

**RULE OF LAW, HUMAN RIGHTS AND NATIONAL SECURITY IN NIGERIA\***

**Abstract**

*Rule of law, human rights and national security are concepts generally obtainable in a country practicing constitutional democracy. Rule of law entails governance in accordance with legal principles and observance of laws which are reasonably justifiable in a democratic society. Hence, rule of law is rule of right and not rule by might nor rule by force, arbitrariness, despotism, dictatorship, tyranny and ultimately anarchy. Protection of human rights is likewise an offshoot of rule of law and citizens' rights is meant to be protected in a nation practicing rule of law. However, because the government is saddled with the duty upholding national security, should rule of law and human rights be curtailed for the purpose of ensuring national security and defence? The primary objective of the research therefore is to examine whether human rights should prevail at the expense of national security or human rights can be restricted in the interest of national security. The research is a doctrinal research that relied on both primary and secondary sources of law. The research finds out that Nigeria has been battling with insecurity and insurgencies over the years, and the government necessarily needs to take proactive steps to arrest the situation, even if human rights would be restricted. The research therefore concludes that it is absolutely not out of place to suspend individual rights and civil liberties of citizens to ensure national security and defence. This does not however mean rule of law should be suspended to ensure national security because in an atmosphere where rule of law is not sustained, anarchy and lawlessness will prevail.*

**Keywords**

Human Rights, Rule of Law, National Security

**1. Introduction**

Rule of law is a principal doctrine of a democratic system and it is a sine qua non for a sustainable government. National security is an important duty of government and the government is expected to ensure the peace and security of the citizens. More so, the government likewise has a duty to protect the nation's territorial integrity and ensure national defence. In essence, the government has the duty to maintain rule of law in governance, ensure there is national security/security of lives and properties, and protect the territorial integrity of the state. It is therefore the duties of government to maintain rule of law, ensure national security and promote national defence. The question for consideration is, which should take precedence among these three duties of government? This is the crux of this presentation and would be analysed therein.

**2. Rule of Law: Meaning and Operation**

The world has experienced several developmental stages and growth. Special thanks to the founders of democracy<sup>1</sup> who promoted egalitarianism in human race and have made the world escape the Hobbesian state of nature.<sup>2</sup> At the moment, democracy is regarded the most popular system of government in the world.<sup>3</sup> What however makes democracy a commendable system of government in the 21<sup>st</sup> century is the principle of rule of law and supremacy of the law. Historically, the origin of rule of law is associated with philosophers and theologians like Aristotle, Henry De Bracton and Albert Venn Dicey. The development of this principle however is much associated with the writings of Albert Venn Dicey, especially in his book titled, *Law of the Constitution*.<sup>4</sup> Dicey captured the meaning of rule of law from three perspectives:

- i. Supremacy of the Law. In substantiating this, Dicey said,  
It means an absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative or even of wide discretionary authority on the part of the government. English men are ruled by the law, and by the law alone; a man may with us be punished for a breach of law, but he can be punished for nothing else
- ii. Equality before the law. Dicey said,

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1 Especially in Cleisthenes, Abraham Lincoln and so on

2 Thomas Hobbes wrote that without law to regulate human affairs, life would be brutish, nasty, solitary and short

3 Political Science Degree, "The Five Most Common Political Systems Around the World" available at [www.politicalsciencedegree.com](http://www.politicalsciencedegree.com) accessed 27<sup>th</sup> November, 2018

4 A.V. Dicey, *The Law of the Constitution* (10th ed. London) 202

- Rule of law means equality before the law, or the equal subjection of all classes to the ordinary laws of the land administered by the ordinary courts
- iii. The constitution should be the result of the ordinary laws of the country. Dicey said, A formula for expressing, the fact that the law of the Constitution, the rules which is foreign continues normally form part of a constitutional code are not the source but the consequence of the rights of individuals, as defined and enforced by the courts.

From the excerpts of Dicey's writing on the three connotations of rule of law, what can be deduced is that rule of law means the observance and supremacy of civil laws, that is, laws which are reasonably justifiable in a democratic society as opposed to draconian, oppressive and arbitrary laws.<sup>5</sup> Rule of law is rule of right and not rule by might nor rule by force, arbitrariness, despotism, dictatorship, tyranny and ultimately anarchy.<sup>6</sup> The doctrine of rule of law has formed the basis and foundation for the formulation of sustaining human rights instruments in the world like United Nations Universal Declaration of Human Rights of 1948, American Declaration of the Rights and Duties of Man of 1948, Rome Convention of 1950, Athens Conference of 1955, New Delhi Conference of 1959, Lagos Conference of 1961, African Charter of Human and Peoples Rights of 1981 and so on. The doctrine of rule of law is also the foundational structure of Nigerian legal system and the basis of Nigerian constitutional democracy. Several court decisions have been reached on the principle of rule of law, some of which include *Obeya Memorial Hospital v. AG Federation & Ors*<sup>7</sup>, *Military Governor of Lagos State & Ors v. Chief Emeka Ojukwu & Anor*,<sup>8</sup> *Okogie v. AG Lagos State*,<sup>9</sup> *Sadiku v. AG Lagos State*<sup>10</sup> among other cases.

### 3. Human Rights versus National Security

Generally, human rights are not fundamental rights *strictu sensu*. The application of human rights is vast and not limited to territorial borders of a state while fundamental rights are applicable within a particular country and is more particularistic than human rights. The issue of human rights and national security has become a matter of concern in modern democracy. This is largely because human rights directly or indirectly affect the national security in the agitated areas. In fact, the observance of human rights and national security in times of crises is difficult because human rights are often subjected for the purpose of achieving overall national security. It is therefore becomes difficult for the citizens and the state to strike a balance between protection and enforcement of human rights and the promotion of national security. The difficulty in having a compromise or middle line between human rights and national security often leads to the suppression of human rights to the detriment of the citizens. Conversely however, the strict adherence to the tenets of human rights especially in times of crises could be a major threat to national security.

The state is naturally saddled with the responsibility of protecting citizens' alienable rights and at the same time promotes and safeguards national security. This duty of the state can be traced to the Hobbes' theory of the state of nature where Thomas Hobbes said for human life not to be brutish, nasty, solitary and short, there is need to recognise and religiously uphold universal rights and freedom for human being, regardless of the race, gender, colour or background. This is because of the world's consciousness that every man is born free.<sup>11</sup> National security generally means freedom of a nation from fear, risk, danger, vulnerability and susceptibility. In fact, it appears that the first and paramount duty of the government, deriving from the Hobbes' theory, is submission of absolute power to the state in return for safety and security. No wonder that Section 14 (1) of the Constitution of the Federal Republic of Nigeria<sup>12</sup> clearly provides that 'the security and welfare of the people shall be a primary purpose of government'. This provision shows that national security is a duty of the government for the collective and common good of all citizens. Beyond the general protection of the safety of citizens, national security also entails preservation of the country's political stability and economic interests.

Further using the Nigerian Constitution as a benchmark, the government has specific duties to protecting and preserving human rights and equalities in the nation, but these duties are not really respected. It is not news to hear

<sup>5</sup>Ese Malemi, *Administrative Law* (3rd ed. Lagos, Princeton Publishing Company 2008)74

<sup>6</sup> Ibid

<sup>7</sup> (1987) 3 NWLR (PT60) 325 SC

<sup>8</sup> (1986) 1 NWLR (PT18) 621 SC

<sup>9</sup> (1981) 2 NCLR 337

<sup>10</sup> (1994) 7NWLR (PT355) 235

<sup>11</sup> See the Universal Declaration of Human Rights

<sup>12</sup> Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

that Chapter II of the Constitution stipulates fundamental objectives and directive principles of state policy but these principles, especially those relating to human rights, appear to be mere decoration to the constitution. For instance, Section 14(1) of the Constitution provides that, 'The Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice. (2) It is hereby, accordingly declared that: (a) sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all powers and authority; (b) the security and welfare of the people shall be the primary purpose of government; and (c) the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.' The above provision is a fine blend of the constitutional need for national security and social justice, but can we really say the government has lived up to the expectation of protecting citizens' rights and preserving national security at the same time?

#### **4. Rule of Law versus National Security**

Supremacy of law is an ideal standard of a modern democratic government. The law is meant to be supreme and its provisions binding on all persons and authorities in the state. This principle is enshrined in the Nigerian Constitution.<sup>13</sup> The same constitution further provides that the welfare of the people shall be the paramount duty of government<sup>14</sup> and to ensure citizen's welfare, national security must be protected. The question that calls for an answer is, should the law be suspended on the altar of national security? Malemi gave an apt response to this when he said: 'All policies, actions and things in society whether they are done by an individual or government should be done according to law and governed by law. The applicable procedure or law should be observed...persons and government should obey the law'. In a constitutional democracy practiced in Nigeria, the place of rule of law is indispensable. Where rule of law is violated, the nation moves into lawlessness and abuse of power. This question on essentiality of rule of law was tested by the court in *Military Governor of Lagos State v. Ojukwu*<sup>15</sup> where the Supreme Court said the Nigerian Constitution is founded on rule of law, the primary meaning of which is that everything must be done according to the law. It means government should be conducted within the framework of recognized rules and principles which restrict discretionary power. Onnoghen JSC likewise affirmed in *A.G Abia State v. AG Federation*<sup>16</sup> that 'where rule of law reigns, political expediency ought to be sacrificed on the altar of rule of law so as to guarantee the continued existence of democratic institutions fashioned to promote social values of liberty, orderly conduct and development.' Lord Atkins of the House of Lords stated in the case of *Liverside v. Anderson*<sup>17</sup> that they (laws) may be changed but they speak the same language in war as in peace.

The purport of the above views is that, rule of law is sacrosanct and must be maintained at all times, both in times of peace and war. Maintaining rule of law by any government is a way of protecting national security in the country. When rule of law is maintained, justice will prevail and there will be little or no agitations from any allegedly deprived group in the country. Therefore, rule of law is expected to work hand in hand with national security, and rule of law is expected to complement all efforts to ensure national security.

#### **5. Right to Life and National Security in Nigeria**

As the name implies, human rights are rights which all human beings have by virtue of their humanity, these rights range from right to life, personal liberty, movement, private and family life, dignity of human person, fair hearing and so on. Human rights further provide a general standard of behavior among the international community.<sup>18</sup> In other words, human rights are natural, rational, inviolable, and inalienable rights, the deprivation of which would constitute a grave affront to one's sense of justice.<sup>19</sup> Appraising human rights in Nigeria, Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, clearly provides for the rights of Nigerian citizens. These rights are fundamental and alienable, and it is the duty of government to uphold these rights and prevent them from violations. These rights include right to life,<sup>20</sup> right to dignity of human person,<sup>21</sup> right to personal liberty,<sup>22</sup> right to

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<sup>13</sup> Section 1(1) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

<sup>14</sup> See the provisions of Section 12, *ibid*

<sup>15</sup> (2001) FWLR (PT50) 1779

<sup>16</sup> (2002) 6 NWLR (PT.764) 542

<sup>17</sup> (1946) AC 206

<sup>18</sup> See the Universal Declaration of Human Rights and United Nations Charter. See also Jacob Abiodun Dada, 'Impediments to Human Rights Protection in Nigeria' (2012) 18 *ANN. SURV. INT'L & COMP. L.* 67, 68.

<sup>19</sup> O. C. Eze, *Human Rights in Africa: Some Selected Problems* (Nigerian Inst. of Int'l Aff. & MacMillan Nigeria Pub. Ltd. 1984) Ch.1

<sup>20</sup> Section 33 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

<sup>21</sup> Section 34, *ibid*

fair hearing,<sup>23</sup> right to private and family life,<sup>24</sup> right to freedom of thought, conscience and religion,<sup>25</sup> right to freedom of movement,<sup>26</sup> right to freedom from discrimination,<sup>27</sup> and the right to acquire and own property anywhere in Nigeria.<sup>28</sup> Furthermore, there are other rights provided for in Chapter II of the Constitution, although these rights are subsumed under the fundamental objectives and directive principles of state policy.

With the exhaustive list of available human rights, this research would just be limited human rights related to national security, with specific focus on right to life. The right to life is a peculiar inalienable right and is among the most important of all the rights guaranteed and protected by contemporary international law.<sup>29</sup> In fact, it is apt to conclude that the right to life is the mother right upon which other rights rest. Hunter David even remarked that initially, ‘the right to life was aimed at preventing arbitrary killing by the government. In recent years, the right to life has evolved to extend to address certain environmental harms that directly or indirectly infringe on the right to life. This extension of the ambit of the right to life is as a result of the efforts and works of environmental and human rights advocates.’<sup>30</sup>

The right to life is not peculiar to municipal laws of the country but it is a right generally accepted internationally. Various international laws clearly provides for the right to life. Article 3 of the Universal Declaration of Human Rights (UDHR), article 6 of the International Covenant on Civil and Political Rights (ICCPR), and article 4 of the American Convention on Human Rights respectively all provide that, ‘everyone has the right to life, liberty and security of person,’<sup>31</sup> ‘every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life,’<sup>32</sup> and the right to life shall be protected from conception.<sup>33</sup> In addition, Article 422 of the African Charter on Human and Peoples’ Rights (ACHPR) and Articles 6(1) 23 & 24 of the United Nations Convention on the Rights of the Child (UNCRC) both provide for the right to life. Section 33 of the Nigerian Constitution, the country’s *grundnorm*, also 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/she has been found guilty in Nigeria.’ Robertson even stated that states have an obligation to safeguard life.<sup>34</sup> Flowing from the above, it is crystal clear that the government is saddled with the responsibility of protecting right to life of citizens, and to achieve this, it entails taking steps to promote national security, and to prevent murder and other crimes threatening life.

No doubt, from the above analysis, it is apparent that right to life is a sacred right that ordinarily should be guarded jealously by the state. The life of every citizen of the country should be priceless to the government; hence right to life should be adequately protected. But the question is, is the situation like that in Nigeria? Is right to life really treated as sacred in Nigeria, especially in this era of ceaseless killings and extra-judicial murder, kidnapping, assassination and so on. Generally, in Nigeria today, the sacredness of human life almost has no meaning again. Several thousands of Nigerians and foreigners have been deprived of their inalienable right to life. The situation is even worst with the advent of terrorism and terrorist groups, and kidnappings. Unfortunately, the government is not winning the war against insecurity in Nigeria at all despite Section 14 of the Constitution provides that the security and welfare of the people shall be the paramount purpose of government.

## **6. Rule of Law is not the same as Human Rights for the Purpose of National Security**

Generally, rule of law can be extensively interpreted to mean respect for and protection of human rights by the government, its agents and servants. This is the view of Malemi and he further asserted that fundamental rights and

<sup>22</sup> Section 35, *ibid*

<sup>23</sup> Section 36, *ibid*

<sup>24</sup> Section 37, *ibid*

<sup>25</sup> Section 38, *ibid*

<sup>26</sup> Section 41, *ibid*

<sup>27</sup> Section 42, *ibid*

<sup>28</sup> Section 43, *ibid*

<sup>29</sup> Hunter David et al., *International Environmental Law and Policy* (3d ed. 2007) 1365–1406

<sup>30</sup> *Ibid* at 1374

<sup>31</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 3 (Dec. 10, 1948)

<sup>32</sup> Article 6(1) International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171

<sup>33</sup> Article 4 of the African Charter on Human and Peoples’ Rights

<sup>34</sup> AH Robertson et al, *Human Rights in Europe: A Study of the European Convention on Human Rights* (Manchester Univ. Press 1993) 25

civil liberties are the foundations on which democracy and orderly societies are built.<sup>35</sup> As much as this may be correct, it should not be totally conceived that rule of law is absolutely the same as human rights, especially in the light of issues of national defence. Rule of law has several connotations: supremacy of the law, equality before the law, action according to law, independence of the judiciary and respect for its decisions, dispensation of justice by the court, government according to civil law, practice of constitutional democracy, practice of separation of powers, access to justice, legal aid services, freedom and independence of the press, and respect for human rights.

In essence therefore, fundamental rights are subsumed under rule of law but rule of law is not entirely about fundamental rights. The two concepts, though related and interwoven, are not the same. Furthermore, what constitutes threat to national security is left for the court to determine. The logical reasoning around this is that, giving the court the discretionary latitude to determine what constitutes threat to national security is rule of law in itself because freedom and independence of the judiciary is one of the cardinal pillars of rule of law.

### **7. The Debate on *Dokubo-Asari v. FRN's*<sup>36</sup> case: A Misconception of Law**

There have been arguments surrounding the court's decision in Dokubo-Asari's case delivered by the Supreme Court. It is generally but wrongly believed that the ratio behind the decision in Asari's case is that court can suspend rule of law on the basis of national security and national defence. However, a careful review and assessment of the court's decision shows that the general believe is not true. The Supreme Court held clearly that where national security is threatened or there is real likelihood of it being threatened, human rights or the individual right of those responsible takes second place. The court did not hold, as widely believed, that rule of law would be suspended when national security is threatened or there is likelihood of it being threatened. The misconception must be clarified. The decision in Dokubo's case is not, in my own view, new or worthy of being debated. Section 45 of the Constitution of the Federal Republic of Nigeria has clearly highlighted situations where human rights may be restricted and these include interest of defence, public safety, public order, public morality, public health, and for the purpose of protecting the rights and freedom of other persons. Therefore the decision in Dokubo-Asari's case is clearly in line with the constitutional provision of section 45, especially interest of defence, public safety and public order.

### **8. Concluding Remarks**

The issue discussed in this research is a very topical one in Nigeria. It is no news that Nigeria has been battling with series of insurgency attacks and uproar of several militia groups threatening the continuing existence of the country. There are reports of daily killings and maiming of innocent citizens and even military officers as a result of terrorist attacks. As if this is not enough, the activities of kidnapping are on the increase, leaving nobody out. The government wants to be proactive to ensure there is an end to destruction of lives and properties in Nigeria and to this end; it is absolutely not out of place to suspend individual rights and civil liberties of citizens to ensure national security and defence. This does not however mean rule of law should be suspended to ensure national security because in an atmosphere where rule of law is not sustained, anarchy and lawlessness will prevail.

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<sup>35</sup>Ese Malemi, *supra*

<sup>36</sup> (2007) 12 NWLR (PT1048)