

**An Appraisal of the Legal Framework for the Proscription of Terrorist Organizations in a Democracy: The Case of Nigeria**

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**Abstract:**

In this article, we examine the proscription powers of the government and its use in countering terrorism. Specifically, the study analyzes the normative framework for proscription of terrorist entities. In order to achieve this aim, the study adopts the doctrinal research methodology to deconstruct the concepts of terrorism, terrorist organizations; highlight and discuss proscribed organizations in Nigeria as well as the procedures for proscription and delisting of designated entities; and undertakes a critique of the delisting regime. Four entities: Boko Haram (or Jamā'at Ahl al-Sunnah li-l-Da'awah wa al-Jihād) and its faction and later ally, Ansaru (Jamā'atu Anṣārīl Muslimīna fī Bilādis Sūdān; the Indigenous People of Biafra; the Islamic Movement in Nigeria, and finally, the Yan Bindiga Group, Yan Ta'adda Group, and other marauding bands of outlaws, have been designated as terrorist groups under the terrorism legislations. The research is of relevance to security and terrorism studies, and their interplay with democracy, human rights and the rule of law. In addition, the study calls for more research on proscription studies.

**Keywords:** Proscription, terrorism, terrorist organization, Nigeria, Boko Haram, Indigenous People of Biafra (IPOB), democracy.

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## I. INTRODUCTION

Efforts to ban associations whose activities endanger public security and safety have a long history in our criminal jurisprudence. From the prohibition of unlawful societies, bespoke legislations have evolved within the context of contemporary counter-terrorism paradigms.<sup>1</sup> Terrorism has come to be perhaps, the most serious threat to public order and security. The proliferation and export of terrorist activities exert pressures on the machinery of the international community and individual States for maintaining law and order. While State power may be able to contain terrorism, it is difficult to completely eradicate it from society once it berths within national territory. Terrorism severely undermines democracy and governance. Daniel Byman emphasized the risk terrorism presents to, even the mature democracies of the world: the United States of America, and much of Europe, and points out its capacity to “distort public debates, discredit moderates, empower political extremes, and polarize societies.”<sup>2</sup>

Regrettably, much of the literature on the listing of terrorist groups or entities are localized in the tabloid, bulletins and gazettes, as there appears to be a subtle lack of scholarly attention on the proscription of terrorist organizations in Nigeria. Proscription or listing refers to the process of blacklisting individuals, groups or entities by labelling them as terrorists by adding them to a national or international register of terrorists.<sup>3</sup> The procedure for the declaration of an association as a terrorist entity is provided for in the Terrorism (Prevention and Prohibition) Act 2022 (hereinafter referred to as the TPPA).<sup>4</sup> Briefly stated, on the approval of the president of Nigeria, the Attorney-General of the Federation may apply to the federal high court to designate a body as a terrorist entity.<sup>5</sup> In debatable circumstances, three groups: (1) Boko Haram (or Jamā‘at Ahl al-Sunnah li-l-Da‘awah wa al-Jihād) and its faction and later, ally Ansaru (Jamā‘atu Anṣārīl Muslimīna fī Bilādīs Sūdān; (2) Indigenous People of Biafra (IPOB); and (3) Islamic Movement in Nigeria (IMN), affirming disparate religious or political ideologies, have been designated as terrorist organizations. A fourth group of ethnic outlaws, made up of armed bandits: the Yan Bindiga Group, Yan Ta’adda Group, and similar groups of armed men, which professes no ambition of establishing a rival system of government was proscribed in 2021.

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<sup>1</sup> See for example, section 62 Criminal Code Act, Laws of the Federation of Nigeria, 2004

<sup>2</sup> Byman, Daniel. "Terrorism and the Threat to Democracy." *Brookings Policy Brief, February* (2019): 1.

<sup>3</sup> Federer, Julia Palmiano. "The Politics of Proscription and Peacemaking: Implications of Labelling Armed Groups as Terrorists and Extremists: The proscription of terrorist organizations: modern blacklisting. In *Global perspective*, Lee Jarvis and Tim Legrand (eds), Abingdon, Routledge, 2020.

<sup>4</sup> Section 1 (d), Terrorism (Prevention and Prohibition) Act 2022, Act. No. 15.

<sup>5</sup> Section 48 (1) (c) Terrorism (Prevention and Prohibition) Act 2022.

Across different systems of government, the use or misuse of legislations to combat terrorism has significant implications for civil liberties: such regulations obtrude upon the rights of association, movement, expression, and so on.<sup>6</sup> Questions about a balance between counter-terrorism and human rights appear rhetorical, but in reality, some sort of compromise may be required as counter-terrorism cannot undermine the supreme values of human rights, democracy and rule of law.<sup>7</sup> Legislations that criminalize terrorism, including proscription processes, may undermine human rights and the rule of law. The necessity of proscription must always be balanced against fair hearing, freedom of worship, freedom of association and freedom of speech.

However, the provision on judicial review of listing procedures appears to have diminished fears about human rights compatibility. In consequence, issues of liberty or due process ultimately fall for determination before the courts in a democracy. It has been suggested by some legal theorists that in emergencies, the executive branch of government knows best, what to do in the interest of secrecy and expediency. On the other hand, the judiciary is not considered an expert in matters of national security.<sup>8</sup> This is the position adopted by the proscription provisions of the TPPA, which accord primacy to executive and legislative discretion. The TPPA 2022 began a jurisprudence of judicial control which was absent in the repealed Terrorism (Prevention) Act 2011.

Liberal democracies are distinguished by (a) opportunities for citizens to choose and replace their representatives through free and fair elections; (b) active participation of the people, as citizens, in politics and civic life; (c) the protection of human rights; and (d) separation of powers and the rule of law.<sup>9</sup> Democracy is often contrasted with monarchy, tyranny or dictatorship. The word “democracy” is derived from the Greek word “*demokratia*” which is translated to mean “rule of the people”.<sup>10</sup> To Hobsbawm, “the point of democracy is not to try to maximize the efficiency and quality of government but to try to minimize its bad effects”.<sup>11</sup> On the intimacy between democracy and human rights, Becker and Raveloson have said: “human rights are much more than a mere

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<sup>6</sup> United Nations Office of the High Commissioner. Special Rapporteur on Terrorism and Human Rights. Available at <https://www.ohchr.org/en/special-procedures/sr-terrorism> accessed on 20th January 2024.

<sup>7</sup> de Frías, Ana Salinas. *Counter-terrorism and human rights in the case law of the European Court of Human Rights*. Council of Europe, 2013.

<sup>8</sup> Posner, Eric A., and Adrian Vermeule. *Terror in the balance: Security, liberty, and the courts*. New York: Oxford University Press, 2007: 30 – 31.

<sup>9</sup> Larry Diamond, What is Democracy? 2004. Available at <http://www.standard.edu/~diamond/Iraq/whatsDemocracy012004.htm>. accessed on 1<sup>st</sup> March 2024.

<sup>10</sup> Nwogu, G. A. I. "Democracy: Its Meaning and Dissenting Opinions of the Political Class in Nigeria: A Philosophical Approach." *Journal of Education and Practice* 6, no. 4 (2015): 131-142.

<sup>11</sup> Hobsbawm, Eric J. *Globalisation, democracy and terrorism*. (London: Little, Brown, 2007), 115.

component of democracy".<sup>12</sup> Human rights protection and advocacy constitute the bedrock for the efficiency of a democratic regime.

This article attempts to answer the following research questions:

1. What is the legal regime for the proscription of terrorist entities in Nigeria?
2. What are the entities or organizations that have been designated as terrorist groups under the regime?
3. What are the challenges involved in the proscription of terrorist entities in Nigeria?

## II. LEGAL MATERIALS AND METHODS

In the analysis of the legal framework for the proscription of terrorist entities, this study adopts the doctrinal research methodology which focuses on the examination of legal norms, authorities, concepts and literature. Accordingly, the study will rely on the provisions of the Terrorism (Prevention and Prohibition) Act 2022 as well as textual sources of legal information.

## III. RESULT AND DISCUSSION

### (a) Terrorism and terrorist organizations

Even though the global condemnation of terrorist activities remains unanimous and unequivocal, efforts to regulate them have been marred by differences of approach and competing concerns. As a result, after more than seventy years of academic penmanship, scholars from many fields have spilled almost as much ink as the actors of terrorism have spilled blood.<sup>13</sup> In some instances, a group which is described as 'freedom fighters' by its supporters may be branded as 'terrorists' by its opponents. Cynics have therefore, often retorted that: 'one man's freedom fighter is another man's terrorist'.<sup>14</sup> Individuals or groups labeled terrorists prefer to be known as separatists, freedom fighters, liberators, revolutionaries, vigilante, militants, paramilitary, guerillas, rebels, patriots, or even Jihadi, mujaheddin, and fedayeen. The last three terms are Arabic words associated with religious terrorism. Religious terrorism is terrorism carried out by groups or individuals, the motivation of which is typically rooted in faith-based tenets.

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<sup>12</sup> Paula Becker, and Jean-Aimé A. Raveloson, "What is Democracy?" (2008): 4-5. Available at <https://www.library.fes.de/pdf-files/bueros/madagaskar/05860.pdf> accessed on 20th February 2024.

<sup>13</sup> Clere, Almiro. "An examination of the Special Tribunal for Lebanon's explosive declaration of terrorism at customary international law." *University of Otago* (2012); 1.

<sup>14</sup> Spencer, Alexander. "Questioning the concept of 'new terrorism'." *Peace, Conflict and Development*, 8 (2006): 1-33.

According to Kiras, the first problem associated with the study of terrorism relates to the relative and subjective lenses that one applies to the subject.<sup>15</sup> The inability to formulate a workable legal definition for ‘terrorism’ stems from its inherent indeterminate and subjective nature.<sup>16</sup> Hoffman has said that terrorism is ineluctably political in aims and motives. It is violent or equally important, threatens violence, which is designed to have far-reaching psychological repercussions beyond the immediate victim or target. Terrorism is conducted by an organization with an identifiable chain of command or conspiratorial cell structure, whose members wear no uniform or identifying insignia; and perpetrated by a sub-national group or non-state entity.<sup>17</sup> The U.S. Department of Defense defines terrorism as the calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.<sup>18</sup> There is no definition of terrorism in the TPPA, but of “acts of terrorism” performed with the intention of furthering an ideology, whether political, religious, racial, or ethnic. This clause is followed by a long catalogue of criminalized conduct.<sup>19</sup>

Entities which employ systematic violence for achieving specific political objectives may be designated as terror groups. The methods of violence used by these groups are ineffable ‘extranormal’, brutal and extraordinary; and designed particularly to intimidate civilian audiences.<sup>20</sup> Across the globe, terrorists entities have adopted the following means, amongst others, to execute their aims: arson, mass killing by, gunfire, suicide bombing and use of improvised explosives, high-jacking of aircraft, ship, hostage-taking or kidnapping, media propaganda and advocacy, piracy, jail break, and forced enlistment or recruitment of combatants or fighters.<sup>21</sup> An organization is formally labeled a terrorist organization, group or entity, if a court finds that it is directly or indirectly engaged in

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<sup>15</sup> Kiras, James D. "Irregular warfare: Terrorism and insurgency." *Strategy in the contemporary world* (2019): 183-201.

<sup>16</sup> Jenkins, Brian Michael. *The study of terrorism: definitional problems*. (Santa Monica: The Rand Corp, 1980), 3.

<sup>17</sup> Hoffman, Bruce. *Inside terrorism*. (Columbia university press, 2017): 43.

<sup>18</sup> Joint Chiefs of Staff DoD, Department of Defense Dictionary of Military and Associated Terms. Washington, D.C, 2008.

<sup>19</sup> Article 2 (2) (3) Terrorism (Prevention and Prohibition) Act 2022: “In this Act, “act of terrorism” means an act willfully performed with the intention of furthering an ideology, whether political, religious, racial, or ethnic, and which— (a) may seriously harm or damage a country or an international organization ; (b) unduly compels a government or an international organization to perform or abstain from performing any act ; (c) seriously intimidates a population ; (d) seriously destabilizes or destroys the fundamental political, constitutional, economic or social structures of a country or an international organization ; (e) influences a government or an international organization by intimidation or coercion ; (f) violates the provisions of any international treaty or resolution to which Nigeria is a party, subject to the provisions of section 12 of the Constitution of the Federal Republic of Nigeria, 1999...”

<sup>20</sup> Lizardo, Omar. "Defining and theorizing terrorism: A global actor-centered approach." *Journal of World-Systems Research* (2008): 91-118.

<sup>21</sup> Okoli, Al Chukwuma, and Philip Iortyer. "Terrorism and humanitarian crisis in Nigeria: Insights from Boko Haram insurgency." *Global Journal of Human Social Science* 14, no. 1 (2014): 39-49.

preparing, planning, assisting or fostering the commission of a terrorist act, or the government has listed it as a terrorist organization.<sup>22</sup>

Kjell Hauske has expressed the view that “terrorist organizations are usually made up of ideologues, criminal mercenaries, and captive participants, and that the ideologues provide political purpose and direction and have a strong group commitment.<sup>23</sup> Although the activities of terrorists and organized criminal groups may overlap, they pursue basically distinct objectives. Terrorists are motivated by political or social objectives unlike organized crime groups which seek profit. Nevertheless, organized criminal groups and terrorist organizations may build alliances with each other. Overtime, criminal and terrorist groups may develop a capacity to engage in both criminal and terrorist activities, thus forming entities that display the characteristics of both groups.<sup>24</sup>

### **(b) Proscribed organizations**

In consequence of its powers in the terrorism legislation, the government designated some groups as terrorist entities. Boko Haram and Ansaru were proscribed on 24<sup>th</sup> May 2013.<sup>25</sup> The Indigenous People of Biafra (IBOP) was proscribed on 20<sup>th</sup> September 2017.<sup>26</sup> The third group, the Islamic Movement in Nigeria (IMN) was proscribed on 26<sup>th</sup> July 2019.<sup>27</sup> On 25<sup>th</sup> November 2021, the government proscribed the Yan Bindiga Group, Yan Ta’adda Group, and similar groups of bandits operating in the north-west and north-central parts of Nigeria.<sup>28</sup>

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<sup>22</sup> “Terrorist Organizations,” Attorney-General’s Department. Available at <https://https://www.ag.gov.au/national-security/australias-counter-terrorism-laws/terrorist-organisations#:~:text=A%20terrorist%20organisation%20is%20an,a%20terrorist%20organisati on%20by%20regulations>. Accessed on 25<sup>th</sup> February 2024.

<sup>23</sup> Hausken, Kjell. “The dynamics of terrorist organizations.” *Operations Research Perspectives* 6 (2019): 100120.

<sup>24</sup> United Nations Office on Drugs and Crime, “Similarities and Differences between Organized Crime and other Forms of Crime”. United Nations Office on Drugs and Crime (UNODC). Available at <https://www.unodc.org/e4j/zh/organized-crime/module-1/key-issues/similarities-and-differences.html#:~:text=Terrorism%20is%20another%20form%20of,achieving%20political%20 or%20social%20objectives>. Accessed on 25<sup>th</sup> February 2024.

<sup>25</sup> See the Terrorism (Prevention) (Proscription Order) Notice 2013.

<sup>26</sup> Terrorism (Prevention) (Proscription) Order Notice 2017. Federal Republic of Nigeria Official Gazette, Vol. 99. No. 104.

<sup>27</sup> Terrorism (Prevention) (Proscription) Order Notice 2019. Federal Republic of Nigeria Official Gazette, Vol. 106. No. 115.

<sup>28</sup> Terrorism (Prevention) (Proscription) Order Notice 2021. Federal Republic of Nigeria Official Gazette, No. 212. Vol. 108. 29<sup>th</sup> November 2021.

### **i. Armed bandits**

Concerning the marauding Fulani outlaws, Wisdom Oghosa Iyekepolo remarked graphically that:

“The Fulani extremist groups are a complex mix of violent groups mainly emerging from the traditionally nomadic Muslim Fulani herders in northern Nigeria. There were initial debates on whether to designate these Fulani groups as terrorists, but the federal government of Nigeria recently declared these groups terrorists after prolonged foot-dragging. There is no doubt that the violent activities of these groups in vulnerable communities are hardly different from those of Boko Haram.”<sup>29</sup>

Armed bandits comprised mostly of Fulani extremists have created enclaves of violent crimes, where they wield quasi-territorial powers.<sup>30</sup> The bandits have attacked communities, government facilities, schools, trains, and have carried out kidnapping for ransom, highway robberies, plundering, rape, cattle-rustling and murder in Zamfara, Katsina, Kaduna, Kebbi, Nasarawa, Niger and Sokoto states.<sup>31</sup> On 28<sup>th</sup> March 2022, hundreds of passengers were abducted, while others were killed or injured after bandits demobilized a Kaduna-to-Abuja train by bombing its tracks.<sup>32</sup>

### **ii. The Islamic Movement in Nigeria**

The Islamic Movement in Nigeria was founded in 1979 by a Shia cleric; Sheik Ibrahim al-Zakzaky following the Iranian Revolution of 1979.<sup>33</sup> The headquarters of the group is in Zaria, Kaduna State. The IMN is a Shia Islamic group, which propounds the

<sup>29</sup> Iyekepolo, Wisdom Oghosa. "Bridging the Norms of Counter-Terrorism and Responsibility to Protect: Countering the Proliferation and Activities of Armed Groups in Nigeria." *Global Responsibility to Protect* 15, no. 4 (2022): 335-360.

<sup>30</sup> Okoli, Al Chukwuma, and Mamuda Abubakar. "'Crimelordism': Understanding a new phenomenon in armed banditry in Nigeria." *Journal of Asian and African Studies* 56, no. 7 (2021): 1724-1737.

<sup>31</sup> Ojo, John Sunday, Samuel Oyewole, and Folahanmi Aina. "Forces of terror: Armed banditry and insecurity in North-west Nigeria." *Democracy and Security* 19, no. 4 (2023): 319-346. 1-28.

<sup>32</sup> "Suspected Bandits Attack Passenger Train in Northern Nigeria." ALJAZEERA. 29<sup>th</sup> March 2022. Available at <https://www.aljazeera.com/news/2022/3/29/suspected-bandits-attack-passenger-train-in-northern-nigeria> accessed on 8th March 2024.

<sup>33</sup> Bunza Mukhtar Umar, "Islamic Movement in Nigeria," in: *Encyclopedia of Islam, THREE*, Edited by Kate Fleet, Gudrum Kramer, Denis Matringe, John Nawas, and Devin J. Stewart. Available at [https://www.referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/islamic-movement-in-nigeria-COM\\_32578#:~:text=The%20Islamic%20Movement%20in%20Nigeria,in%20Kaduna%20State%2C%20Nigeria](https://www.referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/islamic-movement-in-nigeria-COM_32578#:~:text=The%20Islamic%20Movement%20in%20Nigeria,in%20Kaduna%20State%2C%20Nigeria)). Accessed on 27<sup>th</sup> February 2024.

political and religious ideas of Ayatollah Khomeini, and is opposed to Zionism. The IMN has raised awareness about itself and resisted government policies unfavourable to it through street protests and sometimes, clashes with security agents, in the Northern parts of Nigeria, and Abuja. In December 2015, Sheik Ibrahim al-Zakzaky and his wife Zeenat, were apprehended by the Nigerian Army as a result of a bloody clash between the soldiers lead by Lieutenant General Tukur Buratai and members of the IMN.<sup>34</sup> Thereafter, members of the IMN organized protests in Abuja for their release.

Although the IMN and Boko Haram are religion-based terror organizations, they belong to different sects within Islam and employ different methodologies of violence or peaceful protests to propagate their activities and achieve their aims. The IMN and Boko Haram reject the authority of the Nigerian State, but while Boko Haram employs violence, the IMN uses peaceful protests, in most cases.

### iii. Boko Haram

Like the IMN, the avowed desire of the Boko Haram sect is to establish ‘a pure Islamic state ruled by sharia law’.<sup>35</sup> Boko Haram is a Salafist extremist group founded in the north-eastern part of Nigeria in 2002 by an Islamist cleric known as Mohammed Yusuf.<sup>36</sup> From the time of its formation up to 2009, Boko Haram engaged in low-level conflict with local police officers and non-compliant villagers, until its leader, Mohammed Yusuf, captured on 30<sup>th</sup> July 2009 in a battle with Nigerian security forces in Maiduguri, was extra judicially murdered in detention.<sup>37</sup> Boko Haram has been in control of swathes of territory, including the Sambisa forest, in and around Borno State, estimated at 50, 000 square kilometers, but has been unable to capture Maiduguri, the state capital.<sup>38</sup> Since 2015, Boko Haram has operated under the names “Islamic State in West Africa (ISWA) or Islamic State’s West African Province (ISWAP)”.

Boko Haram shares common beliefs with, and has in fact, pledged allegiance to ISIS.<sup>39</sup> From its formation to date, Boko Haram has executed widespread criminality

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<sup>34</sup> Faiza Ma, “Persecution of the Shia Islamic Movement of Nigeria”. UAB Institute for Human Rights Blog, (2020), 19<sup>th</sup> October. Available at <https://sites.uab.edu/humanrights/2020/10/19/persecution-of-the-shia-islamic-movement-of-nigeria/> Accessed on 8<sup>th</sup> March 2024.

<sup>35</sup> A Walker, ‘What is Boko Haram?’ Special Report 308, United States Institute of Peace, Washington DC, (2012): 1.

<sup>36</sup> Okpaga, Adagba, Ugwu Sam Chijioke, and Okechukwu Innocent Eme. "Activities of Boko Haram and insecurity question in Nigeria." *Arabian Journal of Business and management Review (OMAN chapter)* 1, no. 9 (2012): 77.

<sup>37</sup> Uchegara, Asst Kieran E. "Peace talks initiatives between the Boko Haram and Nigerian Government." *International Journal of Business and Social Science* 5, no. 6 (2014), 130.

<sup>38</sup> ‘Boko Haram’. < [https://www.en.m.wikipedia.org/wiki/Boko\\_Haram](https://www.en.m.wikipedia.org/wiki/Boko_Haram) > accessed on 6<sup>th</sup> June 2015.

<sup>39</sup> John Campbell, “ISIS, Al-Qaeda, and Boko Haram: Faces of Terrorism, 2015, 23<sup>rd</sup> November. Available at <https://www.cfr.org/blog/isis-al-qaeda-and-boko-haram-faces-terrorism>. Accessed on 27<sup>th</sup> February 2023.



including bombings, beheadings, assassinations, hostage-taking, enslavement, arson, in Nigeria and neighbouring countries. One incident which earned Boko Haram significant global attention and condemnation was the abduction of 276 teenage school girls from Chibok, a Christian community in Borno State on 14<sup>th</sup> April 2014. About a decade afterwards, 98 of the girls are still being held in captivity.<sup>40</sup> Implementing the goals of Boko Haram and IMN requires the destruction of the Nigerian State and its replacement with an alternative Islamic system of government.

#### **iv. Indigenous People of Biafra**

Violent agitations for the secession of the eastern part of Nigeria have been active since the 1960s. Between 1967 and 1970, Eastern Nigeria was engaged in a brutal, but unsuccessful civil war for its independence and the establishment of the Republic of Biafra. Overtime, several nationalist separatist or secessionist groups have sprung up in the south-eastern regions of Nigeria fighting for the creation of Biafra. IPOB was founded in 2012 by Nnamdi Kanu and Uche Mefor with the overriding goal of the restoration of the Republic of Biafra.<sup>41</sup> On its website, IPOB said:

“Biafra, officially the Republic of Biafra, was a secessionist state in eastern Nigeria, which existed from 30 May 1967 to January 1970...The inhabitants were mostly the Igbo people who led the secession due to economic, ethnic, cultural and religious tensions among the various peoples of Nigeria...”<sup>42</sup>

IPOB’s activities are largely confined to the south-eastern parts of Nigeria. IPOB and its armed wing, the Eastern Security Network (ESN) has been engaged in a guerilla warfare against the Nigerian government leading to attacks and killings of civilians and state security personnel, assassinations, arson and abductions. At least one hundred and twenty-seven police officers or security operatives were reportedly killed by IPOB or its members notoriously labelled “unknown gunmen” in 2021, and about twenty offices of the Independent Electoral Commission were destroyed within that period.<sup>43</sup> IPOB has

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<sup>40</sup> Pearson, Elizabeth, and Jacob Zenn. "Boko Haram, the Islamic State, and the surge in female abductions in Southeastern Niger." ICCT Research Paper, (2021): 3. Premium Times, 'Nine Years After, 98 Chibok Girls Still in Boko Haram Captivity'. 14<sup>th</sup> April 2023. Available at <https://www.premiumtimesng.com/news/top-news/593267-nine-years-after-98-chibok-girls-still-in-boko-haram-captivity.html> accessed on 13th May 2024.

<sup>41</sup> Obi-Ani, Ngozika Anthonia, Okwuchukwu Justice Nzubechi, and Paul Obi-Ani. "Indigenous peoples of biafra (IPOB) and the renewed quest for Biafra." *Cogito (2066-7094)* 12, no. 3 (2020): 101.

<sup>42</sup> The Indigenous People of Biafra. Available at <https://www.ipobgovernment.org/> Accessed on 28<sup>th</sup> February 2024.

<sup>43</sup> Aljazeera, 'Nigeria Accused of 'Ruthless' Crackdown in Restive South East'. 5<sup>th</sup> August 2021. Available at <https://www.aljazeera.com/news/2021/8/5/nigeria-accused-ruthless-crackdown->

also launched attacks on government buildings, police stations, military formations, markets. IPOB has declared and enforced a sit-at-home order in the south-eastern states, to protest the detention of its founder, Nnamdi Kanu.

The sit-at-home order, enforced by brutal attacks on violators, has effectively paralyzed activities in the region as both public and private sector offices are shut down to avoid attacks.<sup>44</sup> In its efforts to crack down on the activities of IPOB, the government has arrested and prosecuted members of the group as well its leader, Nnamdi Kanu. IPOB has accused the government of neglecting the eastern region, poor investments, political alienation, inequitable resource distribution, ethnic marginalization, heavy military presence, arbitrary arrests, extrajudicial killings of Igbos, and the violation of several court orders for the release of its leader, Nnamdi Kanu.<sup>45</sup> However, government crackdown on IPOB has elicited mixed reactions, with some pundits opining that the Nigerian State has utilized violent and excessive police force in an attempt to suppress pro-Biafran aspirations. Chikodiri Nwangwu blames the repressive character of the reaction of the government for the escalation of tensions in the south-east. According to him:

“The recent predisposition of the IPOB to armed separatist struggle in Nigeria is a consequence of the progressive deployment of brute force against the activities of the neo-Biafra separatist movement.”<sup>46</sup>

### (c) The procedure for proscription and deproscription

One of the aims of the TPPA 2022 is to provide for procedures for the declaration of a person or entity as a terrorist or terrorist entity, or terrorism financier.<sup>47</sup> It may be said that proscription as a counter-terrorism strategy denies an entity of public legitimacy; cripples its fund-raising capacity, facilitates law enforcement and prosecution, and suffocates the entity’s propaganda through denial of ‘the oxygen of publicity’.<sup>48</sup> Listing an entity as a terrorist organization has grave consequences for its members. It

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restive-southeast accessed on 28th February 2024.

44 Taiwo-Hassan Adebayo, “Nigerian Government’s Actions Fueled IPOB Violence in South East – Report”, 2022, 3<sup>rd</sup> April. Available at <https://www.premiumtimesng.com/news/headlines/521567-nigerian-govts-actions-fuelled-ipob-violence-in-southeast-report.html?tztc=1> accessed on 28 February 2024.

45 Bolanle Olabimtan ‘Court Awards N500M Damages to Nnamdi Kanu, Orders FG to Return Him to Kenya’. The Cable. 26<sup>th</sup> October 2022. Available at <https://www.thecable.ng/breaking-court-orders-fg-to-return-nnamdi-kanu-to-kenya> accessed on 13th May 2023.

46 Nwangwu, Chikodiri. "Neo-biafra separatist agitations, state repression and insecurity in South-East, Nigeria." *Society* 60, no. 1 (2023): 40-53.

47 Section 1 (d), Terrorism (Prevention and Prohibition) Act 2022.

48 Legrand, Tim, and Lee Jarvis. "Enemies of the state: Proscription powers and their use in the United Kingdom." *British Politics* 9 (2014): 450-471.

also confirms the group's distance from legitimate, democratic and political life.<sup>49</sup> Unlike the Terrorism (Prevention) Act of 2011 which used the word 'organization', the TPPA 2022 uses the word 'entity' with regard to proscription. An 'entity' is defined in Section 99 of the TPPA to mean "a person, group, trust, partnership, fund or any other association or organization, whether incorporated or unincorporated, an unincorporated association or organization or partnership, for the purpose of providing a product or service either for profit or non-profit."

However, while the legislation of 2011 defined 'organization' to exclude political parties, there are no such limitations in the TPPA 2022. In Section 48 (1) of the TPPA, the Attorney-General of the Federation may, with the approval of the President of Nigeria, apply *ex-parte* to the Federal High Court to proscribe a person, association or entity if it associates for the purpose of (a) participating or collaborating in an act of terrorism or terrorism financing; (b) promoting, encouraging or exhorting others to commit an act of terrorism; or (c) setting up or pursuing acts of terrorism. The TPPA requires the publication of the notice of the proscription order in the gazette of the federal government and two national dailies specified by the court.

The proscription order comes into force as soon as the court makes it. However, where an entity believes that it has been unfairly or wrongly listed or proscribed, it may apply to the Attorney-General for deproscription. If there is evidence to show that the entity has not engaged in terrorism, and the President consents to the request for delisting, the Attorney-General may apply to the court for a revocation of the proscription order.<sup>50</sup> Alternatively, within sixty days of the receipt of the order, the proscribed entity may apply to the court for a review of the order. The court shall examine the intelligence report or information presented by the Attorney-General and afford the proscribed entity the opportunity to be heard. Where the court determines that the proscription order is not reasonable, it shall vacate the order.<sup>51</sup>

On the contrary, if the court decides that the proscription order is reasonable, it shall make an order to that effect.<sup>52</sup> The Attorney-General may review a proscription order every twelve months to determine if reasonable grounds for it continue to exist, and

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<sup>49</sup> Jarvis, Lee, and Tim Legrand. "There are serious question marks over the effectiveness and appropriateness of proscribing terrorist organisations." *Democratic Audit Blog* (2014). Available at [https://eprints.lse.ac.uk/59112/1/\\_lse.ac.uk\\_storage\\_LIBRARY\\_Secondary\\_libfile\\_shared\\_repository\\_Content\\_Democratic%20Audit%20blog\\_2014\\_August%202014\\_democraticaudit.com-There\\_are\\_serious\\_question\\_marks\\_over\\_the\\_effectiveness\\_and\\_appropriateness\\_of\\_proscribing\\_terrorist\\_.pdf](https://eprints.lse.ac.uk/59112/1/_lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_Democratic%20Audit%20blog_2014_August%202014_democraticaudit.com-There_are_serious_question_marks_over_the_effectiveness_and_appropriateness_of_proscribing_terrorist_.pdf). Accessed on 11<sup>th</sup> March 2024.

<sup>50</sup> Section 48 (3), Terrorism (Prevention and Prohibition) Act 2022.

<sup>51</sup> Section 57 (1) (2) and (3), Terrorism (Prevention and Prohibition) Act 2022.

<sup>52</sup> Section 57 (4), Terrorism (Prevention and Prohibition) Act 2022.

where no reasonable grounds exist, the order may be revoked.<sup>53</sup> As at the time of writing, there is no record of the deproscription of any organization. In 2018, IPOB unsuccessfully applied to the federal high court for deproscription. The court found the proscription to be meritorious and to have followed the due process of law.<sup>54</sup> The proscription of an entity renders it a crime for a person to knowingly make funds or property available for the benefit of the proscribed entity.<sup>55</sup> Under the TPPA, the membership or profession of membership of an entity, proscribed in or outside Nigeria, is a criminal offence which is punishable with a term of at least 20 years and a maximum sentence of life imprisonment.<sup>56</sup>

#### **(d) A critique of the proscription regime**

It is worth saying again that proscription powers were exercised over only four local groups: Boko Haram, IPOB, IMN and armed bandits. Following the discussion of the procedure for proscription and deproscription in the preceding segment of the paper, this section undertakes an analysis of some of the implications of the proscription law.

##### **i. Identifying the entity for proscription**

A number of problems arise from the selection of a person or body to label a terrorist entity. This complexity is attributable in part, to the lack of coherence and diversity of approaches towards terrorism. Tim Legrand and Lee Jarvis emphasized this idea when they said “a problem associated with the designation of terrorist organizations is the assumption of coherence and boundedness that the act of naming an organization conveys publicity”.<sup>57</sup> It is thus possible to politicize and misuse the word ‘terrorism’ to restrict even non-terrorist activities carried out by non-State actors opposed to government, leading to a violation of basic freedoms.

Political interests and considerations play a noticeable role in the choice of entities a State decides to proscribe. A lot of wrangling underscores the ever-shifting perspective towards what defines a terrorist group. In the Nigerian polity, criticisms followed the designation of IMN as a terrorist entity. The proscription of the minority Shia group; IMN was done about a week after a violent crackdown on the group by security personnel, following protests by IMN members for the release of their leader, Sheik Ibrahim al-Zakzaky from detention. Eleven IMN members, a journalist and a policeman were killed

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<sup>53</sup> Section 57 (6), Terrorism (Prevention and Prohibition) Act 2022.

<sup>54</sup> Taiwo Ojoye, “Court Affirms IPOB’s Proscription, Designation as Terrorist Group”. Punch, 19<sup>th</sup> January 2018. Available at <https://punchng.com/court-affirms-ipobs-proscription-designation-as-terrorist-group/> accessed on 11<sup>th</sup> March 2024.

<sup>55</sup> Section 21 (3) (b), Terrorism (Prevention and Prohibition) Act 2022.

<sup>56</sup> Section 25 (1) Terrorism (Prevention and Prohibition) Act 2022.

<sup>57</sup> Tim Legrand and Lee Jarvis (note 48).

as violence escalated during the protest.<sup>58</sup> The parameters set by the TPPA in Section 2 are anything but adequate, and may result to abuse. The earlier versions of the Act excluded political parties from proscription, but the TPPA contains no such exclusion clause.<sup>59</sup>

In modern times, terrorist entities have become amorphous - members are linked by ideology, shared values and communications technology, rather than a formal organizational structure. Terrorists change their names as often as their allegiance, ideologies and goals change. This presents yet another challenge for the identity, continuity or succession of a terrorist entity. An example is that of Boko Haram, which was founded in 2002. After pledging allegiance to the Islamic State in 2015, Boko Haram renamed itself the Islamic State's West Africa Province (ISWAP).<sup>60</sup> Boko Haram has also operated under the names Ahlusunna wal' Jamma Hijra, and the Yusufiyya. Tim Legrand and Lee Jarvis have stated that "extremist groups elude authorities and evade designation by assuming different guises, splitting, reforming or allying with other causes. Indeed, even where an 'organization' can be distinguished for the purposes of proscription, proving and prosecuting membership remains a sizeable challenge."<sup>61</sup>

Membership of a terrorist entity may also become diffuse and uncertain. On this issue, Russell Hogg has said that the most violent forms of terrorism in modern times are presented by lone wolves, local, self-starter individuals, and groupings, driven by advances in communications technology.<sup>62</sup> Terrorist groups, such as Islamist terrorists, may be connected to a global terror campaign which employs communications technologies to propagate its beliefs and radicalize peoples who have access to the internet.<sup>63</sup> With the use of communications media, individual members of a terrorist group do not have to be known to one another. Furthermore, there may be challenges in distinguishing members of a terrorist group from non-members. Some individuals may support the ideology of a group, but not its mode of operationalizing it. For example, how do you classify Igbos (the primary ethnic group from which Biafran agitators are drawn)

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<sup>58</sup> Human Rights Watch (2019). Nigeria: Court Bans Shia Group. Decision Tramples on Basic Rights of Religious Movement. 30<sup>th</sup> July. Available at <https://www.hrw.org/news/2019/07/30/nigeria-court-bans-shia-group> accessed on 12th March 2024.

<sup>59</sup> Section 2 (3) (ii), Terrorism (Prevention) Act, 2011.

<sup>60</sup> John Bugnacki, "What's in a Name? Boko Haram renames itself the Islamic State's West Africa Province (ISWAP)", 2015, 12<sup>th</sup> May. Available at <https://www.americansecurityproject.org/whats-in-a-name-boko-haram-renames-itself-the-islamic-states-west-africa-province-iswap/> Accessed 4<sup>th</sup> March 2023.

<sup>61</sup> Tim Legrand and Lee Jarvis (note 48).

<sup>62</sup> Hogg, Russell G. "Executive proscription of terrorist organisations in Australia: Exploring the shifting border between crime and politics." In M. Gani and P. Mathew (Eds.), *Fresh perspectives on the 'war on terror'*. (Canberra, ANU E Press, 2008): 297-323.

<sup>63</sup> U.S Department of Justice, Office of Justice Programs (2017) The Role of Social Media in the Evolution of Al-Qaeda Inspired Terrorism. September. NCJ Number: 251106

who glorify IPOB's goal of creating Biafra, but do not support its campaign of violence, or only silently refrain from condemning it? There appears to be no easy way to approach these exemplars in the context of criminal liability. Nevertheless, the Australian position of differentiating between the violent and non-violent arms of an organization and proscribing the later, illustrates a useful way of responding to it. Thus:

“Where an organization has a degree of legitimacy through popular support and has a wide ethnic or national constituency, it is important that listing only be applied to the component that is directly responsible for acts of terrorist violence. For example, Hizballah's stated aim of establishing a radical Shi'a Islamic theocracy in Lebanon remains one of its core ideological pillars. However, Hizballah has evolved into a more pragmatic socio-political movement; it participates in representative politics and has gained a degree of political legitimacy through the election of some of its members to the Lebanese Parliament. It is for this reason that Australia's listing is confined to the External Security Organization (ESO). Australia has avoided listing Hizballah's social and political arms and has distinguished ESO from Islamic Resistance, the militia wing of Hizballah that operates inside Lebanon.”<sup>64</sup>

One consequence of terrorist designation is its negative implication for the peacebuilding process. For example, some prominent individuals have withdrawn from involvement in negotiations with proscribed entities. The well-known mediator for armed bandits; Sheik Ahmad Abubakar Gumi declared his decision to no more mediate between the government and armed bandits, as a result of their designation as terrorists.<sup>65</sup>

## **ii. Utility**

It is rational to ask about the effectiveness of proscription regimes especially as proscribed groups have continued to exist and operate despite government bans. This kind of inquiry is not meant to dismiss its usefulness as a tool for counter-terrorism.

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<sup>64</sup> Parliament of Australia. Available at [https://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=pjcis/proscription/report/chapter%204.htm](https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=pjcis/proscription/report/chapter%204.htm) Accessed on 11<sup>th</sup> March 2024.

<sup>65</sup> Michael Adesina, “I Am Now a Spectator: Gumi Suspends Talks with Bandits”. P. M. News. 9<sup>th</sup> December 2021. Available at <https://pmnewsnigeria.com/2021/12/09/im-now-a-spectator-gumi-suspends-talks-with-bandits/> accessed on 8<sup>th</sup> March 2024.

However, on this issue, Tim Legrand and Lee Jarvis cautioned that “evidence-based assessments of the effectiveness of proscription are, in the first instance, scarce. And, in the second instance, generally skeptical of the value proscription poses.”<sup>66</sup> Elsewhere, it was found that on account of the possibility of prosecution or even damage to reputation, proscription constituted a challenge to the engagement of terrorist entities and their willingness to enter into negotiations.<sup>67</sup> Proscription of terrorist entities in Nigeria appear to have little or no utility. The violence carried out by Boko Haram, IPOB and bandit groups have not declined despite their listing several years ago. Reacting to the designation of bandits as terrorists, Sheik Ahmad Abubakar Gumi who has mediated between the government and the bandits many times to secure the release of hostages held by the bandits remarked that: “the declaration will not change anything, it will not change the dynamics. Already the military is engaging them. It didn’t stop them from kidnappings and killings. The declaration will not end their aggression against society.”<sup>68</sup>

### **(e) Terrorism and democracy**

The relationship between regime type and terrorism in Nigeria has not evoked significant scholarship, despite the fact that it deserves more attention. Until recently, the prevailing view was that a country attracted as much terrorism as it was democratic and liberal.<sup>69</sup> Three reasons were advanced to justify this postulate: (1) respect for due process and human rights placed more restraints on security forces, making it easier for terrorists to plan and coordinate attacks; (2) a free press would provide greater publicity for terrorist violence, thereby placing more pressures on elected officials, who are particularly susceptible to public sentiments, and (3) electoral competition heightens susceptibility to terrorism. The opposing view posits that the nature and constitution of democracy prevents the emergence of terrorism, because of the avalanche of opportunities for the peaceful expression of grievance and access to redress.<sup>70</sup> The relevance of democracy lies in the pathways it provides for handling and resolving disputes in peaceful ways through devices such as “electoral systems, power sharing, checks and balances, the rule of law, political rights, and public participation in

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<sup>66</sup> Tim Legrand and Lee Jarvis (note 48).

<sup>67</sup> “Curbing the Impact of Anti-terror Laws on Peacebuilding.” Available at <https://www.c-r.org/our-work-in-action/stopping-uk-anti-terror> Accessed on 7th March 2023.

<sup>68</sup> “Declaration of Bandits as Terrorists Meaningless Like that of IPOB - Gumi”. Premium Times. 27<sup>th</sup> November 2021. Available at <https://www.premiumtimesng.com/regional/nwest/497641-declaration-of-bandits-as-terrorist-meaningless-like-that-of-ipob-gumi.html> accessed on 8th March 2024.

<sup>69</sup> Magen, Amichai. "Fighting terrorism: The democracy advantage." *Journal of Democracy* 29, no.1 (2018): 111 – 125.

<sup>70</sup> Chenoweth, Erica. "Terrorism and democracy." *Annual Review of Political Science* 16 (2013): 355-378.

governance.”<sup>71</sup> Khalil Azar has pointed out the possible causes of terrorism, and according to him:

“Extremes in psychology, secular ideology, religion, ethnicity, and nationalism often lead to terrorism. Also, the perceived political grievances of occupation, poverty, religious influence, and military oppression are often precursors to terrorism. The reasons for the complaints by the aggrieved parties are based on factual evidence as well as beliefs, or are fabricated by the strong. Most of these complaints are declared by the aggrieved in the form of harm done to them. The aggrieved may be responding in kind to those who inflict the harm on them or they want to attract attention or recognition.”<sup>72</sup>

Since the emergence of terrorist groups in Nigeria, human rights have fared badly in the conflict-ridden areas. The most violated of these rights are the rights to life,<sup>73</sup> torture,<sup>74</sup> personal liberty,<sup>75</sup> and private property.<sup>76</sup> In their efforts to rid the country of terrorism, security forces have killed hundreds of terrorist suspects, and random members of communities where attacks have taken place.<sup>77</sup> Private properties have also been destroyed through aerial bombardment.<sup>78</sup> Yet, government security forces have not been held accountable for the use of excessive force and the deaths of persons in custody.<sup>79</sup> The rule of law presupposes that government’s action will be taken with regard for due process and accountability of public officials. It has been said that the rule of law is a compelling idea in legal thought and in the practice of democracy.<sup>80</sup>

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<sup>71</sup> Iheonu, Chimere O., Simplice A. Asongu, Shedrach A. Agbutun, and Innocent A. Ifelunini. "Democracy and terrorism in Africa." *International social science journal* 72, no. 244 (2022): 273-285.

<sup>72</sup> Khalil Azar, Causes of Terrorism. *IU South Bend Undergraduate Research Journal*, 6, 2003: 1-8.  
<sup>73</sup> In the form of extrajudicial killings, section 33, Constitution of the Federal Republic of Nigeria, 1999.

<sup>74</sup> Section 34, Constitution of the Federal Republic of Nigeria, 1999.

<sup>75</sup> In arbitrary arrest and detention, section 35, Constitution of the Federal Republic of Nigeria, 1999.

<sup>76</sup> Section 43, Constitution of the Federal Republic of Nigeria, 1999.

<sup>77</sup> Human Rights Watch, ‘Spiraling Violence: Boko Haram Attacks and Security Forces Abuses in Nigeria’ October 2012, p. 20.

<sup>78</sup> ‘207 Boko Haram Militants Killed in Maiduguri Attack, Says Civilian-JTF’. 15<sup>th</sup> March 2014. < <http://www.sunnewsonline.com/new/207-boko-haram-militants-killed-maiduguri-attack-says-civilian-jtf/> > accessed on 14<sup>th</sup> May 2024.

<sup>79</sup> S Malik, ‘U. S Report Confirms Abuse by Nigerian Security Forces’ 29<sup>th</sup> June 2015. < <http://www.icirnigeria.org/u-s-report-confirms-abuse-by-nigerian-security-forces/> > accessed on 14<sup>th</sup> May 2024.

<sup>80</sup> Buyse, Antoine, Katharine Fortin, Brianne Mc Gonigle, and Julie Fraser. "The rule of law from below—a concept under development." *Utrecht Law Review* 17, no. 2 (2021): 1-7.



#### **IV. CONCLUSION**

In contemporary times, terrorism presents a grave challenge to the peace, stability and territorial integrity of States. The urgency and enormity of the situation renders it imperative to lead more legal scholarship to boost proscription research. The introductory aspect of this paper highlighted the paucity of academic attention to the proscription of terrorist entities in Nigeria. This paper represents the author's contribution towards addressing the lean literature on the subject. The paper has done this by discussing the proscription regime in the Terrorism Act; by identifying the affected terror groups, and embarking on a critique of the operation of the proscription regime. Just as there is no consensus on the conceptual analysis of terrorism, the identification of a group for proscription purposes remains controversial.

Another key problem remains the ubiquity and prevalence of terrorist activity by groups, even after their proscription, which calls in to question, the effectiveness of the proscription regime. For illustration, the violence perpetrated by the Islamist extremist group; Boko Haram, or the Biafran secessionist agitators; IPOB, has not waned significantly despite officially labelling them as terrorists. As posited in the paper, proscription remains a valuable tool for countering terrorism, but its use is open to abuse by repressive governments as the parameters for designation are fluid, and entities can be designated as terrorists without following due process.

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