

## The Terrorism (Prevention) Act 2011: Economic Implications

Terrorism, which has been defined as “the use or threat of violence to intimidate or cause panic, especially as a means of affecting political conduct”, is a universal phenomenon and Nigeria is not immune to its effects. The enactment of the Terrorism (Prevention) Act 2011 (“the Act”) is Nigeria’s immediate reaction to the rise in terrorism in the country. The Act does not specifically define terrorism. However, the “act of terrorism” is defined as “any act specified in section 1 of the Act” Likewise, a terrorist is defined as “any person involved in the offences under Sections 1 to 14 of the Act, including his sponsors.

The essence of this article is to appraise some of the provisions of the Act and their implications on the economy. Emphasis shall be laid on: penalties under the Act; financial institutions’ obligation to report suspicious transactions relating to terrorism; hostage-taking as an act of terrorism; detention of persons for offences related to terrorism; and the law enforcement agencies.

The Act is made up of eight (8) parts and forty-one (41) sections, prescribing *inter alia*, measures for the prevention, prohibition and combating of acts of terrorism and the financing of terrorism. The Act enjoins all financial institutions to report suspicious transactions relating to terrorism to the Financial Intelligence Unit (FIU) within a period of not more than 72 hours.

not be an excuse to avoid the possibility of sanctions. It should also be noted that when a financial institution makes a report in compliance with this Act, it shall not be responsible for any breach of banker-customer confidentiality emanating thereof.

It is worthy of note that for an act to constitute an offence under section 10 of the Act, it is not necessary to establish that the funds were actually used to commit a terrorist act. It is sufficient that the person knows that the funds would be used, in full or in part to commit an offence in breach of an enactment specified in the schedule to the Act.

The penalties under the Act in respect of the offences under sections 1 and 10 of the Act are life imprisonment or a fine of not less 150 million Naira or both while for offences under sections 2, 3, 4, 5, 8, 9 and 12, it is imprisonment for a term of not less than 3 years and not exceeding 20 years. Where death results from any terrorist act, the penalty shall be life imprisonment. It is however, curious to note that Section 4 (2) of the Act also provides that, where death results from any terrorist act, the penalty shall be death sentence. Where the offender is an artificial person, it shall be liable to a minimum fine of N5,000,000.00 or imprisonment for a maximum term of five years for the principal officers of the company or the defaulting officer.

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As onerous as this responsibility appears, the effect of its breach is no less damning because an institution or person who breaches any of these obligations can safely be termed a terrorist by virtue of Section 40 of the Act. The FIU shall process such information confidentially and forward it to the relevant law enforcement agencies where there are sufficient reasons to suspect that funds are intended to be used for any act of terrorism, or are proceeds of a crime related to terrorism-financing, or belong to a person, entity or organisation considered as terrorist. These provisions are intended to suppress the financing of terrorism, which will invariably starve terrorists of funds, hence the need to have stiff penalties aimed at preventing terrorist transactions/offences.

The economic implication of the reporting obligation provision can be far-reaching, as it could discourage investors ready and willing to invest in the economy; this is more so where an unintentional breach of the section would

There appears to be a lack of uniformity in the penalties available for same or similar acts of terrorism under the Act. Penalties for terrorism acts resulting in death is either life imprisonment or death depending on the choice of the prosecution; though the provision of section 33 of the Act may be referred to as a general provision without prejudice to particular penalty provisions, this does not appear tidy, especially where the penalty is no longer predictable in case of conviction and may be susceptible to abuses.

The penalty for hostage-taking in the Act is noteworthy. Section 11 (1) in effect provides that a person who knowingly seizes, detains or attempts to seize or detain; or threatens to kill, injure or continue to detain another person in order to compel a third party to do, abstain from doing any act or gives an explicit or implicit condition for the release of the hostage, commits an offence under this Act and shall on conviction be liable to imprisonment

for a maximum term of 10 years. From the foregoing, it is clear that hostage-taking and the usual kidnapping trend are acts of terrorism.

Terrorism has significant negative effect on the economies in which it takes place, as it will cause investments to decrease immediately, with income and consumption declining in the long run if not well managed. The Act is intended to bring the country among the comity of nations that has resolved to fight against terrorism, thereby enhancing the image of the country among its peers.

In a bid to stem the tide of economic sabotage occasioned by the financing of terrorism and also create an investment-friendly environment, the Act in section 40 expands the definition of the term *financial institution* and also imposes an obligation on such institutions to report any suspicious transaction in support of terrorism to the FIU with serious implication in situations of a breach.

Prosecution of offences under the Act is severally reserved for the Nigeria Police Force, the Economic and Financial Crimes Commission and the Department of State Services, subject to the inherent powers of the Attorney-General of the Federation, in accordance with the 1999 Constitution and Section 30 of the Act.

The Act in some sections empowers either the Attorney General of the Federation or the National Security Adviser or the Inspector General of Police to make some applications in respect of enforcing some provisions of the Act without giving a clear solution in case of conflicting orders/directive from any of these law enforcement agencies. This is in contrast with sections 16 and 17 which reserve some duties exclusively in respect of specific applications for the State Security Service.

It is recommended that provisions similar to sections 16 and 17 of the Act should be made to forestall possible conflict among the law enforcement agencies. In the alter-

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For detention of offenders, the Act provides that the National Security Adviser or Inspector General of Police or a delegated officer may, subject to the section, direct that the person arrested be detained in a custody for a period not exceeding 24 hours from his arrest, "...without having access to any person other than his Medical Doctor and *legal counsel of the detaining agency...* (italics ours)".

The Constitution of the Federal Republic of Nigeria (as amended) 1999 recognises the fundamental right of an individual to a counsel of *his own choice* (italics ours), therefore section 28 as it affects the choice of counsel on behalf of a detainee challenges the sacrosanct provision of the constitution. It is unclear what this limitation intends to achieve under the section; whether this will survive judicial test in the future remains to be seen.

native, the establishment of an anti-terrorism commission with the responsibility to enforce the Act will be advised or a proviso confirming which agency has an overriding power in decision-making as relates to such orders.

The political will exhibited with the quick passage of the Act will be fruitless if the relevant authorities do not go beyond rhetoric and begin the effective implementation of the provisions of the Act. A peaceful environment, no doubt, breeds political stability and economic growth. It is hoped that the Act will bring about a new lease of life and boost the flagging confidence of investors in an insecure Nigeria. It is also hoped that the Act will energise all the relevant government agencies to proactively tackle terrorism in its entire ramification. These hopes, however may not materialise unless the anomalies discussed in the course of this article are addressed.

#### Editor's Note

There are indications that the law will be allowed to play a more significant role in the improvement of the business climate in Nigeria. The Federal Government, on the recommendation of the National Council on Privatisation (NCP) has just approved the "guided liquidation" of NITEL and M-Tel following a bout of failed attempts to privatise the State-Owned Enterprises. PHCN, another State-Owned Enterprise will be liquidated after its liabilities have been hived-off to the newly created Nigeria Electricity Liability Management Company (NELMCO), and its assets will be privatised. The provisions of the Asset Management Corporation of Nigeria (AMCON) Act was utilised in the acquisition of the properties of a bad debtor by AMCON, sounding a knell to the prevalent act of businesses owing banks with impunity.

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