

CHALLENGES OF ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS VIS A VIS UPHOLDING NATIONAL SECURITY: THE PERSPECTIVE OF THE STATE SECURITY SERVICE

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Abstract

From the inception of declaration of Universal Human Rights in 1948 by the UN several States' constitutions have continued to embody human rights within it. These basic rights inure naturally in man and their derogation will disrupt peace and affect society's equilibrium. The state will not pursue human rights at the expense of state's security or either way. However there have been instances where national security is projected by governments as its main priority. Where national security has been made a priority, several legislations aimed at derogating certain human rights are usually enacted. Constitution having placed certain limitations on human rights makes it not to be at odds with national security matters. This paper *appraises* national security vis-a-vis human rights enforcement under the 1999 Constitution of Nigeria. The work employs doctrinal research methodology. The work found that despite the limitation on enforcement of human rights in certain circumstances by the constitution the state actors still delight in extra subjugation of these rights in pretensions of national security enforcement. It is recommended that further and continual subjugation of human rights beyond the limitations of the constitution is an exertion that will suddenly burst the bubbles in human rights matters and disrupt societal equilibrium.

Keywords: Fundamental Human Rights, Enforcement, National Security, State Security Service

1.0 Introduction

Human Rights are inalienable rights of human beings. These rights provide freedoms, immunities and benefits that according to modern values, all human beings should be able to claim as a matter of right in the society in which they live.¹ On the other hand, Security basically refers to, "the state of being secure especially from attack."² National Security can therefore be said to be the "state of a nation being secure, especially from danger or attack. The national security of a nation is of vital interest to her survival to such an extent that without national security, there can hardly be the nation itself."³ National security as a concern of the government occupies the highest level of priority in the hierarchy of interests in state affairs, to ensure that the country is stable and safe for her citizens.

In developing countries like Nigeria there seem to be inherent tension between the promotion and enforcement of human rights and protection of national security. This tension is largely assumed by the government and policymakers. Almost without an exception, each administration has treated the two goals as mutually exclusive; i.e., to promote human rights at the expense of national security or to protect national security while overlooking human rights. In the latter they tend to define and conceptualize national security in highly militarized terms by emphasizing the Nation's armed forces and security agencies.

At the international level, Nigeria as a sovereignty is a recognized member of the Comity of Nations and a regular signatory to several International Treaties including Human Rights Treaties. Although Nigeria has been active in signing and ratifying the various international human rights treaties over the years, Nigerian citizens have encountered challenges in the course of an attempt to

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¹B.A. Garner, *Blacks Law Dictionary*, (Thomas Reuters) 9th Edition, 2004, p.809; *Ransome Kuti & Ors vs AG Federation & Ors* (1985) NWLR (Pt.6)211

²*Ibid*; p.1476

³E. O. Ugwu, The Interaction between Human Rights and National Security in Nigeria (November 22, 2021). *Global Journal of Politics and Law Research*2021, Vol.9, No.7, pp.61-69, Available at SSRN: <<https://ssrn.com/abstract=3968739>>accessed on 6th June, 2024.

enforce any of the international treaties. (you can cite the case of Gani v FRN in enforcement of HR under African charter) the challenges stems from the fact that content of such treaties already exists in our law.⁴ While the Nigeria constitution protects civil and political rights, some international treaties, for instance the African Charter on Human and Peoples Rights expanded the scope of the rights to include cultural, socio-economic and group rights. It has been aid that since the birth of human right movements in the mid to late twentieth century, the promotion of human rights according has been seen as competing with or even compromising core issues of national security.⁵ In Burke-White's, opinion, promoting human rights have long been viewed as a luxury to be pursued when the government has spare capacity and national security is not being jeopardized.⁶ Human rights are inalienable rights of human beings that live in a particular nation and national security of such nation is the means of ensuring that the nation is protected from danger or any form of attack.

The problem of insecurity in Nigeria is widespread and has continued to spread like wide fire. The idea of adopting restrictive measures in case of threats to national security - as one of the core values which States cherish as non-negotiable and that do not admit compromises⁷ - is an essential component of the legal system both at international and domestic level, and one of those adjustment variables that allow human rights to accommodate and ascertain its social functions. The government and security agencies have often used '*national security*' as a pretext to violate human rights and fundamental freedoms to monitor and deny political opponents their certain privileges,⁸ conceal embarrassing or illegal behaviour, bypass investigations by independent and democratic bodies or to suppress political and social unrest.

Security has been defined conceptualizing the modern society thus: Security is not military force though it may involve it, security is not traditional military activity though it may encompass it, security is not military hardware though it may include it, security is development and without development, there can be no security."⁹ Reflecting on the concept of security as stated herein it is without a doubt that the country's security challenges are obviously enormous and very disturbing. However the fundamental question remains whether Nigerias convoluted security challenges will limit human rights values enshrined in our constitution?

2.0 Fundamental Human Rights Enshrined in Nigerian Constitution

Fundamental Human Rights as enshrined in Constitution of Federal Republic of Nigeria 1999 are inalienable rights of every person or individual regardless of race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.¹⁰ It is a right derived from fundamental law. They remain the basic moral guarantees that people in all countries and cultures allegedly have, simply because they are humans. Thus, for this sole reason such rights are clearly written in the constitution of nations. Fundamental right has been said to be a right that has its origins in a country's constitution or that is necessarily implied from the terms of that constitution. (We are not aware of who said and the author has to be acknowledged) In Nigeria these rights are protected as sacred by the 1999 Constitution of the Federal Republic of Nigeria, based on the legal and political traditions of the country.¹¹ Before considering these rights as enshrined in the 1999 Constitution (as

⁴Chapter IV of Constitution of Nigeria 1999 as amended. The Supreme Court often resolves such conflicts in favour of the Constitution (supply case law authority) thus, restricting the expansion of potential human rights.

⁵Burke-White, William W., "Human Rights and National Security: The Strategic Correlation" (2004). All Faculty Scholarship. 960. <https://scholarship.law.upenn.edu/faculty_scholarship/960>accessed on 6th June, 2024, p.251.

⁶*Ibid*; p.252.

⁷IA Badmus, Nigerian National (In)Security: The Threat Analysis, Peace Research (Vol.37) No.1 (May2005) p. 87-88 <<https://www.jstor.org/stable/24469683>> accessed 9th June, 2024.

⁸*Awolowo & Ors v Federal Minister of Internal Affairs & Anor*(1966) All NLR 178; (1966) NSCC 208.

⁹RS McNamara, *The Essence of Security: Reflections in Office*, (London: Harper and Row) 1968. Include the page of the quotation

¹⁰Punch Editorial Board, 'Fundamental Rights remain elusive in Nigeria,' *Punch Newspaper*, 13th December, 2023.

¹¹A. Yusuf, Issues in Fundamental Human Rights- Department of Arts and Social Sciences Education, University of Ilorin, Ilorin,

amended), it will be apposite to first highlight some of the definitions ascribed to fundamental human rights in case laws.

Kayode Eso JSC¹² in *Ransome Kuti v AG Federation*,¹³ observed that a fundamental right is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. Ideally, they form the cornerstone of any democratic society by safe-guarding the freedom of citizens. These fundamental rights cannot be waived by the State or by any person whereby the right is not for his sole benefit but in the control of the State or the courts, and it is rightly pointed out that these rights have a changing content or growing content and new rights are constantly being interpreted into old ones and some formerly thought to be unimportant are being elevated to new heights.¹⁴ Check the quotation properly to ensure you do not paraphrase. In the same vein the Court of Appeal following the definition of Eso JSC, per Orji-Abadua JCA, in *Hassan v EFCC*,¹⁵ defined fundamental human rights as a right which stands above the ordinary laws of the land and which are in fact antecedent to the political society itself and as such it remains the primary condition to civilized existence. These rights pertain to life¹⁶, dignity of the human person¹⁷, personal liberty¹⁸, fair hearing¹⁹, private and family life²⁰, freedom of thought, conscience and religion²¹, freedom of expression and the press²², peaceful assembly and freedom of association²³, freedom of movement²⁴, freedom from discrimination²⁵, freedom to own acquire and own immovable property anywhere in Nigeria²⁶. We shall briefly examine these fundamental human rights enshrined in the 1999 Constitution.

2.1 A Brief Appraisal on the Key Fundamental Human Rights.

We will briefly examine the basic fundamental human rights as enshrined not just in the 1999 Nigerian Constitution, but in various national constitutions, as well as regional and international human rights instruments. Nevertheless, the focus shall remain on the Nigerian aspect.

2.1.1 Right to Life

The right to life makes it unlawful to intentionally deprive a person of his life. Section 33²⁷ provides that “every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty.”²⁸ From the above quotation, it can be seen that death penalty is enshrined in the Nigerian Constitution only when a suspect is found guilty of a criminal offence by a court of competent

Nigeria;<[https://kwcoeilorin.edu.ng/publications/staff_publications/abdulraheem_yusuf/ISSUES %20IN %20FUNDAMENTAL %20HUMAN %20RIGHTS.pdf](https://kwcoeilorin.edu.ng/publications/staff_publications/abdulraheem_yusuf/ISSUES_%20IN_%20FUNDAMENTAL_%20HUMAN_%20RIGHTS.pdf)> accessed on 8th June, 2024.

¹² Justice Kayode Eso is a former Justice of the Supreme Court of Nigeria.

¹³(1985) 2NWLR complete the citation or use another citation

¹⁴Z. O. Lawal, ‘Synopsis on Enforcement of Fundamental Human Rights Under the Nigerian Constitution,<<https://www.aachambers.com/articles/an-analysis-on-the-enforcement-of-fundamental-human-rights-under-the-nigeria-constitution/>> accessed on 8th June. 2024.

¹⁵(2014) NWLR (Pt.1389) p.607 at 610.

¹⁶Chapter IV, CFRN 1999 (as amended), s.33

¹⁷*Ibid*, s.34

¹⁸*Ibid*, s.35

¹⁹*Ibid*, s.36

²⁰*Ibid*, s.37

²¹*Ibid*, s.38

²²*Ibid*, s.39

²³*Ibid*, s.40

²⁴*Ibid*, s.41

²⁵*Ibid*, s.42

²⁶*Ibid*, s.43

²⁷ CFRN 1999

²⁸ *Ibid*

jurisdiction.²⁹ However, a person who deprives another person of his life in an act of defending a third party from harm or property is not deemed to have intentionally killed or deprived that person of his life.³⁰

2.1.2 Right to Dignity of the Human Person (Recheck the section)

The right to dignity of the human person provision forbids all manner of inhuman treatment. Inhuman treatment has been defined as any act which deliberately causes suffering not amounting to torture such as withholding medical treatment, cramping in overcrowded and squalid prisons or destruction of homes and personal properties (who is the author of this definition?). Section 34³¹ highlighted this right thus: Every individual is entitled to respect for the dignity of his person, and accordingly – (a) no person shall be subjected to torture or to inhuman or degrading treatment; (b) no person shall be held in slavery or servitude; and (c) no person shall be required to perform forced or compulsory labour. Moreover, the Court of Appeal in *Uzoukwu v Ezeonu*³² added, “any barbarous or cruel act or acting without feeling for the suffering of the other is a violation of the dignity of person.

2.1.3 Personal Liberty

The provision under s.35³³ states that “Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty...”, except ...³⁴ The meaning of personal liberty was construed by the court in *Adewole v Jakande*³⁵ to mean privileges, immunities, or rights enjoyed by prescription or grants. It denotes not merely freedom from bodily or physical restraints,³⁶ but rights to contact, to have an occupation, to acquire knowledge, to marry, have a home, children, to worship, enjoy and have privileges recognized by law for happiness of free men.³⁷ The section further provides ancillary rights with limitations.³⁸ Thus, a person arrested or detained has the right to remain silent and not answer questions unless duly represented by a legal representative of his own choice.³⁹ The person shall be informed in writing within twenty-four hours and in the language he understands of the facts and grounds of his arrest.⁴⁰ Such a person reserves the right to compensation and demand for public apology if unlawfully detained.⁴¹ However, the above section does not invalidate any law concerning members of the armed forces or the police,⁴² as long as such person is found guilty of an offence punishable by such detention.

2.1.4 Right to Fair Hearing

The right to fair hearing is also about equality of persons before the law, and the concept of being innocent until proven guilty.⁴³ The position of the law as enshrined in the constitution under section

²⁹ J.M Maikomo, N.S Gambo, “Fundamental Human Rights,” A Publication of the Department of Political Science and International Relations & Department of Peace Studies and Conflict Resolution, <https://www.researchgate.net/publication/369762562_Fundamental_Human_Rights> accessed on 8th June 2024.

³⁰*Ibid*, s.33(2)

³¹ CFRN 1999

³² (1991) NWLR (Pt. 200) 708 CA.

³³ CFRN 1999

³⁴*Ibid*, s.35(1) (a-f)

³⁵Y. Olomjobi, “Right to Personal Liberty in Nigeria,” citing *Adewole v Jakande*(1981)1 NCLR 262, 278(H.C of Lagos State)<https://www.researchgate.net/publication/369762562_Fundamental_Human_Rights> accessed 9th June, 2024.

³⁶O.N Ogbu, “*Human Rights Law and Practice in Nigeria. Volume 1*” (Snaap Press Ltd) 2d ed. 2013.

³⁷Y. Olomjobi; *Op cit*, p.8

³⁸ CFRN 1999, s.35 (2)(3)(4)(5)(6)(7)

³⁹*Ibid*, s.35(2); *Awolowo v Minister of Internal Affairs* (supra), on his limitations.

⁴⁰*Ibid*, s.35(3)

⁴¹*Ibid*, s.35(6)

⁴²*Ibid*, s.35(7)

⁴³*Ibid*, s.36(5); *Alaya v The State* (2007)16 NWLR (Pt.1061) 487.

36(1) is thus: In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. The following constitute the major features of the right to fair hearing under the constitution: (a) equal access to, and equality before the courts;⁴⁴ (b) the right to an interpreter and legal representation of his choice;⁴⁵ (c) the right to obtain copies of records of all proceedings of the court or tribunal;⁴⁶ (d) the right to a hearing within a reasonable time;⁴⁷ (e) the right not to be tried again for the same offence;⁴⁸ (f) the conviction and punishment for the criminal offence shall not be retroactive;⁴⁹ and (g) the right of the accused not to give evidence at the trial.⁵⁰

2.1.5 Right to Private and Family Life.

Section 37⁵¹ provides for the protection of right to privacy of citizens, their homes, correspondence, telephone communications and telegraphic communications is guaranteed and protected. This fundamental right is another important human right that reinforces the values of human dignity, freedom, equality, and respect. It further extends to privacy of emails, text messages, and to an extent, personal information sent via the internet.⁵²

2.1.6 Right to Freedom of Thought, Conscience and Religion

This is an all important aspect of human rights as it deals with the freedom to think independently, have a free conscience, and the choice of religion that edifies the human spirit, soul and mind.⁵³ It is also inalienable and one of the oldest and most controversial rights in traditional and contemporary international system.⁵⁴ Section 38⁵⁵ provides that every person shall be entitled to freedom of thought, conscience and religion including freedom to change his religion or belief, and freedom (either alone or in community with others and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.⁵⁶

2.1.7 Right to Freedom of Expression and the Press

The right to have and express an opinion is a fundamental human right on every person resident in Nigeria notwithstanding the fact such person may not be a citizen of Nigeria. It is therefore necessary to allow for dissecting opinions (check the quotation to ensure it tallies with what is in the paper) in every society. Section 39⁵⁷ outlined this freedom thus: (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. (2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish, and operate any medium for the dissemination of

⁴⁴*Ibid*, s.36(2); *Sani v The State* (2018) All FWLR (Pt. 950) 1622 at 1665.

⁴⁵*Ibid*, s.36(6); *Iwuoha v Okorioke* (1996)2 NWLR (Pt.429) 234; also, *Guinness (Nig) Plc v Ufor* (2008)2 NWLR (Pt.1112) 12.

⁴⁶*Ibid*, s.36(7)

⁴⁷*Ibid*, s.36(3) &(4)

⁴⁸*Ibid*, s.36(8)

⁴⁹*Ibid*, s.36(9)

⁵⁰*Ibid*, s.36(11)

⁵¹CFRN 1999

⁵² CI Okafor; RI Nwangeneh, "Fundamental Human Rights in Nigeria," Chapter 14, under "Fundamentals of the Nigerian Legal System," (Eunique Press) Revised Edition, 2022. Page 237.

⁵³ J.M Maikomo, N.S Gambo, *Op cit*.

⁵⁴*Ibid*.

⁵⁵ CFRN 1999, S.38 (1)

⁵⁶*Ibid*, s.38(2)

⁵⁷ CFRN 1999

information, ideas and opinions.⁵⁸ The press, which is generally referred to as the ‘Fourth Estate’ serves as check on political leaders, as well as framing of political, economic and socio-cultural issues in societies.⁵⁹

2.1.8 Right to Peaceful Assembly and Association

The court in *Abubakar v A.G Federation*⁶⁰ described freedom of assembly as the bone of any democratic form of government. Indeed, these democratic governments have enshrined the right to free speech, movement, peaceful assembly and association in order to actualize individual and group interest. Section 40⁶¹ states that “every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.” However, assembly of persons must be peaceful and seen to be peaceful. Free people are allowed to create and join civil rights movements, pressure groups, professional unions, and labour unions in order to press forward their interests, most often, before the government. This precludes the drafting of a person into an association or union against his will, even though such is backed by operation of law.⁶²

2.1.9 The Right to Freedom of Movement

The right to move freely from one place to another for either to search for economic opportunities or for pleasure is very fundamental because it is part of the right to personal liberty. The provision under s.41⁶³ states that “every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.” Whereas, in reading this provision together with s.35⁶⁴, not only guarantees the right to move freely, it also guarantees the right to reside in any part of one’s choice and guarantees the right of entry and exit from Nigeria.⁶⁵ However, this provision is subject to restrictions to the extent that it shall not invalidate any law made that will be reasonably justifiable in any democratic society.⁶⁶

2.1.10 Right to Freedom from Discrimination

There is a universal consensus on the dignity and equality of the human being, and the need to respect everyone.⁶⁷ Thus, no one should be discriminated against because of their territories, race, gender, culture, colour, religion, philosophy, or even physical features. Section 42⁶⁸ states that: A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person – (a) be subject either expressly by, or in practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion, or political opinions are not made subject; or (b) be accorded expressly by, or in practical application of, any law in force in Nigeria, or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinions. In spite of

⁵⁸ This right is not absolute and such provisions are thus subject to Government regulations. *Ukegbu v N.B.C* (2007)4 NWLR (Pt.1055)551

⁵⁹J.M Maikomo, N.S Gambo,*ibid*.

⁶⁰(2007)3 NWLR (Pt. 1022) 601

⁶¹ Ibid CFRN 1999

⁶²*James v Okereke* (2008)13 NWLR (Pt. 1105) 552

⁶³ CFRN 1999

⁶⁴*ibid*.

⁶⁵ C.I Okafor; R.I Nwangenah; *Op cit*, p.239

⁶⁶ CFRN 1999, s.41 (2)

⁶⁷J.M Maikomo, N.S Gambo; *Op cit*

⁶⁸CFRN 1999

this, in some communities, even to this day, people are still subjected to some form of discrimination or the other based on their sex or ethnicity. The provision further provides for discrimination against persons by reason of birth.⁶⁹

2.1.11 Right to Acquire and Own Immovable Property

The right to acquire and own immovable property applies to citizens of Nigeria only. The right to ownership of property is very crucial because it is an economic endeavour that allows an individual or group of individuals to acquire landed properties as assets. It thus provides under s.43⁷⁰ that, “subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.”⁷¹ Section 44(1) further provides that no movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, (among other things) (a) requires the prompt payment of compensation therefore; and (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.” The section further vests the entire property in and control of all minerals, mineral oils and natural gas in, under or upon the land in Nigeria or its territorial waters or exclusive economic zone upon the Federal Government.⁷²

3.0 National Security in Nigeria: Concept and Overview

The term “National Security” has been construed in different ways, each of which emphasizes vital factors underlying ideals.⁷³ It is conceived that the concept of security has been traditionally perceived or associated with the whole gamut of processes defined in terms of the capacity of the coercive apparatus of the State to uphold sovereignty, define territorial integrity, ensure stability and peace as well as pursue armed conflict.⁷⁴ National Security can be described as the state of being secure or free from any danger – whether imminent or remote, and risks. Scholars have lent their thoughts and feelings, capturing their experience on the meaning of National Security. National Security has been said to be the condition of a nation or country as a whole, not being threatened especially physically, psychologically, emotionally or financially. Thus, anything which threatens the physical well-being of the population or jeopardizes the stability of the nation’s economy or institutions is considered a national security threat.⁷⁵ It has further been described as the sum total of the vital interest of the State, and a vital interest is one of which a nation is willing to resort to force or war either immediately or ultimately.⁷⁶ The author maintains that the concept of national security will vary from State to State in direct proportion to their individual willingness to risk either conflict or war at any given time to safeguard its national values.⁷⁷

⁶⁹CFRN 1999, s. 42(2); *Mojekwu v Mojekwu* (1997)7 NWLR (Pt. 512) 283; Also, *Adewole v Jakande (supra)*,

⁷⁰*Ibid.*

⁷¹*Timothy v Oforka* (2008)8 NWLR (Pt. 1091) 204.

⁷²CFRN 1999, s.44(3)

⁷³J. I Ebeh, “National Security and National Development: A Critique,” *International Journal of Arts and Humanities (IJAH)* Bahir Dar-Ethiopia, Vol.4(2) S/No. 14, April 2015, pgs. 1-14 >ajol-file-journals_511_articles_118887_submission_proof_118887-6037-328395-1-10-20150701.pdf> accessed on 11th June, 2024.

⁷⁴A.E Orhero, “Human Security: The Key to Enduring National Security in Nigeria,” Department of Political Science, Faculty of Social Sciences, Delta State University, Abraka <https://www.jopaf.com/uploads/issue17/HUMAN_SECURITY_THE_KEY_TO_ENDURING_NATIONAL_SECURITY_IN_NIGERIA.pdf> accessed on 11th June< 2024.

⁷⁵C.I Okafor, “National Security in Nigeria: A Legal Perspective,” *Idemili Bar Journal* (Vol.3 2023), p. 17.

⁷⁶Z.B Peterside, “The Impact of Proliferation of Small Arms and Light Weapons on the Quest for National Security in Nigeria,” *Saudi Journal of Humanities & Social Sciences*, Vol 3(7), 2018, pgs. 852-860.

⁷⁷*Ibid.*

Threat challenges a nation's power and disrupts its well-being, hence the call for national security to help put up safeguards against such threats.⁷⁸ At different times, national security has been seen as the protection or national survival or capacity for self-defense both in the acquisition of military weapons and the recruitment and deployment of military personnel. National security has thus been expanded to include the pursuit of international trade, economic concerns or health priorities aimed at sustaining the continuity and survival of a nation. In Nigeria, the institution primarily tasked with this responsibility is the Office of the National Security Adviser (ONSA), established by the National Security Agency Act,⁷⁹ whose essential mandate consists of intelligence gathering, processing and dissemination towards warding of threats to the well-being of the nation.⁸⁰

It should be pointed out that the NSA Act established three principal agencies: the Department of Intelligence Agency (DIA), the National Intelligence Agency (NIA), and the State Security Services⁸¹(SSS) (Is it still SSS or DSS?). The Act also mandates the ONSA to ensure the formulation and implementation of a comprehensive counter-terrorism strategy and build capacity for the effective discharge of the functions of relevant security, intelligence, law enforcement and military services.⁸²

Nigeria, regrettably has in recent times recorded unprecedented challenges, the foremost being insecurity which have constantly threatened the stability of the country. Since the advent of the present democratic dispensation in the country, while democratic norms are taking root, the nation's security outlook remains precarious in the face of diverse threats such as Militant Islamic Groups (Boko Haram & ISWAP), herdsmen clashes with local farmers, banditry, kidnapping for ransoms pervading throughout the country, cultism and ritual killings etc.⁸³ The rise of these groups has had significant influence on the numbers of ethnic-religious conflicts the country has witnessed. It is indeed of consequence that the ability of the Nigerian government to perform her primary role is in itself the guarantee of her existence; whereas failure of the government to perform this role equals to failure of government existence; again, failure of government existence equals to failure to the continued existence of the nation. Such has been the argument.⁸⁴

It must be emphasized that national security involves a situation where either an individual, social group or geopolitical entity is protected against any form of attack, whether internally or externally. The nation's most basic fundamental value must be its survival, self-preservation and self-perpetuation. It is maintained that the major factors which easily undermine the security of any nation are injustice and corruption.⁸⁵ These elements may manifest outright in the actions or inactions of the government, in their relationship with the governed and they have great capacity to generate devastating ripple effects.⁸⁶

4.0 Fundamental Human Rights Limitations by National Security: Department of State Services (DSS) Experience.

Not all the rights provided under the constitution are absolute. In other words, it is safe to say that rights are inconceivable without limitations. Under the same constitution, there are legislative derogation of fundamental rights on grounds of National security. This is provided for in s.45(1) and

⁷⁸ C.I Okafor; *Op cit*, pg. 17

⁷⁹CAP N74, Laws of the Federation of Nigeria 2010.

⁸⁰National Security Agency Act (hereinafter referred to as NSA Act) s. 2.

⁸¹ Presently the Department of State Services (DSS).

⁸² NSA Act, *ibid*.

⁸³ Brig. Gen S. Bala, E. Quedraogo, "National Security Strategy Development (Nigeria Case Study). A Working Paper, July, 2018<<https://africacenter.org/wp-content/uploads/2019/04/2019-04-NSSD-Case-Study-Nigeria-EN.pdf>> accessed 12th July, 2024.

⁸⁴*ibid*, p.179

⁸⁵T. B Mofolorunsho *et al*, "Challenges of National Security in Nigeria," International Journal of Research and Innovation in Social Science (IJRISS) |Volume III, Issue VII, July 2019 |ISSN 2454-6186<www.rsisinternational.org/> accessed on 12th June, 2024.

⁸⁶*ibid*, p.5

(2).⁸⁷ Under the section, the following rights could suffer derogation: Right to life, Right to personal liberty, Right to private and family life, Right to freedom of thought, conscience and religion, Right to freedom of expression and the press, Right to peaceful assembly and association, and Right to freedom of movement.⁸⁸ The provisions concerning right to life and right to personal liberty, could however only suffer derogation upon declaration of emergency in fulfillment of section 305⁸⁹. Derogation of sections 37 to 41 under section 45 (1) provides states:

"Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons".

Therefore, the plain interpretation of the above section is that rights may be derogated by law that is reasonably justifiable in a democratic society for the interest of defense, public safety, public order, morality, public health, or for the purpose of protecting the rights of other persons.⁹⁰

The Department of State Services (DSS) is one of the internal security forces in Nigeria created as the Nigerian Security Organization (NSO) during the military regime. The historical account was that the organization was split into three agencies,⁹¹ each with its own mandate. The Department of State Services⁹² which reports to the National Security Adviser in the Office of the President is responsible for counter intelligence, internal security,⁹³ counter-terrorism and surveillance, as well as protection of senior government officials.

In a majority of cases, where the DSS had in the past exercised its powers to protect state security, Nigerian courts have held that their power to offer redress is limited.⁹⁴ Realistically, the courts in not only acknowledging the constitutional rights of persons, for instance, the right to practice his religion but goes further to caution such right cannot be allowed to be practice in such a way that would disturb the peace of others.⁹⁵ The courts further advanced two arguments to support their position; the first is that they cannot intervene in cases of proper exercise of security powers because the issues calling for consideration of the exercise of the powers are political, hence, non-justiciable. Second, the facts giving rise to the exercise of security powers are generally hidden from the public and it is not in the national interest that they be disclosed.⁹⁶ It can be recounted on February, 2024, where the agency released a statement directing the organized labour in Nigeria to desist from holding its slated rally for 27th and 28th February on grounds that the action would disrupt peace and public order. Somewhat interestingly, the DSS acknowledged it recognized protest as the legitimate

⁸⁷ *Ibid* CFRN

⁸⁸ *Olisa Agbakoba v Director SSS* (1994)6 NWLR (Pt.351) p.475. "Court dismisses Emeziele's Ally Human Rights Suit against DSS," <<https://punchng.com/court-dismisses-emezieles-ally-human-rights-suit-against-dss/>>accessed on 14th June, 2024.

⁸⁹ CFRN 1999, s.305(3).

⁹⁰ E.A Taiwo, "Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A Need for Liberal Provisions." *African Human Rights Journal*, p. 573<<https://scielo.org.za/pdf/ahrli/v9n2/09.pdf>> accessed on 15th June, 2024.

⁹¹The Defence Intelligence Agency (DIA), the National Intelligence Agency (NIA) and the State Security Service (SSS). The latter now known as the Department of State Services (DSS).

⁹²Hereinafter referred to as the Agency or acronymically DSS.

⁹³A further appraisal of the task includes the detecting and preventing within Nigeria any crime against the internal security of Nigeria and the protection and preservation of non-military classified matters concerning the internal security of Nigeria.

⁹⁴B. Ugochukwu, "The State Security Service and Human Rights in Nigeria," *Third World Legal Studies Vol. 14, The Governance of Internal Security Forces in Sub-Saharan Africa-Article 15, 1997*, <<https://core.ac.uk/download/pdf/303859358.pdf>> p. 81. accessed on 15th June, 2024.

⁹⁵ Department of State Services: Media Center, "Court Dismisses Nnamdi Kanu's Fundamental Rights suit against the DSS," (A Publication), 4th June, 2022,<https://www.dss.gov.ng/dss_more?id=1P4uH1Qfulistdufru7BsQ==> accessed on 15th June, 2024.

⁹⁶B. Ugochukwu; *Op cit*, p.81

right of Nigeria Labour Unions, but nevertheless, maintained that it was important to prevent a situation where some hostile forces would use the protest to destabilize the peace of the nation.⁹⁷

5.0 Conclusion.

Nigeria, like most countries, will forever continue to fight for the protection of its national security against internal or external aggressors. Some arguments have persisted as to which of the two; fundamental rights and national security, has priority over the other. We have earlier provided an answer to this question, by highlighting what should be the primary purpose of the state. In our opinion, the primary purpose of the state is the well-being of its citizens and this includes both security, sociopolitical and economic welfare. This has been constitutionally provided to mean the promotion of the security and welfare of citizens.⁹⁸ In Nigeria, the DSS exercises most of the powers available to the police: arrest, search, detention, interrogation, and the scope of their activities cover all plans, acts and schemes that threaten the security of the State. The fluidity of the term “State Security” has however become what an author described as “*catchall*” making every act or dissension of the political opposition a security issue.⁹⁹

In other circumstances against natural and environmental disasters like floods, earthquakes, health epidemics, poverty, etc., under the constitution of the Federal Republic of Nigeria 1999 as amended, these circumstances could again, permit the government to invoke the mantra of national security to derogate human rights. Invoking this mantra is however not enough. It must be statutorily provided for in accordance with the Constitution and strictly for the purpose of combating the identified threat to national security. Furthermore, s.14(1) (b) provides that the security and welfare of the people shall be the primary purpose of government.¹⁰⁰ This provision is made under Chapter II of the CFRN 1999 as amended, which chapter incorporates the Fundamental Objectives and Directive Principles of State Policy. Despite this appellation of “Fundamental Objectives”, they have been consistently adjudged as non-justiciable while adjudging Chapter IV which provides for Fundamental Rights justiciable. However this dichotomy is flawed because the security and welfare of citizens can only be demonstrated by the achievement of the provisions and protections guaranteed by Chapter IV: the so-called justiciable rights. This is perhaps why in certain jurisdictions, for instance India, it has been held that fulfillment of civil and political rights without fulfillment of social and economic rights is deficient.

The conclusion is not precise as to exact position of the writers. The work has not made any recommendation. It is advised that recommendation be made and conclusion recouched to show a precise stand of the researchers.

⁹⁷ M. Hile, “Is protest An Endangered Human Right of Nigeria?” <<https://www.financialnigeria.com/is-protest-an-endangered-human-right-of-nigerians-blog-863.html>> accessed on 17th June, 2024.

⁹⁸ Chapter II, CFRN 1999, s.14(1) (b) “the security and welfare of the people shall be the primary purpose of government”. This provision provides for the Fundamental Objectives and Directive Principles of State Policy.

⁹⁹ B. Ugochukwu, *ibid*.

¹⁰⁰ CFRN 1999.