

BALANCING NATIONAL SECURITY AND CIVIL LIBERTIES: THE ROLE OF THE NIGERIAN JUDICIARY

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Abstract

This article examines the delicate balance between national security and civil liberties in Nigeria, with a focus on the critical roles played by the judiciary. In the context of increasing security challenges, including terrorism, insurgency, and cyber threats, the Nigerian government has implemented various measures aimed at safeguarding national security. However, these measures often raise concerns about potential infringements on civil liberties, such as freedom of speech, privacy rights, and due process. The Nigerian judiciary, as the guardian of the Constitution and the protector of individual rights, is tasked with navigating these complex issues. This article explores key judicial decisions and legal frameworks that illustrate how Nigerian courts have approached the tension between national security and civil liberties. It analyzes landmark cases where the judiciary has either upheld or struck down government actions on grounds of constitutional rights. The paper also covers the challenges faced by the judiciary, including political pressure, limited resources, and public perception. Through the review of legal precedents and scholarly opinions, the article aims to provide a nuanced understanding of the judiciary's role in maintaining a balance that ensures both the security of the state and the protection of fundamental human rights. It highlights the importance of judicial independence, transparency, and adherence to the rule of law in achieving this balance. The article concludes with recommendations for strengthening the judiciary's

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capacity to effectively adjudicate issues at the intersection of national security and civil liberties in Nigeria.

Keywords: National Security, Civil Liberty, Judiciary

1.0 Introduction

The balance between national security and civil liberties is a fundamental issue in any democratic society, and Nigeria is no exception. In recent years, Nigeria has faced significant security challenges, including Boko Haram insurgency, banditry, kidnappings, and cyber threats. In response, the government has enacted various security measures aimed at safeguarding the nation and its citizens. However, while the government has the legitimate obligation to ensure national security, it must not come at the undue expense of individual freedoms and rights enshrined in the Nigerian Constitution, such as the rights to freedom of speech, privacy and due process.¹

The judiciary plays a pivotal role in mediating this delicate balance. As the interpreter of the Constitution and the guardian of individual rights, Nigerian courts are tasked with ensuring that security measures do not disproportionately infringe upon civil liberties. This role is particularly challenging given pressures from the executive branch and the urgent need to effectively address security threats facing the nation.

This research paper delves into the Nigerian judiciary's approach to balancing national security and civil liberties. It examines key judicial decisions, legal principles, and the broader legal framework that guide the courts in navigating this complex terrain. By analyzing landmark cases and judicial reasoning, the paper sheds light on how Nigerian

¹ These rights can be seen in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

courts have responded to various security measures and their implications for civil liberties.

Furthermore, this article explores the challenges faced by the judiciary within this context, including political pressures, resource constraints, and issues of public trust. It also discusses the importance of judicial independence, transparency, and adherence to the rule of law in maintaining adequate balance.

Ultimately, this paper aims to provide a comprehensive understanding of the judiciary's crucial role in protecting both national security and individual rights in Nigeria. It underscores the need for a robust legal framework and an empowered judiciary to ensure that the pursuit of security does not come at the expense of fundamental freedoms.

2.0 Conceptual Clarifications

2.1 National Security

'Security is the sum total of vital interest of estate for which a state is willing to go to war either immediately or ultimately. It is really the core values and interest which are vitally important to the security of a state as reported in the Annual Reports, Ministry of Defence, Government of India, 1972.'²

Hence, National Security is simply defined as the ability of a country's government to protect its citizens, economy, and other institutions from threats. Notably, this definition has grown beyond the obvious protection against military attacks in the 21st century. It now includes several non-military missions such as economic security, political security, energy security, homeland security, cyber security, human

² Anand K Singh, 'Concept of National Security: An Overview' (2015) 2 (12) *Journal of Emerging Technologies and Innovative Research* 1920 <<https://www.jetir.org/papers/JETIR1701686.pdf>> accessed 26 May 2025.

security and environmental security. To ensure national security, governments rely on tactics, including political, economic and military power, along with diplomacy.³

Nigeria's national security landscape is multifaceted and complex, reflecting the country's diverse ethnic composition, expansive geography, and significant economic potential. As Africa's most populous nation and largest economy, Nigeria faces a range of security challenges that include insurgencies, terrorism, communal conflicts, and organised crime. The Boko Haram insurgency in the northeast, the Niger Delta militancy in the south, and herder-farmer clashes in the middle belt are prominent issues that highlight the internal security threats. The Nigerian government has implemented various strategies and collaborated with international partners to address these threats, but the dynamic and evolving nature of security challenges necessitates continuous adaptation and comprehensive policy responses.⁴ Additionally, Nigeria's strategic position in West Africa makes it a key player in regional stability and counter-terrorism efforts.

According to the African Center for Strategic Studies⁵, the most potent threats to Nigerian national security include global challenges such as terrorism; transnational organised crimes; crude oil theft or illegal bunkering; climate change; communal and ethno-religious conflicts; pastoralists and farmers conflicts; politics and federalism in Nigeria;

³ Robert Longley, 'National Security Definition and Examples' (Thoughtco, 24 September 2021) <<https://www.thoughtco.com/national-security-definition-and-examples-5197450>> accessed 26 May 2025.

⁴ Anekwe Rita Ifeoma et al, 'Insurgencies and National Security in Nigeria: The Way Forward' (May 2020) American International Journal of Business Management 3(5) 4-9 < <https://www.aijbm.com/wp-content/uploads/2020/05/B350409.pdf> > accessed 26 May 2025.

⁵ Africa Center for Strategic Studies, 'Nigeria's Diverse Security Threats' (30 March 2021) <<https://africancenter.org/spotlight/nigeria-diverse-security-threats/>> accessed 26 May 2025.

governance; poverty; kidnapping, proliferations of small arms and light weapons; proliferation of weapons of mass destruction; illegal migration; economic challenges; financial crimes; information technology and cyber security; natural, man-made and medical related threats and environmental security. The threats enumerated above are by no means the only threats to Nigeria's national security. They are nevertheless the most potent and are adjudged potential sources of disaffection, discontent and instability that could adversely affect the country quest for national stability, unity and development.⁶

2.2 Civil Liberties

Civil liberties refer to the fundamental rights and freedoms guaranteed to individuals, such as freedom of speech, assembly and the right to a fair trial. They are natural rights inherent to every citizen which protects them from tyranny by the state. The degree to which these liberties are enjoyed by people is an important indicator of the quality of a given country's democracy.⁷

Although the term 'civil liberties may vary across different countries, examples of civil liberties include freedom from torture and death, the right to liberty and security, freedom of conscience, freedom of the press, freedom of religion, freedom of expression, freedom of assembly,

⁶ Brig. Gen. (Ret) Saleh Bala and Dr. Émile Ouédraogo, 'National Security Strategy Development Nigeria Case Study Working Paper (Preliminary Draft)' (2018) *African Center for Strategic Studies* <<https://africancenter.org/wp-content/uploads/2019/04/2019-04-NSSD-Case-Study-Nigeria-EN.pdf> > accessed 26 May 2025.

⁷ Alex Nulman, 'What are Civil Liberties: Definition, Role, Connection to Civil Rights' (Liberties.eu, 4 October 2022) <<https://www.liberties.eu/en/stories/civil-liberties-definition/44448> > accessed 26 May 2025.

freedom of speech, the right to privacy, the right to equal treatment and due process, the right to a fair trial, and the right to life.⁸

In Nigeria, civil liberties are enshrined in the Constitution and have been upheld in various judicial decisions. One notable case is the landmark decision in *Fawehinmi v. Akilu* (1987)⁹, where the Supreme Court of Nigeria reinforced the protection of civil liberties, emphasising the importance of safeguarding individuals' rights against arbitrary state actions. This case highlighted the judiciary's role in upholding the rule of law and ensuring that civil liberties remain a cornerstone of Nigeria's legal framework.¹⁰

Some international human rights instruments which Nigeria is also a signatory to enshrine these civil rights which are essential to ensuring individual autonomy and limiting governmental power, thereby fostering a democratic society.¹¹

2.3 Judiciary

According to Black's Law Dictionary, the Judiciary is that branch of government invested with judicial power, which is intended to interpret, construe and apply the law.¹² Simply put, it refers to the part of a country's government that is responsible for its legal system, including all the judges in the country's courts¹³, the Courts and the body interpreting the laws and administering justice. As

⁸ Modern Threat to Civil Liberties' (Learn Nigerian Law, 2024) <<https://www.learnnigerianlaw.com/learn/human-rights/threats> > accessed 20 February, 2025.

⁹ (1987) SC 1 NWLR (Pt. 67) p.797 SC.

¹⁰ Ibid.

¹¹ Nulman (n 7).

¹² Bryan A Garner (ed), Black's Law Dictionary (11th edn, Thomson Reuters 2019)

¹³ Cambridge Dictionary, 'Judiciary' <<https://dictionary.cambridge.org/dictionary/english/judiciary> > accessed 26 May 2025.

the third arm of government in Nigeria, its primary responsibility is to interpret laws passed by the legislature and apply them to specific cases in order to decide any issues pertaining to civil rights and obligations between individuals, as well as between the government or authority and any Nigerian citizen.¹⁴

As Justice Nnamani JSC (as he then was) puts it in his scholarly article, *“the Judiciary is the guardian of our Constitution, the protector of our cherished governance under the rule of law, the Guardian of our Fundamental rights, the enforcer of all laws without which the stability of society can be threatened, the maintainer of public order and public security, the guarantee against arbitrariness and generally the only insurance for a just and happy society”*.¹⁵

Also, Section 6(1) and (2) of the 1999 Constitution provide that the judicial power in the federation and states shall be vested in the courts established for the federation and the states respectively.¹⁶ In defining what is meant by "Judicial Power", Nnaemeka Agu JSC in *Momoh v Senate*¹⁷, described judicial power as the authority exercised by the department of government that is charged with declaration of what the Law is and its construction.

3.0 Legal Framework for Security and Civil Liberties in Nigeria

3.1 The Nigerian 1999 Constitution (as amended) (CFRN)

¹⁴ Abayomi Oluwaseun Akanle and Kemisola Busayo Akanle, ‘Legal Analysis of the Role of the Judiciary in Enhancing National Security in Nigeria’ (2021) 7 (1) *Journal of Law and Global Policy*

<<https://www.iardjournals.org/abstract.php?id=3307&j=JLGP&pn=Legal+Analysis+of+the+Role+of+the+Judiciary+in+Enhancing%0D%0ANational+Security+in+Nigeria> > accessed 27 May 2025.

¹⁵ E Nnamani “The Judiciary in the 1990’s: Expectations and challenges” A Journal of contemporary legal Problems, Vol 1, No.3 (1990)27.

¹⁶ Section 6 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

¹⁷ (1984) 4 NCLR 269.

The Nigerian 1999 Constitution, as amended, specifies several provisions concerning the country's security and defence. Section 14(2) (b) emphasises that 'the security and welfare of the people shall be the primary purpose of government.' Rightly so, Chapter IV of the Constitution guarantees fundamental rights, including the right to life (Section 33), personal liberty (Section 35) and freedom of expression (Section 39). Section 45 allows for the restriction of these rights in the interest of defence, public safety, public order, public morality or public health. However, it is pertinent to say that such restrictions must be 'reasonably justifiable in a democratic society.'¹⁸

In addition, Section 217 empowers the President to serve as Commander-in-Chief of the Federation's Armed Forces. This invariably grants the President jurisdiction over the Army, Navy, and Air Force, as well as the ability to choose service chiefs. Section 218 reaffirms the President's role as Commander-in-Chief and states that the President may transfer authority over the operational use of the Armed Forces to other military officials. Section 219 establishes the National Defence Council, which is responsible for advising the President on questions of defence and security. Section 220 covers the formation of the Nigeria Police Force, outlining its functions and capabilities. It emphasises the responsibility of the police in upholding law and order. Section 305 allows the President to proclaim a state of emergency and confer special powers to address the emergency.¹⁹ This includes the authority to issue legally binding executive directives. Section 216 gives the President the authority to nominate service heads for the armed forces, subject to

¹⁸ Section 14 and Chapter IV of the CFRN 1999 (as amended).

¹⁹ The State House press release titled 'President Tinubu Declares State of Emergency in Rivers State on Tuesday 18 March 2025', confirms the invocation of Section 305 (5) to address a prolonged political crisis, suspension of the governor, deputy governor and state assembly; and the appointment of Vice Admiral Ibokette Ibas (Rtd) as Administrator for six months.

National Assembly confirmation.²⁰ These constitutional provisions form the groundwork for the organisation, command, and usage of Nigeria's armed forces, as well as the development of bodies such as the National Defence Council.²¹

3.2 Police Act 2020²²

Section 1 of the Act creates the Nigeria Police Force as the primary law enforcement agency in the country and defines its organisational structure. Section 4 defines the functions and duties of the Nigeria Police Force, to include maintaining law and order, preventing and detecting crime, enforcing laws, protecting lives and property, and preserving public peace. Section 6 establishes the National Police Council, which is responsible for the structure and management of the Nigeria Police Force. The council consists of the President, the Governors of the States, the Chairman of the Police Service Commission, and the Inspector-General of Police. Section 7 mandates the National Police Council to advise the President on matters concerning the structure and administration of the Nigeria Police Force. Section 33, on the other hand, also grants wide range of authority to the Inspector-General of Police to make legal directives for the preservation and protection of public safety and order. While Section 46 of the Act gives the Inspector-General of Police the authority to create specialised units within the Force to fight organised crime, terrorism and cybercrime, among other organised crimes.²³

²⁰ Constitution of the Federal Republic of Nigeria, 1999 as amended.

²¹ Ifediora Obiora, 'The Potency of Extant Laws Regulating Security in Nigeria' (Omaplex Law Firm, 23 July 2024) < <https://omaplex.com.ng/the-potency-of-extant-laws-regulating-security-in-nigeria/> > accessed 26 May 2025.

²² Nigeria Police Act 2020, No 2 of 2020, Federal Republic of Nigeria Official Gazette No 148, Vol 107, Government Notice No 154.

²³ Obiora (n 21).

3.3 Armed Forces Act 2004²⁴

The Nigerian Armed Forces Act establishes the legislative basis for organising, disciplining, and administering the Federal Republic of Nigeria's Armed Forces. The Act designates the President as the Commander-in-Chief of the Armed Forces and creates the structure and operations of the Army, Navy, and Air Force. Section 1 establishes the Federation's Armed Forces and provides that they will continue to exist under the President's authority. Section 2 describes the components of the Armed Forces, which comprise the Army, Navy, and Air Force. Section 7 empowers the President to nominate the Chief of Defence Staff, the Chief of Army Staff, the Chief of Naval Staff, and the Chief of the Air Staff. Section 8 reiterates the President's role as Commander-in-Chief of the Armed Forces and grants the President the authority to issue directions for the operational use of the Armed Forces. Section 9 establishes the terms of service for members of the Armed Forces, including salary, pensions, and allowances. Section 16 of the Act grants the President the authority to issue regulations and orders for the discipline, administration, and good governance of the Armed Forces, typically in cooperation with the National Defence Council. These parts emphasise the legal foundations of the Nigerian Armed Forces, with a focus on the President's authority as Commander-in-Chief, the Armed Forces' structure, and the framework for command, discipline, and service conditions.²⁵

3.4 Nigerian Security and Civil Defence Corps (NSCDC) Act 2003²⁶

The NSCDC is responsible for protecting the safety of persons and property, particularly in areas not covered by the Nigeria Police Force.

²⁴ Armed Forces Act, Cap A20, Laws of the Federation of Nigeria 2004.

²⁵ Obiora (n 21).

²⁶ Nigeria Security and Civil Defence Corps Act 2003, Cap N146, Laws of the Federation of Nigeria 2004, as amended by Nigeria Security and Civil Defence Corps (Amendment) Act 2007.

Section 1 established the Nigeria Security and Civil Defence Corps as a government paramilitary body tasked with providing measures to protect the nation and its population from threats, attacks, and disasters. Section 3 describes the NSCDC's functions, with a focus on life and property protection as well as other national security tasks. Section 7 empowers NSCDC personnel to arrest and detain anyone who is reasonably suspected of committing crimes against essential infrastructure and public utilities. Section 8 describes the powers of NSCDC officers, including the ability to carry firearms, access premises for inspection, and implement disaster prevention and control measures. Section 9 urges the NSCDC and other security agencies to work together to carry out their missions more effectively. Section 12 protects NSCDC officers from legal action if they behave in good faith while doing their duties.²⁷

3.5 Administration of Criminal Justice Act, 2015 (ACJA)²⁸

The ACJA was enacted in May 2015, with a view to reforming the delivery of criminal justice in Nigeria. Section 1 (1) of the Act states the objectives of the Act thus: “The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.”²⁹

This Act therefore helps the judicial arm of government in performing their pivotal role in such a way that it provides a comprehensive

²⁷ Obiora (n 8).

²⁸ Administration of Criminal 2015, Laws of the Federation of Nigeria.

²⁹ Yemi Akinseye-George, ‘Eight Years of the Administration of the Criminal Justice Act, 2015: What has changed?’ (Loyal Nigerian Lawyer, 6 November 2023) < <https://loyalnigerianlawyer.com/eight-years-of-the-administration-of-criminal-justice-act-2015-what-has-changed/> > accessed 26 May 2015.

procedural framework that enhances both national security and the protection of civil liberties in Nigeria. The act harmonises and replaces the outdated Criminal Procedure Act (CPA) and the Criminal Procedure Code (CPC) applicable in the federal courts³⁰ by introducing provisions that ensure due process in the apprehension, detention and prosecution of suspects. Notably, Sections 6 and 7 emphasise the duty of law enforcement agencies to respect human dignity and prevent abuse during arrest and detention, which reinforces the constitutional rights guaranteed under Chapter IV of the 1999 Constitution. Therefore, by ensuring timely prosecution and prohibiting arbitrary arrests and prolonged pre-trial detention, the Act supports security operations while safeguarding individual freedom; a key element in striking the balance between state security interests and human rights.³¹

Furthermore, Sections 293 to 299 of ACJA provides for remand proceedings and the requirement of judicial oversight in detention matters which serve in checking executive overreach and abuse by security operatives. The judiciary plays a pivotal role under the Act by interpreting and enforcing these safeguards, thereby ensuring that national security measures do not result in the erosion of civil liberties.³² Additionally, the Act's promotion of non-custodial sentencing options such as community service and parole³³ addresses the problem of prison congestion which is often worsened by indiscriminate security crackdowns. Through these mechanisms, this Act reinforces the legal

³⁰ Same can be found in states that have adopted it.

³¹ Chukwuemeka Eze, 'ACJA and the Protection of Human Rights in Nigeria: A Critical Appraisal' (2021) 12 (3) *Nigerian Journal of Human Rights Law* 45.

³² Abimbola Olayemi, 'Safeguarding Civil Liberties in Nigeria: The Role of the Judiciary under the ACJA' (2020) 18(1) *African Journal of Criminal Justice Reform* 22.

³³ As provided in Section 453of ACJA.

and institutional structures necessary for a balanced approach to justice, where both security and liberty are protected under the rule of law.³⁴

It should also be noted that in the International sphere, Nigeria is a signatory to various human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Human and Peoples Rights Law, which further obligates the government to uphold civil liberties.

3.6 International Covenant on Civil and Political Rights (ICCPR)³⁵

The ICCPR, adopted by the UN General Assembly in 1966 and ratified by Nigeria in 1993 outlines a broad range of civil liberties and imposes binding obligations on state parties. By virtue of Article 2(1), Nigeria is obligated to respect and ensure the rights of all individuals without discrimination. Hence, obligatory provisions include Article 6 (right to life), Article 7 (prohibition of torture or cruel treatment), Article 9 (right to liberty and security), Article 14 (right to a fair trial), Article 17 (right to privacy), and Article 19 (freedom of expression). The provisions seek to limit arbitrary use of state power and guarantee fundamental freedoms, even during times of emergency as Article 4 sets out strict conditions for derogations.³⁶

Although Nigeria has ratified the ICCPR, the law is however not enforceable in Nigerian courts unless domesticated through legislation, as provided by Section 12 (1) of the Constitution of the Federal Republic

³⁴ Femi Odekunle, 'The Administration of Criminal Justice Act and Its Implications for Criminal Justice in Nigeria' (2016) 3(2) *Journal of Law and Contemporary Issues* 109.

³⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

³⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, *United Nations Human Rights Office of the High Commissioner* < <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> > accessed 17 July 2025.

of Nigeria, 1999 as amended. Despite the aforementioned, Nigerian courts sometimes reference its provisions in human rights cases to interpret Chapter IV fundamental human rights under the Constitution. An example is a reference drawn from the provision of Article 14 of the ICCPR and Section 36 of the Constitution, which both guarantee fair hearing. Therefore, even though the ICCPR is not yet fully domesticated, it influences judicial reasoning and strengthens Nigeria's obligation under international law to protect civil liberties.

3.7 African Charter on Human and People's Rights (ACHPR)³⁷

The ACHPR, adopted in 1981 by the Organization of African Unity (now African Union), is fully domesticated in Nigeria through the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9, LFN 2004. Key provisions where the Charter guarantees civil and political rights include Article 4 (right to life), Article 5 (protection against torture and degrading treatment), Article 6 (right to fair trial), Article 9 (freedom of expression) and Article 10-11 (freedom of association and assembly).³⁸

Since the Charter is domesticated, it therefore means that its provisions are enforceable in Nigerian courts without the need for further legislative action. This explains the regular reliance on its provisions by the Nigerian courts which can be seen in the case of *Abacha v Fawehinmi*³⁹, where the Supreme Court held that the African Charter has the force of law in Nigeria and can be enforced like any other domestic statute. This pronouncement affirms that the government is legally obligated to uphold the rights enshrined in the Charter and also, individuals can seek redress in domestic courts for violation of those

³⁷ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria 2004.

³⁸ *Ibid.*

³⁹ (2000) 6 NWLR (Pt. 660) 228.

rights. Therefore, the ACHPR plays a vital role in ensuring accountability and safeguarding civil liberties in Nigeria.

4.0 The Conflict between National Security and Civil Liberties

The relationship between national security and civil liberties is often characterized by tension, particularly in periods of crisis or perceived threats to a state's stability. National security embodies the protection of a nation's territorial integrity, sovereignty and the safety of its citizens from both internal and external threats. While on the flip side, civil liberties encompass individual rights and freedoms such as the right to life, liberty, privacy and freedom of expression, which are protected by constitutional and legal instruments. In reality, efforts to protect the state may necessitate limitations on certain freedoms. For instance, by the provision of Section 45(1) of the Nigerian Constitution, civil liberties guaranteed in Sections 37 to 41 can be restricted in the interest of defense, public safety, public order or public morality. However, the challenge arises when such restrictions are applied arbitrarily or disproportionately.⁴⁰

An example of this tension is evident in Nigeria's approach to counterterrorism. In the case of *Asari Dokubo v Federal Republic of Nigeria*⁴¹, the Supreme Court held that the right to personal liberty could be derogated from, in cases where national security is at stake. My Lord, Hon. Justice Ibrahim Tanko Muhammad in his pronouncement, stated that, 'where national security is threatened or there is a likelihood of it being threatened, human rights or the individual rights of those responsible take second place.' This gives emphasis to the judiciary's

⁴⁰ Onyinyechi David-Mark, 'Individual Rights, Terrorism and National Security in Nigeria: Issues and Challenges' (13 November 2023) *African Journal of International and European Economic Law* 8(1) 110-125

< <https://ajieel.com/index.php/a/article/download/73/71/283> > accessed 17 July 2025.

⁴¹ (2007) 12 NWLR (Pt. 1048) 320.

tendency to prioritize state security over personal freedoms in certain circumstances. However, though this approach may serve instantaneous security needs, it raises concern over the erosion of rights and the potential for abuse under the guise of security.⁴²

International instruments also showcase this delicate balance. Article 4 of the International Covenant on Civil and Political Rights (ICCPR) allows for derogation from certain rights during public emergencies that threaten the life of the nation, but imposes strict conditions: the measures must be strictly required by the exigencies of the situation, non-discriminatory and not inconsistent with other international obligations. Importantly, some rights, such as the right to life (Article 6), freedom from torture (Article 7) and recognition as a person before the law (Article 16) are non-derogable. Despite ratifying the ICCPR, it is yet to be domesticated which limits its enforceability Nigeria under Section 12(1) CFRN though occasionally, it is referenced in interpreting the scope and limitation of constitutional rights.⁴³

By distinction, the African Charter on Human and People's Rights (ACHPR) which has been domesticated in Nigeria, does not provide for derogation clauses, thereby reinforcing the protection of civil liberties even in states of emergency. In the case of *Abacha v Fawehinmi*⁴⁴, the Supreme Court affirmed that the provisions of the ACHPR have the

⁴² Oluwapelumi M. Mofuluwawo, 'Balancing the Competing Interests of Human Rights and National Security: *Dokubo-Asari v Federal Government of Nigeria* in Perspective' (TheNigeriaLawyer, 20 August 2024) <<https://thenigerialawyer.com/balancing-the-competing-interests-of-human-rights-and-national-security-dokubo-asari-v-federal-government-of-nigeria-in-perspective/>> accessed 17 July 2025.

⁴³ Aaron Olaniyi Salau, 'The Right of Access to Information and National Security in the African Regional Human Rights System' (African Human Rights Law Journal, 2017)

<<https://www.ahrlj.up.ac.za/salau-ao>> accessed 17 July 2025.

⁴⁴ *Ibid* (n 39).

force of law in Nigeria and can be invoked in domestic courts. This decision has played a pivotal role in promoting the enforceability of civil rights even in the face of state-imposed restrictions for security purposes. Ultimately, the legal framework in Nigeria reveals a complex dynamic in which national security and civil liberties must be carefully balanced to avoid legitimizing authoritarian tendencies under the pretext of maintaining order.⁴⁵

5.0 The Role of the Judiciary in the Conflict between National Security and Civil Liberty

The judiciary, as the interpreter of the Constitution and the guardian of individual rights, plays a pivotal role in mediating a delicate balance between national security and civil liberties. In other words, the Nigerian courts are tasked with striking a balance by ensuring that measures taken for national security do not disproportionately infringe upon civil liberties. This is due to the fact that the constitution provides for both national security and civil liberties. For instance, Section 14 (2) (b)⁴⁶ stipulates that the ‘security and welfare of the people shall be the primary purpose of government,’ while Chapter IV guarantees civil liberties such as the right to life⁴⁷; right to respect of human dignity⁴⁸; right to personal liberty such as no person should suffer from unlawful arrest or detention outside the confines of reasonable time and, on the flip side, individuals arrested should be availed prompt information upon arrest in a language they understand, of the reasons for their arrest and any charges against them⁴⁹; right to fair hearing within a reasonable

⁴⁵ Emmanuel Onyekachi Ugwu, ‘The Interaction between Human Rights and National Security in Nigeria’ (22 November 2021) *Global Journal of Politics and Law Research* 9(7) 61-69 < <https://ssrn.com/abstract=3968739> > accessed 17 July 2025.

⁴⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁴⁷ S 33 Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁴⁸ *Ibid.* S 34

⁴⁹ *Ibid.* S 35.

time by a court of law guaranteeing independence and impartiality⁵⁰; freedom of expression⁵¹ amongst others. This dual mandate places the judiciary at the centre of determining the constitutionality and proportionality of security measures which invariably requires a proportionality test and adherence to the rule of law. Hence, the judiciary is saddled with the meticulous process of judicial review, where courts assess the legality and constitutionality of actions taken by the government and its agencies whilst holding the balance between their role in national security on the one part and their role in protecting civil liberties on the other part.⁵²

In carrying out this responsibility, Nigerian courts have been asked to define the extent to which individual rights can be compromised in the interest of national security. A renowned case in this regard is *Alhaji Mujahid Dokubo-Asari v. Federal Republic of Nigeria*⁵³ where the appellant, Mujahid Asari Dokubo, while upholding the decision of the trial court, the Supreme Court held that even though the constitution guarantees personal liberty, such rights can be restricted especially when national security is at stake. The court stated that the collective right to security supersedes individual rights when there is credible threat to national peace and stability.⁵⁴ Thus, by upholding the integrity of the constitution and scrutinising attempts to curtail rights under vague or overreaching justifications, the judiciary plays a pivotal role in preserving the democratic principles upon which Nigeria's legal framework is built.

⁵⁰ Ibid. 36

⁵¹ Ibid. s 39

⁵² Femi Falana, 'National Security is Subject to Rule of Law' (Vanguard, 2018) <<https://www.vanguardngr.com/2018/09/national-security-is-subject-to-rule-of-law-3-by>> accessed 25 May 2025.

⁵³ (2007) 12 NWLR (Pt 1048) 320 (SC).

⁵⁴ Ibid.

Similarly, in *Nnamdi Kanu v Federal Republic of Nigeria*,⁵⁵ Nnamdi Kanu, leader of the Indigenous People of Biafra (IPOB), was arrested and extradited to Nigeria under controversial circumstances in 2021. Despite a 2022 Court of Appeal ruling that discharged him; the Supreme Court in December 2023 overturned this decision, reinstating terrorism charges. The Court acknowledged violations of Kanu's rights during his arrest but held that these did not warrant dismissal of the charges, emphasising the precedence of national security concerns.⁵⁶

Another case that emphasises the judiciary's role in national security is *Boko Haram Suspects v Federal Republic of Nigeria*⁵⁷ where the suspects were accused of terrorism and national security offences. In this case, bail was restricted due to national security concerns, but the restriction was deemed reasonable and justifiable. The court held that the right to bail can be restricted in cases involving national security, but the restriction must be reasonable and justifiable. In the same vein, in *Mohammed Yusuf v. Federal Republic of Nigeria*,⁵⁸ where the applicant was accused of terrorism and national security offences, bail was restricted due to national security concerns, but the restriction was deemed in accordance with the law. The court held that the right to bail can be restricted in cases involving terrorism and national security, but the restriction must be in accordance with the law. Also, in *Aminu Tambuwal v. Federal Republic of Nigeria*,⁵⁹ where Aminu Tambuwal, the Governor of Sokoto State, was charged with corruption and abuse of office; the court held that the right to bail is not absolute and can be

⁵⁵ (2022) CA/A/203/2022 (Court of Appeal, Abuja).

⁵⁶ 'Nigeria's Supreme Court reinstates terrorism charges against separatist leader' (AP News, 15 December 2023) <<https://apnews.com/article/51a637e9f77fc14d49322ee52ef5a0b8>> accessed 27 May 2025.

⁵⁷ (2015) 15 NWLR (Pt. 1483) 444.

⁵⁸ (2010) 6 NWLR (Pt. 1191) 191.

⁵⁹ (2015) 17 NWLR (Pt.1494) 211.

denied if the applicant is charged with an offence that threatens national security or public safety.

On the other hand, in the case of the Federal Republic of Nigeria v Omoyele Sowore,⁶⁰ the judiciary demonstrated its commitment to civil liberties. Here, the defendant, a human rights activist, was arrested and charged with treasonable felony following his decision to start a “revolution” in Nigeria starting from August 5, 2019. The DSS argued that his call for revolution posed a threat to national security, public order and the stability of the state. The counsel for the accused applied for bail and argued that the charges brought against him were politically motivated and aimed at silencing him. The court ruled in favour of the accused, granting him bail with stringent conditions as it found that the evidence presented against the accused did not justify prolonged detention and that the constitutional rights of the accused should be upheld. The Sowore bail saga illustrated how the judiciary maintains the fragile balance between national security and civil liberty in Nigeria, preventing the executive from using national security as a justification for political oppression.⁶¹ Therefore, while the government has a legitimate interest in maintaining stability, suppressing political opposition under the guise of national security threatens democracy.

Another instance of the judiciary maintaining the balance between national security and civil liberty is its role of checking executive overreach. This is exemplified in the case of Lagos State v Ojukwu⁶², where the Supreme Court condemned the State’s use of force without due process, emphasising the rule of law. Similarly, in the case of *Fawehinmi v Abacha*⁶³ the Supreme Court upheld the right to personal

⁶⁰ Charge No. FHC/ABJ/CR/235/2019 (Unreported, Federal High Court, Abuja).

⁶¹ *Federal Republic of Nigeria v Omoyele Sowore* (n 60).

⁶² (1986) 1 NWLR (Pt. 18) 621.

⁶³ (2000) 6 NWLR (Pt. 660) 228.

liberty and condemned arbitrary detention. Also, in the case of Director of *SSS v Agbakoba*⁶⁴, the court affirmed the right to freedom of movement.

From the above cases, it can be inferred that one of the roles of the judiciary is to ensure that laws and executive actions comply with constitutional provisions. This answers why we see the courts' action through its power vested for judicial review; invalidate laws or actions that infringe upon civil liberties.

In essence, the judiciary's commitment to interpreting and upholding the provisions of the constitution is paramount to protecting citizens from the misuse of state power. By maintaining a steadfast stance on constitutional principles, the judiciary ensures that personal liberties and privacy rights remain inviolable, thereby reinforcing the foundation of a democratic society where the rule of law prevails and individual rights are respected and upheld.

6.0 Challenges Facing the Judiciary

Despite the constitutional guarantees, it is a fact that the Judiciary faces several challenges in carrying out their role of interpreting the law and balancing national security and civil liberties. These challenges range from:

- i. Political interference: there have been instances when the executive outrightly flout and disregard court orders, thereby undermining the judicial authority. Another example is the case of Daniel Ojukwu's arrest⁶⁵. Daniel Ojukwu, a journalist, was detained under the

⁶⁴ (1999) 3 NWLR (Pt. 595) 314.

⁶⁵ Foundation for Investigative Journalism, 'Nigerian Police Arrest FIJ Reporter, Daniel Ojukwu' (6 May 2024) <<https://mfwa.org/country-highlights/nigerian-police-arrest-fij-reporter-daniel-ojukwu/>> accessed 28 May 2025.

Cybercrime Act for over a week without being charged. This raises concerns about press freedom of expression and the misuse of security laws to suppress dissent of opinions.

- ii. Resource Constraints: this refers to inadequate resources of the judiciary which hampers its independence and efficiency.
- iii. Corruption: allegations of corruption within the judiciary erode public trust and compromise the delivery of justice.

7.0 Conclusion

In conclusion, the judiciary plays a vital role in striking a balance between national security and civil liberty in Nigeria. As the guardian of the constitution, the judiciary must ensure that the executive's pursuit of national security does not imperil the fundamental rights of citizens. Through judicial review and robust jurisprudence, the judiciary can prevent arbitrary detention, surveillance, and suppression of free speech. By upholding the rule of law and protecting individual liberties, the judiciary can foster a culture of transparency, accountability, and human rights in Nigeria's national security apparatus.

The judiciary's role is particularly crucial in the context of Nigeria's ongoing struggles with terrorism, insurgency, and banditry. While the government's efforts to combat these threats are legitimate, they must not come at the expense of citizens' fundamental rights. The judiciary must therefore remain vigilant in preventing the erosion of civil liberties and ensuring that national security measures are necessary, proportionate, and in line with international human rights standards.

By doing so, the judiciary can safeguard the very fabric of Nigerian democracy and ensure that national security enhances, rather than erodes, the well-being of all citizens. The judiciary's independence, impartiality, and courage in the face of executive pressure are essential in this regard. By upholding the constitution and the rule of law, the

judiciary can guarantee that Nigeria's national security framework is built on a foundation of respect for human rights and the dignity of all persons. Ultimately, the judiciary's role in mediating the conflict between national security and civil liberty will shape the future of human rights and the rule of law in Nigeria, and will have far-reaching implications for the country's democratic development and international standing.

8.0 Recommendations

- i. **Judicial review:** The courts should exercise robust judicial review to ensure that national security measures are necessary, proportionate, and comply with human rights standards.
- ii. **Transparency and accountability:** The judiciary should promote transparency in national security decision-making and hold the executive branch accountable for any violations of civil liberties. This will go a long way in blotting out corruption allegations against the judiciary.
- iii. **Protection of vulnerable groups:** The judiciary should be vigilant in protecting the rights of vulnerable groups, such as minorities and political opponents, from excessive national security measures.
- iv. **Dialogue and collaboration:** The judiciary should engage in dialogue with the executive and legislative branches to find balanced solutions that address national security concerns while respecting civil liberties.
- v. **Human rights education:** The judiciary should promote human rights education and awareness among law enforcement agencies, the military, and the general public. This can be carried out through the use of the National Judicial Institute whose mandate is to educate judicial officers and their support staff. They can widen those in attendance to include these law enforcement agencies in such forums.

II Wada & RD Mann: Balancing National Security and Civil Liberties: The Role of the Nigerian Judiciary

- vi. Independent oversight: The judiciary should support independent oversight bodies to monitor national security activities and ensure compliance with human rights standards.
- vii. Remedies for violations: The judiciary should provide effective remedies for individuals whose civil liberties have been violated by implementation of national security measures.
- viii. Independence of the Judiciary: the immediate resulting effect of the independence of the judiciary will be blotting out of political interferences in the course of justice. This will further equip the judiciary in carrying out their role of maintaining the balance between national security and civil liberties.

These recommendations aim to strengthen the Nigerian judiciary's role in balancing national security and civil liberties, promoting a culture of respect for human rights and the rule of law.