

# RULE OF LAW, HUMAN RIGHTS, AND NATIONAL SECURITY: AN OVERVIEW OF THE NIGERIAN PERSPECTIVE

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## Abstract

The relationship between the rule of law, human rights, and national security is a complex and often contentious issue, particularly in Nigeria, where political instability, insurgency, and terrorism have posed significant challenges to governance and security. The interplay between the rule of law, human rights, and national security is a critical aspect of governance in Nigeria. While the rule of law ensures justice, fairness, and accountability, human rights provide individuals with fundamental freedoms and dignity. National security, on the other hand, seeks to maintain stability and protect citizens from internal and external threats. However, in Nigeria, these three elements often clash, especially in times of security crises and governance challenges. This article explores their intersection, the challenges faced, and possible solutions for balancing national security with respect for human rights and adherence to the rule of law while exploring the delicate balance between safeguarding national security and protecting human rights within the Nigerian context. It examines how the rule of law acts as a foundation for ensuring justice, accountability, and protection of individual rights, while also addressing the role of national security in maintaining state sovereignty and public order. The Nigerian government's approach to security, especially in the fight against Boko Haram, herder-farmer conflicts, and other insurgent groups, has led to human rights violations, including arbitrary arrests, torture, and extrajudicial killings. These tensions have raised critical questions about the legitimacy of state actions and the need for legal frameworks that respect constitutional rights while ensuring effective national security strategies. By analyzing legal instruments such as the Nigerian Constitution, international human rights laws, and national security policies, the paper assesses how Nigeria can strike an equilibrium between these two often conflicting priorities. It also reflects on the role of civil society, international actors, and legal reforms in promoting a system where the rule of law and human rights are upheld even amidst national security concerns.

**Keywords:** *Rule of Law, National Security, Human Rights, Nigeria*

## 1. INTRODUCTION

The concepts of rule of law, human rights, and national security are central to the governance of any state. In democratic societies, these elements are often interdependent, with each reinforcing the other in pursuit of justice, peace, and order. However, the dynamic interplay between these elements can lead to tensions, particularly when national security concerns appear to conflict with the protection of individual freedoms. This issue is particularly evident in Nigeria, where political instability, violent insurgencies, and widespread insecurity have created significant challenges for the government, law enforcement agencies, and civil society.

Nigeria, Africa's most populous country, faces numerous security challenges, including terrorism, banditry, insurgency, and communal conflicts. In response, the government has often adopted

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measures that prioritize national security at the expense of human rights and the rule of law. This has sparked debates on whether security concerns justify restrictions on fundamental freedoms. While national security is paramount, it must not override the principles of democracy, human dignity, and justice. This statement asserts that although protecting a nation's security is of utmost importance, it should never be used as a justification to violate fundamental democratic values, human dignity, and the principle of justice; meaning that even in the face of threats, a government must uphold basic human rights and operate within the framework of a democratic system.<sup>1</sup>

The rule of law refers to a system of governance where laws are enacted, enforced, and upheld in a manner that is fair, just, and impartial. Human rights, on the other hand, are the basic rights and freedoms to which all individuals are entitled, regardless of nationality, ethnicity, or status. National security is the safeguarding of the state from threats, both external and internal, including terrorism, insurgency, and organized crime.

## **2. The Rule of Law in Nigeria**

### **2.1 Meaning and Principles of the Rule of Law**

The rule of law in Nigeria has a complex historical context shaped by colonialism, military rule, and democratic governance. Nigeria's democracy has been fragile and fluctuating since independence. Successive governments have struggled to create a sense of national unity in a complex country whose borders were drawn by British colonialists, incorporating more than 200 ethnic groups. Democratization and development have progressed at different speeds in the country's disparate regions.<sup>2</sup> The Nigerian Constitution,<sup>3</sup> adopted in 1999, provides a robust framework for the rule of law, guaranteeing the rights of citizens and the independence of the judiciary. The judiciary is tasked with interpreting the laws and ensuring that executive actions do not contravene constitutional principles. However, the effective implementation of the rule of law has been undermined by challenges such as corruption, inadequate judicial independence, and political interference and the stability and prosperity of any society hinges on the rule of law and effective administration of justice, which guarantees accountability of government officials and protection of citizens from abuse. Furthermore, fair and timely resolution of disputes and prosecution of criminals are critical components of effective administration of justice. Corruption subverts these core principles and erodes public trust in government institutions and the legal system.<sup>4</sup>

Nigeria's legal system is largely based on English common law, although customary and Sharia laws also play significant roles in various regions of the country. The Constitution provides for the separation of powers between the executive, legislative, and judiciary,<sup>5</sup> and stipulates that no person shall be deprived of their liberty except in accordance with the law.<sup>6</sup> Despite these provisions, the rule of law in Nigeria remains fragile, particularly in the context of national security concerns, where the use of emergency powers has often been used to bypass constitutional protections.

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<sup>1</sup> B.U Ihugba and S.A Danwanka, *Derogation from Fundamental Rights for National Security Consideration In Nigeria*,

<https://ir.nilds.gov.ng/bitstream/handle/123456789/404/DEROGATION%20FROM%20FUNDAMENTAL%20RIGHTS%20FOR%20NATIONAL.pdf?sequence=1&isAllowed=y> retrieved on the 6<sup>th</sup> of February, 2025

<sup>2</sup> *Democracy in Nigeria*, <https://www-chathamhouse-org.webpkgcache.com/doc/-/s/www.chathamhouse.org/2022/06/democracy-nigeria> retrieved on the 6th of February, 2025

<sup>3</sup> Hereinafter referred to as the Constitution

<sup>4</sup> Tiwalade Aderoju, *The Impact of Corruption on the Rule of Law and The Effective Administration of Justice using Nigeria as a Case Study*, <https://www.ibanet.org/impact-of-corruption-on-rule-of-law-Nigeria> retrieved on the 6th of February 2025

<sup>5</sup> Sections 4,5,6 of the 1999 Constitution of the Federal Republic of Nigeria

<sup>6</sup> Section 35, *ibid*

**The rule of law is a foundational principle in democratic governance that ensures laws are applied fairly and consistently. The concept is rooted in three key principles:**

1. Supremacy of the law: No one is above the law, including government officials.
2. Equality before the law: Every individual is subject to the same legal standards.
3. Protection of fundamental rights: Citizens' rights must be safeguarded through legal mechanisms and an independent judiciary.<sup>7</sup>

## **2.2 Legal Framework for the Rule of Law in Nigeria**

Nigeria's commitment to the rule of law is enshrined in:

- a. The 1999 Constitution of Nigeria (as amended), which guarantees fundamental rights.
- b. The judiciary, which interprets laws and ensures justice.
- c. International treaties, such as the African Charter on Human and Peoples' Rights, which Nigeria has ratified.

## **2.3 Challenges to the Rule of Law in Nigeria**

Despite these legal provisions, the rule of law faces serious challenges in Nigeria, including:

- a. Political interference in the judiciary, weakening its independence.
- b. Arbitrary arrests and detentions, often in the name of national security.
- c. Failure to enforce court orders, particularly in cases involving government agencies.

## **3. Human Rights in Nigeria**

### **3.1 Understanding Human Rights**

Human rights are a set of principles concerned with equality and fairness. They recognize our freedom to make choices about our lives and to develop our potential as human beings. They are about living a life free from fear, harassment or discrimination.<sup>8</sup>

Cranston defined human rights as something of which no one may be deprived without a great affront to justice. There are certain deeds which should never be done, certain freedoms which should never be invaded, some things which are suppressively sacred.<sup>9</sup>

Also, according to Osita Eze, Human Rights represents demand or claims which individuals or groups make on society, some of which are protected by law and have become part of *lex lata*,<sup>10</sup> while others remain aspirations to be attained in the future.<sup>11</sup>

Human rights are inherent freedoms and entitlements that every person is born with, regardless of nationality, race, or social status. They include: Civil and political rights (freedom of expression, right to fair trial) as well as economic, social, and cultural rights (right to education, health, and employment).

Human rights in Nigeria are protected by both national and international instruments. The Nigerian Constitution guarantees fundamental human rights such as the right to life, personal liberty, and freedom of expression. Additionally, Nigeria is a signatory to several international treaties, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and

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<sup>7</sup>Principles of the Rule of Law, <https://www.ruleoflaw.org.au/principles/> retrieved on the 6<sup>th</sup> of February, 2025

<sup>8</sup>An Introduction to Human Rights, <https://humanrights.gov.au/our-work/education/introduction-human-rights#:~:text=their%20human%20rights,-Human%20rights%20are%20a%20set%20of%20principles%20concerned%20with%20equality,from%20fear%2C%20harassment%20or%20discrimination> retrieved on the 6<sup>th</sup> of February, 2025

<sup>9</sup>M. Cranston: *Human Rights; Real and Supposed* in Raphael (ed.) *Political Theory and the Rights of Man*, Bloomington, 1967, p.52

<sup>10</sup>The law as it exists

<sup>11</sup>Osita Eze, *Human Rights in Africa: Selected Problems*, Lagos; Macmillian; 1984, p. 5 established by law.

Political Rights (ICCPR)<sup>12</sup> and the African Charter on Human and Peoples' Rights (ACHPR),<sup>13</sup> which enshrine various human rights protections.

However, in practice, Nigeria has faced significant challenges in protecting human rights. Reports of extrajudicial killings, arbitrary arrests, torture, and forced disappearances have become all too common, especially in conflict zones affected by insurgencies such as Boko Haram in the northeast. In these regions, the security forces often justify their actions on the grounds of combating terrorism, which raises concerns about human rights violations under the guise of national security. The ongoing conflict in the northeast has displaced millions of people, contributing to the widespread violation of economic, social, and cultural rights. These extrajudicial killings and counter-terrorism operations by security forces in the fight against insurgency as well as cases of police brutality, as seen in the 2020 #EndSARS protests, suppression of press freedom and arbitrary arrests of journalists has led to the belief in the government's inability to effectively protect its citizens in these areas and has highlighted the tensions between national security and the protection of human rights.

#### **4. National Security in Nigeria**

##### **4.1 Definition and Scope of National Security**

Nigeria is stupendously endowed with abundant human and natural resources, but the challenge of internal security has created a dangerous situation where violent crimes have become rampant and thus negatively affecting development.<sup>14</sup> National security in Nigeria is defined as the protection of the country from threats posed by external and internal forces. The Nigerian government is primarily responsible for ensuring national security through its military, intelligence agencies, and law enforcement bodies. The essence of National Security is to ensure that Nigeria's sovereignty, territorial integrity, national interests, the well-being of the people and the country's institutions are preserved, protected and enhanced.<sup>15</sup> National security in Nigeria is increasingly focused on counterterrorism efforts, particularly in response to Boko Haram insurgency and other militant groups such as the Islamic State West Africa Province (ISWAP).<sup>16</sup>

In addition to terrorism, Nigeria also faces challenges related to internal conflicts, such as the herder-farmer clashes in the Middle Belt and southeast, as well as rising incidences of kidnapping and banditry. Nigeria also faces issues of Oil theft and militancy in the Niger Delta as well as Separatist agitations by groups like the Indigenous People of Biafra (IPOB).

National security refers to measures taken by the state to protect its citizens, sovereignty, and territorial integrity from threats. In Nigeria, national security encompasses Military and defense operations against external threats, Law enforcement activities to combat crime and insurgency as well as Cyber security measures to prevent cyber threats. The Nigerian military has played a prominent role in addressing these security threats, often operating in collaboration with the police and intelligence services. However, the military's involvement in civilian matters has raised concerns about the abuse of power and accountability, especially when operations result in civilian casualties.

##### **4.2 Legal Framework for National Security**

Nigeria has several laws guiding national security, including:

- a. The Constitution (Sections 14(2) (b) and 217-219), which empowers security agencies to maintain law and order.

<sup>13</sup>Article 4 of the ACHPR states: that every person has the right to life and personal integrity. This means that everyone has the right to be respected and that their life cannot be taken away without just cause.

<sup>14</sup>Clement C. Chigbo: *Issues on National Security, Human Rights and National Development in Nigeria*, UNIZIK Journal of Public and Private Law Vol. 12 Oct. 2022

<sup>15</sup>National Security Strategy, <https://nctc.gov.ng/wp-content/uploads/2024/01/NSS-2019.pdf> retrieved on the 6th of February, 2025

<sup>16</sup>Ibid

- b. The Terrorism (Prevention) Act, which grants authorities powers to combat terrorism.
- c. Cybercrime (Prohibition, Prevention, etc.) Act, which tackles cyber threats.

#### **4.3 Challenges in Balancing National Security and Human Rights**

The conflict between national security and human rights is perhaps most evident in the Nigerian government's response to the Boko Haram insurgency. The government has implemented strict security measures, including the deployment of military forces, the imposition of curfews, and the creation of detention facilities for suspected militants. However, these measures have often led to widespread human rights abuses, including torture and extrajudicial killings by the military.

The use of emergency powers, which allows the government to bypass certain constitutional safeguards, has been criticized for undermining human rights protections. For example, the Terrorism (Prevention and Prohibition) Act 2022, grants security agencies broad powers to detain individuals suspected of terrorism-related activities, but it has been criticized for its lack of adequate safeguards to protect the rights of detainees.

While national security is crucial, the implementation of security measures often violates human rights, including:

- a. Use of excessive force by security agencies.
- b. Mass surveillance and internet restrictions in the name of counterterrorism.
- c. Prolonged detention without trial, violating due process rights.

### **5. Striking a Balance: Rule of Law, Human Rights, and National Security**

#### **5.1 The Nigerian Government's Approach to National Security and Human Rights**

Security is surely the foundation upon which every meaningful development to be achieved and sustained must be erected.<sup>17</sup> Security is one of the most important duties of government all over the world. The 1999 Constitution of the Federal Republic of Nigeria specifically provides that “The security and welfare of the people shall be the primary purpose of government”.<sup>18</sup> The Nigerian government's approach to national security has often been characterized by a heavy reliance on military and security forces to combat insurgency and organized crime. While national security is crucial, there have been increasing calls for greater accountability in the conduct of military operations and security practices. The government's response to insurgency has sometimes resulted in disproportionate actions, including the killing of civilians and the destruction of property, all of which violate international human rights standards.

Despite these challenges, Nigeria has made efforts to address these issues through legal reforms and collaborations with international human rights organizations. The government has also faced pressure from the international community to improve its human rights record, particularly in relation to security operations. Some of the ways that the international community and the citizenry have maintained that human rights can be improved upon is through the following means:

##### **a. Ensuring Accountability and Oversight**

- Security agencies must be held accountable for human rights abuses.
- Strengthening oversight bodies like the National Human Rights Commission (NHRC).

##### **b. Judicial Independence and Fair Trials**

- The judiciary must remain independent to check executive overreach.
- Individuals accused of terrorism or crimes should have access to fair trials.

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<sup>17</sup>Afe Babalola, SAN, *The Elusive Search for Nation Nigeria*, Published by Special Collection Unit, Afe Babalola University, Ado-Ekiti, 2009, Chapter 6, p.180.

<sup>18</sup>Section 14(2) (b) Constitution of the Federal Republic of Nigeria 1999 as amended.

**c. Legislative Reforms**

- Amending laws that allow indefinite detention without trial.
- Strengthening legal safeguards to prevent abuse of power.

**d. Promoting Civil-Military Relations**

- Training security forces on human rights and rules of engagement.
- Encouraging community policing to foster cooperation with citizens.

**6. Case Studies in Nigeria**

**6.1 The #EndSARS Movement and Police Brutality**

The 2020 #EndSARS protests highlighted widespread police brutality and the violation of citizens' rights. Despite government promises, cases of unlawful arrests and extrajudicial killings persist.

**6.2 Counterterrorism and Human Rights Abuses**

The military's counterterrorism operations against Boko Haram have resulted in collateral damage, including civilian deaths and mass displacements. Reports from Amnesty International detail cases of unlawful detention and sexual violence in IDP camps.<sup>19</sup>

**6.3 Internet Censorship and Freedom of Speech**

The Nigerian government's 2021 Twitter ban raised concerns about digital rights and freedom of expression. Similar restrictions threaten democracy and the rule of law.

**7. CHALLENGES IN ACHIEVING A BALANCE**

Achieving a balance between national security and human rights in Nigeria has proven to be a daunting task, given the political and socio-economic landscape. Some of the challenges in reconciling national security concerns with the protection of human rights are outlined below:

**7.1 Inadequate Legal Frameworks and Enforcement Mechanisms**

While Nigeria's Constitution provides a foundation for protecting human rights, the enforcement of these rights often falls short. The legal framework to safeguard citizens' rights in the context of national security is often undermined by weak enforcement mechanisms, corruption, and inefficiencies within the judicial system. For instance, security agencies frequently act outside the bounds of established law, and there are minimal repercussions for human rights abuses committed by state actors. Moreover, there is often insufficient legal recourse for victims of human rights violations in conflict zones.

**7.2 Corruption and Political Interference**

Corruption in the Nigerian government has long been a barrier to effective governance and the rule of law. The military and security services are often accused of corruption, which impacts their ability to uphold human rights in their security operations. Politicians have been known to use security agencies for political gain, leading to a breakdown in accountability and impeding the fair application of the law. This corruption breeds inefficiencies, delays in justice, and a lack of trust in institutions, making it difficult for the Nigerian government to balance its national security priorities with respect for human rights.

By addressing these challenges, Nigeria can achieve a security framework that upholds the rule of law and human rights while maintaining national stability.

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<sup>19</sup>Nigeria: Boko Haram: Brutality against women and girls needs urgent response – new research 24<sup>th</sup> March 2021: <https://www.amnesty.org/en/latest/press-release/2021/03/nigeria-boko-haram-brutality-against-women-and-girls-needs-urgent-response-new-research/> retrieved on the 10<sup>th</sup> of February, 2025

## **8. The Role of the International Community and Civil Society**

International human rights organizations, including Human Rights Watch and Amnesty International, have played an important role in highlighting human rights violations in Nigeria. Their reports and advocacy work have brought attention to the need for the Nigerian government to uphold international human rights standards, even in the face of pressing security concerns. However, the Nigerian government's response to international pressure has often been insufficient, as the government has consistently defended its actions in the name of national security. This tension between state sovereignty and international human rights law remains a significant challenge in balancing security needs with human rights protections.

### **8.1 Civil Society Advocacy**

Civil society organizations (CSOs) in Nigeria have long been at the forefront of advocating for human rights and the rule of law, particularly in relation to security issues. Many CSOs, including the Nigerian Bar Association (NBA) and the Civil Liberties Organization (CLO), have worked to raise awareness about the impact of security policies on human rights, including extrajudicial killings, unlawful detention, and torture. These groups have also been involved in legal challenges against security-related policies and the abuse of power by the state.

The efforts of these organizations to hold government actors accountable are vital in promoting transparency and ensuring that the state adheres to both domestic and international legal obligations. They advocate for reforms in national security legislation and highlight human rights abuses to the international community. However, civil society organizations in Nigeria also face significant challenges, including government repression, harassment, and threats to their personnel, especially in conflict zones.

### **8.2 The Influence of International Human Rights Law**

International human rights law plays an essential role in shaping Nigeria's legal obligations and governance practices. Nigeria is a signatory to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR), both of which provide a framework for protecting the rights of individuals in the context of national security operations. The Nigerian government's adherence to these international conventions has been subject to scrutiny, particularly in cases where national security measures violate human rights.

International bodies, such as the United Nations Human Rights Council and the African Union, have put pressure on Nigeria to amend its security practices, aligning them with human rights principles. The African Union's efforts to establish the African Charter on Democracy, Elections, and Governance (ACDEG) aim to strengthen the protection of human rights while combating terrorism and other national security threats on the continent. Nigeria's engagement with such international organizations has led to some reforms, although challenges persist.

### **8.3 International Human Rights Organizations and Monitoring**

Human rights organizations such as Amnesty International and Human Rights Watch have conducted independent investigations into human rights violations in Nigeria, including those linked to national security. These organizations have documented numerous abuses by Nigerian security forces, including the military's operations in the fight against Boko Haram and other insurgent groups. Their findings have been used to pressure the Nigerian government to improve accountability and to review security practices. However, the government's reluctance to admit to such abuses or initiate significant reforms has limited the effectiveness of these international monitoring bodies.

## **9. Conclusion**

The relationship between the rule of law, human rights, and national security in Nigeria is complex. While national security is essential for stability, it must not come at the cost of human rights violations and disregard for the rule of law. A balanced approach, involving legal reforms, judicial independence, and human rights education, is crucial to ensuring security measures do not undermine democracy.

The tension between national security and the protection of human rights remains one of the most pressing challenges in Nigeria's governance. While national security is crucial for maintaining peace and order, it must not come at the cost of fundamental human rights, as this can undermine the very legitimacy of the state. Legal reforms, stronger accountability mechanisms, and greater transparency are necessary for achieving a balance between the need for security and the protection of citizens' rights. By improving the legal and institutional frameworks for both human rights and national security, Nigeria can better protect its citizens, ensure justice, and strengthen the rule of law.

The future of Nigeria's national security and human rights protection depends on the government's commitment to reform, the strengthening of civil society engagement, and the active participation of international bodies. Also, the respect for the basic rights that the citizens are entitled to must be upheld by every arm of government and their agencies. Only through these efforts can Nigeria hope to navigate the challenges it faces and achieve a more secure and just society for all its citizens.

## **10. Recommendations**

### **1. Legal Reforms**

To achieve a balance between national security and human rights in Nigeria, it is essential to amend and strengthen existing legal frameworks. Nigeria should prioritize enacting laws that provide clear guidelines on the conduct of security forces, including rules of engagement that safeguard the rights of citizens. Legal reforms should also ensure that counterterrorism and security laws, such as the Terrorism (Prevention and Prohibition) Act, are applied in a manner that respects due process and does not permit arbitrary detention or torture.

Moreover, the government should amend emergency powers legislation to ensure that such measures are used only when absolutely necessary and that they are subject to judicial oversight to prevent abuses of power. Legal frameworks should include provisions for redress for victims of human rights violations, ensuring that individuals have access to remedies and compensation for violations.

### **2. Strengthening the Judiciary and Accountability Mechanisms**

The Nigerian judiciary must be strengthened to ensure it can effectively address human rights violations and hold perpetrators accountable, including members of the security forces, without fear or favour. Ensuring judicial independence and protecting judges from political interference is key and fundamental to achieving this goal. Additionally, creating independent bodies such as an independent police complaints commission or military oversight body would allow for better accountability and transparency in security operations.

### **3. Capacity Building for Law Enforcement and Military**

It is vital that the Nigerian military and law enforcement agencies are trained in human rights principles and the legal framework governing the use of force. Training programs should include instruction on international human rights law, the protection of civilians in conflict zones, and the ethical use of military force. In addition, creating clear reporting mechanisms for abuses by security forces would help to monitor and mitigate the risks of human rights violations during counterterrorism and counterinsurgency operations.

### **4. Greater Civil Society Engagement and Public Awareness**

The Nigerian government should engage civil society in the development of national security policies to ensure that human rights concerns are adequately addressed. Civil society organizations should be allowed to participate in security sector reforms, providing expertise and representing the interests of affected communities. Public awareness campaigns are also necessary to educate citizens on their rights, available legal remedies, and avenues for reporting human rights violations by state actors. There should also be public enlightenment and education for the general public to heighten their awareness as regards their rights.

## **5. International Cooperation**

Nigeria should strengthen its cooperation with international bodies, such as the United Nations and the African Union, to develop best practices for balancing national security with human rights. International assistance and capacity building can provide Nigeria with the tools to implement human rights protections while combating terrorism and insurgency. Additionally, Nigeria should engage with international human rights monitoring mechanisms to address concerns related to security-related human rights abuses.