



Implication Of The Denial Of Human Rights And National Security In Nigeria

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ABSTRACT

The need to fight insecurity have been in the front burner of the discuss in Nigeria. In the recent past, the heightened insecurity situation in Nigeria have been a source of concern to everyone. Human Rights norms as documented by the International Bill of Rights seeks to amongst other things address the issue of insecurity. This article critically x-rays the effect that adherence to Human Rights norms play in enhancing national security, with particular reference to Nigeria. Further to that, is whether Human Right norms should be relegated when it clashes with national security or whether they can be both accommodated to complement each other.

Keywords: Human Rights, National Security.

INTRODUCTION

Since the birth of Human Rights movement in the mid-twentieth century in Nigeria, the promotion of Human Rights has been seen as competing with or even compromising core issues of national security.² Promoting Human Rights has long been viewed as a luxury to be pursued when the government has spare diplomatic capacity and national security is not being jeopardized.³

The subordination of Human Rights to national security has manifested itself in the past three decades of Nigeria's domestic and foreign policy. This is not to say that Human Rights have never motivated Nigeria's policy. In some cases, such as the pressure on South Africa throughout the 1980s, Human Rights was a driving factor. Rather the point is that Human Rights policies have generally given way to perceived security concerns.⁴

In Nigeria, there have been increase in the level of insecurity in the recent past. Despite government intense efforts to arrest the situation through increased budgetary allocation to the ministry of defence, purchase of the state of the Art weapons to the Armed forces, the Insecurities on the land has continued unabated. This paper seeks to analyze how the upholding of rule of law, social justice, freedom and human dignity can facilitate National Security. It will also seek to unravel the prevalent conceptual ambiguity regarding Human Rights and national Security. It starts with the theoretical underpinning of Human Rights and then moves on in laying and conceptualizing the state of security in the country. The paper then moves on to analyze and conceptualize Human Rights and security subsequently proceeds to narrate how the observance of Human Rights contributes to the state of security in the nation.

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² Buregess and Owen, "Editors' Introduction to what is Human Security? (2004) Security Dialogue 35(3) 345-376.

³ Numan Mahuj and Ind. Mizanur Rahman, 'Ensuring Human Security in Bangladesh: Role of National Human Rights Commission (NHRC).

⁴ President Muhammadu Buhari's speech during the 2015 Nigerian Bar Association (NBA) Conference in Abuja, where he stated that when there is a clash between Rule of Law and National Security that the Rule of Law will be relegated in the interest of national security.

THE CONCEPT OF HUMAN RIGHT

The concept of Human Rights is better appreciated when we understand the nature of man. Man by nature craves for the need for his rights to be respected.⁵ These rights are not necessarily the creation of the law but are endowed or an inbuilt desire in man. It is not the law that gave man the desire to be treated with dignity, the desire to be treated fairly with other members of the community or the desire to be respected, irrespective of social status, these desires are all inborn in man and implanted in our being before birth. What the creation of law only did was to provide a legal framework for the realization of these rights.

It is therefore pertinent that we understand that the concept of the respect of Human Rights is one that flows from the core of the human nature. This view was expressed by the Supreme Court through Kayode Eso in *Ransome Kuti vs AGF*⁶ where he describes Human Rights as “a right which stands above all other ordinary laws of the land which is in fact antecedent to the political society itself and that it is the primary condition to a civilized existence”. The implication of this is that these rights existed before the society or government. That man by his nature came to the society believing that these rights must be protected and that it’s a primary condition for a society that seeks peace.

According to Amartya Sen, Human Rights or its equivalent (fundamental rights, basic freedom, constitutional rights) refers to a higher order of right, authoritative defined and carrying the expectation that it has a peremptory character and thus prevails over (ordinary) rights and reflects the essential values of the society adopting it.⁷

Whether Human Rights discourse is essentially ethical and philosophical or rather essentially legal and political is a matter for debate, but as Sen remark “Even though Human Rights can and often do, inspire legislation, this is a further, rather than constitutive characteristics of human rights”⁸, Implying an inherent value of the concept of Human Rights, independent of what is established in law. These rights are “natural rights” derived from natural order and are inalienable immutable and absolute rights not based on “positive law” but recognized through a political and legal process that results in a declaration, law, treaty or other normative instrument.⁹

The rights are described as natural, inalienable, immutable and absolute rights. These are very strong adjectives used to qualify Human Rights, it goes to show the very character of Human Rights, which is to the effect that these rights are not the creation of artificial mechanisms but came innate in man and any artificial mechanism or instrument which tries to derogate or inhibit these rights will be resisted by man.

Similar view was expressed by Jean Jacques Rousseau, he pointed out that Human Rights are natural rights, that is right inherent in each individual irrespective of birth and status. He further stated thus:

“It is plainly contrary to the law of nature... that the privileged few, should judge themselves with superfluity while the starving multitude are in want of the bare necessities of life.”¹⁰

Jacques Rousseau was emphatic here in stating that denial of Human Rights contravenes the law of nature. This is so because the natural course of things expects that the rights of people must be obeyed and where there are derogations of these rights over a period of time there are always consequences like civil disobedience, societal unrest etc.

⁵ The Holy Bible and Quoran states that man was made in the nature of God (Gen 1:26) if man is in the image of God, that is God-like, it then means he came with an innate nature that does not permit subjugation.

⁶ (1985) 2NWLR Pt 211 @ 299.

⁷ Amarkya Sen, “Elements of a Theory of Human Rights,” [2004](32)(4) *Philosophy and Public Affairs*; 320.

⁸ *ibid* Pg. 319.

⁹ Steven Marks, *Human Rights: A Brief Introduction* (Harvard University Press, 2016)

¹⁰ J.J Rousseau, “Origin and Basis of Inequality Among Men” (Create Space Independent Publishing; 1755).

This points to a strong relationship between Human Rights and Security, but before we discuss this relationship, we shall be discussing the state of National Security in Nigeria.

THE STATE OF NATIONAL SECURITY IN NIGERIA

The 2022 Global Peace Index published by the Institute For Peace And Economics ranked Nigeria at 146 out of 163 countries, only better than countries like Iraq, Syria, Libya, Afghanistan, Sudan, Somalia, Yemen and Russia which are typically known to have been conflict areas for a long time.¹¹ The security challenges are continuing to spiral into general lawlessness and anarchy.¹² Also, the Global conflict tracker hosted by the United States Council of Foreign relations¹³ recorded that the attack by bandits across the North-west have claimed at least 5,000 lives since 2019. Since 2009, nearly 350,000 people have been killed in the North-Eastern part of the country due to largely the activities of Boko Haram Islamist Insurgents. The Number of displaced persons in Lake Chad Basin is about three million.

Insecurity in Nigeria is multidimensional and pervasive ranging from armed banditry kidnapping, attacks on state infrastructure, perennial herder/farmer clashes to gang violence, attacks on police stations, persons, airports and power transformers, inter-communal violence, ritual killings, mob justice and causal intimidation of ordinary citizens by the law enforcement agents.

In the south-south region, we have an economic war as the government struggles to maintain the peace required to a drive optimal crude oil exploration for FOREX earnings. Nigeria earns about 80% of its foreign exchange earnings from the oil and gas sector.¹⁴ There are also political agitations in the south-east, secessionist agitations in the south-west. Today, we have terrorism, banditry and kidnapping in the northern part that have taken frightening dimensions and colorations.

The worsening insecurity profile in Nigeria is reaching a worrisome dimension with the unfortunate incident on Monday, 28 March 2022, when some gun men launched an attack on a Nigerian Railway Corporation (NRC) Abuja-Kaduna evening train¹⁵ carrying an estimated 398 passengers. After the attacks report confirmed that eight people were killed and twenty-two people are still missing. Earlier on 26th of March 2022, the Kaduna Airport was attacked, leaving one dead and many maimed. This is rather frightening and increasingly threatening to the wellbeing of Nigerians.

The Federal government of Nigeria has made several attempts to arrest the heightened insecurity situation in the country, there have been an incremental budgetary allocation for the security sector. In the 2022 budget,¹⁶ the huge amount of N2.41 trillion was earmarked for the defence and security sector making Nigeria the third largest military budget in Africa behind only to South Africa and Algeria. This gesture may have reflected (government resolve to addressing the security challenges.

This goes to show that there is more to security than just arming the Armed Forces with fine weapons and state of the Art Antennary. If Nigeria having the third budgetary allocation to its Ministry of Defence in the whole of Africa is as insecure, at it presently is, it tells us that there might be other things we are not doing right, such as respect for Human Rights, this is because you cannot fight insecurity without dealing with the issue of rights derogations.

This is also while there have been some pieces of legislation in the nation where the issue of Human Right and National security intersects, this is very important because we cannot address one without addressing the other. For the purpose of context, we shall be discussing a few examples of our laws that have this intersection between National Security and Human Rights.

¹¹ Global Peace Index, accessed on <https://www.visionofhumanity.org/maps/#/>. Accessed on 21/12/2022.

¹² Lagos Chamber of Commerce and Industry, Statement on the Worsening Security Challenges in Nigeria, 2022.

¹³ United State Council on Foreign Relations. Accessed on <https://www.cfr.org/> 21/12/2022.

¹⁴ Punch Nigeria accessed at <https://punching.com/nigeria-lost-n74-51bn-oil-revenue-in-december-saysopoc/> 21/12/2022.

¹⁵ Nigerian's Abuja to Kaduna train attack access <https://www.bbc.com/news/world-africa-61775212> accessed 21/12/2022.

¹⁶ Budget Office of the Federation, Federal Republic of Nigeria, accessed at <https://www.budgetoffice.gov.ng/index.php/resources/internal-resources/cal-circular/2022?layout=default>. Accessed on 21/12/2022.

INTERSECTION BETWEEN HUMAN RIGHTS AND NATIONAL SECURITY VIA NIGERIAN LAWS

There have been several provisions of the Nigerian law, where the need to adhere and safeguard the rights of the citizenry and the need to ensure national security intersects. Some of the laws in this regard that this work will be examining includes the constitution of the Federal Republic of Nigeria 1999 (as amended), terrorism (prevention) Amendment Act 2012, Administration of Criminal Justice Act 2015, Armed Forces Act (AFA) CAP A20, laws of the Federation of Nigeria 2004 and Fundamental Right Enforcement Procedure Rules 2009.

The entire chapter four of the Constitution is devoted to fundamental rights. It commenced with the right of life, wherein it provided that “every person have the right of life and no one shall be deprived of his life save in the execution of a sentence in respect of criminal offence of which he has been found guilty in Nigeria.¹⁷ The Constitution brings in the issue of national security, even at this stage already by providing that a person shall not be regarded as having been deprived of his life in contravention of this section. If he dies as a result of the use to such extent, in such circumstances as is permitted by law or of such force as is reasonably for the following reasons, for the defence of any person from unlawful violence or for the defence of property, in order to effect lawful arrest or to prevent the escape of a person lawfully detained or for the purpose of suppressing of riot insurrection or mutiny.¹⁸

The constitution clearly distinguishes when the right to life can be said not to be derogated from. Any deprivation of life outside the exceptions becomes a criminal offence that is punishable by law. The constitution also recognizes that even in this exceptional case of insurrection or mutiny the suppression of such acts is necessary and that it may involve life, depending on the method used to suppress it and which should be in line with the rules of engagement of the military and paramilitary organization that is used for the suppression of the acts in question. There is emphasis in the constitution on the importance of life citizens as well as the need of having a nation that is secured. Hence, in *Eze v. State*¹⁹ the Supreme Court of Nigeria restated the fact that life is sacred and that the court will convict anyone who deprives another of his life in ways that are not permitted by law.

There are other human rights guaranteed by the constitution, like the right to dignity of human person,²⁰ it outlaws torture, inhuman and degrading treatment with the exception of it required in the duties of members of the Armed forces or the police in an emergency or calamity threatening the wellbeing of a community.

There are also other guaranteed rights in the Constitution like the right of personal liberty,²¹ the right of fair hearing²² the rights to private and family life, right to freedom of thought conscience religion,²³ right to freedom of expression and press²⁴ others are right to peaceful assembly and associations, right to freedom of movement,²⁵ right to own and acquire property.²⁶

From the foregoing it is obvious that the 1999 Constitution made adequate provisions for the protection of human rights and equally provide for specific circumstances especially with regard to national security when such rights can be derogated from. The interaction of human rights and security is very glaring in the constitution.

¹⁷ Section 33(1), Constitution of the Federation Republic of Nigeria.

¹⁸ *ibid*.

¹⁹ (2018) <PELR-44967(SC).

²⁰ Sec. 34(1) Constitution of the Federal republic of Nigeria.

²¹ *ibid* sec.35

²² *ibid* sec.36; *Chita Knitting and Weaving Manufacturing Co. Ltd vs. Akingbade* (2016) <PELR-40437 SC.

²³ *ibid* Sec. 38.

²⁴ *ibid* Sec.39

²⁵ *ibid* Sec. 41

²⁶ *ibid* Sec. 41

TERRORISM (PREVENTION) AMENDMENT ACT 2013

Terrorism appears to be a new menace in Nigeria, this led to the Terrorism Prevention Act 2011 and, its subsequent amendment in 2013. The amendment make provision for extra-territorial application of the Act and strengthens terrorist financing offences.²⁷

In the recent past some of the accusation of breach of Human Rights in some quarters against Nigeria sprang up due to fight against terrorism, especially with regard to Boko haram terrorist members. However, the Act provides for the protection of human rights even in the counter terrorism fights. One example of such provision is that:

The court may, pursuant to an *ex parte* application, grant an order for the detention of a suspect under the Act for a period not exceeding 90 days subject to the renewal for a similar period until the conclusion of the investigation and prosecution of the matter that led to the arrest and detention is dispersed with.²⁸

The provision is made into ensure there is no arbitrary and prolonged detention of suspects of terrorism offences in the country. Every person detained longer than the period provided has a right to sue. There is therefore a close interaction in this Act between Human Rights and security. It will be like a jungle to checks and balance to regulate methods of arrest and detention even in extreme cases of terrorism. This is a bold statement, emphasizing that even in government countering terrorism operations, security agencies must respect Human Rights.

ARMED FORCES ACT²⁹

This Act is a special law that guides members of the armed Forces in their day-to-day activities, both in and outside uniform. Members of the Armed forces even when they are countering terrorism are bound to be professional, strictly follow the rules of engagement and ensure that they respect Human Rights in their operations. There have been situations where members of the armed forces have been court martialled for breaching the Human Rights of subjects even in counter terrorism operations.

The law does not allow troops in the counter terrorism operation to extra judicially execute arrested terrorist no matter the atrocities they committed before their arrest.

ENHANCING NATIONAL SECURITY THROUGH THE PROTECTION OF HUMAN RIGHTS

Only by comprehending the root cause of social unrest and all forms of criminality can effective policies be devised to prevent future violations. It is no surprise that scholars have invested a great deal of energy in explaining the vexing question of why crimes occur. What moves people to commit atrocities and various forms of crimes against others, even their neighbors?

The conventional wisdom often points to evil or sadistic individuals as the source of crimes. A comparative perspective tells us however that most crimes are born out of Human Rights violations³⁰ and are the result of a fundamental and deliberate neglect and conclusion of a segment of the society by the state.³¹ Of all the possible means of curbing insecurity, arms and ammunition of the Armed forces have perhaps attracted the most attention by the state.³² More commonly known as the repression, coercion or state terror, this entails the use of treat of violence by the government or its agents and possible violations which take various forms, including torture, extra-judicial killing, political imprisonment and disappearance.

²⁷ Explanatory Memorandum, Terrorism (Prevention) (Amendment) Act, 2013.

²⁸ Sec. 27(1) Terrorism (Prevention)(Amendment) Act, 2013.

²⁹ CAP A20 Laws of the Federation of Nigeria 2004.

³⁰ Sonia Cardenas, "Constructing Rights" Human Rights Education and State" *International Political Science Review* [26](4) (2005) 4

³¹ S. Cardens, Human Rights in Comparative Politics accessed in <https://www.oxfordpoliticsstrove.com> 3/1/2023.

The evidence is so overwhelming that the use of sophisticated arms and ammunition by members of the Armed forces to quell insecurity has not achieved the desired outcome. In fact, as the more the state acquires more lethal weapons and advanced technology to arrest the situation, the criminals seem to devise other strategies to escape the security as a concept has gone beyond ammunitions and Fire Arms has been defined in various ways depending on perspective and purpose. According to the definition of African Union Non-Aggression and Common Defence Pact 3. Human security means the security of individual with respect to the satisfaction of the basic needs of life; it also encompasses the creation of the social, political, economic, military, environmental and cultural conditions necessary for the survival, livelihood and dignity of the individual.³³ Therefore the focus is not merely on threats emanating from violent conflicts. As the commission of human security explains: “(h)uman security is also concerned with deprivation from extreme impoverishment, pollution, ill health, illiteracy and other maladies.”³⁴

Human security therefore encompasses the provision and protection of the vital core of all human lives in ways that enhance human freedoms and human fulfilment.³⁵ The rights contained in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, social and Cultural Rights (ICESCR) Rights, establish the fundamental components of human rights. These rights bespeak the human conditions necessary for human wellbeing and advancement and the promotion and protection play a significant role in ensuring the goal of human security is attained.³⁶

Hence human rights and security are mutually reinforcing Human Rights define the rights necessary for promoting security, as well as identifying the corresponding obligations and the bearers thereof.

The two concepts complement each other, in the context of achieving human security, to achieve the goals of security, the commission of human security,³⁷ formulated a framework that combines two interrelated strategies, namely the protection and the empowerment of people. They emphasized the need for equality and non-discrimination, the standards they set, and their requirement for institutions and processes that enable individual liberties and freedoms, including political participation, make Human Rights an important framework for systematically addressing human security threats.³⁸ The protection and empowerment of people is critical to attain the goal of human security. This strategy emphasizes the need to enable people actively defend their freedoms and to develop the capability to address insecurities.

While assessing Human Rights and human security scenario in Nigeria, it is undeniably evident that when fundamental Human Rights is brutally violated, the people become in humanly insecure. It is therefore not possible to attain one without attaining the other. This further buttressed by the fact that societies where the rights of the people are respected are safer and more secure than societies, where there are deprivation and vast abuse of rights.

Therefore, the level of security in a locality is not fixed but changes according to the level in which rights are respected. Not taken into account these changes will lead to the erroneous conclusion that the issue of security is invariant. Environmental pollution, urban overcrowding, traffic accidents, aging population, structural change of the family, breaking down traditional social structures are phenomena that often triggers increased tension along with developmental levels speaking more broadly, the boom of globalization triggers a host of security threats such as climate change, the proliferation of weapons of mass destruction, international terrorism, crime. In addition, the consequences of globalization, such as

³² The 2022 Budget of the Federal Government of Nigeria has the Ministry of Defence Budgeted the sum of N2.41 trillion the Hurd largest in Africa.

³³ African Union Non-Aggression and common defence Pact (2005/2009) Article 3.

³⁴ Ibid.

³⁵ Commission on Human Security (2003:4).

³⁶ Commission on Human Security (2003:100).

³⁷ Commission of Human Security (2003:10-12).

³⁸ Report on the United Nations Secretary General on Human Security (A/64/701).

economic inequality, erosion of traditional cultural values, stratification of social divide into many classes or social groups also contribute to breaking down traditional communities, forcing marginalized groups or communities into marginalization.

Thus, denial of Human Rights not only serves as denial to individuals alone but is an elusive deep problem cutting across the foundation and depth of the society. The higher the development, the stronger the foundation and structure of the security and stability.

CONCLUSION

The relationship between Human Rights and security as has been highlighted has many overlap between them. There is a view by a leading human rights expert, Bertrand G. Rancharan,³⁹ that “Human Rights determine and direct human security”. It can be said that while human rights issues are often not well received by state policies, the security of the state can raise the issue of Human Rights to a higher level of consideration.⁴⁰ The argument of developing countries including Nigeria is that human rights are subjected to a great deal of criticism as a tool used by the western European hegemony, in stark contrast to what is called “African values”. While discussing the role of human rights in promoting national Security, it is to be noted that national security is enhanced by the observance of Human Rights.

Human Rights violations represent a threat to national security and are therefore used as indicators as early warning mechanism to prevent conflict. Human Rights also play a role in conflict management and peace building after conflicts. In other words, besides being an essential tool for preventing conflict, Human Rights are also the basis of state management and democracy. They provide the platform for addressing social unrest, through enhanced transparency and accountability.⁴¹ Security and Human Rights are owned at addressing both violence and poverty issues. International Human Rights law covers basic needs such as employment, education self-determination. Human Rights issues prohibits torture, repression and torture⁴² promotion and protection of “freedom from fear” and “live a life of dignity” are the goals of Human Rights.

In short, the concept of Human Rights and security are mutually reinforcing and interdependent.⁴³ Accordingly, we will not have security where there are denial of rights and we will not have respect for Human Rights in an insecure society.

³⁹ B Ramcharan, “Human Rights and Human Security” (2002). The Hague: Martinus Nijhoff.

⁴⁰ G. Oberleitner “Human Security a Challenge to international Law? Global Governance: A Review of Multilateralism and International Organisation, 11(2), 185-203.

⁴¹ NDP (2000). Human Development Report Oxford and New York, NY: Oxford University Press.

⁴² S. Ogata, “Overview for the Commission of Human Security” (2021).

⁴³ A. Sen. Why human security? International Symposium of human security (Tokyo 2002).