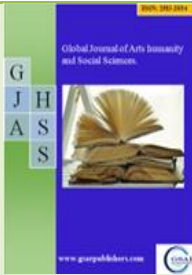
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## COUNTERTERRORISM AND THE RIGHT TO FAIR HEARING IN NIGERIA: A CRITICAL ANALYSIS

By

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### Abstract

The rise of terrorism in Nigeria, particularly Boko Haram insurgency, has necessitated the Nigerian government to adopt counterterrorism strategies to combat their activities. However, these measures have raised significant concerns regarding compliance with fair trial guarantees under the 1999 Nigerian Constitution (as amended) and also under international law. This paper aims at critical analysis of some of the fair hearing violations during counterterrorism. It is the argument of the paper that while national security is a legitimate state objective under Nigerian Constitution, its pursuit has often resulted in systemic violations of due process rights such as secret trials, prolonged detention, mass prosecutions and coerced confessions. It is further the argument of the paper that Nigeria's counterterrorism framework, particularly under the Terrorism (Prevention and Prohibition) Act, 2022, systematically undermines the constitutional right to fair hearing guaranteed under section 36 of the Constitution of the Federal of Nigeria, 1999 (as amended). The paper finds that there is a systemic pattern of fair trial violations in Nigeria's counterterrorism, particularly in terrorism related prosecutions. The paper adopts the doctrinal research methodology. It concludes that while counterterrorism is a legitimate and necessary state function, its implementation in Nigeria has negatively affected the protection of fair trial rights. The fight against terrorism in Nigeria is both necessary and urgent. However, the erosion of fair hearing rights undermines the rule of law and may ultimately weaken counterterrorism efforts. Upholding fair hearing is not a hindrance to counterterrorism but a cornerstone of legitimate and effective justice. It recommends that the Nigerian government should ensure strict compliance with section 36 of the Constitution in all counterterrorism prosecutions. Nigeria should also align its counterterrorism framework more closely with international human rights standards, particularly the ICCPR and African Charter. It also proposes reforms to harmonize security imperatives with constitutional safeguards.

**Keywords:** constitution, counterterrorism, right to fair hearing, human rights violations, rule of law

### 1. Introduction

Counterterrorism has become one of the most pressing security priorities of the Nigerian state, particularly following the emergence and sustained activities of Boko Haram and other violent extremist organizations, in response, Nigeria has developed a range of legislative, administrative and military strategies aimed at preventing terrorism, prosecuting offenders, and restoring national security. Key among these legal instruments is the Terrorism (Prevention and Prohibition) Act, 2022, supported by provisions of the Constitution of the Federal Republic of Nigeria,

1999 (as amended) and the Administration of Criminal Justice Act, 2015 (ACJA). The rise of terrorism in Nigeria particularly since 2009, has compelled the state to adopt aggressive counterterrorism strategies. Military operations, emergency regulations, and special legal frameworks have been deployed to combat insurgency, especially in the North-Eastern part. However, these measures have not been without controversy. Reports of arbitrary detention, delayed trials, and restricted access to legal representation, have raised serious constitutional concerns. At the heart of these concerns, lies the right to fair hearing, one of the most fundamental pillars of justice in any democratic society.



Nonetheless, while these measures are designed to protect national security and public safety, their implementation has generated significant constitutional and human rights concerns, especially in relation to fair hearing or fair trial. The right to fair hearing, guaranteed under section 36 of the Constitution, as well as under Article 7 of the African Charter on Human and Peoples' Rights, require that every accused person be afforded due process, including the right to legal representation, the presumption of innocence, and trial within reasonable time amongst others.

However, in practice, counterterrorism operations in Nigeria have often involved mass arrests, prolonged detention without trial, military detention of suspects, secret or closed proceedings, and reliance on confessional statements obtained under questionable circumstances.

This situation has created a persistent tension between the state's obligation to combat terrorism effectively and its duty to uphold fundamental human rights. While security concerns may justify exceptional measures, international and domestic legal standards emphasize that such measures must remain within the bounds of legality and respect for human dignity.

This paper therefore critically examines the extent to which Nigeria's counterterrorism strategies comply with fair trial guarantees identifies instances of violations and evaluates the implications for the rule of law and justice administration in the country. Thus, the central question this article addresses is whether Nigeria can effectively combat terrorism without undermining the constitutional right to fair hearing? The essentials of a fair hearing have been stated by Nnamani JSC in the case of *Kotoye v. CBN*<sup>1</sup> as follows: trial within a reasonable time, trial by a court or tribunal established by law, prior notice (adequate time and facilities), opportunity to be heard, entitlement to legal representation, right to examine witnesses, assistance of an interpreter, and proceedings to be held in public. In view of the fact that these fair hearing essentials are very broad, this paper will examine only two basic ones: trial within a reasonable time and entitlement to legal representation.

The paper proceeds on five parts. Part I is the introduction. Part II deals with conceptual clarifications. Part III deals with Legal Frameworks to Combat Terrorism in Nigeria. Part VI analysis the key areas of tension between counterterrorism practices and fair hearing, while parts V and VI offer recommendations and conclusion.

## 2. Conceptual Framework

### 2.1 Counterterrorism

Counterterrorism refers to the coordinated use of military, intelligence, legal, and socio-economic measures by the state to prevent, deter, and respond to terrorist activities, while also addressing the root causes of violent extremism such as poverty, marginalization and weak governance.

Counter-terrorism/counter-insurgency is simply those military, paramilitary, political, economic, psychological, legal and civic

<sup>1</sup> (1989) 1 NWLR (pt. 98) 419 at 426

actions taken by a government to defeat insurgency or terrorism.<sup>2</sup> They comprise comprehensive civilian and military efforts taken to simultaneously defeat and contain insurgency and terrorism as well as address their root causes. Community policing has been adjudged a pillar of the coordinated measures to prevent terrorism; it mainstreams policing into respect for human rights and the law in counter terrorism operations.<sup>3</sup> According to the United Nations, States should continually take actions in about seven priority areas to counter-terrorism. These include dialogue and conflict prevention, strengthen good governance, human rights and rule of law; engage communities and empower the youths; mainstream gender equality and empower women; involve in education, skill development and facilitate employment.<sup>4</sup>

Counterterrorism means the practice, military tactics, techniques, and strategy that government, military, law enforcement, business, and intelligence in Europe Vienna use to combat or prevent terrorism. It also involves the strategies attempted to counter financing of terrorism. According to Cortright as cited in Ezirim&Okoye:

Counter-terrorism requires not only improved security but better effort to address the underlying conditions that give rise to terrorism resolving conflicts, ending foreign occupations, overcoming oppression, eradicating poverty, supporting sustainable development, empowering the marginalised, defending human rights, promoting good governance-all are vital to the struggle against terrorism, yet addressing these challenges is made more difficult by repressive counterterrorism policies.

Counter-terrorism involves a broader or comprehensive military and civilian strategies or response towards combating, eradicating or eliminating terrorist activities in a state. Counter-terrorism/counter-insurgency involves political, security, economic and informational components that reinforce governmental legitimacy and effectiveness in combating the activities or influence of terrorist group over the population.<sup>5</sup>

Nigeria's counterterrorism strategies against Boko Haram are multi-layered, combining military force, intelligence operations,

<sup>2</sup>Army Field Manual 3-24 published in 2006 by the Headquarters, Department of the U.S Army, available at ><https://www.bsdl.org?abstract&did=468442>>. Accessed on 11 March 2026

<sup>3</sup>OSCE ODHR, 'Preventing Terrorism and Radicalization that leads to Terrorism: A Community Policing Approach' (Organization) for Security and Corporation in Europe Vienna, 2014; available at <<https://www.osce.org/files/f/documents/1/d/111438>

<sup>4</sup>United Nations Development Programme, 'New Threats to human security in the Anthropocene' (Special Report2022) 3, available at <<https://hdr.undp.org/system/files/documents/srhrs2022pdf.pdf>> accessed on 11 March 2026.

<sup>5</sup>K.O. Ilo& F.C. Chilaka, *Counter Insurgency and Management of Internally Displaced Persons in the North East Nigeria [2009-2016] Studies in Politics and Society*, 7, 224-244.



legal measures, and regional cooperation. However, in practice they are often criticized by Nigerian scholars for being more reactive than preventive.

Counterterrorism has been widely conceptualized in Nigerian legal and security scholarship as a multi-dimensional state response to terrorist threats involving the use of military force, intelligence operations, legal frameworks and socio-economic interventions. It is not limited to armed response but includes preventive mechanisms such as deradicalisation, financial surveillance, and community engagement. In the Nigerian context, scholars consistently emphasise that counterterrorism operates within a security-governance framework, where the state seeks to maintain public order while responding to asymmetric threats posed by non-state actors.

For instance, Faluyi, Khan, and Akinola argue that Nigeria's counterterrorism strategy is heavily shaped by state-centric and military responses, particularly in the fight against Boko Haram insurgency. They observe that Nigeria's federal security structure prioritizes coercive force over preventive governance strategies. However, they critique this approach as insufficient, noting that terrorism persists due to weak institutions, poor coordination, and socio-political exclusion. They conclude that counterterrorism must go beyond force to include institutional reform and socio-economic development.<sup>6</sup>

Similarly, Owojori *et al* argue that most counterterrorism operations in Nigeria are reactive rather than preventive, meaning that the state often responds after terrorist incidents have occurred rather than addressing early warning signs. This reactive posture is evident in large-scale military offensives, emergency declarations, and tactical deployments.<sup>7</sup> The implication of that while it may produce short-term disruption of terrorist activities, it often fails to achieve long-term stabilization, as non-state actors adapt, relocate or splinter into smaller networks.

Ike, Antonopoulos, and Singh adopt a human security and community based perspective, arguing that Nigeria's counterterrorism strategy suffers from a disconnect between state security institutions and local populations. They emphasise that lack of trust between citizens and security agencies undermines intelligence flow, socio-economic deprivation increases vulnerability to radicalization and counterterrorism policies are often perceived as externally imposed rather than community-driven. In view they recommend a shift toward community-

inclusive counterterrorism strategies and trust-building mechanisms.<sup>8</sup>

Akintayo advances a more contemporary view of counterterrorism, advocating a "whole-of-society approach" that integrates government institutions, civil society organizations, religious leaders, and communities. He critiques excessive reliance on intelligence and military force, arguing that such approaches risk alienating communities and undermining long-term security objectives. He rather proposes Preventive and Countering Violent Extremism (PCVE) as a sustainable framework addressing ideological, economic, and social drivers of terrorism.<sup>9</sup>

Nigeria adopts a multi-dimensional approach including military operations, intelligence gathering by DSS and military intelligence, legal framework (Terrorism Prevention and Prohibition) Act, 2022 regional cooperation through Multinational Joint Task Force (MNJTF) with Chad, Niger, and Cameroon, deradicalisation programmes like Operation Safe Corridor and socio-economic interventions in North East of Nigeria. Counterterrorism in Nigeria face some challenges among which are poor intelligence coordination, porous borders, over-reliance on military force, corruption and weak institutions, human rights concerns in military operations, and poverty, unemployment fueling recruitment into Boko Haram terrorist group.

Counterterrorism thus refers to policies, strategies, and actions adopted by government to prevent, detect, and suppress terrorist activities. Counterterrorism generally includes prevention of terrorist acts, disruption of terrorist networks, prosecution of offenders and financial control of terrorist funding.

## 2.2 Fair Hearing

Fair hearing as a concept is vague and not amenable to accurate definition. In the case of *Moses Adebayo OmuyaOchu v. Federal Republic of Nigeria*<sup>10</sup>, Fasanmi, JCA held that:

A party who will be affected by the result of a decision must be given an opportunity of being heard. The essence of fair hearing under section 33 subsection 1 of the 1979 Constitution is a hearing which will be fair to both parties to the suit. It does not contemplate a standard of justice which is biased in favour of one party and the prejudice of the other. The hearing must be fair and in accordance with the twin pillars of justice namely: *audi alteram partem* and *nemo iudex in causa sua*.

<sup>6</sup> O.T. Faluyi, S.Khan and A.O. Akinola, *Boko Haram's Terrorism and the Nigerian State: Federalism, Politics and Policies* (Springer, 2019); also available <<https://doi.org/10.1007/978-3-030-05737>> accessed 2 May 2026.

<sup>7</sup> A.J. Owojori, E.O. Fasuan, O.M. Ilori and A.K. Matanmi, 'Interrogating the Effectiveness of Nigeria's Counterterrorism Efforts and the Variation in Boko Haram Terrorism Trajectory' (2021) 1 (1) *Nigerian Journal of Peace, Development & Humanitarian Affairs* 1-8; available at <<https://journals.abuad.edu.ng>> accessed 2 March 2026

<sup>8</sup> T.J. Ike, G.A. Antonopoulos & D. Singh, 'Community Perspectives of Terrorism and the Nigeria Government's Counterterrorism Strategies: A Systemic Review' (2022) 25 (2) *Security Journal* 1-20

<sup>9</sup> J. Akintayo, 'Whole-of-society Approach or Manufacturing Intelligence? Making sense of State-CSO Relation in Preventing and Countering Violent Extremism in Nigeria' (2024) 17 (1) *Critical Studies on Terrorism* 1-25

<sup>10</sup> (2010) LPELR-4673 (CA)



Also, in *Isiyaku Mohammed v. Kano N.A.*,<sup>11</sup> Ademola CJN stated that:

It has been suggested that a fair hearing does not mean a fair trial. We think a fair hearing must involve a fair trial and a fair trial of a case consists of the whole hearing. We therefore see no difference between the two. The true test of fair hearing is the impression of a reasonable person who was present at the trial whether from his observation; justice has been done in the case.

In *Ijeoma v. The State*<sup>12</sup>, it was held that it can only be defined properly in relation to the facts and circumstances of a given case before the court.

The desire to protect human beings by a serious regulation is a result of an observation like that made by Hume that in all animate beings that populate the globe, there is none against which the nature has exercised more cruelty like human beings, by considering the quantity of infinite needs and necessities which she has bestowed on him and by the weakness of the means that she gives him to meet these needs.<sup>13</sup> Among creatures extremely vulnerable, human beings deserve to have a certain protection by everyone, every state and all organs of states. It is in this perspective that the United Nations has adopted the "Universal Declaration of Human Rights" in 1947. This Declaration has served as the foundation for two binding United Nations human rights covenants: "the International Covenant on Economic, Social and Cultural Rights" (ICESCR) which is out of the scope of this study and "International Covenant on Civil and Political Rights" (ICCPR).<sup>14</sup> The provisions of this Declaration relating to rights to a fair trial has been given effective legal force and codified specifically in articles 14 and 15 of the ICCPR. Principles governing fair trial rights of the accused are "standard operating procedures" in both regimes developed by both civil law and common law.<sup>15</sup> In terms of any proceedings, these standards are fundamental rights of the defendants that must be respected at all times during investigations and subsequent trials including the post-trial stages. The denial of fair trial to the accused persons may be considered as a denial of justice.

Fair trial rights carry corresponding obligations that must be translated into concrete duties to guarantee these rights. International human rights law obligations require that the state must respect, protect and fulfill<sup>16</sup> its obligations related to the

<sup>11</sup> (1968) 1 AII N.L.R 42

<sup>12</sup> (1990) 6 NWLR (pt. 159) 567 at 580

<sup>13</sup> *Ligue Congolais des Electeurs (1999), Bonne gouvernance et Droits de l'homme (good governance and human rights), with the support of UNDP, Kinshasa, LWNL Publication, p. 3*

<sup>14</sup> *Didace, Nshimiyimana, 'Critical Evaluation of Rights to a Fair Trial in Rwandan Criminal Law', International Journal of Law Management & Humanities, Vol. 3, 2020, p. 55*

<sup>15</sup> *Ibid*

<sup>16</sup> *The Maastricht Guidelines on violations of Economic, Social and Cultural Rights, "Limburg Principles", 1997, point 6.*

enjoyment of fair trial rights by the accused persons within their territory and jurisdiction. In view of this, Nigeria as well as other States party to international instruments relating to a fair trial, is obliged by the legal frameworks to respect, protect and fulfill the fair trials in good faith, due to the principle commonly referred to as "the doctrine of *pacta sunt servanda*".<sup>17</sup>

The right to a fair trial can be traced to the provision in Magna Carta where it is stated that 'no free man shall be seized or imprisoned, or stripped of his rights of possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.'<sup>18</sup>

Amendment V and Amendment VI of the American Bill of Rights of 1791 further paved the way for further development of the concept of fair trial and due process of the law. Amendment V provides as follows:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a punishment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The right to a fair trial is a norm of international human rights and also adopted by many countries in their procedural law. Countries like U.S.A., Canada, U.K., and India have adopted this norm and are enshrined in their constitution. The right to a fair trial has been defined in numerous international instruments. The major features of fair trial are preserved in the Universal Declaration of Human Rights. The concept of fair trial is based on the basic principles of natural justice. It is based on the basic ideology that State and its agencies have the duty to bring offenders before the law. Therefore, in their battle against crime and delinquency, State and its officers cannot on any account forsake the decency of State behaviour and have recourse to extra-legal methods for the sake of detection of crime and even criminals. Therefore the procedure adopted by the State must be just, fair and reasonable. Thus, Nigerian courts have recognized that the primary object of criminal procedure is to ensure a fair trial of accused persons. Human life should be valued and a person accused of any offence should not be punished unless he has been given a fair trial and his guilt has been proved in such trial. Every person has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair

<sup>17</sup> *The doctrine of pacta sunt servanda provides that any treaty in force binds the parties. This doctrine is a principle of customary international law and is codified in Article 26 of the Vienna Convention on the Law of Treaties, 1969.*

<sup>18</sup> *Clause 39 of the Carta*

prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated.<sup>19</sup>The right to a fair trial is a fundamental safeguard to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedoms, most importantly of the right to liberty and security of person. It is established that certain constitutional safeguards are enshrined in the Constitution of the Federal Republic of Nigeria, 1999 to ensure the fair trial of accused persons in criminal matters. A breach of any of the constitutional safeguards will vitiate a trial and may consequently nullify the entire proceeding depending on the degree of breach.

On the whole, fair trial refers to the entitlement of an accused person to have their case heard by an independent, impartial, and competent tribunal established by law. This principle ensures that justice is administered without bias, coercion, or interference. In Nigeria, the right to fair trial is constitutionally guaranteed under section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides that in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair hearing within a reasonable time by a court or tribunal established by law. Key elements of the right to fair trial include: presumption of innocence, right to be informed of the charge, right to adequate time and facilities to prepare defence, right to legal representation, right to examine witnesses, trial before an independent and impartial tribunal and public hearing within a reasonable time. These guarantees ensure that justice is not only done but also seen to be done.

Nigeria operates a dual criminal law system, the Criminal Code Act, applicable mainly in Southern Nigeria, and the Penal Code Act, applicable in Northern Nigeria. Although these laws define criminal offences and penalties, they do not independently guarantee fair trial rights. Rather, such rights are derived from constitutional provisions and supported by procedural statutes such as the Administration of Criminal Justice Act, 2015 (speedy trial mechanisms, regulation of confessional statements and protection against unlawful detention) and the Evidence Act, 2011 (ensures fair admissibility of evidence and protection against involuntary confessions) and Anti-Torture Act, 2017 (where it criminalizes torture, ensures evidence obtained through torture is invalid, protection of dignity of accused persons) and Police Act, 2020 that regulates arrest, detention, investigation and prohibits torture unlawful detention and it requires respect for human rights.. Despite these legal safeguards, concerns persist regarding the practical enforcement of fair trial rights in Nigeria, including delays in criminal proceedings, inadequate legal representation, and procedural irregularities. Thus, although Nigerian law strongly guarantees fair trial rights, there is significant gap between legal provisions and practical enforcement. In many cases, accused persons are subject to prolonged pre-trial detention, trials are delayed due to procedural inefficiencies, and police investigations

are often poorly conducted or influenced by misconduct. Hence, these issues undermine the effectiveness of fair trial guarantees and raise concerns about the actual realization of justice within Nigeria's criminal justice system.

These decisions establish that fair hearing is both procedural and substantive requirement, and any breach renders proceedings void. They collectively establish that fair hearing in Nigeria is universally applicable via courts, tribunals and institutions, is absolute in effect and can be waived, requires substantive fairness, not technical compliance.

The right to fair hearing under section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has attracted extensive scholarly attention in Nigeria and beyond. Legal writers have examined its meaning and scope.

### 3. Legal Frameworks to Combat Terrorism in Nigeria

#### 3.1 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The 1999 Constitution provides the legal backbone for Nigeria's counterterrorism strategy. While it empowers the Federal Government to enact and enforce strong laws against terrorism, it also ensures that such measures respect human rights, due process, and the rule of law. Effective counterterrorism in Nigeria therefore requires balancing national security with constitutional freedoms. The Constitution therefore sets out the legal, institutional, and human rights framework within which all counterterrorism measures must meet.

The 1999 Constitution (as amended) is more than a political document. It establishes the core security mandate of the state, structures the institutions fighting terrorism, guarantees fundamental rights, and sets limits of state power in times of crisis. It also shapes national values that counter extremist ideologies. Thus, constitutionalism is itself a counterterrorism strategy.

Constitutional strategy refers to the use of constitutional provisions, institutions, values, and frameworks as tools for national security and public order. It involves employing constitutional authority, checks, rights, and structures as part of a comprehensive approach to counterterrorism.

Section 1 (1) of the Constitution states that the Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. This supremacy performs several strategic counterterrorism roles. Thus, the Constitution legitimizes counterterrorism laws and agencies such as TPA, 2022, National Security Agencies Act, Armed Forces Act, 2004, the Police Act, 2022, all having derived their validity from the Constitution. Thus, if any law is inconsistent with the Constitution, it is void to the extent of the inconsistency.

Thus, Constitution functions as the legal structure that validates and establishes the creation process for all other laws. The Constitution requires legislative, executive and judicial actions to follow its principles.

<sup>19</sup>Zahira Habibullah Sheikh and ors v. State of Gujarat and ors (2006) 3 SCC 374 at 395

The National Assembly uses its legislative authority granted by a constitutional provision to make laws about national security and terrorism. It allocates all legislative powers of the Federation to a National Assembly which includes both a Senate and a House of Representative.<sup>20</sup> Section 4 of CFRN, 1999 (as amended) grants legislative powers to the National Assembly through explicit definition of its powers as those related to matters included in the Exclusive List contained in the Second Schedule to this Constitution together with ‘any other matters which the National Assembly may legislate upon’ as contained in section 4 (4) thus resulting in minimal debate regarding the extent of these powers concerning the Exclusive List.

Furthermore, section 14 (2) provides that “the security and welfare of the people shall be the primary purpose of government”. The section therefore anchors the government’s obligation to combat terrorism. It gives legal justification for military deployment against insurgents. Furthermore, the section empowers the state to enact counterterrorism legislation, and mandates continuous investment in security infrastructure. The constitutional duty to protect lives provides the strongest moral and legal justification for counterterrorism operations.

### 3.2 Terrorism (Prevention and Prohibition) Act, 2022

Terrorism remains one of the most serious threats to Nigeria’s peace, security, and development. Over the past two decades, Nigeria has witnessed the rise of violent extremist groups such as Boko Haram, Islamic State West Africa Province, (ISWAP) and other armed militias whose activities have resulted in loss of lives, destruction of property, and mass displacement of citizens. In response, the Nigerian government has continually reformed its legal and institutional frameworks to strengthen counterterrorism measures. One of the most significant of these reforms is the enactment of the Terrorism (Prevention and Prohibition) Act, 2022 (PTA, 2022) which repealed the earlier Terrorism (Prevention) (Amendment) Act, 2013. The TPA, 2022 provides a comprehensive legal foundation for preventing, investigating and punishing acts of terrorism while ensuring compliance with international obligations. TPA, 2022 is Nigeria’s principal law for combating terrorism. It replaces earlier terrorism legislation, the 2011 Act and 2013 Amendment, to create a more robust, modern and internationally compliant counterterrorism framework.

The primary objectives of the TPA, 2022 are provided under Part 1 of the Act. Among them are-

- a. prevent and prohibit all forms of terrorism and related activities in Nigeria.
- b. Strengthen inter-agency coordination and enhance intelligence gathering.
- c. Provide clear procedures for investigating, prosecuting, and punishing offenders.
- d. Ensure Nigeria’s compliance with United Nations Security Council Resolutions (UNSCRs) and other international instruments on counterterrorism.

- e. Promote deradicalization, rehabilitation, and reintegration of repentant terrorists as part of a holistic counterterrorism approach.

Through these objectives, the Act serves as the central legal framework supporting Nigeria’s broader National Counter Terrorism Strategy (NACTEST).

The definition of terrorism stands as a central issue in the Terrorism (Prevention) Act 2022. Section 2 of the Act states that an “act of terrorism” includes any ideologically motivated activity (political, religious, racial, ethnic) which causes permanent damage to nations or international organizations or terrorizes populations and destabilizes political and social systems while pressuring governments and institutions to act “. The definition matches the international legal norms for terrorism outlined in United Nations Security Council Resolutions 1373 passed in 2001 and 2178 passed in 2014 which Nigeria has agreed to uphold. This extensive definition of terrorism aims to cover all possible forms of terrorism including violent acts as well as planning and financing terrorist activities or providing support in any capacity.<sup>21</sup> Critics believe that the broad definition creates opportunities for misuse. It states that nations with fragile governance systems and weak rule of law show increased susceptibility to misuse of wide-ranging anti-terrorism legislation.<sup>22</sup> According to statutory law, anyone who participates in terrorism or handles weapons for terrorist purposes qualifies as a terrorist. Any activity involving the gathering or handling of terrorist funds becomes a criminal offence under this law. The expansive legal protection enables authorities to prosecute both direct perpetrators of terrorist activities and their supporters who provide financial assistance.<sup>23</sup> Nigeria has adopted international standards by ratifying and integrating the International Convention for the Suppression of the Financing of Terrorism into its domestic legislation.

Thus, the Act provides a detailed and broadened definition of terrorism and terrorist acts to include:

- a. Violent acts intended to cause fear or coerce the government.
- b. Attacks on critical infrastructure.
- c. Terrorist financing and support.
- d. Radicalization and recruitment.
- e. Use of ICT, social media, digital platforms for terrorist purposes.

## 4. Areas of Conflict Between Counterterrorism and Fair Hearing

The right to fair hearing is a fundamental constitutional guarantee under section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). It encompasses the right to adequate

<sup>21</sup>T. Oyelade et al, ‘Accessing the Efficiency of Judicial Response to Terrorism in Nigeria’, [2025] 2 (1) NAUJOPL, 6.

<sup>22</sup>Ibid.

<sup>23</sup>Ibid.

<sup>20</sup>Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 4.



time and facilities for defence, legal representation, public hearing and trial within a reasonable time. In Nigeria's counterterrorism framework, however, these guarantees have frequently been undermined by operational and institutional practices adopted by Nigeria in response to the activities of Boko Haram. This segment examines specific instances of violation of fair hearing, drawing from judicial authorities and empirical evidence. These are trial within a reasonable time and entitlement to legal representation.

#### 4.1 Trial within a Reasonable Time

Detention without fair trial refers to the arrest and prolonged holding of individuals by the state without formally charging them before a competent court of law. While the Nigerian government considers preventive detention necessary for national security, critics argue that it often results in violations of fundamental human rights guaranteed under the Constitution of the Federal Republic of Nigeria, 1999 (as amended). For example, section 36 of the 1999 Constitution provides as follows:

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.

The meaning of the constitutional provision cited above is that any person charged with a criminal offence must be tried before a court of competent jurisdiction presided over by an impartial and independent judge.<sup>24</sup> In its counterterrorism measure, the JFT and C-JTF have been alleged of committing detention-related human rights breaches. The majority of the Boko Haram suspects are held in custody for years without trial. This in itself is a breach of their right to a free and fair trial. With their prolonged stay in detention, other abuses are inevitable. For instance, some of the detainees are mishandled by the security operatives in an attempt to extract information from them. They are deprived of contacting their family members or attorneys.<sup>25</sup> This is re-echoed by the Amnesty International when it maintains that counterterrorism operatives are in the habit of illegally arresting and detaining people in their military facilities, without sparing children. Accordingly, from April 2017 to October 2017, the military released 1,353 overstayed detainees. Over 4,900 suspects were detained at Giwa Barracks military detention facility. Report of dead detainees was a daily occurrence because of the overcrowded nature of the centres.<sup>26</sup> The report also states that close to 200 children less than six years old

were confined in such congested and germ-infested centres. Worst still, the report averred that there were cases of women given birth in detention.<sup>27</sup> Some of these women were sexually harassed by the security men, sometimes in return for food.<sup>28</sup> Thus in an attempt to thwart Boko Haram activities, the counterterrorism agents seem to have committed grave crimes in northeast Nigeria akin to the infringements perpetrated by the terrorists.<sup>29</sup>

Thus, the operations of Nigerian security agencies have raised serious human rights concerns due to certain of the measures they resort to, especially concerning arrests and detainments as persons denied of their freedom in correlation with the counterterrorism efforts in the North-East zone, have not been guaranteed fair trial. Even though the Office of the Attorney General of Nigeria set-up a special unit in March 2014 to treat cases of terrorism to facilitate speedy prosecutions, OHCHR affirms that, only few cases have been prosecuted, while large numbers of suspected Boko Haram detainees remain in detention centres.<sup>30</sup> On the whole, the general state of custodian centres in Nigeria is in itself abusive to the dignity of inmates as humans, in addition to the numerous inhuman treatments meted to them by the government security agencies fighting Boko Haram insurgents.<sup>31</sup>

The Office of the United Nations High Commissioner for Human Rights (OHCHR) confirms that in domain impacted by Boko Haram conflict, young males are vulnerable to both the risk of becoming Boko Haram targets and being indiscriminately apprehended and imprisoned by the security forces if they are presumed to be associated with Boko Haram. A victim, according to OHCHR, described how he was erroneously taken as a Boko Haram member and incarcerated by the military in Yola, the capital of Adamawa State. The victim spoke about maltreatment and circumstances in prison that result in average death of five deaths on a daily basis in cells where Boko Haram suspects were detained and allegedly constantly assaulted. OHCHR gathered from witnesses that suspected Boko Haram members were denied food and water, and that many drank one another's urine.<sup>32</sup>

A recurring feature of counterterrorism operations is extended detention without trial. According to International reports, "Thousands of people have been detained without charge for years in military facilities".<sup>33</sup> This report finds bearing in the case of

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> R. Moorthy, et al., 'Counterterrorism and Human Rights Violations in Northeast Nigeria' (2020). *International Journal of Innovation, Creativity and Change* (13 (12) 935

<sup>30</sup> United Nations, 2015 Reports

<sup>31</sup> S.I Ifejika, & O.V. Ojo, 'The Nuisances of Terrorism and Human Rights Violations in Nigeria', (2024) 19 (1) *The International Journal of Interdisciplinary Civic and Political Studies* 99.

<sup>32</sup> United Nations, 2015 Reports

<sup>33</sup> Human Rights Watch, 'Nigeria: Flawed Trials of Boko Haram Suspects', 2018.

<sup>24</sup> H. Okorie, *Constitutional Law and Constitutionalism in Nigeria* (Lagos: Princeton & Associate Publishing Co. Ltd, 2025) 418.

<sup>25</sup> P. Mbah, and C. Nwangwu, 'The Counter-Insurgency Operations of the Joint Task Force and Human Rights Abuses in Northern Nigeria', (2014) 4 *Journal of Educational and Social Research*, 567-78

<sup>26</sup> Amnesty International Report, 'The State of the World's Human Rights, 2018, <https://www.amnesty.org/download/Documents>> accessed 14 March 2026.

*Bamgboye v. University of Ilorin*,<sup>34</sup> where the Supreme Court stated that “Justice delayed is justice denied.” Prolonged detention therefore violates section 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Specifically, under section 35 (4) and (5) of the 1999 Constitution, any person arrested or detained must be brought before a court within a “reasonable time.” This is usually within 24 hours where the court is within a radius of 40 kilometers; or within 48 hours or such longer periods as considered reasonable in other circumstances.

However, in practice, terrorism suspects are frequently detained for several months or even years before trial. Typically, counterterrorism operations against Boko Haram in North East of Nigeria have involved mass arrests during military raids, detention based on suspicion or intelligent reports. Security agencies often justify prolonged detention on grounds of national security, complexity of terrorism investigations, difficulties in gathering evidence, fear of further attacks, and inadequate prosecutorial capacity. In *Lufadeju v. Johnson*,<sup>35</sup> the Supreme Court emphasized that personal liberty is a constitutionally protected right and detention must comply strictly with legal procedures. Although preventive detention may occur under lawful authority, arbitrary or indefinite detention is unconstitutional. Similarly, in *Ezekiel Hart v. Commissioner of Police*,<sup>36</sup> the court stressed that detention outside constitutional procedures violates personal liberty protections.

Several international organizations have criticized Nigeria’s detention practices during counterterrorism operations. Amnesty International reported that thousands of persons suspected of terrorism were detained without trial in military facilities such as Giwa Barracks in Maiduguri. The organization documented overcrowding, deaths in custody, denial of access to lawyers and families and arbitrary detention practices.<sup>37</sup>

The Terrorism (Prevention and Prohibition) Act 2022 represents a major legislative effort to strengthen Nigeria’s response to terrorism. However, the wide powers granted to security agencies raise significant human rights concerns, particularly regarding detention, surveillance, and freedom of association.<sup>38</sup> However, Ensuring that counterterrorism measures remain consistent with the Constitution of Nigeria, 1999 is essential for maintaining the rule of law. For example, in the area of arrest and detention, security agencies are granted powers to arrest and detain persons suspected of involvement in terrorism. The implication here is that counterterrorism practices may raise issues concerning arbitrary arrest, prolonged detention without trial, denial of access to legal representation. These concerns relate directly to the right to

personal liberty<sup>39</sup> and fair hearing<sup>40</sup> guaranteed under the Nigerian Constitution.

Some Nigerian authors have come out to make their views known on detention without trial. Writer like Nwabueze, argues that detention without trial is inconsistent with constitutional democracy because it allows the executive to bypass judicial oversight.<sup>41</sup> Akinseye-George, states that counterterrorism measures must comply with constitutional safeguards and international human rights standards. He also argues that prolonged detention without trial undermines the legitimacy of counterterrorism operations.<sup>42</sup> Ijalaye and Akinrinade emphasise that preventive detention in Nigeria often violates both constitutional guarantees and international human rights norms.<sup>43</sup> Chidi Odinkalu argues that Nigeria’s counterterrorism is characterized by a “detain-first, investigate-later” approach. According to him, “The criminal justice system is often bypassed in favour of administrative detention practices that undermine due process”.<sup>44</sup> This supports the claim that violations are systemic, not incidental and also shows that many fair hearing breaches arise from institutional inefficiency, not necessity.

Some judicial pronouncements on detention without trial in Nigeria have buttressed the illegality of indefinite without trial in Nigeria. In *Lufadeju v. Johnson*<sup>45</sup>, the Supreme Court states that preventive detention may be lawful if authorized by statute, but it must comply with constitutional safeguards. In *Attorney General of the Federation v. Abubakar*, the court states the supremacy of the Constitution in matters affecting fundamental rights.<sup>46</sup> *Jim-Jaja v. Commissioner of Police Rivers State*<sup>47</sup>, the Supreme Court states that detention beyond the constitutional time limit without court order is unlawful. It is important to note that these cases underscore that security considerations do not override constitutional protections.

It has been said that a trial within a reasonable time implies a speedy trial. This however, does not mean a hasty decision which makes the decision reached per *incuriam*. What is reasonable depends on each circumstance. Thus, on the question whether there was a prolonged or inordinate delay in the hearing and

<sup>39</sup> Constitution of the Federal republic of Nigeria, 1999 (as amended); *Odugu v. A.G. Federation* (1996) 6 NWLR (pt. 456) 508 (SC), *Bamayi v. State* (2001) 8 NWLR (pt. 715) 270 (SC)

<sup>40</sup> *Ibid*, section 36; *NAF v. Shekete* (2002) 18 NWLR (pt. 798) 129.

<sup>41</sup> B.O. Nwabueze, *Constitutional Democracy in Africa* (Spectrum Books, 2003) 312-318.

<sup>42</sup> Akinseye-George, Y., *Law and Practice of Human Rights Litigation in Nigeria* (Princeton Publishing Ltd, 2010) 146-150.

<sup>43</sup> D. Ijalaye, ., & B. Akinrinade, *Human Rights Law and Practice in Nigeria*(Ile-Ife: University of Ife Press, 1998) 210-215.

<sup>44</sup> C. Odinkalu, ‘Counterterrorism and Human Rights in Nigeria’ 2015

<sup>45</sup> (2007) 8 NWLR (pt. 1037) 535 (SC)

<sup>46</sup> (2007) 10 NWLR (pt. 1041) 1 (SC)

<sup>47</sup> (2013) 6 NWLR (pt. 1350) 225 (SC)

<sup>34</sup> (1999) 10 NWLR (pt. 622) 290

<sup>35</sup> (2007) 8 NWLR (pt. 1037) 535 SC

<sup>36</sup> (1957) NRNL 34

<sup>37</sup> Amnesty International, *Stars on Their Shoulders, Blood on Their Hands: War Crimes Committed by the Nigerian Military*, 2015

<sup>38</sup> *Terrorism (Prevention and Prohibition) Act, 2022, sections 25-70.*



determination of the case and, if so, whether it vitiates the trial, has been held that the legal effect depends on the circumstances of each particular case. For example, the trial will be vitiated if the learned trial judge is no longer in a position to properly articulate the evidence adduced before him and make full use of his advantage in having seen and observed the demeanour and credibility of witnesses who testified before him. If that is the case, then the prolonged or undue delay is capable of occasioning a miscarriage of justice and will vitiate the trial.<sup>48</sup> Thus, in *Egbo & ORS v. Agbara & Ors*,<sup>49</sup> Adio JSC rules that:

...a party raising as a ground for attacking the findings of fact of the trial court on the ground that there was a prolonged or undue delay in the trial of the case must show the specific finding or findings of fact which could be faulted as a result of the delay.

In *Pam v. Mohammed*,<sup>50</sup> the Supreme Court defined the words “reasonable time” in section 36 of the 1999 Constitution of the Federal Republic of Nigeria and noted that they are in their docile content, vague and nebulous. A reasonable time is a time justified by reason. Reasonable time in its nebulous content cannot be determined in *vacuo* but in relation to the facts of each case. This is because what constitutes a reasonable time in one case may not necessarily constitute a reasonable time in another case.<sup>51</sup> Similarly, in *Danladi v. Dangiri & Ors*,<sup>52</sup> Per Ngwuta, JSC, stated that the phrase “within a reasonable time” implies that the time for the determination of the matter should not be too short or too long, depending on the nature and facts of the case.

It will therefore mean that reasonable time is the period of time which in the search for justice, does not wear out the parties and their witnesses and which is required to ensure that justice is not only done but appears to a reasonable person to be done.<sup>53</sup> Once a matter is not heard within such a reasonable, it will be deemed to have contravened the essential principle of fair hearing doctrine.<sup>54</sup> Therefore, the true test of fair hearing is the impression of a reasonable person who was present at the court whether from his observation justice has been done, and whether the reasonable person will consider the fact that the court in its proceedings was impartial and fair to all parties.<sup>55</sup>

#### 4.2 Lack of legal representation

Another recurring issue is the limited or delayed access to legal representation. Reports indicate that many suspects met their lawyers for first time in court and have no opportunity to prepare

for their defence. In the case of *Okafor v. State*,<sup>56</sup> the Supreme Court held that denial of adequate legal representation constitutes a breach of fair hearing. The absence of effective counsel renders trials procedurally defective, particularly in complex terrorism cases requiring detailed factual and legal preparation. As noted by Human Rights Watch; ‘Most suspected members of Boko Haram arrested had no meaningful opportunity to consult with a lawyer...’<sup>57</sup>

Right to counsel of one’s choice is provided for under section 36 (6) (c) of the 1999 Constitution. It provides that “Every person who is charged with a criminal offence shall be entitled to defend himself in person or by legal practitioners of his choice”. Access to legal representation is a central component of fair hearing,

The problem occurs in counterterrorism where terrorism suspects are commonly detained, in such places as military detention centres, remote facilities and high security environments. As a result, lawyers are denied access to detainees, access may be delayed for security clearance, detainees may be interrogated before meeting counsel and indigent suspects may lack resources to hire lawyers. Legal representation is important to fair hearing to enhance protection against forced confessions, ensuring understanding of charges, equality before the law and safeguarding judicial integrity.

There is thus a duty on the judge to assist the defendant present his case. Thus, the constitutional right of an accused to defend himself in a criminal or to a counsel of his choice implies that he must be afforded the opportunity. In *R v. Mary Kingston*<sup>58</sup>, the court held that: it is fundamental to a fair trial of a serious criminal charge like murder that the accused person should not be left unrepresented at any stage of the trial. This much is emphasized by Oputa JSC in *Udofia v. State*.<sup>59</sup> In *Nemi v. State*, Bello JSC holds that non representation by a legal practitioner is not by itself a contravention of the Constitution unless the accused is not permitted to exercise his right to be defended by a legal practitioner of his choice. The right to counsel of one’s choice is the main issue in the case of *Awolowo v. Federal Minister of Internal Affairs*,<sup>60</sup> where the counsel for the appellant was refused entry into Nigeria by the Minister of Internal Affairs on no serious grounds, the court holds that the Minister’s act in pursuance of the Immigration Act is not unconstitutional. It further held that the Constitution is a Nigerian Constitution meant for Nigerians in Nigeria, the natural consequence of this being that the legal representative contemplated under section 21(5) (c) which is *fac simile* of section 36 (6) (c) ought to be someone in Nigeria and not outside it. Again, in *Tajudeen Bello v. The State*,<sup>61</sup> the failure of the

<sup>48</sup> *Awoniyi & Sons v. Igbalaye & Ors* (1965) AII N.L.R. 163

<sup>49</sup> *Suit No. S.C. 99/1990; (1997) 1 NWLR (pt. 48) 293 at 320-321*

<sup>50</sup> (2008) NWLR (pt. 112) 17

<sup>51</sup> *Ibid*

<sup>52</sup> (2014) LPELR-24020 (SC)

<sup>53</sup> *Ariori v. Elemo* (1983) 1 SCNLR 1

<sup>54</sup> *INEC v. Musa* (2003) NWLR (pt. 806) 72

<sup>55</sup> *F. Ajogwu, SAN, Fair Hearing* (2<sup>nd</sup> edition) (Lagos: Commercial Law Development Services (CLDS), 2010) 47

<sup>56</sup> (1976) 5 SC 13

<sup>57</sup> *Human Rights Watch, ‘Nigeria: Flawed Trials of Boko Haram Suspects’, 2018*

<sup>58</sup> (1948) 32 CR.App.R. 183

<sup>59</sup> (1986) 3 NWLR (pt. 84) 533

<sup>60</sup> (1962) LLR 117

<sup>61</sup> (1981) 2 NCLR 667



State to assign a legal practitioner to defend an accused person charged with a capital offence was held to amount to a denial of fair hearing under section 33 of the 1979 Constitution.

Several scholars have examined the relationship between counterterrorism and fair hearing in Nigeria. Their views largely focus on the constitutional implications of prolonged detention and denial of legal representation. For instance, Odinkalu argues that denial of legal representation during counterterrorism weakens public confidence in justice administration and increases the likelihood of wrongful convictions.<sup>62</sup> Similarly, YemiAkinseye-George maintains that counterterrorism measures must operate within constitutional limits and human rights standards despite the severity of terrorism threats.<sup>63</sup> Additionally, Oyebode emphasizes that national security must not become a justification for suppressing constitutional rights and democratic safeguards.<sup>64</sup>

In conclusion, whether an accused is assigned counsel of his own choice or not, the important thing is to see that he is at least represented by a counsel. In this regard, the sixth amendment of the United States Constitution which is similar to section 36 (6) (c) is more in accord with reality as it confines itself merely to the assistance of a counsel, the reality being that an accused who is not led at all by a counsel (as opposed to a counsel of his choice) in the technicalities of criminal procedure can hardly be said to have had a fair trial.<sup>65</sup>

A fair trial is an indispensable component of the rule of law and the principles of due process. These rules are crucial for the protection against human rights abuses. The right to fair hearing entails that all persons are equal before the law and by implication have the unfettered right to judicial fairness. In the celebrated case of Dr. Bentley's case (*R v. Cambridge University*),<sup>66</sup> common law guides, informs that fair hearing is a prerequisite by natural justice. In common law fair hearing entails two planks: that a person may not be judge in his own cause and that every person must be entitled to a fair hearing. Most crucially, right to a fair trial presumes that the trial process is just and equitable. Hence, in the determination of a criminal matter against any person, he or she should be tried within the ambits of a fair, an unprejudiced, and a conscientious trial within a reasonable time.

## 5. Recommendations

Although the fight against terrorism requires decisive state action, such measures must be implemented within the framework of the

<sup>62</sup> C.A. Odinkalu, 'Why More Africans Don't Use Human Rights Language' (2004) 2 (1) *Journal of Human Rights* 59

<sup>63</sup> Y. Akinseye-George, 'Human Rights and National Security in Nigeria', in E. Azinge and B. Owasanoye (eds) *Justiciability and Constitutionalism: An Economic Analysis of Law* (Nigerian Institute of Advanced Legal Studies, 2010)

<sup>64</sup> A. Oyebode, *International Law and Politics: An African Perspective* (Bolabay Publications, 2003)

<sup>65</sup> J.E. Edet, *Notes on Constitutional Law* (Lagos: Princeton & Associate Co. Ltd, 2024), 231-232

<sup>66</sup> (1723) 1 STR 557 27, 28

rule of law and due process. Consequently, the following recommendations are proposed to strengthen the protection of fair hearing while enhancing the effectiveness of counterterrorism strategies in Nigeria:

### a. Prompt Arraignment of Suspects

Prolonged detention should be avoided by security agencies. Terrorism suspects should also be promptly charged before competent courts within the constitutionally prescribed period.

### b. Improved Access to Legal Representation

Government should strengthen legal aid and services and guarantee unhindered access to lawyers to terrorism suspects, including those held in military detention facilities

### c. Compliance with Human Rights Standards

Counterterrorism strategies should conform to both domestic and international human rights obligations, especially on those principles contained in the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.

### d. Use of Technology and Forensic Investigation

Technological and forensic investigation should be encouraged and adopted by the Investigating Officers to reduce the overreliance on confessional statements and arbitrary detention practices.

### e. Training of Security Personnel

Military and security agencies should receive constant training and re-training on constitutional rights, fair hearing and lawful interrogation procedures to minimize abuses during counterterrorism operations

### f. Judicial Oversight

The courts should remain resolute on the maxim or law that an accused person is presumed innocent in every trial until convicted and must also respect and enforce the constitutional provisions relating to human rights. This will lead to the protection of the rights of the suspects.

## 6. Conclusion

Counterterrorism remains essential to Nigeria's national security due to the persistent threats posed by insurgents and terrorist groups such as Boko Haram. Nevertheless, the pursuit of security must not undermine the constitutional guarantee of fair hearing under the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Thus, practices such as prolonged detention without trial and denial of legal representation continue to challenge the integrity of Nigeria's criminal justice system.

In view of this, effective counterterrorism and protection of fair hearing are not mutually exclusive; rather, adherence to justice, accountability and human rights strengthens the legitimacy and effectiveness of Nigeria's counterterrorism framework.