

# THE NIGERIAN JURIDICAL REVIEW

Vol. 13

(2015)

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## **NIGERIAN JURIDICAL REVIEW**

**VOLUME 13 (2015)**

To be cited as: **(2015) 13 Nig. J. R.**

**ISSN: 0189 - 4315**

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### CONTRIBUTIONS

The Journal welcomes articles in any area or related subjects for publishing considerations. Articles and correspondence should be forwarded to:

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Nigerian Juridical Review, Faculty of Law,  
University of Nigeria, Enugu Campus, Enugu, Nigeria.  
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### PUBLISHED BY

Faculty of Law, University of Nigeria,  
Enugu Campus

### PRINTED BY:

Sylva Prints, Enugu & Abuja  
+234-08063978826; +234-08181610325  
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**TERRORISM, ARMED CONFLICT AND THE NIGERIAN CHILD: LEGAL FRAMEWORK FOR CHILD RIGHTS ENFORCEMENT IN NIGERIA\*****Abstract**

*Children, broadly defined as all persons under the age of 18, are some of the most vulnerable to the effects of terrorist activities, armed conflict, internal strife or situations of militarized violence. The unique vulnerabilities of children to terrorist activities manifest in three broad contexts: children are increasingly recruited by terrorist groups, such as the Boko Haram, Islamic State of Iraq and Syria (ISIS), and the Pakistani Taliban, as child soldiers or suicide bombers. Secondly, children who lose their parents or guardian to armed conflict are often stranded, demobilized, tortured or recruited as child participants in armed internal conflicts or terrorist groups; and thirdly, state actions aimed to quash militancy and terrorism have, on many occasions, impacted the health and welfare of children. In recognition of their unique vulnerabilities, international law has, over the last decade, emphasised the need for tailored and holistic legal regimes designed to protect, fulfil and realize the fundamental human rights of children, as parts of national counter-terrorism efforts. Despite this growing emphasis on the need to integrate child rights into national counter-terrorism frameworks, the recognition and protection offered to child rights, under the Nigerian legal framework on terrorism, remains at best, inconsistent and at worst, inadequate. This article evaluates the impacts of terrorist activities on the enforcement of the right of the child in Nigeria. It discusses the need for a holistic legal framework for protecting and realizing the rights of Nigerian children who are impacted by terrorist activities and internal armed conflicts.*

**Keywords: Terrorism, Boko Haram, Child, Rights, Juvenile, Justice**

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## **1. Introduction**

One of the most pressing concerns facing our current generation is the geometric rise in the incidence and notoriety of terrorism and terrorist activities. Since 1994, the United Nations General Assembly has consistently defined terrorist acts as 'criminal acts intended or calculated to provoke a state of terror in the general public...whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them'.<sup>1</sup> More than ever, the world has experienced a sharp rise in high-profile terrorist attacks, ranging from the 1988 Lockerbie bomber disaster,<sup>2</sup> the 2001 (9-11) attacks in the United States;<sup>3</sup> the 2005 London bus attack (7-7),<sup>4</sup> the 2013 Boston

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<sup>1</sup> See 1994 United Nations Declaration on Measures to Eliminate International Terrorism annex to UN General Assembly resolution 49/60, 'Measures to Eliminate International Terrorism' of December 9, 1994, UN Doc. A/Res/60/49. President Barack Obama, while commenting on the Boston Marathon bombings of April, 2013, declared that "Anytime bombs are used to target innocent civilians, it is an act of terror". Section 1 of Nigeria's Terrorism Prevention Act of 2011 defines acts of terrorism to include kidnappings, use of explosives, intimidation, destruction of government facility, disruption of water or power supply, and other acts or omissions outside Nigeria, which constitute terrorism.

<sup>2</sup> On Wednesday 21 December 1988, a Pan Am Flight 103 from Frankfurt to Detroit was blown up by a terrorist's bomb, killing all 243 passengers and 16 crew on board. The aircraft crashed into residential areas in Lockerbie, Scotland, killing 11 more people on the ground. See M Cox and Tom Foster, *Their Darkest Day: The Tragedy of Pan Am 103*, (Grove 1992).

<sup>3</sup> On September 11, 2001, four passenger flights were hijacked by 19 al-Qaeda terrorists, and crashed into buildings. In total, the attacks claimed the lives of 2,996 people and caused at least \$10 billion in property and infrastructure damage. See Matthew J. Morgan *The Impact of 9/11 on Politics and War: The Day that Changed Everything?* (Palgrave Macmillan, 2009) 222.

<sup>4</sup> On the morning of Thursday, 7 July 2005, four Islamist extremists separately detonated bombs in quick succession aboard London Underground trains across the city and on a double-decker bus in London. Fifty-two people were killed and over 700 more were injured in the attacks, which became the United Kingdom's worst terrorist incident since the 1988 Lockerbie bombing. See BBC News, *July 07 Bombing*, <[http://news.bbc.co.uk/2/shared/spl/hi/uk/05/london\\_blasts/what\\_happened/html/russell\\_sq.stm](http://news.bbc.co.uk/2/shared/spl/hi/uk/05/london_blasts/what_happened/html/russell_sq.stm)> accessed September 12, 2015.

Marathon bombing,<sup>5</sup> and most recently the 2015 Paris attacks,<sup>6</sup> all of which claimed lives and limbs in monumental proportions.

Unfortunately, Nigeria has in recent years become the epicenter of violent terrorist and militant attacks. Incessant terrorist attacks from the extremist group-Boko Haram have claimed several lives and limbs, and have remained complex threats to peaceful existence in Nigeria. Ranging from the 2011 Abuja bombing,<sup>7</sup> the 2011 Christmas day bombings,<sup>8</sup> and the brazen abduction of over three hundred school girls from the Chibok Government Secondary School,<sup>9</sup> to mention just a few, Nigeria has over the last five years simply remained a nation under terrorist siege. These aside, episodes of militancy such as the abduction of a bus load of school children in Abia State,<sup>10</sup> and violent attacks on families across Nigeria by armed robbers; have all contributed to the current situation whereby Nigeria has now been classified as a volatile and a

<sup>5</sup> On April 15, 2013, during the annual Boston Marathon event, two terrorist brothers carried out a bomb attack near the marathon's finish line, killing 3 people and injuring an estimated 264 others. See *United States of America v. Dzhokhar Tsarnaev* R 13- 10200-GAO <<http://www.justice.gov/iso/opa/resources/363201342213441988148.pdf>> accessed September 12, 2015.

<sup>6</sup> On 13 November 2015, a series of coordinated terrorist attacks, consisting of mass shootings, suicide bombings, and hostage-taking was carried out in Paris, by the Islamic State of Iraq and the Levant (ISIL), a terrorist group. See Cable News Network (CNN), 'Paris massacre: At least 128 killed in gunfire and blasts, French officials say' (2015) <<http://edition.cnn.com/2015/11/13/world/paris-shooting/index.html>> accessed September 12, 2015.

<sup>7</sup> On 26 August 2011, the United Nations building in Abuja was bombed by the Boko Haram killing over 21 people with about 60 others wounded. See BBC News, 'Abuja attack: Car bomb hits Nigeria UN building' <<http://www.bbc.com/news/world-africa-14677957>> accessed September 12, 2015.

<sup>8</sup> On 25 December 2011 a series of bombings were carried out by Boko Haram at multiple churches killing a total of 41 people. BBC News, 'Nigeria churches hit by blasts during Christmas prayers' <<http://www.bbc.com/news/world-africa-16328940>> accessed September 12, 2015.

<sup>9</sup> On 14 April 2014, 276 female students were kidnapped from the Government Secondary School in Chibok town, Borno State by Boko Haram. BBC News, 'Chibok abductions in Nigeria: 'More than 230 seized'' <<http://www.bbc.com/news/world-africa-27101714>> accessed September 12, 2015.

<sup>10</sup> Foreign Affairs, 'The Rise of the Child Terrorist', <<https://www.foreignaffairs.com/articles/middle-east/2015-02-09/rise-child-terrorist>> accessed September 12, 2015.



terrorist nation, and one of the worst countries on earth for a child to grow up.<sup>11</sup>

The unique vulnerabilities of children to terrorist activities manifest in three broad contexts. Firstly, when families are shattered by terrorist attacks, children are rendered homeless or orphaned.<sup>12</sup> Most times, children who lose their parents or guardian to armed conflict are often stranded, demobilized, tortured or recruited as child participants in armed internal conflicts or terrorist groups. Secondly, children are increasingly exploited and recruited by terrorist and militant groups to become child soldiers or suicide bombers. Terrorist groups have increasingly adopted this strategy to groom, indoctrinate and access a large pool of children who are easier to indoctrinate and less likely to resist, since they do not yet fully understand their own morality and mortality.<sup>13</sup> Thirdly, apart from the direct effects of terrorist attacks themselves, government actions aimed to quash militancy and terrorism have on many occasions added to the vulnerability of children.<sup>14</sup> According to a 2014 Report by Amnesty International, the Nigerian Army, in its fight against the Boko Haram, has committed serious and systematic violations of human rights and international humanitarian law by all sides.<sup>15</sup> According to the Report, since May 2013, at least 1.5 million people, mainly women, children and elderly people, were forced to flee to other parts of Nigeria or seek refuge in neighboring countries

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<sup>11</sup> See United States Department of State, *Country Reports on Terrorism 2011 - Nigeria*, 31 July 2012,

<<http://www.refworld.org/docid/501fbca9c.html>> accessed 18 May 2013. See also United Nations Children's Fund (UNICEF), *State of the World's Children 2012* (New York 2012).

<sup>12</sup> J Hagan, 'Psychological Implications of Disaster or Terrorism on Children- A Guide for Pediatricians' (2005) 116 *Pediatrics* 787-705; D Kraft, "Terrorism's Toll Traumatizing Children", (2004) 56: 36 *Jewish Telegraphic Agency*, May 28, 2004/Sivan 8 5764; R Monson, 'Children and Terror' (2002) 17 *J. PediatrNurs.* 62-63.

<sup>13</sup> Foreign Affairs, 'The Rise of the Child Terrorist', *supra* note 10.

<sup>14</sup> See United States Department of State, *Country Reports on Terrorism 2011 - Nigeria*, 31 July 2012.

<sup>15</sup> BBC News, 'Nigeria army committed atrocities, Amnesty says' <<http://www.bbc.com/news/world-africa-28651767>> accessed September 12, 2015.

due to increased military presence.<sup>16</sup> Children have also faced increased harsh and unsuitable living conditions. According to Amnesty, two towns, Maiduguri and Biu, experienced cholera outbreaks in camps for the internally displaced, resulting in more than 100 deaths, mostly children.<sup>17</sup>

The foregoing direct and indirect effects of terrorism carry far-reaching consequences on the protection, enforcement and fulfilment of the fundamental human rights of the Nigerian child. In recognition of their unique vulnerabilities, international law has, over the last decade, emphasised the need for tailored and holistic legal regimes designed to protect, fulfil and realize the fundamental human rights of children, as parts of national counter-terrorism efforts. For example, Article 38 (4) of the United Nations Convention on the Rights of the Child (CRC) 1989, encourages countries to take all feasible measures to ensure protection and care of children in armed conflict situations.<sup>18</sup> Article 1 defines a child as every human being below 18 years. Article 37 provides that no child shall be deprived of his or her liberty unlawfully or arbitrarily.<sup>19</sup> While Article 39 mandates countries to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of armed conflict, in an environment, which fosters the health, self-respect and dignity of the child. Similarly, in 2000, the Committee on the Rights of the Child recommended that:

States parties review all provisions of criminal legislation, including on criminal procedure, dealing with children under 18 (including any special legislation applying to armed forces) so as to ensure that it reflects appropriately the provisions of the Convention on the Right of the Child (arts. 37 and 40) ... [and] consider incorporating into all relevant domestic laws and regulations.<sup>20</sup>

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<sup>16</sup> Amnesty International, Amnesty International Report 2014/15, <<https://www.amnesty.org/en/countries/africa/nigeria/report-nigeria/>>accessed September 12, 2015.

<sup>17</sup> *Ibid.*

<sup>18</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>19</sup> *Ibid.*

<sup>20</sup> Committee on the Rights of the Child, *Report on the twenty-fifth session*, CRC/C/100 of 14 November 2000, p. 131.

Despite the foregoing emphases on the need to integrate juvenile rights and justice into national counter-terrorism frameworks, the recognition and protection offered to child rights under the Nigerian legal framework on terrorism remains at best, inconsistent and at worst, inadequate. As a party to the CRC, Nigeria is under obligation to respect, protect and fulfill all the rights established by the CRC.<sup>21</sup> Nigeria is also expected to submit periodic reports on progress recorded in the implementation of the Convention in the Country, as stipulated in Article 44 of the Convention. These obligations have to a large extent remained unmet and have not been holistically integrated into Nigeria's overall framework for combating terrorism. For example Nigeria's Terrorism (Prevention) Act of 2011 fails to specifically identify how terrorism uniquely impacts the rights of children to enjoy fundamental human rights; and therefore fails to prescribe tailored programs and policies that could prevent and effectively respond to the impacts of terror on the rights of the Nigerian child.<sup>22</sup>

This article evaluates the impacts of terrorist activities on the enforcement of the right of the child in Nigeria. It provides an analytical overview of the human rights implications for children exposed to terrorism. The article discusses the need for a holistic legal framework for protecting and realizing the rights of Nigerian children who surrender, are demobilized or impacted by terrorist activities and internal armed conflicts. This article is divided into five sections; this introduction being the first. Section two explores the key human rights of the child that are currently threatened by the high incidents of terrorism in Nigeria. Section three evaluates practical and logistical barriers to the holistic implementation of child rights in Nigeria. It examines how legislative fragmentation, lack of political will and inadequate resources and capacity, stifle the holistic integration and implementation of child rights as part of counter-terrorism measures in Nigeria. Section four discusses legal and practical measures required to better protect the rights of

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<sup>21</sup> See Art. 4, which places an obligation on States to ensure that the rights in the Convention are implemented.

<sup>22</sup> The Terrorism Prevention Act (TPA) 2011 as amended by the Terrorism (Prevention) (Amendment) Act 2013. In this article, the two laws are collectively referred to as Terrorism (Prevention) Act 2011.

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children exposed to terrorism in Nigeria. It recommends a two-step approach as a holistic framework for protecting, realizing and fulfilling the child rights in armed conflict and violent situations. This article concludes in section five.

## 2. Terrorism and the Right of the Child

This section provides an overview of the key fundamental rights of the Nigerian child increasingly threatened by the direct and indirect impacts of terrorism. Although terrorism arguably, affects everyone, its social, economic and environmental effects are hardest on vulnerable groups all over the world. The impacts of terrorist attacks, whether in the form of bombing, massive shooting, kidnappings and abductions, organized attacks, or use of chemicals, are felt most acutely by those segments of the population already in vulnerable situations. Vulnerable groups includes women, children, racial and ethnic minorities, migrants and non-citizens, refugees, indigenous peoples, and those living in extreme poverty, who bear the most disproportionate burden of terrorism.<sup>23</sup>

Due to the age, mental and physical limitations, children are particularly vulnerable to the far-reaching impact of terrorism. Generally, children are often unable to make or implement decisions that could protect or liberate them from violent situations. Even when able to do so, children often lack the economic powers to escape violent situations. The resulting chaos, fear and casualties associated with terrorism would most often times mean that children are separated from their families, watch their parents breathe their last, themselves sustain fatal bodily injuries, suffer permanent physical disability, suffer disruption to daily routines or

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<sup>23</sup> According to the Report of the Independent Expert on human rights and poverty, due to discrimination, groups such as women, children, racial and ethnic minorities, migrants and non-citizens, refugees, indigenous peoples, persons with disabilities and older persons, encounter greater challenges accessing income, assets and services and are thus particularly vulnerable to poverty. Having fallen into poverty, they are exposed to systematic stigmatization and discrimination on the grounds of their poverty, which perpetuates their situation. *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, on the draft guiding principles on extreme poverty and human rights, A/HRC/15/41(06 August 2010) para 22.*

school, or in some cases get dislocated from residence or simply get missing. Children are also at risk for experiencing mental health difficulties after a disaster or act of terrorism, most especially children that witnessed the event, lost parents, friends or their loved ones as a result, and even those children who merely reside in the affected community or watch coverage of the event on television. Incidents of terror therefore affect the fundamental rights of children to health; education; life, survival and development; food; family unification; and a suite of other civil, cultural, economic, political and social rights enshrined in the legally binding CRC and in the Constitution of the Federal Republic of Nigeria (CFRN).<sup>24</sup>

#### **A. Right to Life, Survival and Development**

Terrorist activities cut down the lives of promising children and extinguish their human rights to enjoy life to the fullest. Article 6 of the CRC establishes the right of the child to life, survival and development. It places an obligation on states to ensure the child's survival and development. The right to life is also recognized in other core international human rights instruments. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) prohibits the arbitrary deprivation of life.<sup>25</sup> It provides that every human being has the inherent right to life, and that this right shall be protected by law. The right to life has also been identified as one of the rights for which no state shall derogate from, even in time of emergency threatening the life of the nation.<sup>26</sup> Article 3 of the Universal Declaration on Human and Peoples Rights (UDHR) also upholds the right to life, liberty and security of the person.<sup>27</sup> Regionally, Article 4 of the African Charter on Human and Peoples

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<sup>24</sup> Constitution of the Federal Republic of Nigeria; Cap C 23 LFN 2004, as amended in 2010.

<sup>25</sup> International Covenant on Civil and Political Rights (Adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>26</sup> See The Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights (1984). The Siracusa Principles developed by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1984 states that no state party shall even in time of emergency threatening the life of the nation, derogate from a number of key guarantees which include the right to life.

<sup>27</sup> Universal Declaration on Human and Peoples Rights, (Adopted on December 10, 1948) G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

Rights (AFCHPR) recognises the right to life.<sup>28</sup> Section 33 of the CFRN also provides that every person has a right to life, and no one shall be deprived intentionally of his life. Furthermore, section 4 of the Nigerian Child Rights Act of 2003 (CRA) expressly stipulates that every child in Nigeria has the right to survival and development.<sup>29</sup>

The protection of the right to life includes the obligation of governments to take all possible measures to reduce mortality and to increase life expectancy.<sup>30</sup> It also includes the duties of government to prevent security breaches or events that threaten human life and survival. The UN Human Rights Committee has held in numerous cases that summary executions, terrorism and mass atrocities are violations of the right to life.<sup>31</sup> Due to the high mortality rate from different sources including terrorism and organised crime, statistics show that the life expectancy for an average Nigerian is currently 48 years, an abysmally low figure when compared to the United States child (78 years), Canada (81 years) and United Kingdom (80 years). Terrorism further exacerbates the rapid decline in the expected survival rate of the Nigerian child. For Nigeria to meet its obligations to respect, protect and fulfil the right of the Nigerian child to life, development and survival, there is a need for holistic action to tackle insecurity and violent acts such as terrorism that critically threaten this right.

### **B. Health**

Terrorism affects the rights of a child to physical and mental health in a number of ways. As noted earlier, children that have witnessed a terrorist attack or have lost loved ones in an attack are at a high risk of experiencing mental health difficulties after such disaster or act of

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<sup>28</sup> African Charter Human and Peoples Rights (Adopted 27 June 1981, entered into force 21 October 1981) OAU Doc. CAB/LEG/67/3 Rev. 5, reprinted in 21 ILM 58 (1982); See also Art. 2 of the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms 1949) and American Convention on Human Rights (Adopted 22 November 1969, entered into force 18 July, 1978) O.A.S. Res. 447 (IX-0/79).

<sup>29</sup> Child's Rights Act 2003 Cap. C50 Laws of the Federation of Nigeria 2004.

<sup>30</sup> See United Nations General Comment 6/16 of 27 July 1982, para. 5.

<sup>31</sup> See Annual Reports of the UN Special Rapporteur on Summary and Arbitrary Executions UN-Doc. E/CN.4/1995/61.

terrorism. Studies show that one of the most prevalent medical conditions recorded with such children is the Posttraumatic Stress Disorder (PTSD) – a psychological condition that develops as a result of witnessing or experiencing a threatening or harmful event that elicits fear, helplessness, or horror.<sup>32</sup> Over 40% of children exposed to terrorism and kidnappings have been diagnosed with PTSD within three months after the event.<sup>33</sup> While over 70% are later diagnosed with the condition over the course of their lifetime. Symptoms of PTSD include persistent re-experiencing of the event, disrupted consciousness, uncontrollable, intense grief, changes in sleeping or eating patterns, and extreme cognitive impairment may appear in severely affected children. Other symptoms include depression, avoidance of things or places related to the event, persistent symptoms of increased anxiety, irritability, sleep disturbance, safety and security concerns, restlessness, social isolation, aggression, peer rejection, bullying, school absences, a decline in academic performance, and a decreased interest in previously enjoyed activities or hobbies.<sup>34</sup> Apart from mental health impacts, terrorism also leaves physical health impacts such as respiratory problems due to inhaling explosives, physical incapacity, bodily injuries, health problems and diseases.

These impacts of terrorist attacks infringe the rights of the Nigerian child to health, as provided in Article 24 of the CRC. This article places an obligation on States to abolish practices that are harmful to the health of a child. The human right to health has been

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<sup>32</sup> A recent study found that six months after the 9-11 attacks, approximately 75,000 New York City public school children were suffering from PTSD, including children who were not directly affected by the event. American Psychological Association, 'The Impact of Terrorism and Disasters on Children' <<http://www.apa.org/about/gr/issues/cyf/disaster.aspx>> accessed 12 May 2013; D Foy, B Madvig, et al. 'Etiological Factors in the Development of Post-Traumatic Stress Disorder in Children and Adolescents' (1996) 34 *J. Sch. Psychology* 133-45; J Hagan, "Psychological Implications of Disaster or Terrorism on Children- A Guide for Pediatricians" (2005) 116 *Pediatrics* 787-705.

<sup>33</sup> American Psychological Association, 'The Impact of Terrorism and Disasters on Children' *Ibid.*

<sup>34</sup> M. Basheer Ahmed, 'Effects of Terrorism on Children: Psychosocial Biological Understanding' (2007) *Journal of the Islamic Medical Association*; T Veenema, B Schroeder, 'The Aftermath of Violence: Children, Disaster, and Posttraumatic Stress Disorder (2002) 16 *J Pediatr Health Care*. 235-244.

recognised in Article 12 of the ICESCR, which explicitly provides for 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.<sup>35</sup>The ICESCR also defines steps that states should take to realize progressively the 'highest attainable standard of health', including the improvement of all aspects of environmental and industrial hygiene. Though not legally binding, Article 25 of the Universal Declaration on Human Rights (UDHR) provides that everyone has the right to a standard of living adequate for the health and well being of themselves and their family.<sup>36</sup>At the regional level, Article 16(1) of the African Charter on Human Rights provides that every individual shall have the right to enjoy the best attainable state of physical and mental health. Similarly, section 13 of the CRA provides that every child is entitled to enjoy the best attainable state of physical, mental and spiritual health. It places a responsibility on government, parent, guardian, institution, service, agency, organisation or body responsible for the care of a child to provide for the child the best attainable state of health.

In order to foster the protection of the right to health, States are to take public health measures to prevent disasters, epidemic, endemic, occupational or environmental diseases.<sup>37</sup> This has been interpreted to include removing as far as possible, all causes of ill health.<sup>38</sup>It also includes general obligations to reduce infant and child mortality rate; ensure the provision of necessary medical assistance and health care services to all children with emphasis on the development of primary health care; ensure the provision of adequate nutrition and safe drinking water; ensure the provision of good hygiene and environmental sanitation; combat disease and malnutrition within the framework of primary health care through the application of appropriate technology; ensure appropriate health

<sup>35</sup> See B Toebes, *The Right to Health as a Right in International Law* (Hart 1999).

<sup>36</sup> Universal Declaration on Human and Peoples Rights, adopted on December 10, 1948) G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>37</sup> See Art. 12(2), International Covenant on Economic Social and Cultural Right (Adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, reprinted in 6 ILM 360 (1967).

<sup>38</sup> See A Chapman, 'Core Obligations Related to the Right to Health' in A Chapman, S Russell, eds. *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*. (Intersentia 2002) 85-216.



care for expectant and nursing mothers; and support, through technical and financial means, the mobilisation of national and local community resources in the development of primary health care for children.<sup>39</sup>

To prevent the Nigerian child from the long-term effects of PTSD and other physical health problems associated with terrorist attacks, Nigeria is under obligation to remove all causes insecurity, which are at the root of such health concerns. Without good physical and mental health, the abilities of the Nigerian child to enjoy life to the fullest and to develop in a stable way would be significantly threatened.<sup>40</sup>

### **C. Right to Parental Care**

One of the fundamental human rights of a child is the right to remain united with the family. The importance of the family to the development of the child cannot be overemphasized, as such, international law abhors any event or situation that tends to remove the child from the family or severe the child from enjoying the company of family members. Article 9 of the CRC provides for the right of the child to retain contact with parents in cases of separation. If separation is the result of detention, imprisonment or death the State shall provide the information to the child or parents about the whereabouts of the missing family member. Similarly, section 14 of the CRA provides that every child has a right to parental care, and that accordingly, no child shall be separated from his parents against the wish of the child. Furthermore, section 27 of the CRA provides that no person shall remove or take a child out of the custody or protection of his father or mother, guardian or such other person having lawful care or charge of the child against the will of the father, mother, guardian or other person. It establishes imprisonment terms of 15-20 years for the criminal abduction of

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<sup>39</sup> S. 13 (3) a-g, Child's Rights Act 2003 Cap. C50 Laws of the Federation of Nigeria 2004.

<sup>40</sup> As Herophilus the Physician to Alexander the Great wrote in his often quoted poem: 'When health is absent Wisdom cannot reveal itself, Art cannot become manifest, Strength cannot fight, Wealth becomes useless and intelligence cannot be applied' *Encyclopedia of World Biography Supplement* (Vol. 25, Thomson Gale 2005).

children from the lawful custody of their parents.<sup>41</sup> Section 34 (2) of the CRA also places a responsibility on the Government or any other relevant agency or body to ensure that no child is directly involved in any military operation or hostilities.

Terrorist attacks in Nigeria have resulted in the death of parents, siblings, or close relatives; they have also resulted in temporary and permanent separation of children from parents due to inability to locate or identify family members. Incidents of kidnapping, such as the abduction of the Chibok school girls, and the recruitment of children as suicide bombers, have also separated Nigerian children from their families keeping them to live and feed in despicable conditions, away from the warmth and embrace of their parents and family. When these happen, they significantly infringe on the rights of the child to enjoy close contact and company of their family.

#### ***D. Schooling, Education***

The right to education is one of the key rights provided in the CRC, the CFRN and the CRA. As defined by the United Nations, 'education is both a human right in itself and an indispensable means of realizing other human rights'.<sup>42</sup> It includes the right of the child to attend school and to attain free primary and secondary education. Due to the chaos, fear and deaths that trail terrorist attacks and violence, children often suffer disruption to daily routines or school. In most cases, children are either lost or their parents are not available or do not feel safe enough to take them to school. This aside, the Boko Haram group has so far burnt down or destroyed more than a fifty primary schools in northern Nigeria in a staunch campaign to shut down all western-oriented schools.<sup>43</sup> Reports suggest that students and teachers have had to stay at home for fear

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<sup>41</sup> This section provides that where the child is unlawfully removed to taken out of Federal Republic of Nigeria—(i) with intention to return the child to Nigeria, to imprisonment for a term of fifteen years, or (ii) with no intention to return the child to Nigeria, to imprisonment for a term of twenty years.

<sup>42</sup> General Comment No. 13 of the United Nations Committee on Economic, Social and Cultural Rights. UN Doc. E/C.12/1999/10.

<sup>43</sup> 'Boko Haram Keeps Nigerian Children Out of School' (December 14, 2012) <<http://www.dw.de/boko-haram-attacks-keep-nigerian-children-out-of-school/a-15929363>>.

of attack. There have also been broad daylight killing of more than ten teachers and seriously injuring four students.<sup>44</sup>

Similarly, the reverse side is that most times, State actions to combat terrorism such as declaring curfews, state of emergencies or volatile military action, often mean that schools would be closed for weeks, and in extreme cases months.<sup>45</sup> Closure for extended periods could result in loss of interest in going back to school, a situation which has further contributed to the increase in drop- out rates in Northern Nigeria. According to official reports, more than fifteen thousand children in northeast Nigeria are unable to attend school following violent attacks by Boko Haram.<sup>46</sup>

These events directly infringe on the rights of the Nigerian child to attain formal education as enshrined in the CRC. Article 28 of the CRC provides for the right of a child to free primary education, the availability of vocational education and the need for countries to adopt measures to reduce the drop-out rates. The right to education is also recognized in Article 26 of the Universal Declaration of Human Rights and Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Similarly, section 15 of the CRA also recognizes the right of every child to free, compulsory and universal basic education. It places an absolute duty of the Nigerian Government to provide such education.

The enforcement and fulfillment of the right to education has been elaborated using the four As Framework, which asserts that for the right to education to be enforced, it must be *available, accessible,*

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<sup>44</sup> World Reports, 'Nigerian School attacked, students killed in Boko Haram Attack' (April 14 2013) <[http://www.upi.com/Top\\_News/World-News/2013/04/14/Nigerian-school-attacked-students-killed-in-Boko-Haram-attack/UPI-97431365968576/#ixzz2TdQQ5J3f](http://www.upi.com/Top_News/World-News/2013/04/14/Nigerian-school-attacked-students-killed-in-Boko-Haram-attack/UPI-97431365968576/#ixzz2TdQQ5J3f)>

<sup>45</sup> United States Department of State, *Country Reports on Terrorism 2011 - Nigeria*, 31 July 2012, <<http://www.refworld.org/docid/501fbca9c.html>> accessed 18 May 2013.

<sup>46</sup> "We have been asked to resume classes but we are too afraid to return to school despite the stationing of a military post outside the school" said Hajara Modu, a school teacher at Customs primary school in Maiduguri. See 'Nigeria: Boko Haram Attacks Hit School Attendance in Borno State' (14 May 2013) All African Report <<http://allafrica.com/stories/201305141197.html>> accessed 17 May 2013.

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*acceptable and adaptable*.<sup>47</sup> This places a duty on states to remove all barriers to obtaining education. Insecurity is a major barrier to education and a principal contributor to the high drop-out rates in some parts of Nigeria. Insecurity, terrorism and insurgency disrupt academic calendars, keep children from classrooms and threaten the enforcement of the rights of the Nigerian child to obtain formal education.

### **E. Participatory Rights**

Children who are silenced or unheard cannot challenge violence and abuse perpetrated against them. Similarly, policy-makers cannot identify the barriers to fulfilling children's rights if they do not hear from children about the existence and nature of those barriers. International law therefore recognises the rights of children to be heard and taken seriously. This provision, outlined in article 12 of the CRC, states that 'States Parties shall assure to the child, who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.' Article 12 (2) further states that:

For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or appropriate body, in a manner consistent with the procedural rules of national law.

This provision aligns with section 39 of the CFRN, which states that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. This right places an obligation on governments to ensure that children are provided opportunities to freely air their opinion, and to participate in decisions and actions that affect them. For example, children should be allowed to take part and influence decision-making processes on how terrorism

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<sup>47</sup> The four As framework was developed by the former UN Special Rapporteur on the Right to Education, Katarina Tomasevski. Though not legally binding, it has been recognized as providing a normative interpretation and international guideline on the protection and fulfillment of the right to education.

affects them and on how measures to combat terrorism will not erode their fundamental rights. This includes providing ethical, safe and effective methods for children to express their concerns, through children councils, school meetings, surveys and questionnaires, and the obligation of governments to ensure that positive feedback or outcomes associated with realising the right of children are heard and taken seriously.<sup>48</sup>

In Nigeria, the rights of children to be heard remain substantially unrealized, especially children living in conflict zones. Governments and administrators take key decisions on suspension of academic calendar, resettlement, or the environments that children will live and grow without engaging with children. When key decisions that affect children are made without their contribution or participation, several of their fundamental rights go unrealized and unprotected. It is therefore important to establish adequate legal frameworks through which children are recognised as active citizens, contributing both to decisions that affect their own lives as well as to their communities.

It is clear from the foregoing that insecurity, insurgence and terrorism threaten the enforcement and protection of the robust rights afforded to the Nigerian child under national and international law. To address these concerns, it is important to incorporate a child perspective into legal solutions designed to tackle insecurity in Nigeria. Although several of these fundamental human rights are recognized under Nigerian laws, their practical implementation remain at best, inconsistent and at worst, inadequate. The next section evaluates key gaps in Nigerian legal framework on child rights that stifle the protection of children in violent and terrorist situations.

### **3. Evaluation of the Nigerian Legal Regime on Terrorism and Child Rights**

It is crystal clear from the last section that the fundamental rights of children to health; education; life, survival and development; food;

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<sup>48</sup> UNICEF, 'Every Child's Right to be Heard', (2011) <[http://www.unicef.org/french/adolescence/files/Every\\_Childs\\_Right\\_to\\_be\\_Heard.pdf](http://www.unicef.org/french/adolescence/files/Every_Childs_Right_to_be_Heard.pdf)> accessed September 23, 2015.

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family unification; and a suite of other civil, cultural, economic, political and social rights are generally well recognized and enshrined in the Nigerian Constitution, and in the CRA. Despite these recognitions, the Nigerian child is continually exposed to diverse physical, emotional and long-term impacts of terrorism and internal armed conflicts. This section evaluates some of the practical and logistical challenges that continue to stifle the protection of child rights in Nigeria.

#### **A. Fragmentation of Legal Frameworks**

One key reason for the limited enforcement of child rights in terrorism and conflict situations is the lack of a holistic, tailored and co-ordinated legal framework on the protection of children in conflict situations. While several of the rights of children are robustly recognized in the CRA, the Nigerian Terrorism Act does not incorporate or reference these rights. Neither do counter-terrorism regulations or government actions-plan offer tailored protections for the rights of children as parts of anti-terrorism measures. For example, the Terrorism Act broadly defines an act of terrorism to include kidnapping a person, which though broad enough to include a child, does not specifically address the specific vulnerabilities of a kidnapped child, as opposed to that of an adult. The Act also fails to recognize the express need to protect all of the rights of a child in counter-terrorism measures. Neither does it provide robust legal protection to children affected by terrorism. This creates a situation whereby the rights of the child recognized in the CRC, CFRN and CRA and could be lost in translation. For example, while deploying massive troops to combat terrorist groups in Northern Nigeria might be a pragmatic step, policy makers failed to holistically assess how such military action might further result in loss of lives, prevent children from going to school and also further expose children to emotional trauma due to decibels of noise emanating from the perpetual exchange of gun fire. Such piecemeal approaches fail to understand how the failure to design tailored solutions that speak to the needs of the child could result in tackling the cause of terrorism without addressing its effects. They therefore, lead to a situation whereby policy responses transfer risks and problems from one sector to the other. As noted by Amnesty International, government

interventions and counter-terrorism measures have failed to adequately integrate, protect, realize and fulfil several of the rights of vulnerable children recognized in the CRC, CFRN and the CRA.<sup>49</sup>

The importance of the principles of systemic integration and coherent interpretation of legal rights and obligations is a cornerstone of international law. As laid down in Article 31(3)(c) of the Vienna Convention on the Law of Treaties, integrating obligations established in several legal instruments is a mandatory requirement of treaty interpretation and implementation.<sup>50</sup> To avoid fragmentation and the overlap of legal regimes, countries must holistically implement and harmonize efforts to combat terrorism with human rights protection.

Counter-terrorism laws and policy instruments must be designed, interpreted and applied holistically and coherently to ensure that all of the fundamental rights of the child enshrined in the CRC, CFRN and the CRA are protected, realized and fulfilled when combating terrorism in Nigeria. There is a need for a holistic approach that mainstreams the right of the child into policy responses and legal frameworks designed to combat insecurity and terrorism in Nigeria. There is a need to recognize that the needs of

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<sup>49</sup> Amnesty International, Amnesty International Report 20/4/15, above, note 16. See also Amnesty International, 'Boko Haram: Civilians continue to be at Risk of Human Rights abuse by Boko Haram and Human Rights Violations by State Security Forces,' available at <https://www.amnesty.org/en/documents/AFR44/2428/2015/en> accessed December 15, 2015.

<sup>50</sup> See C. McLachlan, 'The Principle of Systemic Integration and Article 31(3)(C) of The Vienna Convention', *International and Comparative Law Quarterly*, 54 (2005), 279. See also, Combacau and Sur, who refer to it as the 'Principe d' Integration' in J. Combacau and S. Sur, *Droit International Public* (Paris: Montchrestien, 2004), 175. See the Report of the International Law Commission which describes Article 31(3)(c) of the Vienna Convention on the Law of Treaties as a 'a mandatory part of the interpretation' that covers all the sources of international law, including custom, general principles, and, where applicable, other treaties. International Law Commission (ILC), *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, 13 April 2006, A/CN.4/L.682, at para. 426. See also WTO Panel in *EC - Measures Affecting the Approval and Marketing of Biotech Products* (7 February 2006), WT/DS291-293/INTERIM, 300, para. 7.69, which confirmed the application of Art. 31 (3) to treaty interpretation.

children are different from those of adults. As such, national responses must specifically speak to those peculiar needs. Through a flexible, dynamic, integrated and multifaceted legal framework, the rights of the Nigerian child would be reflected in all decision and policymaking on security, anti-terrorism and protection at all levels.<sup>51</sup>

Mainstreaming the right of the child into national security frameworks would include harmonising or integrating the above discussed human rights safeguards with measures designed to combat terrorism in Nigeria. According to the ICCPR, 'the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his social, economic and cultural rights'<sup>52</sup> Human rights mainstreaming seeks to ensure that adequate conditions are put in place for children to enjoy their human rights. This paradigm will require policymakers to ask, how does insecurity affect children, how can we tackle these effects and how do we ensure that our national responses to terrorism do not further violate the rights of the child? For example, in deciding to declare a state of emergency or to declare a shoot-out with terrorist groups, how do we ensure that children are protected from such violence? How do ensure that schooling is not affected and how do we mitigate unintended consequences of combating terror? Current approaches that neglect the perspectives of the child often result in adopting far reaching sanctions and policies to combat terror, which further exacerbate the violations of the rights of the child.

An integrated approach as typified by the human rights mainstream paradigm represents a shift from the 'one pipe-at-a-time' approach to a forward-looking, harmonized and holistic approach. The human rights mainstream approach recognises the need to coherently provide for the protection of children while

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<sup>51</sup> See J Soussan, *Making Mainstreaming Work* (SEI 2007) 2, R Sacco, 'Legal Formants: A Dynamic Approach to Comparative Law' (Installment II of II), (1991) 39 *Am. J. Comp. L.* 343.

<sup>52</sup> See Preamble to the International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, entered into force 23 March 1976, 999 UNTS 171 <<http://www2.ohchr.org/english/law/ccpr.htm>> accessed 02 January, 2012.



designing security action plans. It promotes a coherence of international obligations with respect to human rights and other issues, through a harmonized approach. Unlike traditional piecemeal approaches, the mainstream approach enables the problems to be identified and causes tackled, rather than merely treating the symptom on a 'as it happens' basis.

In implementing national roadmaps on security, there is a need to design specific and co-ordinated framework, that draw on extensive consultation with mental health professionals, educators and parents to identify interventions for children in times of violence. Such consultations will promote information exchange that would assist federal agencies to design tailored interventions for children. This would include defining how best to combat terrorism without violating the rights of children, how to provide more security around schools to prevent children from being attacked; and how to ensure that children are not exposed to violence.

#### **B. Lack of Political Will**

Despite the recognition of child rights on paper, little or no attention has been paid by successive governments, at federal, state and local government levels, to give practical effects to those rights. Children are still perceived as objects, rather than subjects and real citizens who deserve to be protected, reintegrated and assisted to recover from violent situations. While the federal government has arguably not done enough to design recovery programs for vulnerable children, the CRA has been given little or no attention across state and local government levels. Only few States in Nigeria have child protection laws or programs designed to give effect to the CRA,<sup>53</sup> while those States that have adopted the CRA have significantly failed to institute programs and action plans to implement the rights enshrined in the law. As one commentator rightly noted:

The Nigerian government has abdicated its responsibility to protect the child. Most of the states that have passed the Child

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<sup>53</sup> O Akinwumi, 'Legal Impediments on the Practical Implementation of the Child Right Act 2003' (2009) 37:3 *International Journal of Legal Information* 391, noting that the rights of Nigerian children are still at the mercy of legislators. Several arguments have been employed by various states that have refused to sign the Child's Right Act. All of them seem to allude to the diversity of cultures and of religion as an excuse for failing to pass the appropriate legislation.

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Rights Act are not even implementing it...So at the end of the day, there is really no change in the status of the Nigerian child in most states across the country.<sup>54</sup>

Generally, due to political divisions and the tendency to relegate child rights to the back burner the vulnerability of the Nigerian child has not been given adequate recognition and consideration in policy consideration and budgetary allocations. This inertia and lack of political will by governments to design and give practical effects to the implementation of the rights enshrined in the CRA mean child rights remain illusory in Nigeria. To truly realize child rights in Nigeria, especially in conflict situations, governments at all levels must adopt the CRA and design programs and policies aimed at giving full effect to all of the rights enshrined therein.

### **C. Resources and Capacity**

Protecting and realizing child rights in Nigeria require significant financial and human resources. For example, one of the government obligations under the CRC is the need to establish special institutions and programs designed to create a peaceful and stable environment for a child to recover from the aftermath of violence and conflict. This would, in practical terms, mean appointing psychologists and therapists to aid recovery, offering alternate accommodation and resettlement where necessary, providing free education, and free health care. It would also require increased funding and infrastructure for the educational sector, provision of comprehensive water scheme for children in local communities to reduce water borne diseases in children. All of these action points are currently underfunded and moribund in Nigeria. To effectively protect the Nigerian child, extant institutional architecture for delivering health, education, social welfare and sanitation must be revamped and restructured to make them more functional, efficient and effective. Government must as a matter of priority fund and revamp the key sectors required to support qualitative life for the Nigerian child. It is important for Government to commit funds to

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<sup>54</sup> 'Nigeria's Child Rights Act non-functional, activists say' (2014) <<http://www.premiumtimesng.com/news/161510-nigerias-child-rights-act-non-functional-activists-say.html>> accessed September 23, 2015.

improving the health, educational and social welfare of children through prioritized budgeting and increased governmental commitment. Furthermore, in addition to providing quality health care equipment and facilities, parents, health care workers and schools must be offered tailored and holistic training to better support and rehabilitate children in armed conflict situations

#### **4. Taking Child Rights Seriously: A Two-Step Approach to Implementation**

As noted in the last section, although different policy reports, proposals and action plans have been designed to tackle terrorism in Nigeria, these proposals do not fully reflect a 'child perspective' in the discourse. Governments at federal, state and local levels have also failed to prioritize and practically implement many of the human rights of the Nigerian child, robustly recognized under Nigerian law. To address the current gulf between governmental rhetoric on child rights and reality there is therefore an urgent need to revamp current policy architecture on terrorism and armed conflicts in Nigeria to integrate and protect the rights of the Nigerian child. This section recommends a two-step approach as a holistic framework for protecting, realizing and fulfilling the child rights in armed conflict and violent situations.

A holistic program would include two aspects: a preventive element and a response element. The preventive element relates to designing special programs to prevent and eliminate the effects of terrorism on children. It would seek to isolate and insulate children from suffering hardships related to terror. This would include improving the level of security in schools, playgrounds and in neighborhoods. Security of school children can be ensured by building safer schools, deploying security agents to secure schools; and moving schools from slums and hidden communities to well guarded and safer sections of the state. Communities could also establish neighborhood surveillance programs in partnership with security agencies, to identify suspicious activities at the earliest time. It would also include establishing national awareness programs and trainings for parents and children on the need to be cautious while relating with strangers.

The second aspect is the response element. To protect the rights of children, there is a need to establish tailored disaster response plans that could minimize the health and mental impacts of terror events on children. Specific federal programs should be designed to ensure the basic safety of the child and loved ones immediately after a terrorist event. For example through a dedicated Children Emergency Response Team which would be tasked with addressing physical needs of children in an emergency, searching for missing children and reuniting them with family members. Such a program would serve as the first point of call for parents searching for their missing children after an emergency. It would also provide alternative care for children in the absence of parents. Article 20 of the CRC places an obligation on States to establish alternative care for children in the absence of parents.

It is also important to provide specialized programs that would foster the recovery and reintegration of children after attacks. For example Article 39 of the CRC provides that States have obligations for the reeducation and social reintegration of child victims of exploitation, torture or armed conflicts. Reintegration would begin by encouraging children to express their feelings about the event, evaluation of impacts, addressing the child's traumatic reactions and providing psycho-educational programs for anxiety management. Such programs would make it easier for a child to move on and attempt a fresh start after a terrorist event. To further facilitate recovery there is also a need to provide financial and continuous assistance for families of children adversely affected or disabled by an attack. For example, Article 23 of the CRC provides that disabled children have the right to benefit from special care and education for a fuller life in society. This places an obligation on States to design special recovery and health programs for such children to ensure that they can continue to live a normal life after such attacks.

## **5. Conclusion**

The issues examined in this article raise two fundamental concerns: that the protection offered by the Nigerian legal framework on terrorism, to children who have been impacted by terrorism, are uncoordinated and less implemented; and that where emergency counter-terrorism legal regimes or military efforts are introduced,

international and statutory legal norms on the need to protect, rehabilitate and socially reintegrate a child victim of armed conflict, in an environment which fosters the health, self-respect and dignity of the child, is given little or no attention. Extant piecemeal approaches to combating terrorism fail to recognize the fact that except the needs of children are specifically addressed in anti-terrorism programs and frameworks, governmental actions designed to combat terror may further exacerbate the infringements of the rights of the child.

This article has argued for a holistic approach that mainstreams the rights of the child into national security and anti-terrorism programs. This human rights mainstream paradigm calls for the integration of tailor-made programs that recognize the peculiar needs of children and provides robust responses to meeting such needs. This will include a preventive program, which would focus on safeguarding schools, communities and playgrounds such that children are adequately protected from terror. The second limb is the need to establish a tailored emergency response program through which children could be adequately treated, rehabilitated, assisted and re-united with families after a disaster or attack. Through such a robust and holistic approach, the rights of a child to health, life, education, development, survival, recovery and reintegration, as guaranteed under international and national law, would be progressively realized and achieved in Nigeria.