BALANCING MIGRANTS' RIGHTS AND NATIONAL SECURITY IN NIGERIA: CONSTITUTIONAL IMPERATIVES AND LEGAL BOUNDARIES.

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Abstract

The growing movement of migrants into and within Nigeria has intensified the challenge of reconciling the constitutional protection of migrants' rights with the demands of national security. The 1999 Constitution of the Federal Republic of Nigeria guarantees certain rights to all persons, including non-citizens, yet national security concerns have prompted policies and practices that sometimes conflict with these guarantees. This article critically examines the constitutional imperatives and legal boundaries guiding this balance, drawing attention to the intersection between human rights obligations and state security prerogatives. The study adopts a doctrinal legal research methodology, relying on primary sources such as the 1999 Constitution, the Immigration Act, 2015, subsidiary legislation, and judicial decisions, complemented by secondary sources including scholarly commentaries, policy papers, and comparative jurisprudence. The analysis reveals that while the legal framework provides a robust constitutional foundation for the protection of migrants, broad discretionary powers vested in immigration and security agencies frequently undermine due process, leading to arbitrary detention, deportation, and other rights violations. The article recommends statutory reforms to limit discretionary powers, strengthen judicial oversight, and institutionalize independent monitoring mechanisms. It concludes that a sustainable approach to national security in Nigeria must be anchored on respect for constitutional guarantees, adherence to the rule of law, and alignment with international human rights standards.

Keyword: Migrant Rights, National Security, Human Rights, Deportation, Migration Governance.

1.0. Introduction

Migration, both voluntary and forced, has become a defining feature of contemporary global dynamics, with profound implications for states' legal and policy frameworks. Nigeria, as major destination, transit, and origin country, faces increasing pressures from the movement of persons across its borders. While migrants contribute socio-economic development and cultural diversity, irregular migration and associated security concerns-such as terrorism, human trafficking, and organized crimes have intensified calls for stronger border control and restrictive migration policies.

The 1999 Constitution of the Federal Republic of Nigeria enshrines fundamental rights applicable to all persons within its territory, including non-citizens. These rights-such as the right to life, dignity of the human person, and fair hearing-reflect Nigeria's commitment to the rule of law and international human rights obligations. However, the imperatives of national security often led to measures that encroach upon these rights, raising questions about the constitutional limits of state

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power. The tension between safeguarding national security and upholding migrants' rights presents a complex legal and policy dilemma.

This article interrogates the constitutional imperatives and legal boundaries within which Nigeria seeks to strike this balance. It critically analyses the existing legal framework, identifies enforcement gaps, and draws on comparative perspectives, from Canada, South Africa and the United Kingdom, to propose reforms that promote both national security and the protection of migrants' rights in a manner consistent with constitutionalism and the rule of law.

2.0. Legal Framework Governing Migrants' Rights in Nigeria

The legal protection of migrants in Nigeria is derived from a combination of domestic constitutional provisions, statutory laws, and international instruments.

2.1 Constitution of the Federal Republic of Nigeria 1999 (as amended).

Chapter IV of the 1999 Constitution[2] guarantees a range of rights to every person within Nigeria's territory, including migrants. Section 33 guarantees the right to life, Section 34 prohibits torture and inhuman treatment, Section 35 guarantees personal liberty, and Section 36 ensures fair hearing. These rights apply to all persons, as confirmed in the case of *Minister of Internal Affairs v. Shugaba Abdurahman Darman*,[3] where the Court held that the deportation of a Nigerian citizen without due process was unconstitutional. Although Shugaba was a citizen, the judgment established that even administrative actions against individuals must comply with the Constitution.

2.2. Immigration Act, 2015.

The Immigration Act 2015 provides the statutory basis for entry, residence, and removal of non-citizens in Nigeria. Section 17 empowers the Minister to deport any non-citizen whose presence is deemed contrary to national interest, peace, or security. However, such deportation must still conform to the Constitution and international obligations. In *Longwe v. Minister of Interior*,[4] the Court noted that the discretionary power to deport must be exercised within the limits of procedural fairness respect for human rights.

2.3. International and Regional Instruments

Nigeria is a party to the 1951 Refugee Convention, the African Charter on Human and Peoples' Rights (ratified domestically through Cap 9 LFN 2004), and the ECOWAS Protocol on Free Movement of Persons, Residence and Establishment. Article 12 of the African Charter guarantees the right to seek asylum and prohibits mass expulsion.

The ECOWAS Protocol, particularly Article 2, ensures the right to entry and residence of Community citizens. In *Moussa Leo Keita v. Republic of Mali*,[5] the ECOWAS Court affirmed the binding nature of this Protocol and ruled against Mali's arbitrary deportation of a citizen of another ECOWAS member state.

[2] Constitution of the Federal Republic of Nigeria,1999(as amended). S. 1(3)
[3] (1982) 3 NCLR 915; also cited in I P Nwakoby, *et al,* Exposition on Declarartion of Rights, Mandamus, Prohibition, Injunction, Certiorari and Habeas Corpus. *COOU Law Journal* Vol. 9 Number 1 (2024) 1
[4] (1986) FHCLR 343
[5] Judgment No. ECW/CCJ/APP/03/07

Nigeria has also signed but not domesticated the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) making its provisions persuasive but not enforceable in local Courts.

3.0. National Security Imperatives on Immigration Governance.

The growing transnational threats posed by terrorism, human trafficking, insurgency, and irregular migration have prompted the Nigerian government to prioritize security in its immigration governance. The Boko Haram insurgency in the North-East and the presence of foreign fighters across the Sahel region have led to intensified surveillance and stricter border controls. These measures, while intended to protect national integrity, have sometimes resulted in arbitrary arrests, prolonged detention, and deportations without due process.[6]

The Nigerian Immigration Service (NIS), the Department of State Services (DSS), and the National Intelligence Agency (NIA) are key actors in this securitized immigration landscape. Their operations are guided by legislation such as the Immigration Act and the National Security Agencies Act.

However, instances of extrajudicial detention and lack of access to legal representation raise concerns about the proportionality and lawfulness of these actions.

4.0. Constitutional Limits on the Restriction of Migrants' Rights

While the Constitution allows for the limitation of certain rights, such limitations must be consistent with constitutional safeguards and international human rights standards.

4.1 Section 45 of the 1999 Constitution.

Section 45(1) permits the restriction of rights guaranteed under Section 37(privacy), Section 38(thought, conscience, and religion), Section 39(expression), Section 40(assembly and association), and Section 41(movement), provided such restrictions are:

i. In the interest of defense, public safety, public order, public morality, or public health;
ii. Reasonably justifiable in a democratic society.

Thus, not all rights are absolute, but limitations must meet the test of legality, necessity, and proportionality.[7]

4.2 Non-Derogable Rights

Certain rights such as the right to life (Section 33), dignity of human person (Section 34), and freedom from discrimination (Section 42) are treated as non-derogable. In *Ubani v. Director of State Security Service*,[8] the Court emphasized that even in cases of national emergency, actions taken must comply with due process.

[6] See Human Rights Watch,*Arbitrary Detention of Migrants in Nigeria* (2019).
[7] See *Nwankwo v. State* (1985) 6 NCLR 228, where the Court stressed that limitations on rights must be strictly construed.
[8] (1999) 11 HRLRA 129

Furthermore, *the African Commission in Civil Liberties Organizations v. Nigeria*[9] reiterated that national security cannot be used to justify derogation from core rights unless strictly necessary and proportional.

5 Judicial Attitudes and Interpretative Trends

Nigerian courts have played a pivotal role in defining the limits of executive power in immigration and security matters. Courts have generally favoured a rights-based interpretation of the Constitution, as seen in cases such as *Shugaba* and *Ubani.* However, Courts have also occasionally deferred to executive discretion, particularly in national security cases.

In *Director of State Security Service v. Olisa Agbakoba*,[10] the Supreme Court affirmed that even national security considerations must be balanced against the right to freedom of movement and expression. The judiciary has increasingly emphasized procedural fairness, transparency, and adherence to constitutional norms.

6 Comparative Perspectives from other Jurisdictions and Global Best Practices.

The challenge of balancing migrants' rights with national security imperatives is not unique to Nigeria. Comparative insights from other jurisdictions reveal varying approaches, shaped by constitutional structures, legal traditions, and socio-political contexts. In Canada, the Canadian Charter of Rights and Freedoms guarantee fundamental rights to "everyone," irrespective of citizenship status, including the right to life, liberty, and security of the person under section 7.[11] However, the state retains powers under the Immigration and Refugee Protection Act to detain and deport non-citizens on security grounds, subject to judicial oversight. In *Charkaoui v. Canada* (Citizenship and Immigration),[12] the Supreme Court of Canada held that the use of "security certificates" to detain and remove non-citizens suspected of terrorism without adequate disclosure of evidence violated the Charter's guarantees of fundamental justice.

South Africa similarly enshrines broad rights for "everyone" in its Constitution, including freedom and security of the person, and just administrative action.[13] Yet, the Constitutional Court in *Lawyers for Human Rights v. Minister of Home Affairs*,[14] declared aspects of the Immigration Act unconstitutional for allowing extended detention of undocumented migrants without prompt judicial review. In the United Kingdom, the Human Rights Act 1998 incorporates the European Convention on Human Rights (ECHR) into domestic law, guaranteeing rights such as liberty and security (Article 5) and prohibition of torture or inhuman treatment (Article 3). Nevertheless, in *A and Others v. Secretary of State for the Home Department*,[15] the House of Lords invalidated indefinite detention of foreign nationals suspected of terrorism, holding it incompatible with the ECHR.

[9] (2001) AHRLR 75(ACHPR 2001)
[10] (1999) 3 NWLR(Pt.595) 314
[11] Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act,1982, being Schedule B of the Canada Act 1982(UK),1982, c 11, s 7.
[12] [2007] 1 SCR 350(SCC)
[13] Constitution of the Republic of South Africa,1996, ss 12 and 33.
[14] [2017] ZACC 22
[15] [2004] UKHL 56, [2005] 2 AC 68.

These jurisdictions demonstrate that effective balancing of national security and migrants' rights requires clear statutory limits, judicial safeguards, and institutional accountability. The jurisprudence underscores that security measures must remain proportionate, non-discriminatory, and compliant with constitutional and international human rights obligations.

7 Policy Recommendations

The following policy recommendations are made:

1 **Narrowing Discretionary Powers:** The wide discretionary powers vested in immigration and security agencies under the Immigration Act 2015,[16] should be clearly defined to prevent arbitrary arrests, prolonged detention, and deportation without due process. Legislative amendments should incorporate specific procedural safeguards consistent with constitutional and international standards.

2 **Judicial Oversight:** All detention and deportation decisions should be subject to prompt judicial review, as emphasized in *Odafe v. Attorney-General of the Federation*,[17] where the court underscored that deprivation of liberty must comply with constitutional guarantees.

3 **Independent Monitoring Mechanisms:** An independent oversight body should be established to monitor immigration enforcement, investigate rights violations, and recommend corrective measures.

4 **Capacity Building for Immigration Officers:** Continuous human rights training for immigration and border control officials should be institutionalized to align enforcement practices with Nigeria's obligations under instruments such as the International Covenant on Civil and Political Rights (ICCPR).

5 **Integration of Human Rights into Security Policies:** National security strategies should include a rights-based approach, ensuring that the protection of sovereignty does not compromise fundamental rights guaranteed under Chapter IV of the 1999 Constitution.

8 Conclusion

Balancing migrants' rights with national security imperatives in Nigeria remains a delicate constitutional task. While the state is entitled to protect its sovereignty, territorial integrity, and citizens from security threats, such measures must operate within the confines of constitutional safeguards and international obligations. Comparative jurisprudence from Canada, South Africa, and the United Kingdom illustrates that effective balancing is possible when security measures are proportionate, transparent, and subject to robust judicial oversight.

For Nigeria, achieving this balance requires legislative reform, institutional accountability, and a sustained commitment to the rule of law. Ultimately, sustainable national security is inseparable from the respect for human dignity and the protection of rights, as reaffirmed in *Mohammed v. Commissioner of Police*,[18] where the Courts reiterated that rights guaranteed by the Constitution apply to all persons, citizens and non-citizens alike.

[16] Immigration Act, No.8 of 2015, Laws of the Federation of Nigeria (LFN) 2015, ss.17-23.
[17](2004) LPELR-22208(CA).
[18] (2014) LPELR-23614(CA).