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**LAW AND
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YOGYAKARTA, 04 – 07 APRIL 2017

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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Yogyakarta, 04 – 07 April 2017

LP3M & Faculty of Law Universitas Muhammadiyah Yogyakarta
2017

PROCEEDING

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Message from Chairman

Yordan Gunawan

Chairman, International Conference on Law and Society 6,
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Assalaamu'alaikumWarahmatullahiWabarakatuh,

In the Name of Allah, the most Gracious and the most Merciful. Peace and blessings be upon our Prophet Muhammad (S.A.W).

First and foremost, I felt honoured, on behalf of the university to be warmly welcomed and to be given the opportunity to work hand in hand, organizing a respectable conference. Indeed, this is a great achievement towards a warmers multilateral tie among UniversitasMuhammadiyah Yogyakarta (UMY), International Islamic University Malaysia (IIUM), UniversitiIslam Sultan Sharif Ali (UNISSA), Universiti Sultan ZainalAbidin Malaysia (UNiSZA), Fatoni University, Istanbul University, Fatih Sultan Mehmet Vakif University and Istanbul Medeniyet University.

I believe that this is a great step to give more contribution the knowledge development and sharing not only for eight universities but also to the Muslim world. Improving academic quality and strengthening our position as the procedures of knowledge and wisdom will offer a meaningful contribution to the development of Islamic Civilization. This responsibility is particularly significant especially with the emergence of the information and knowledge society where value adding is mainly generated by the production and the dissemination of knowledge.

Today's joint seminar signifies our attempts to shoulder this responsibility. I am confident to say that this program will be a giant leap for all of us to open other pathways of cooperation. I am also convinced that through strengthening our collaboration we can learn from each other and continue learning, as far as I am concerned, is a valuable ingredient to develop our universities. I sincerely wish you good luck and success in joining this program

I would also like to express my heartfeltthanks to the keynote speakers, committee, contributors, papers presenters and participants in this prestigious event.

This educational and cultural visit is not only and avenue to foster good relationship between organizations and individuals but also to learn as much from one another. The Islamic platform inculcated throughout the educational system namely the Islamization of knowledge, both theoretical and practical, will add value to us. Those comprehensive excellent we strived for must always be encouraged through conferences, seminars and intellectual-based activities in line with our lullaby: The journey of a thousand miles begin by a single step, the vision of centuries ahead must start from now.

Looking forward to a fruitful meeting.

Wassalamu'alaikumWarahmatullahiWabarakatuh

Foreword

Trisno Raharjo

Dean, Faculty of Law, Universitas Muhammadiyah Yogyakarta

Alhamdulillah all praise be to Allah SWT for his mercy and blessings that has enabled the Fakultas Hukum, Universitas Muhammadiyah Yogyakarta in organizing this Inaugural International Conference on Law and Society 6 (ICLAS 6).

This Conference will be providing us with the much needed academic platform to discuss the role of law in the society, and in the context of our two universities, the need to identify the role of law in furthering the progress and development of the Muslims. Muslim in Indonesia and all over the world have to deal with the ubiquity of internet in our daily lives life which bring with it the advantages of easy access of global communication that brings us closer. However, internet also brings with it the depraved and corrupted contents posing serious challenges to the moral fabric of our society. Nevertheless, we should be encouraged to exploit the technology for the benefit of the academics in the Asia region to crat a platform to collaborate for propelling the renaissance of scholarship amongst the Muslims.

This Conference marks the beginning of a strategically planned collaboration that must not be a one off event but the beginning of a series of events to provide the much needed platform for networking for the young Muslim scholars to nurture the development of the Muslim society.

UMY aims to be a World Class Islamic University and intend to assume an important role in reaching out to the Muslim ummah by organising conferences hosting prominent scholars to enrich the developmment of knowledge. This plan will only materialise with the continous support and active participation of all of us. I would like to express sincere appreciation to the committee in organising and hosting this Conference.

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Detention under Anti Terrorism laws in Malaysia and Nigeria: An Expository Study on Boko Haram Suspects

BABAGANA KARUMI* AND FARID SUFIAN SHUAIB**

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Abstract

Terrorism is an organised transnational crime that has the potential danger to the stability and security of nations, and largely a threat to international peace. The rise of terrorist armed groups across the globe has brought about renewed efforts by States to enact legislations that will curtail the harmful activities of terrorists. Detention is one of such effort used in preventing and disrupting the plans of these terrorists. Nations affected by the activities of armed terrorists experienced arrest and detention of suspects, backed with terrorism prevention legislations with the expected aim of safeguarding the national security. Nevertheless, such detentions are often posed with perceived threat of violation of rights. Cases of prolonged detention without trials are alleged, where suspects are kept on unsubstantiated suspicions with denied access to lawyer and family members. The opportunity to challenge these violations and the basis of detention before the court of law are equally denied. The paper, using doctrinal research method examines anti terrorism laws in Malaysia and Nigeria, with particular reference to detention of Boko Haram suspects in Nigeria. The paper concludes with recommendations on the challenges faced by detainees and the need for adequate safeguards on their rights.

Keywords; *Terrorism, Detention, Boko Haram, Human Rights*

I. Introduction

Prevention of terrorism is undeniably an important task in maintaining peace, security and stability of any country. Terrorism is an emerging phenomenon across the globe. It is used to achieve political, religious or ideological aim, by the intentional use of force on indiscriminate people. The act of terrorism is usually carried out with the intention of causing death or serious bodily harm on civilian, government or organisations. Terrorism has been a great threat to the society and it is necessary to control, including by preventive laws. States for instance detains suspects of terrorism for long period of time without trial. The detention of suspects is generally permitted under human right laws – either domestic or international - provided it is based on reasonable grounds and procedures as established by law. The detention should not be arbitrary, discriminatory, or disproportionate and should be subjected to fair and effective judicial review. Hence, persons in detention should not be maltreated and adequate safeguards should be provided for the protection of their rights. However, not all state actions are within the permitted confine of the laws. In balancing between the security of the nations and the rights of alleged terrorists, the state apparatus sometime err on the side of security.

Nations affected by the activities of armed terrorists experienced arrest and detention of suspects, backed with terrorism prevention legislations with the expected aim of safeguarding the national security. Nevertheless, such detentions are often posed with perceived threat of violation

of rights. Cases of prolonged detention without trials are alleged, where suspects are kept on unsubstantiated suspicions with denied access to lawyer and family members. This could be seen for instance in states that have suffered prolong fights against armed terrorists such as the state of Nigeria in dealing with the Boko Haram insurgents of Nigeria that carried out deadly attacks in the sub Saharan Africa which destroyed lives and properties including that of civilians. Malaysia also has a fair share of dealing with armed terrorists albeit in much smaller scale and less persistence. Taking into account the fact that terrorist threats has no possibility of being abated any time soon, it is important to consider the legal complication arising from the use of detention law to tackle the threat.

II. Discussion

2.1 Meaning of Terrorism

With the severity and complexity of terrorism attacks, there is no unvarying definition of the act. Nevertheless, there are highlights given by scholars on the subject. Thus, terrorism is a generic term which encapsulates the method of causing harm based on certain motivations or ideologies prompting such actions. Terrorism is defined as the use or threat of violence to intimidate or cause panic, especially as means of affecting political conduct.¹ The acts of violence or intimidation can be carried out by a person or a group of persons. Terrorism is usually politically motivated and secretly planned to carry out a mischief. It could also be the use or threat of use of force for the purpose of advancing a political, religious or ideological cause. Similarly, the act of terrorism is described as the recurrent use or threatened use of politically motivated and clandestinely organised violence, by a group whose aim is to influence a psychological target in order to make it behave in a way which the group desires.²

Most of definitions on terrorism have a common feature of use of threat or violence to intimidate or cause panic. This goes to show the danger involved in the act of terrorism that requires major regulation by government in protecting its citizens from the harmful act of terrorists. Notably, the act of terrorism is often used against the state or the public with a politically or ideologically motivated attacks to intimidate or coerce the society or government to do or refrain from doing an act.³

Terrorism is both complex and sensitive, as it combines many aspects of human experience and existence. It is characterised by the use of violence against civilians with the shared desire of causing terror or panic in the society.⁴ Terrorism advances violence in opposition to government and the targets are mostly state officials and government properties. Ultimately, the term terrorism is used to describe wide range of violence, and by its nature and characteristics it can occur both in conflict and peace time.⁵ Hence, terrorism constitutes crime under domestic and international law, and it is motivated by complex medium of reasons and ideals. Due to the nature of threats from modern terrorism, it is no longer realistic for countries to rely on existing criminal law legislations to deal with terrorism. As such, it has become imperative for countries to enact separate laws to counter the menace, hence, Malaysia and Nigeria have enacted separate laws to deal specifically with terrorism threats.

2.2 Boko Haram Insurgency in Nigeria

Nigerian unfortunately have been living with the threat of terrorist activities of Boko Haram since 2009. Boko Haram is a radical sect that is against western ideology, with linkages with other terrorist groups like, *al-Qaeda* and *al Shabaab*.⁶ Since 2009, the Boko Haram insurgents have

engaged in several attacks and heinous acts that have embossed the word 'terrorism' on the conscience of the Nigerian populace. The origin of Boko Haram can be tracked to 2002 when Mallam Mohammed Yusuf founded the sect, and gave it an official name as *Jama'atu Ahlis Sunna Lidda'awati wal Jihad*, an Arabic term meaning "People Committed to the Propagation of Prophet's Teaching and Jihad".⁷ However, the sect is popularly known as Boko Haram, a Hausa name which translates into "Western education is prohibited". The conflict of Boko Haram has resulted in the death of thousands of innocent civilians, security personnel and government officials and have displaced over 2 million persons from their homes.⁸ While the insurgency continued, Boko Haram is alleged to have committed war crimes and crimes against humanity in Northern Nigeria killing several persons.⁹ They have wilfully carried out deadly attacks targeting innocent people.¹⁰ Several places were targeted and bombed by Boko Haram, including markets, transport hubs, bars, restaurants and places of worship in cities across Northern Nigeria.¹¹ According to the Global Terrorism Index 2016, Boko Haram is one of the four most deadly terrorist groups in the world.¹² They have engaged in terrorist attacks in 5 countries, resulting in death of several persons.¹³

Serious human rights violations have been listed as part of the atrocities resulting from the fatal terrorist attack in the North Eastern Nigeria by Boko Haram against civilians, officials and the military targets.¹⁴ Abduction of women and children has been recorded as part of the activities of the terrorist. Boko Haram as a national security problem, has posed threats and have carried out several attacks in Nigeria. One of the notorious attacks carried out by Boko Haram is the suicide car bomb attack on the United Nations Building in Abuja, where at least 18 people were killed, and many more injured.¹⁵

In response to the wicked activities of the insurgent's government deployed security operatives to enforce the law and protect innocent civilians, several arrest and detention of suspects linked with the activities of the insurgents were made.¹⁶ However, there are allegations of prolonged detention under the Terrorism Prevention Act of Nigeria, where suspects are kept for long period without trial. Several arrests were made under the terrorism prevention law, thus, in November 2011 a member of the Nigerian parliament was arrested and charged for having a connection with one Ali Sanda Umar Konduga (a Boko Haram's spokesman). According to the authorities several communications were traced between the Boko Haram member and the legislator.¹⁷ Recently, the Nigerian Army released over 348 suspects of Boko Haram, who were arrested at different locations of Borno State in Nigeria. According to the Army they are released after they were found to be innocent.¹⁸ Similarly, United Nations (UN) negotiated the release of 876 children from army detention for Boko Haram suspects in Nigeria.¹⁹ Several detentions under the TPA have been carried out by the security operatives in Northern Nigeria, with the view of investigating and curtailing the act of Boko Haram suspects. This paper considers the Boko Haram insurgency due to their notorious attacks in the north eastern part of Nigeria that destroyed lives and properties. Consequent upon that, several suspects are still in detention awaiting prosecution, while others are still being investigated as their attacks on innocent public has not end.

2.3 Terrorism Prevention in Malaysia

Malaysia as a peace-loving, moderate and progressive Muslim-majority country has generally outside the incidence of terrorism or hot-bed of terrorists. However, Malaysia is not completely immune. Relatively minor terrorist-related incidences do occur from time to time. In July 2000, the al-Ma'unah group robbed firearms and ammunition from army posts.²⁰ They launched incipi-

ent attacks on electrical cable tower and planned to target a major Hindu temple and major refineries of alcoholic drinks in Kuala Lumpur. In December 2000, Kumpulan Militan Malaysia (KMM) robbed 2 banks in suburbs of Kuala Lumpur. However, in the second robbery a member of the group was shot dead and others arrested.²¹ The arrests uncovered 84 other members and led to the discoveries of other violent crimes committed in line with the group plan for a Daulah Islamiah Nusantara. In 2015 and 2016, Malaysia arrested and convicted several supporters of ISIL (Islamic State of Iraq and the Levant).

Offences related to terrorism could be found under the Penal Code. Chapter VI of the Penal Code provides for offences against the state including waging war against the King which members of the al-Maunah group were convicted upon. Recognising the increasing threat of terrorism, amendments were made to the Penal Code to create offences specifically to terrorism. Chapter VIA provides for offences relating to terrorism including providing devices and recruiting members and supporting for terrorist groups. Included in the amendment to the Penal Code are new offences of activities "detrimental to parliamentary democracy" under section 124B and the offence of "sabotage" under section 124K of the Penal Code.²² The Penal Code defines "activity detrimental to parliamentary democracy" as an activity "designed to overthrow or undermine parliamentary democracy by violent or unconstitutional means".²³ Sabotage is defined as an act or omission intending to cause harm i) for the interest of foreign powers or foreign organizations; or ii) to premises or utilities used for national defence or for war; or iii) to the maintenance of essential services.²⁴

Malaysia has devised several means to prevent and minimise the increasing threat of terrorism that may likely to occur. Recently, Malaysia launched its first integrated special operations unit charged with the responsibility to respond to terrorism attacks and neutralise such threats.²⁵ The operation consists of officers from Malaysian police, army, navy and coast guard to act as first responders in an event of terrorism attacks. The integrated force is setup to strengthen the nation's security and protecting it from threats of terrorism. The Southeast Asia Regional Centre for Counter-Terrorism (SEARCCT) is also hosted by Malaysia. Malaysia also adopted hearts-and-minds approach in counter-terrorism.²⁶

In connection with detention, the law that governs the act of terrorist and terrorism prevention in Malaysia is the Prevention of Terrorism Act 2015 (POTA). The law prevents the conduct and support for the act of violence involving terrorist organization of foreign countries and it provides for the control of persons affected by such act, as well as persons engaged in terrorism. The Act empowers the Malaysian authorities to detain terror suspects without trial for a period of two years and does not allow any judicial reviews on the detentions. Nevertheless, such detentions will be reviewed by a special Prevention of Terrorism Board.²⁷ Under the newly enacted Prevention of Terrorism Act 2015 (POTA), a board is established to approve detention or restriction orders for individuals "in the interest of security of Malaysia". Thus, a suspect can first be detained for 59 days without charge before being presented to the board. The board is appointed by *Yang di-Pertuan Agong* and its actions and decisions are excluded from the jurisdiction of any court, it has the power to renew detention orders indefinitely.²⁸ The decision of the board cannot be appealed upon, except in relation to question on compliance with procedural requirement in POTA.²⁹

The POTA is reminiscent of Malaysia's Internal Security Act 1960 (ISA), abolished in 2012, which also allowed for indefinite detention without trial. However, the new law has not included the necessary safeguards to ensure fair trials and respect of human rights so it could be just as susceptible to abuse as the widely condemned ISA, which was used to unjustly detain govern-

ment critics and created a climate of fear in the country for decades.³⁰ The Act provides for the prevention of terrorism, its support or act involving listed terrorist organisation in foreign countries or any part of it. The Act further protects Malaysia from any act by person that threatens or prejudicial to its security.³¹ Nevertheless, POTA has some safeguards on the rights of detainees. Even though a police officer is empowered under the Act to arrest without a warrant where he has reason to believe that there is justification to hold an inquiry into a person, the person arrested is to be produced within twenty-four hours before a Magistrate.³² An Inquiry Officer, who is not a police officer, conducts his inquiry and makes his reports on his findings to the Prevention of Terrorism Board.³³ Consequently, where a person is detained under the Act and where it was found that there are no grounds for which he is lawfully detained, the Sessions Court Judge will direct his release, subjects to certain conditions such as provision of bond, police supervision and attaching an electronic monitoring device.³⁴

Suspect arrested for terrorism is subject to the decision of the board constituted under POTA and it reviews cases in line with the provisions of the Act. Although the powers and decision of the Board are subject to judicial review, the grounds for reviews are very limited, namely to the issue on compliance with procedural requirements under the Act.³⁵ These restrictions seems to repeat the legal position with regards to orders of the Minister under the repealed Internal Security Act 1960 (ISA) and thus at odds with the avowed objective of reforming the ISA.

The Prevention of Terrorism Act was enacted to fight the growing global threat of terrorism, even though it transgresses basic civil liberties as laws a preventive detention law is expected to do. In order to avoid these constitutional breaches against articles 5, 8, 9, 10 and 13, the Act relied on Article 149, which allows Parliament to enact special laws to stop or prevent threats to security and public order. In spite of this constitutional allowance, the court had held that article 149 of the Federal Constitution is not a *carte blanche* denial of rights.³⁶ Rather, it is merely a mechanism to allow Parliament to enact provisions contrary to such rights.³⁷

Thus, the law is specific on the rights of individuals, which are considered as fundamental and needs to be upheld at all times. However, due to the nature of terrorism and the terrorist acts, strict measures have to be in place to prevent it, as its consequences are loss of life and damage to properties. Nevertheless, it is important for adequate safeguard to be in place to prevent potential abuse of the law.

2.4 Terrorism Prevention in Nigeria

As a part of efforts geared towards the activities of the terrorist in Nigeria, particularly the Boko Haram as described above, various security operatives have established counter-terrorism units to tackle and address the issues of insurgency.³⁸ The legal framework for the prevention of terrorism in Nigeria is principally incorporated in the Terrorism (Prevention) (Amendment) Act 2013. The Act was essentially enacted to prevent and deal with the trend of terrorism emerging in Nigeria. The Constitution empowers the National Assembly to make laws for the peace, order and good government of Nigeria.³⁹ It may make laws for the Federation or any part thereof with respect to the maintenance and securing of public safety and public order and providing, maintaining and securing of supplies and services as may be designated by the National Assembly as essential supplies and services.⁴⁰

Before the enactment of the Terrorism Prevention Act, the Criminal Code⁴¹ and the Penal Code⁴² and other legislations managed the administration of criminal justice system in defining and prescribing punishment for criminal offences in Nigeria. Both the Criminal Code and Penal

Code did not make specific provisions for terrorism. The legislations however, criminalise specific acts of violence such as kidnapping, murder, homicide, rape, riot, and other violent activities which are synonymous to terrorist activities. Therefore, the coming into force of the Terrorism (Prevention) Act has brought relief for Nigerians with the specific prohibition of terrorism and other ancillary offences.⁴³

The act of terrorism causes great danger on the lives and the peaceful wellbeing of the society. Hostage taking in form of kidnapping is an act of terrorism under the Act.⁴⁴ This can be done by detaining or seizing a person or its attempt to a third party to do or refrain from doing an act may be capable of being a terrorist act.⁴⁵ More often, detention has been the measure used in curtailing the acts of terrorist, so that they do not have the opportunity of carrying out their attacks. However, under the Nigerian Constitution every person is entitled to enjoy his liberty without hindrance except in accordance with the law.⁴⁶

2.5 Detention of Terrorist

Generally, the liberty of a person is guaranteed under the law. However, there are certain situations and acts that will deny him of this right and will be construed as forfeited. The fact that a person has a duty to ensure that he should not exercise his rights to the detriment of other person's right or against the accepted social order or prejudicial to public order.⁴⁷ Thus, his right stops where other's right's begins, and as such his act and conduct must conform with the laid down norms and practice of the law and society. Accordingly, the UDHR states that an individual in the exercise of his rights and freedoms, shall be subject only to such limitations as are determined by law, solely for the purpose of securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and the general welfare in a democratic society.⁴⁸

Therefore, if a person exceeds his bounds, he is certainly liable to face the consequences of his actions. Usually, whether or not a person exceeds his bound will be determined by the courts. Upon conviction, the court will impose the punishment which may include imprisonment. The problem with such laws that provide for detention is that it provides for "detention without trial" or executive detention. Without judicial intervention, the law could be easily be abused for political purposes as the late Hugh Hickling, the architect of the notorious repealed Malaysian Internal Security Act 1960 said that he "could not imagine then, that the time would come when the power of detention...would be used against political opponents, welfare workers and others dedicated to nonviolent, peaceful activities".⁴⁹

Be that as it may, after repealing the Internal Security Act 1960, Malaysia enacted the Prevention of Terrorism Act 2015 where any person who is reasonably suspected and believed that grounds exists as to which it could justify holding an inquiry into his case may be arrested and his case referred by a police officer to the public prosecution for direction.⁵⁰ The person arrested shall unless sooner released be taken without reasonable delay, or within 24 hours be brought before a magistrate.⁵¹ Where person is taken before a magistrate, the magistrate shall after the production of a written statement by a police officer, and on a satisfied grounds that he is engaged in the commission or support of terrorist act involving listed terrorist organisation in foreign or any part of a foreign country be remanded in police custody for a period of 21 days.⁵² Consequent before the expiry of the 21 days if the person is not released, and the magistrate is satisfied that there are sufficient evidence to justify the holding of inquiry, he could be further remanded for a period of 38 days.⁵³ Where no ground for his lawful detention exists his release shall be directed. Therefore,

the person so arrested and detained shall if not sooner released be brought before an inquiry officer.⁵⁴ At any time during his detention, a person may be brought before a Sessions Court Judge who may release him if there is no ground to detain him.⁵⁵ The person may also be released with bond or police supervision, and with electronic monitoring device.⁵⁶

In addition to the 21 days detention with a further extension of 38 days under POTA, a suspect could be arrested and detained under the Security Offences (Special Measures) Act (SOSMA) 2012.⁵⁷ The Act allows for 2 days detention without legal representation and for detention for up to 28 days. Not long after the enactment of this law, criticisms have been raised to alleged abuse of the law by resorting to its draconian nature to deal with dissidents of the government of the day rather than with genuine existential threat to the state.⁵⁸ Nevertheless, authorities have claimed that detentions under SOSMA are said to be carried out within the ambit of the law which still begs the question of whether the authorities are adhering to rule of law or rule by law.⁵⁹

Similarly, in Nigeria the Terrorism (Prevention) Act provides that, where a person is arrested under a reasonable suspicion of having committed an offence described under the Act,⁶⁰ 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 the Medical Doctor and legal counsel of the detaining agency.⁶¹

However, the Constitution of the Federal Republic of Nigeria recognises the fundamental right of an individual to a counsel of his own choice.⁶² Section 28 of TPA borders on the discretion of a detainee to engage the counsel of his choice, the provision has the sanctified provision of the constitution that gave him an unhindered choice to engage who will represent him. Thus, it is uncertain to determine the intent of the legislations as to what it seeks to achieve.

The idea of detaining suspected terrorist for a longer period is perhaps to achieve a preventive and disruptive measure on the activities and network of terrorist, thereby making it difficult to carry out their plans. Nevertheless, prolonged detentions can only be condoned where the detention has been judicially sought and obtained.

Conversely, Nigeria's Terrorism (Prevention) Act,⁶³ gives the military wide powers to arrest and detain people for a long period without trial. Section 27 accepts the arrest and detention of a person found on any premises or places or in any conveyance, by an authorised officer of any agency until the completion of the search or investigation under the act. The act allows for unspecified detention, allowing the court to grant an order for the detention of a suspect for 90 days, and to renew the order for additional 90-day periods until the conclusion of investigation and prosecution.⁶⁴ Under the act, anyone who engages in, attempts, threatens or assists an act of terrorism, or omits to do anything that is reasonably necessary to prevent an act of terrorism may be guilty under the act and subject to penalties including up to life imprisonment.

Conversely, the treatment of suspects detained for terrorism slightly differs in Malaysia and Nigeria. Thus, in Malaysia the case of a suspected terrorist is handled by a Board established under the POTA, who decides and deal with the case. However, in Nigeria such Board does not exist, a suspected terrorist is detained and treated like any other detainee under the applicable criminal laws, but subject to certain conditions and requirements provided under the TPA, for instance the length of time provided by TPA that a detained suspect of terrorism is to be held.

Nevertheless, Malaysia and Nigeria have some similarities with regards to the period of detention for investigation in the case of suspected terrorist, the laws preventing terrorism in both countries allowed for a longer period of detention than provided for in their Constitutions.⁶⁵

However, on the treatment of terrorism suspect, POTA provides that once a suspect is arrested for the offence of terrorism his case will be referred to an inquiry officer who will inquire into the matter and report same to the Board established under the Act. The Board upon receipt of such report will decide either to prosecute or release the suspect on conditions determined by the Board. Conversely, in Nigeria the trend of dealing with terrorism suspects is different with that of Malaysia, in Nigeria the suspect if arrested, will be detained and after investigations he will be arraigned before a court of law. However, at the moment where suspects of terrorism are mostly kept in Military barracks, because there are reported cases of prison break in facilities where Boko Haram suspects are detained.⁶⁶

III. Conclusion

The unique nature of terrorism reveals that its prevention and control need a special approach of detaining suspects in an unusual manner. Thus, detention for terrorism takes longer period than other offences. In that suspects are kept for long to break the chain of plans designed by the terrorist. Greater caution and restraint should be observed when security detentions are resorted to under the law. Allowing officials to exercise authority, on the basis of classified intelligence information gathering and subject only to limited judicial review, to deprive persons of their liberty based on grounds of security, is hazardous to liberty and to the rule of law. In many countries, political dissidents may be deemed security threats. Even in democracies under the rule of law, over-zealous officials may be too quick to conclude, on the basis of inconclusive intelligence information, that someone is a security threat. Nevertheless, if security detention is to be allowed, its use must be restricted to an absolute minimum, and subjected to rigorous procedural safeguards.

The laws on prevention of terrorism were described as legislation having loosely defined clause with minimal provisions on the safeguards that will ensure that the rights of detainees are not abused. The provision ousting the jurisdiction of courts is a major setback on the safeguard of rights. Therefore, laws on prevention of terrorism should make adequate provisions for the protection of the rights of detainees because both laws on prevention of terrorism in Malaysia and Nigeria provides for a longer period of detention for suspects of terrorism.

In addition, the fight against terrorism must be done comprehensively taking into the short term and long term strategies and dealing with its root causes. It is insufficient to be successful in the tactical aspect in the fight against terrorism but failed to prevent regeneration of new terrorists. Perhaps the Malaysian hearts-and-minds approach in counter-terrorism should be emulated.

ENDNOTES

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- ⁴⁴Terrorism (Prevention) Act, 2011, S.11.
- ⁴⁵Ibid.
- ⁴⁶Constitution of the Federal Republic of Nigeria, 1999, S. 35 (1). However, the liberty of a person can be deprived where criminal charges are pending against him, he can be detained pending the determination of the case, *Azu Vs UBN PLC (2014) 5-7 MJSC 1 at 27 Paras F-G*.
- ⁴⁷Ibid
- ⁴⁸Article 29(2) UDHR
- ⁴⁹Obituary, *Professor Hugh Hickling*, TELEGRAPH, Apr. 17, 2007, <http://www.telegraph.co.uk/news/obituaries/1548788/Professor-Hugh-Hickling.html>. accessed on 25th March 2017.
- ⁵⁰POTA, section 3.
- ⁵¹POTA, section 3(3).
- ⁵²POTA, section 4(1)(a).
- ⁵³POTA, section 4(2).
- ⁵⁴POTA, section 5.
- ⁵⁵POTA, section 6(1)(a).
- ⁵⁶POTA, sections 6(1)(b), 6(4).
- ⁵⁷SOSMA, section 4(5), provides that a suspect can be arrested and detained for 28 days, for the purpose of investigations. Datuk Seri Khairuddin Abu Hassan and Matthias Chang were detained under SOSMA for investigation. “Matthias Chang Joins Khairuddin Abu Hassan Under Sosma Detention”, Malaysia Today (October 8, 2015), Online News, <http://www.malaysia-today.net/matthias-chang-joins-khairuddin-abu-hassan-under-sosma-detention/>, Accessed 18 November, 2016.
- ⁵⁸Zurairi Ar, “Maria Chin to be held for 28 days under Sosma” <http://www.themalaymailonline.com/malaysia/article/lawyer-maria-chin-to-be-held-full-28-days-under-sosma#sthash.Gzgh3Qxy.dpuf>, Accessed 3 December, 2016. Channel NewsAsia, Bersih co-chair Maria Chin Abdullah freed from detention, 29 November, 2106, <http://www.channelnewsasia.com/news/asiapacific/bersih-co-chair-maria-chin-abdullah-freed-from-detention/3324652.html>, Accessed 3 December, 2016. Maria Chin Abdullah was held for 11 days, she was arrested on the 18 November, 2016 a day ahead of a mass demonstration.
- ⁵⁹Kamles Kumar, “Nothing unlawful about Khairuddin, Chang’s SOSMA detentions, IGP insists” <http://www.themalaymailonline.com/malaysia/article/nothing-unlawful-about-khairuddin-changs-sosma-detentions-igp-insists#sthash.KOCXR4Pn.dpuf>, Accessed on 8 December, 2016.
- ⁶⁰Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 13 and 14 of the Terrorism (Prevention) Act, 2011.
- ⁶¹Terrorism (Prevention) Act, 2011, S.28.
- ⁶²Constitution of Federal Republic of Nigeria, S. 35 (2).
- ⁶³The Principal Act was enacted in 2011, and amended in 2013.
- ⁶⁴Terrorism (Prevention) (Amendment) Act, 2013, section 27 (1).
- ⁶⁵Federal Constitution of Malaysia, article 5 and Constitution of Federal Republic of Nigeria, section 35.
- ⁶⁶David Smith, “More Than 700 Inmates Escape During Attack on Nigerian Prison” The Guardian, September 8, 2010. <https://www.theguardian.com/world/2010/sep/08/muslim-extremists-escape-nigeria-prison>, Accessed 30th January, 2017.