

## THE INTERACTION BETWEEN HUMAN RIGHTS AND NATIONAL SECURITY IN NIGERIA

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**ABSTRACT:** *Observance of human rights is a cardinal principle for the survival of any democratic society just as ensuring national security is a vital interest for any nation. Nigeria has been under an unbroken democratic governance since 1999 and democracy can hardly exist in its real sense anywhere without the observance of human rights. This topic became of interest in Nigeria because of the problem of insecurity that got to a very high level. The security challenges are obviously enormous and very disturbing. These challenges are in form of terrorism, insurgency, banditry and kidnapping among others. In the midst of these challenges that threaten the very existence of the country, perpetrated mainly by non-state actors, some people feel that human rights should be relegated to the background in order to effectively deal with the security challenges. That is the research problem. It is however pertinent to note that without the observance of human rights, and rule of law generally, it will be difficult to ensure national security. Doctrinal and teleological research methods were used in this work. Doctrinal method through the use of the relevant Nigerian laws. Teleological method was used in terms of the experience of the researcher as a practicing lawyer that has handled some human rights cases in Nigerian courts. The paper found that Nigerian laws made enough provisions for both the respect for human rights and for ensuring national security which only need to be implemented fully and to allow the courts to decide the way forward when there is a conflict between human rights and national security.*

**KEY WORDS:** human rights, national security, Dokubo-Asari, constitution, Federal Republic of Nigeria, Administration of Criminal Justice Act, Terrorism Prevention Amendment Act.

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## INTRODUCTION

Human rights are inalienable rights of human beings. “They are the freedoms, immunities and benefits that, according to modern values (especially at an international level) all human beings should be able to claim as a matter of right in the society in which they live.”<sup>1</sup> Nigeria is a recognized member of the comity of nations and a signatory to several international treaties including human rights treaties like the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights among others. Security in this context can simply be said to be “the state of being secure, especially from danger or attack”<sup>2</sup> National security can therefore be said to be the state of a nation being secure,

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<sup>1</sup> Garner, B.A. Blacks Law Dictionary, Ninth Edition, Thomas Reuters, 2004, p.809.

<sup>2</sup> Ibid.p.1476.

especially from danger or attack. National security is a vital interest of any nation which invariable means that without national security, there can hardly be the nation itself.

Human rights are inalienable rights of human beings that live in a particular nation and national security of such a nation is the means of ensuring that the nation is protected from danger or attack. The nation is made up of the human beings in whose benefits the protection of the nation is meant. The existence of human beings is mandatory for there to be a nation and the protection of the nation is mandatory for the nation to exist. This shows how connected human rights and national security are. One needs the other for survival. The most important human right is right to life. If human lives of the persons that make up a nation are taken without recourse to the law, the nation which is supposed to be made up of human beings, cannot exist. This work will therefore look at the interaction between human rights and national security as provided for in Nigerian laws after which it will look at some practical situations wherein there have been smooth and rough interaction of these two important concepts and how the courts in Nigeria reacted to those situations.

## **INTERACTION BETWEEN HUMAN RIGHTS AND NATIONAL SECURITY THROUGH NIGERIAN LAWS**

Several Nigerian laws made provisions to ensure the protection of both human rights of citizens and national security. Some of the laws that will be examined in this work include the grundnorm, the Constitution of the Federal Republic of Nigeria 1999 (CFRN) (as amended), Terrorism (Prevention) Amendment Act 2013, Administration of Criminal Justice Act 2015, Armed Forces Act (AFA) CAP A20, Laws of the Federation of Nigeria 2004 (as amended) and Fundamental Rights Enforcement Procedure Rules 2009.

### **The Constitution of the Federal Republic of Nigeria 1999 (as amended)**

The CFRN 1999 (as amended) made several provisions. The entire Chapter four of the Constitution is devoted to fundamental rights. It began with right to life wherein it provided that “every person has a right to life and no one shall be deprived of his life, save in the execution of sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria”<sup>3</sup> The Constitution brings in the issue of national security even at this stage already by providing that a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use to such extent in such circumstances as permitted by law, of such force as is reasonably necessary for the following reasons; for the defence of any person from unlawful violence or for defence of property, in order to effect lawful arrest or to prevent the escape of a person lawfully detained or for the purpose of suppressing a riot, insurrection or mutiny.<sup>4</sup>

The drafters of the Constitution clearly distinguished when the right to life can be said not to be derogated from. Any deprivation of life outside the exceptions becomes a criminal offence that is punishable by law. The Constitution recognizes the fact that in a situation of insurrection or mutiny, that suppression of such acts is necessary and that it may involve life, depending on

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<sup>3</sup> Section 33(1), Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>4</sup> Ibid. Section 33(2).

the method used to suppress it and which should be in line with the rules of engagement of the military or paramilitary organization that is used for the suppression of the act in question. Even here, the constitution recognizes the importance of the lives of citizens and equally recognizes the importance of having a nation that is secured. In the case of *Eze v State*<sup>5</sup>, the Supreme Court of Nigeria restated the fact that life is sacred and that the court will convict anyone who deprives another of his life in ways that are not permitted by law.

The Constitution also guarantees the right to the dignity of human person.<sup>6</sup> The Constitution herein outlaws torture or inhuman or degrading treatment, slavery or forced labour.<sup>7</sup> It however gives exception in the case of forced labour if it is required in consequence of an order of court, if it is required in the duties of the members of the Armed forces or the police, in an emergency or calamity threatening the life or well-being of the community. It is also an exception if the labour forms part of compulsory national service in the Armed Forces of the federation or as a part of education and training of citizens as may be prescribed by the Act of the National Assembly.<sup>8</sup> In this instance, the Constitution recognizes that in certain situations, in order to save a community during an emergency, there could be forced labour, but still to the benefit of the people themselves and for their security. Any such labour that does not come within the ambit of the constitutional provision is unlawful.

There are also other human rights guaranteed by the Constitution like the right to personal liberty<sup>9</sup> and the right to fair hearing<sup>10</sup> with their own exceptions. The right to fair hearing is an outstanding human right especially as it relates to trials. It provides that “every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty”<sup>11</sup> It equally provides that every person charged with a criminal offence shall be entitled to be informed properly in the language that he understands and in detail of the nature of the offence. In addition, it provides that such an accused person shall be given adequate time and facilities for the preparation of his defence and that he has a right to defend himself in person or by legal practitioners of his own choice. He equally has a right to examine in person or by his legal practitioners the witnesses called by the prosecution and to equally have without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.<sup>12</sup> The Supreme Court of Nigeria in reiterating the importance of fair hearing in the case of *Chitra Knitting & Weaving Manufacturing Co Ltd v Akingbade*<sup>13</sup> held that “it follows therefore that once an appellate court finds, as in this case, that there is a breach of the right of fair hearing in the proceeding in issue, it must allow the appeal, having no other alternative in the matter”. Once the right to fair hearing is breached, the trial becomes a nullity. The CFRN 1999 and Nigerian courts are clear about the need to observe the right to fair hearing.

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<sup>5</sup> (2018) LPELR-44967 (SC)

<sup>6</sup> Section 34 CFRN 1999 as amended.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid. Section 35.

<sup>10</sup> Ibid. Section 36.

<sup>11</sup> Ibid. Section 36 (5).

<sup>12</sup> Ibid. Section 36 (6).

<sup>13</sup> (2016) LPELR- 40437 SC.

Other aspects of fundamental human rights guaranteed by the Constitution are the right to private and family life<sup>14</sup>, right to freedom of thought, conscience and religion<sup>15</sup>, right to freedom of expression and press<sup>16</sup> and right to peaceful assembly and association.<sup>17</sup> Others are right to freedom of movement<sup>18</sup>, right to freedom from discrimination<sup>19</sup> and right to acquire and own immovable property anywhere in Nigeria<sup>20</sup>. No one is authorized to compulsorily acquire another's property except in a manner prescribed by law.<sup>21</sup>

The Constitution equally made a bold statement in relation to national security when it provided for restriction and derogation from fundamental rights. It provides that:

*Nothing in Section 37 (right to private and family life), 38 (right to freedom of thought, conscience and religion), 39 (right to freedom of expression and the press) 40 (right to peaceful assembly and association), 41 (right to freedom of movement) of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society- in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons.*<sup>22</sup>

The Constitution also gives citizens an opportunity for redress when their rights are breached. In a special way, it provides that "any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress."<sup>23</sup> It is also in line with this Section of the Constitution that the Chief Justice of Nigeria promulgated Fundamental Right Enforcement Procedure Rules 2009 which is purely meant for redress on human rights breaches. The Constitution did not just provide for when the rights are breached but also when it is being or likely to be contravened.

From the foregoing, it is obvious that the CFRN 1999 (as amended) made adequate provisions for the protection of human rights and equally provides for specific circumstances especially with regard to national security when such rights can be derogated from. The interaction of human rights and national security is therefore made obvious by the Constitution.

### **Terrorism (Prevention) Amendment Act 2013**

Terrorism is generally new in Nigeria, compared to some other parts of the world and as a new disease, needed a new solution which gave birth to the Terrorism Prevention Act 2011 and its subsequent amendment in 2013. The amendment makes provisions for extra-territorial application of the Act and strengthens terrorist financing offences.<sup>24</sup> One can hardly talk about

<sup>14</sup> Section 37 CFRN 1999 as amended.

<sup>15</sup> Ibid. Section 38.

<sup>16</sup> Ibid. Section 39.

<sup>17</sup> Ibid. Section 40.

<sup>18</sup> Ibid. Section 41.

<sup>19</sup> Ibid. Section 42.

<sup>20</sup> Ibid. Section 43.

<sup>21</sup> Ibid. Section 44.

<sup>22</sup> Ibid. Section 45 (1).

<sup>23</sup> Ibid. Section 46.

<sup>24</sup> Explanatory Memorandum, Terrorism (Prevention)(Amendment) Act, 2013.

national security in Nigeria without mentioning the menace of terrorism. Some of the accusations of breach of human rights in some quarters against Nigeria sprang up due to the fight against terrorism especially with regard to Boko Haram terrorist members. However, the Act provides for protection of human rights even in the counter terrorism fight. One example of such provisions is that:

*The court may, pursuant to an ex-parte application, grant an order for the detention of a suspect under this Act for a period not exceeding 90 days subject to the renewal for a similar period until the conclusion of the investigation and prosecution of the matter that led to the arrest and detention is dispensed with.*<sup>25</sup>

The provision is made to ensure that there is no arbitrary and prolonged detention of suspects of terrorism offences in the country. Every lawyer representing a suspect that is detained longer than the period provided without the approval of a court has a right to sue the authority that detained the suspect. There is therefore a close interaction as far as this Act is concerned, between human rights and national security. It will be like a jungle if there are no checks and balances to regulate methods of arrest and detention even in extreme cases of terrorism. If there is a situation where someone or some persons do not strictly follow the law in arrest and detention, there are judicial remedies when such a situation is brought before the law courts. This is to ensure that the Government and security agencies respect human rights while conducting counter terrorism operations.

### **Administration of Criminal Justice Act 2015**

The need to reduce the number of awaiting trial inmates in Nigeria and the need to speed up the process of obtaining justice in the country brought the need for the promulgation of the Administration of Criminal Justice Act (ACJA) 2015. Many countries of the world have the challenge of having too many awaiting trial inmates and in many cases outnumbering the number of those that have passed through trial, convicted and sentenced. In order to ensure quick dispensation of justice, which is at the heart of the protection of human rights, the Act established the Administration of Criminal Justice Monitoring Committee made up of the Chief Judge of the Federal Capital Territory who is the Chairman, the Attorney General of the Federation, a Judge of the Federal High Court, the Inspector General of Police, the Comptroller General of the Nigerian Prisons Service and the Executive Secretary of the National Human Rights Commission. Others are Chairman of any of the local branch of the Nigerian Bar Association in the Federal Capital territory, the Director General of the Legal Aid Council of Nigeria and a representative of the Civil Society working on human rights and access to justice or women rights.<sup>26</sup>

This Committee is tasked to ensure that:

*Criminal matters are speedily dealt with; congestion of criminal cases in courts is drastically reduced; congestion in prisons is reduced to the barest minimum; persons awaiting trial are, as far as possible, not detained in prison custody; the relationship between the organs charged with the responsibility for all aspects of the administration of justice is cordial and there exists maximum cooperation amongst*

<sup>25</sup> Section 27(1) Terrorism (Prevention) (Amendment) Act, 2013.

<sup>26</sup> Section 469 (1) Administration of Criminal Justice Act 2015.



*the organs in the administration of justice in Nigeria; collate, analyse and publish information in relation to the administration of criminal justice sector in Nigeria; submit quarterly report to the Chief Justice of Nigeria to keep him abreast of developments towards improved criminal justice delivery and for necessary action and carry out such other activities as are necessary for the effective and efficient administration of justice.*<sup>27</sup>

It is obvious that while protecting national security, issues of arrest and detention of suspects will arise, hence the need to ensure that the human rights of those arrested, detained or tried are adequately protected. This shows the interaction between national security and human rights in the Administration of Criminal Justice Act. It is important to add that the provisions of this Act are practically implemented and the Act has actually enhanced speedy trials in Nigeria to some extent.

#### **Armed Forces Act CAP A20 Laws of the Federation of Nigeria 2004**

The Armed Forces Act (AFA) CAP A20 Laws of the Federation of Nigeria 2004 is a special law that guides members of the Armed Forces in their day-to-day activities, both in and outside uniform. The members of the Nigerian Armed Forces are the ones that are deployed in counter terrorism operations. They are bound to be professional, strictly follow their rules of engagement and ensure that they respect human rights in their operations. There have been situations where members of the Armed Forces were court martialled for breaching the human rights of suspects even in counter terrorism operations. Currently, two soldiers are standing trial before 7 Division General Court Martial of the Nigerian Army in Maiduguri, Nigeria for allegedly extra judicially killing one arrested Boko Haram member on 16 January 2021 out of eight of them that were arrested, while trying to avenge the death of one officer and six soldiers killed by the arrested terrorists. Boko Haram members are known to be terrorizing Nigeria especially in North Eastern part of the country and they are currently the most potent threat the national security of Nigeria. Even then, the law does not allow troops in the counter terrorism operation to extra-judicially execute arrested members of the Sect no matter the atrocities they committed before being arrested. Nigeria is also a signatory to the Geneva Convention that prohibits the extra judicial killing of an arrested suspect. It would have been a different thing if they were killed while exchanging fire with the troops in battle.

The rights of the troops themselves are adequately protected during their own trials.<sup>28</sup> Even those that extra-judicially killed arrested terrorists will also have their rights protected while being tried at the court martial, just like how the rights of civilians are protected while being tried in civil courts. They have the right to be informed of the crime they committed. A copy of the charge sheet and summary or abstract of evidence shall be given to the accused at least 24 hours before the trial.<sup>29</sup> They equally have the following rights in a court martial; the right to defend themselves in person or by a counsel of their choice.<sup>30</sup> Where they cannot afford a

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<sup>27</sup> Ibid. Section 470.

<sup>28</sup> Section 36 Constitution of the Federal Republic of Nigeria

<sup>29</sup> Rule 25 (d) Rules of Procedure Army, 1972.

<sup>30</sup> Section 36 (6) (c) CFRN 1999.

counsel, the military will provide them one.<sup>31</sup> Right to object to any member of the court martial or a waiting member before they are sworn in.<sup>32</sup> Right to the presumption of innocence.<sup>33</sup> Right to examine in person or by their legal practitioners, the witnesses called by the prosecution.<sup>34</sup> Right to an interpreter if they cannot understand the language used at the trial of the offence.<sup>35</sup> They also have the right to the record of proceedings of the trial at the conclusion of the trial<sup>36</sup> and right to be tried for an offence once,<sup>37</sup> right not to be tried for an offence that has been condoned<sup>38</sup> and right not to be tried for an offence not defined and the penalty not prescribed in a written law.<sup>39</sup> The rules of evidence observed in civil courts are the same rules observed in a court martial. AFA provides that "...the rules as to evidence to be observed in proceedings before a court-martial shall be the same as those observed in criminal courts in Nigeria..." The same Evidence Act 2011, used in civil courts is used in courts martial. In order to adequately ensure that while fighting to ensure national security that human rights are protected, the Constitution and other laws in the country have adequately provided for both.

## **PRACTICAL SITUATIONS OF INTERACTION BETWEEN HUMAN RIGHTS AND NATIONAL SECURITY IN NIGERIA**

The essence of the laws as enunciated above is to guide human activities and in this context, to ensure a balanced interaction between human rights which is a part of rule of law and national security which ensures that even the lawyers are secured. It will not be right to claim that Nigeria has been perfect in executing the provisions of the law especially with regard to human rights while working to ensure national security. The Nigerian Government has been accused of disobedience to court orders in some instances, like the cases of the former national security adviser, Col Sambo Dasuki (Rtd) and Sheik Ibrahim El Zakzaky granted bail while in detention in some occasions but were not released. Col Dasuki was standing trial for an allegation of diverting \$2.1 billion arms funds while serving as National Security Adviser while Elzakzaky was tried for alleged culpable homicide, unlawful assembly and disruption of public peace among others. Two of them have however been released. While Col Dasuki was released on 24 December 2019 in obedience to one of the many court orders after about four years in detention, Elzakzaky was discharged and acquitted by the Kaduna State High Court in Nigeria on 28 July 2021 after about four years in detention as well. The two cases bordered on the interaction between human rights and national security

On 26 August 2018, the Nigerian President while declaring open the 2018 Annual General Conference of the Nigerian Bar Association in Abuja, Nigeria, the Nigerian President made a statement that bordered on this topic. He said that: "Rule of Law must be subject to the supremacy of the nation's security and national interest. Our apex court has had cause to adopt

<sup>31</sup> Rule 25 (b) Rules of Procedure Army, 1972.

<sup>32</sup> Section 137 AFA LFN 2004.

<sup>33</sup> Section 36 (5) CFRN 1999.

<sup>34</sup> Ibid. Section 36 (6) (d).

<sup>35</sup> Ibid. Section 36 (6) (e).

<sup>36</sup> Ibid. Section 36 (7).

<sup>37</sup> Section 36 (9) CFRN 1999, Section 171 (1) (a) and (b) AFA CAP A20 LFN 2004.

<sup>38</sup> Section 171 (c) AFA CAP A20 LFN 2004. See also *Aminun Kano v The Nigerian Army* (2010) 1 MJSC Pt 1, 151.

<sup>39</sup> Section 36 (12) CFRN 1999 as amended.

a position on this issue in this regard and it is now a matter of judicial recognition that; where national security and public interest are threatened or there is a likelihood of their being threatened, the individual rights of those allegedly responsible must take second place, in favour of the greater good of society”<sup>40</sup> This statement brought about so many comments in the country, from those for and against the position of the President.

The statement of the President was culled from the case of *Dokubo-Asari v Federal Republic of Nigeria*<sup>41</sup> decided by the Supreme Court on 8 June 2007. Dokubo-Asari, the appellant was tried on five-count charges of conspiracy to commit treasonable felony, forming, managing and assisting in the management of unlawful societies, publishing a statement, rumour or report likely to cause fear and false alarm to the public and membership of unlawful societies.<sup>42</sup> The trial court refused him bail based on the weight of the charges. He appealed to the Court of Appeal which equally dismissed his appeal which made him to appeal to the Supreme Court. In its judgment, the Supreme Court held as follows;

*The pronouncement by the court below (Court of Appeal) is that where National Security is threatened or there is the likelihood of it being threatened, human rights or the individual rights of those responsible take second place. Human rights or individual rights must be suspended until the national security can be protected. This is not anything new. The corporate existence of Nigeria as a united, harmonious, indivisible and indissoluble sovereign nation, is clearly greater than any citizen's liberty or right. Once the security of the nation is in jeopardy and it survives in pieces rather than in peace, the individual's liberty or right may not even exist.*<sup>43</sup>

The President rightly quoted the law as stipulated by the Supreme Court of Nigeria in that particular case. The Supreme Court acted in line with the CFRN wherein it provided for derogation of some rights based on the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of other persons.<sup>44</sup> It is the court that made this decision and it is the courts that should make decisions as to whether a suspect or an accused should be granted bail or not. That is the difference. It is not the President as a person or the Attorney General of the Federation as an individual that should assess a situation and come up with the idea that such a suspect or an accused person should not be granted bail. That will not be within the ambit of rule of law which is supreme. Even the same court may decide differently in another case if the facts are not in all fours. It is the duty of Nigerian courts which remain the custodians of Nigerian laws and which must always be obeyed. Though the CFRN 1999 authorises the Attorney General of the Federation or those of States (in states) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court martial in respect of any offence created by law, to take over and continue at any stage before judgment or to discontinue at any stage

<sup>40</sup> [punchng.com/president-buharis-speech-at-2018-nba-annual-general-conference](https://punchng.com/president-buharis-speech-at-2018-nba-annual-general-conference) assessed on 15 November 2021.

<sup>41</sup> (2007) Law Pavilion Electronic Law Report (LPELR) – 958 (Supreme Court).

<sup>42</sup> Ibid. p.iii.

<sup>43</sup> Ibid.p.38 para B-E.

<sup>44</sup> Section 45 Constitution of the Federal Republic of Nigeria 1999 (as amended).



before judgment,<sup>45</sup> he still performs those functions through the instrumentality of the court and when the court decides that a detainee or an accused person should be granted bail, the only way to continue detaining such a person is if the decision not to grant bail is appealed and if the appellate court refuses to grant bail. The reason for strictly following the rule of law is to avoid impunity wherein an individual determines how long a person should remain in detention without recourse to the courts.

## CONCLUSION

The work brought out the interaction between human rights and national security in Nigeria, using the provisions of the CFRN 1999 (as amended), the Terrorism Prevention Amendment Act 2013 and the Armed Forces Act CAP A20 Laws of the Federation of Nigeria 2004 among others. All the Acts made provisions for the respect of human rights and equally for the protection of National Security. Like the tongue and the teeth, human rights are meant to co-exist with national security. It is the law that created the nation that equally created human rights. The paper found that the legal provision for the protection of human rights in Nigeria and for ensuring National Security is adequate. However, the implementation cannot be said to be perfect hence the paper recommends that human rights should be respected in all situations except where the law allows for the derogation of those rights and the courts should be the ones to determine when there should be those derogations and not to be left in the hands of individual appointment holders. This is to avoid impunity and absolute power which corrupts absolutely.

## REFERENCES

1. Armed Forces Act, CAP A20 Laws of the Federation of Nigeria 2004.
2. Constitution of the Federal Republic of Nigeria 1999 as amended.
3. Evidence Act 2011.
4. Fundamental Rights Enforcement Procedure Rules 2009.
5. Rules of Procedure Army (1972).

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<sup>45</sup>Sections 174 and 211 Constitution of the Federal Republic of Nigeria 1999 (as amended).