C R/210/2012), FRN v Umar Musa Kibiya (Unreported FHC/KN/C R/193/2012) and FRN v Idris Hamza (Unreported FHC/KN/C R/196/2012) the accused were ordered to forfeit funds ranging from US$12, 000 to US$65,000 by the Federal High Court sitting in Kano.

The provisions of the 2011 Act regarding penalties for corporate bodies convicted for offences relating to money laundering have been described as 'too harsh because the other punishments provided as fines to be paid in bulk, suspension, revocation or withdrawal of license are deterrent and punitive enough' (Ladan 2013). The penalty, as provided in Section 19 of the Act, is that upon conviction the corporate body shall be ordered by the court to be wound up and all its assets and properties forfeited to the Federal Government. Although this penalty may indeed appear to be harsh, the havoc caused by money laundering especially as a means of financing terrorism by corporate bodies and charitable organisations make these the ideal penalties for any nation desirous of preventing terrorism. Hiding under the guise of charitable organisations, some corporations have been known to serve as conduits for laundering proceeds of crimes and funds meant for terrorist groups.

The imposition of stiff penalties on banks and corporate bodies for involvement in or failing to report suspicious transactions is not limited to Nigeria. The US has had cause to resort to these measures on several occasions. For instance, the United States Federal Reserve Board recently fined the US arm of UBS AG US$100 million for funnelling US$5 billion to countries such as Cuba, Iran and Libya (Weiss 2005: 3). Similarly, for failing to report what was described as 'unusual transactions', (Weiss 2005: 4) the Riggs Bank was fined US$25 million in May 2004 (*ibid.*). If Nigeria can summon the political will to implement the provisions of the Money Laundering (Prohibition) Act, financial and designated non-financial institutions will be more vigilant in monitoring transactions and reporting suspicious and unusual transactions to the relevant authorities.

The financing of terrorism through what has come to be known as the 'new economy of terror' (Barber 2011: 1) also has money laundering as an integral part. It has been credited with 'generating vast amounts of money … with a turnover of about $1.5 trillion, twice the GDP of the United Kingdom' (Napoleoni 2005: xviii–xix). The laundering of money is done 'through seemingly legitimate banks, financial structures, trusts and charities, to the actual, direct or indirect support and logistical systems for Islamist terrorist groups and cells throughout the world' (Barber 2011: 3). The FATF Report 2008 states that the laundering of money through charities by terrorist groups for the purpose of financing terrorism has been facilitated by several factors including the considerable public trust which charities enjoy. This public trust is based largely on the perception of charities and non-profit organisations as groups rendering indispensable humanitarian services, especially in regions ravaged by conflicts and crisis.

This perception therefore exempts charities from the type of financial and administrative scrutiny which other bodies and groups are subjected to – and therein lies their attractiveness to terrorist groups who are 'looking to minimise risk to their own operations and logistical networks', (FATF Report 2014), and for whom 'piggybacking on, or mimicking, legitimate non-profit organisations has presented an attractive solution' (*ibid.*). Secondly, most charities enjoy a global presence since they are available in nearly all continents of the world. This physical presence, international operational framework and the availability of funds from donors make them attractive to terrorist groups as a means of laundering money.

Prosecution of money laundering cases

Section 20 of the Money Laundering (Prohibition) Act 2011 has vested exclusive jurisdiction on the Federal High Court for the trial of cases involving allegations of money laundering. The Act provides that the 'Federal High Court shall have exclusive jurisdiction to try offences under this Act'. The Act further provides that evidence of possession of pecuniary resources or property which an accused person cannot satisfactorily account for and which is above his known income may be taken as corroborating the evidence of any witness in the trial.

The power to demand, obtain and inspect the books and records of the financial institution or designated non-financial institutions to confirm compliance with the provisions of the Act has been vested in the Director of Investigations or any other officer of the Ministry, Commission or Agency duly authorised to act in that regard under Section 21. Any person who obstructs such an officer and prevents him from discharging his duties under this Act, shall be liable upon conviction to imprisonment for a term of at least two years (in the case of an individual) or a fine of 1,000,000 naira (in the case of corporate bodies or financial institutions) as provided for under Section 22 of the Act.

Economic and Financial Crimes Commission (Establishment) Act 2004

The Economic and Financial Crimes Commission (Establishment) Act 2004 constitutes an important legislation in the fight against corruption in Nigeria. The Act provides for the establishment of the body known as the EFCC with a mandate inter alia:

(i) to investigate all financial crimes including advance fee fraud, money laundering, counterfeiting;

(ii) toexamine and investigate all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved;

(iii) to collaborate with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the commission concerning

a) the identification, determination of the whereabouts and activities of persons suspected of being involved in economic and financial crimes;

b) the movement of proceeds or properties derived from the commission of economic and financial and other related crimes;

c) the exchange of personnel or other experts;

d) the establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved;

e) the undertaking of research and similar work with a view to determining the manifestation, extent, magnitude and effects of economic and financial crimes, advising government on appropriate intervention measures for combating same.

Of particular interest is the provision of the Act relating to terrorism. Prior to the enactment of the Terrorism (Prohibition) (Amendment) Act, the only law relating specifically to the offence of terrorism in Nigeria was the Economic and Financial Crimes Commission The Act. Act provided for the offence of terrorism in Section 14(1) to the effect that any person 'who willfully provides or collects by any means, directly or indirectly, any money with intent that the money shall be used or is in the knowledge 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'.

The nexus between the EFCC and terrorism revolves around the financing of terrorism. By the provision of this section, the provision and collection of money with the knowledge that such would be used for an act of terrorism is enough to constitute an offence. The mere provision of money which is eventually used by the recipient for an act of terrorism would not suffice. It is essential that the money must have been provided and collected with the knowledge that the money is meant for the execution of an act of terrorism. In this regard, the knowledge supplies the *mens rea* while the actual act of terrorism constitutes the *actus reus* of the offence. The penalty for this offence (imprisonment for life) underscores the vital role played by finance in the commission of acts of terrorism, and is an appropriate punishment for the offence.

Apart from serving as a fitting punishment for those who fund or receive funds for the purpose of committing acts of terrorism, the punishment has the added advantage of serving as a deterrent for persons who otherwise would have provided funds to terrorist groups. The prospect of serving a life imprisonment sentence is enough to discourage would be financial sponsors of terrorism and outweighs whatever benefit they hope to gain from the venture. A similar penalty is provided for persons who attempt to commit or facilitate the commission of a terrorist act in Section 14(2), or who make funds, financial assets or other related services available for use by any other person to commit or attempt to commit a terrorist act under Section 14(3). This penalty is also appropriate, for the purpose of both punishment and deterrence, as argued earlier.

The EFCC also plays a critical role in the fight against terrorism by virtue of the powers vested in the Commission under the Money Laundering (Prohibition) Act. The Money Laundering (Prohibition) Act 2011 in the Interpretation section (Section 25) defines 'commission', copiously referred to in several sections of the Acts, as meaning the EFCC. The powers and responsibilities vested in the Commission by this act on issues relating to the laundering of funds for the purpose of financing acts of terrorism include inter alia:

(i) the right to be informed of any transfer to or from a foreign country of funds in excess of US$10,000 or its equivalent in writing within seven days of the transaction;

(ii) the right to receive reports on suspicious transactions involving terrorism financing;

(iii) the power to place a 'stop order' on any account or transaction suspected to be involved in the commission of a crime; and

(iv) the power to obtain an order from the High Court to place a suspicious account under surveillance.

In the exercise of these and other powers conferred on the Commission, it has successfully prosecuted several cases dealing with money laundering in the Federal High Court; for example, the cases of FRN v Aminu Lamido, FRN v Bashir Abdu earlier referred to. However, the prosecution and conviction rates have not been as high as expected, owing in part to delays encountered in the course of the trials of such offences. The trials are sometimes stalled by the filing of series of motions and applications by the defence (Ladan 2013). Ladan states that 'In plethora of these cases, the trials hardly go beyond the initial stage of arraignment before being stalled, owing to multiple preliminary applications ranging from challenges of territorial jurisdiction of the trial courts, the propriety of the indictments/

charges' among other objections (*ibid.*: 12). Arguing along the same lines, Anaedozie states that the Commission has blamed its poor conviction records on factors such as 'the justice system that permits accused persons to use frivolous technicalities to delay the course of justice and this is often done in orchestrated conspiracy and connivance of some lawyers and court judges' (2016: 24). A way out of these delays may lie in the creation of specialised courts devoted solely to the trial of crimes related to terrorism and the reformation of the criminal justice system in such a way that would eliminate the technicality of unending preliminary objections and create a time-frame for the trial of terror-related offences.

Conclusion

Terrorism the world over can barely be separated from violence, destruction and death. This is because, by its very nature, terrorism thrives on violence and the instilling of fear in the target population. Like other countries that are vulnerable to terrorism, in the past few years Nigeria has been under the siege of terrorist groups who have wrecked incalculable havoc on the Nigerian state and its citizens. Terrorism in Nigeria, especially that which is unleashed on the country by the Boko Haram terror group, has had devastating effects on the country and its citizens. The bid to stop the activities of this group and prevent a resurgence of terrorism led to the enactment of legislation such as the Terrorism (Prevention) (Amendment) Act 2013, the Money Laundering Act 2011 and the Economic and Financial Crimes Commission Establishment Act 2004.

The success of the Nigerian legal framework on terrorism is however hinged on its ability to cut off the sources of finance of Boko Haram and other terrorist organisations. Finance is the heart beat of terrorism and any effort aimed at putting an end to the activities of terrorist groups must take this into consideration. Nigeria has, in recognition of this fact, taken steps to cut off the sources of finance available to terrorist organisations. This article has analysed these efforts as contained in the different laws which prohibit the financing of terrorism by individuals and corporate bodies.

In recognition of the important role played by finance in sustaining terrorism, the Nigerian Terrorism (Prevention) (Amendment) Act 2013 has made provisions prohibiting the financing of terrorism by any person, group or organisation. The Money Laundering Act which forms an integral part of the legal framework on terrorism also contains provisions prohibiting the laundering of funds for the purpose of financing terrorism, among others. The Money Laundering (Prohibition) Act of 2011, in its explanatory memorandum:

(i) provides for the repeal of the Money Laundering Act 2004 and enactment of Money Laundering (Prohibition) Act, 2011;

(ii) makes comprehensive provisions to prohibit the financing of terrorism, the laundering of the proceeds of a crime, or an illegal act; and

(iii) provides appropriate penalties and expands the scope of supervisory and regulatory authorities so as to address the challenges faced in the implementation of the anti-money laundering regime in Nigeria.

This Act is clearly intended to serve as a medium for combatting the menace of money laundering and the financing of terror. The emphasis is therefore on the detection of money laundering for the financing of terror and the need for financial institutions to strictly adhere to the guidelines on customer identification and suspicious transaction reporting to the relevant bodies. The finding however points to the fact that terrorists hardly rely on money laundering as a means of funding their activities. More reliance is placed on money received through illegal channels from sponsors and affiliates outside the country, proceeds from crimes (for example armed robberies and kidnapping) and personal funds of members of the group. The efficacy of the Money Laundering (Prohibition) Act as a tool for combatting terrorism is therefore questionable. The provisions on the financing of terror, as contained in the Terrorism (Prevention) (Amendment) Act 2013, are more appropriate tools in this regard and the implementation of its provisions is bound to cut off the sources of finance to Boko Haram and bring an end to its reign of terror. The international nature of the activities of Boko Haram makes it imperative that the countries most affected (Nigeria, Chad, Cameroon and Niger) come together to devise counter-terrorism measures that would cut off the sources of finance available to this group, in order to curb its activities (Rosendorff and Sandler 2005:176).

Acknowledgement

I wish to thank CODESRIA and UNOWAS for the Travel Grant, which made it possible for me to present the draft of this paper at the 'International Policy Dialogue Conference on Money, Security and Democratic Governance in Africa', held in Bamako, Mali, 19th–20th October, 2017. I also wish to acknowledge the useful comments from colleagues during the conference.

References

Anaedozie, F., 2016. 'Is Grand Corruption the Cancer of Nigeria? A Critical Discussion in the Light of an Exchange of Presidential Letters'. *European Scientific Journal*, 12(5), pp.11-34

Arabinda, A., 2009, *Targeting Terrorist Financing: International Cooperation and New Regimes*, New York: Routledge.

Barber, S. 2011, 'The "new economy of terror": thefinancing of Islamist terrorism', *Global Security Studies*2 (1): 1–13.

Blanchard, L.P., 2014, Nigeria's Boko Haram: Frequently Asked Questions, report prepared by the US Congressional Research Service.

Costa, A.M., 2010, Digest of Terrorist Cases, United Nations Office on Drugs and Crime.

EFCC,For the Records: 2013 Convictions,https://efccnigeria.org/efcc/images/EFCC_2013_Convictions.pdf, accessed 4 January 2017.

Ehrenfeld, R., 2003, *Funding Evil: How Terrorism Is Financed – and How To Stop It*, New York: American Center for Democracy.

FATF Report, 2014, 'Risk of Terrorist Abuse in Non-Profit Organisations', http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf, accessed 4 January 2017.

Financial Action Task Force Report, 2008, Terrorist Financing, http://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Terrorist%20Financing%20Typologies%20Report.pdf, accessed January 2017.

Gardner, K.L., 2007, 'Fighting terrorism the FATF way', *Global Governance*13 (3): 325–45.

Gurule, J., 2004, 'Unfunding terror: perspectives on unfunding terror (Panel One)', Journal Articles Paper 469, http://scholarship.law.nd.edu/law_faculty_scholarship/469?utm_source=scholarship.law.nd.edu%2Flaw_faculty_scholarship%2F469&utm_medium=PDF&utm_campaign=PDFCoverPages, accessed 3 November 2017.

Ladan, M.T., 2013, 'Appraisal of legal, regulatory and institutional frameworks in combating money laundering and terrorism financing in Nigeria', http://ssrn.com/abstract=2336025, accessed 4 January 2017.

McCoy, T. 2014, 'This is how Boko Haram funds its evil', *Washington Post*.

Napoleoni, L., 2005, *Terror Incorporated: Tracing the Dollars behind the Terror Networks*, New York: Seven Stories Press.

Robinson J., 1994, *The Laundrymen: Inside the World's Third Largest Business*, London: Simon & Schuster.

Rosendorff, B.P. and Sandler, T., 2005, 'The political economy of transnational terrorism', *Journal of Conflict Resolution* 49 (2):171–82.

Weber, P., 2014, 'Who's financing Boko Haram?', *The Week,* http://theweek.com/articles/447032/whos-financing-boko-haram, accessed 20 November 2017.

Weiss, M.A., 2005, Terrorist Financing: The 9/11 Commission Recommendation, Congressional Research Service Report for Congress, 3, https://fas.org/sgp/crs/terror/RS21902.pdf, accessed 3 January 2017.