



HUMAN RIGHTS AND NATIONAL SECURITY: STRIKING THE BALANCE

Enebeli, Victor Nonso Esq. Phd*
Lilly-Tariah, Abbiba Phd. **

ABSTRACT

The intersection of human rights and national security presents one of the most formidable challenges in contemporary legal and political discourse. States are constitutionally and internationally obligated to protect both the security of the polity and the fundamental rights of individuals; yet these dual imperatives frequently collide in practice. This article, via doctrinal methodology, examines the conceptual, normative, and judicial frameworks that govern the tension between human rights protection and national security imperatives. Drawing on international human rights law, comparative constitutional jurisprudence from the United Kingdom, the European Court of Human Rights, and the Nigerian legal order, it argues that the relationship between security and rights is not inherently antagonistic but rather amenable to principled legal calibration through the doctrines of proportionality, legality, and necessity. The article traces how legislative and executive overreach in the name of security has been judicially reviewed across multiple jurisdictions, and evaluates the particular challenges facing Nigeria as it contends simultaneously with jihadist insurgency, banditry, and systemic governance deficits. It concludes that durable national security is best achieved not through the suppression of rights but through their principled enforcement within a robust rule-of-law framework, and offers recommendations for normative and institutional reform.

KEYWORDS: Human Rights; National Security; Nigeria; European Convention on Human Rights; Judicial Review.

1. INTRODUCTION

The right to life, liberty, and security of person is among the foundational guarantees of modern human rights law.¹ Yet the very act of securing the state against existential and sub-existential threats has, throughout history, served as the most potent justification for restricting the liberties of individuals. From the internment policies of the Second World War to the extraordinary rendition programmes that followed the attacks of 11 September 2001, governments have repeatedly invoked national security as the rationale for measures that would, in ordinary times, be regarded as grave violations of fundamental rights. The perennial question is whether these measures represent a regrettable but legally permissible concession to necessity or whether they constitute an abuse of power dressed in the garb of public interest.

*PhD (Coventry), B.L., (Abuja), LLM (Coventry), LLB(Hons) (London Met), Director of Studies, Justice Mary Odili Judicial Institute, Port Harcourt, Rivers State of Nigeria. Senior Lecturer, Department of Public Law, Faculty of Law, Rivers State University. Lead Partner, ENN Prime LP, Port Harcourt, Rivers State. Phone: 09020176657, email: victor.enebeli@ust.edu.ng

**PhD (RSU), B.L. (Lagos), LLM (RGU-Aberdeen), LLB (RSUST), Senior Lecturer, Department of Public Law, Faculty of Law, Rivers State University. Email: abbiba.lilly-tariah@ust.edu.ng

¹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217A(III)) (UDHR) art 3.



International human rights instruments acknowledge that certain rights may be limited or derogated from in times of public emergency threatening the life of the nation.² The International Covenant on Civil and Political Rights (ICCPR) permits states to derogate from several of its provisions in times of public emergency, provided that the measures taken are strictly required by the exigencies of the situation and do not discriminate on prohibited grounds.³ The Siracusa Principles further elaborate the conditions under which limitations and derogations are legitimate, emphasising that restrictions on rights must be prescribed by law, necessary in a democratic society, proportionate to the aim pursued, and consistent with the non-derogable core of human rights.⁴

The European Convention on Human Rights (ECHR) similarly permits derogation in time of war or other public emergency threatening the life of the nation, subject to procedural and substantive requirements.⁵ At the domestic level, national constitutions, including Nigeria's 1999 Constitution contain limitation clauses that permit the restriction of guaranteed rights in the interest of defence, public safety, and public order.⁶

The task of reconciling these competing imperatives falls primarily on courts, which serve as the institutional guardians of rights against executive overreach. The UK House of Lords' landmark decision in *A v Secretary of State for the Home Department*,⁷ often called the 'Belmarsh case', exemplifies the judicial courage required to check security legislation that unjustifiably encroaches on fundamental rights. Their Lordships held, by a majority of eight to one, that the indefinite detention without trial of foreign nationals suspected of terrorism was incompatible with the ECHR. The decision was a resounding affirmation that even in times of real and pressing security threat, the rule of law and the rights it protects cannot be suspended at the pleasure of the executive.

Yet the challenge is far from resolved. The proliferation of counter-terrorism legislation across the world in the two decades since 2001, the expansion of mass surveillance capabilities enabled by digital technology, and the emergence of new threats including cyberterrorism and the activities of non-state armed groups have each posed fresh challenges to the normative architecture of human rights protection. As Lord Hope observed in the Belmarsh case, 'the human rights of the individual and the rights of the community to be protected from terrorism must be balanced against each other'⁸

² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

³ ICCPR art 4(1).

⁴ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1985) UN Doc E/CN.4/1985/4, annex.

⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 222 (ECHR).

⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) ch IV.

⁷ *A v Secretary of State for the Home Department* [2004] UKHL 56, [2005] 2 AC 68.

⁸ *A v Secretary of State for the Home Department* [2004] UKHL 56, [2005] 2 AC 68; [97] (Lord Hope).



2. THE CONCEPTUAL FRAMEWORK: HUMAN RIGHTS AND NATIONAL SECURITY

2.1 Defining National Security

National security is a notoriously protean concept. Walker has observed that it encompasses not merely defence against military attack but also protection of the state's vital functions from disruption by terrorism, espionage, sabotage, and other forms of organised subversion.⁹ At its broadest, national security encompasses economic security, cyber security, and the integrity of democratic institutions. Its malleability is both its political utility and its legal danger: a concept without fixed contours may be stretched to justify virtually any measure. Courts have accordingly insisted that where 'national security' is invoked to justify an interference with rights, the invocation must be supported by evidence and must not become an *ipse dixit* (argument from unsupported authority) of the executive branch.

Legislation enacted in the name of national security has proliferated at a remarkable rate. The United Kingdom's Prevention of Terrorism Act 2005 introduced control orders, a form of restriction short of imprisonment but potentially as severe in their practical effect, including limitations on movement, association, and communication.¹⁰ In Nigeria, the Terrorism (Prevention) Act 2011 enacted principally in response to the Boko Haram insurgency defines terrorism broadly to include acts intended or reasonably regarded as intended to intimidate a population or to compel a government or international organisation to act or abstain from acting in any manner.¹¹ The breadth of such definitions carries the risk of encompassing legitimate political dissent, trade union activity, and civil disobedience within the criminal law's reach. Gearty has warned that the expansion of security legislation without corresponding safeguards 'hollows out' civil liberties in ways that may not be immediately perceptible but are nonetheless corrosive to democratic culture.¹²

2.2 The Nature of Human Rights and Their Susceptibility to Limitation

Human rights scholarship distinguishes between absolute rights which admit of no limitation whatsoever and qualified or derogable rights. The prohibition on torture and cruel, inhuman, or degrading treatment, and the right not to be subjected to retroactive criminal penalties, are absolute in character under international law; they may not be suspended even in times of grave emergency.¹³ Other rights including the right to liberty, the right to a fair trial, freedom of expression, and freedom of assembly may be subject to limitations prescribed by law and justified by reference to legitimate aims, including national security, provided the limitations are proportionate and necessary.

This two-tier structure creates an essential distinction: states may lawfully restrict qualified rights in the service of security, but they may never use security as a pretext for acts that violate absolute

⁹ Clive Walker, *Terrorism and the Law* (OUP 2011) 1.

¹⁰ Prevention of Terrorism Act 2005 (UK).

¹¹ Terrorism (Prevention) Act 2011 (Nigeria) s 1.

¹² Conor Gearty, *Civil Liberties* (OUP 2007) 45.

¹³ ICCPR art 6, 7.



rights. The juridical consequence of conflating these categories treating derogable rights as if they were absolute while treating absolute prohibitions as if they were subject to executive discretion is a collapse of the normative architecture of rights protection.

2.3 The False Dichotomy: Security versus Rights

A persistent analytical error in both policy discourse and popular commentary is the framing of security and rights as fundamentally opposed values, such that the protection of one necessarily requires the sacrifice of the other. This ‘trade-off’ discourse is both empirically contestable and normatively dangerous. Empirically, evidence from multiple jurisdictions suggests that rights-respecting approaches to counter-terrorism, which emphasise criminal prosecution, intelligence-led policing, and community engagement are more effective in the long run than repressive measures that radicalise populations and undermine state legitimacy. Normatively, the trade-off discourse misunderstands the nature of rights: a state that routinely violates the rights of its citizens in the name of security ultimately undermines the very social compact that security is designed to protect.

Bingham argued compellingly that the rule of law is not a luxury to be jettisoned in times of crisis but a necessity: ‘[i]t is the rule of law, binding on government as on the governed, that makes the difference between a democracy and a police state.’¹⁴ Dyzenhaus has similarly argued that the ‘emergency constitution’ must remain tethered to the ordinary constitution’s commitments if it is to retain legitimacy.¹⁵

3. THE INTERNATIONAL LEGAL FRAMEWORK

3.1 The ICCPR and Permissible Derogations

The ICCPR provides the foundational international framework for balancing human rights and national security. Article 4 permits states to take measures derogating from their obligations under the Covenant ‘[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed’. The permissible scope of derogation is subject to three key conditions: the measures must be strictly required by the exigencies of the situation; they must be consistent with the state’s other obligations under international law; and they must not be discriminatory.¹⁶

The Human Rights Committee has emphasised in General Comment No 29 that the requirement that measures be ‘strictly required’ is not satisfied merely by the existence of an emergency: the state must demonstrate a rational connection between the specific derogating measure and the

¹⁴ Tom Bingham, *The Rule of Law* (Penguin 2010) 133.

¹⁵ David Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency* (CUP 2006) 3.

¹⁶ ICCPR art 4(1).



emergency, and must show that the measure goes no further than necessary.¹⁷ This standard, analogous to the proportionality principle in European human rights law, has been endorsed by the Siracusa Principles, which elaborate further criteria including the requirement that restrictions be consistent with democratic values and the protection of human dignity.¹⁸

3.2 The ECHR Framework

Under the ECHR, the principal mechanism for balancing rights and security operates through two channels: the limitation clauses within individual articles, and the general derogation clause in Article 15. Several Convention rights, including Article 8 (private and family life), Article 10 (expression), and Article 11 (assembly), expressly permit restrictions ‘in the interests of national security’ or ‘for the prevention of disorder or crime’, provided such restrictions are prescribed by law, necessary in a democratic society, and proportionate.¹⁹

In *Lawless v Ireland*, the European Court of Human Rights first elaborated the conditions for a valid Article 15 derogation: there must be a genuine public emergency threatening the life of the nation; the measures taken must be strictly required by the exigencies of the situation; and the state must keep the Secretary-General of the Council of Europe informed.²⁰ In *Ireland v United Kingdom*, the Court further established that inhuman treatment, in that case the use of ‘five techniques’, in interrogating terrorist suspects was absolutely prohibited even in conditions of grave emergency, notwithstanding the severity of the security situation in Northern Ireland.²¹

The Grand Chamber’s judgment in *A v United Kingdom* represented a significant development in the Court’s scrutiny of detention-based security measures. The Court held that the detention of foreign nationals without charge under the Anti-terrorism, Crime and Security Act 2001 violated Article 5 of the Convention because the measures were disproportionate and discriminatory. The state had failed to demonstrate that indefinite detention was strictly required, particularly when other measures including criminal prosecution and deportation remained available.²² Critically, the Court rejected the government’s argument that the severity of the threat justified any measure deemed necessary by the executive, affirming that proportionality review must be substantive rather than deferential.

¹⁷ Human Rights Committee, General Comment No 29 ‘States of Emergency (Article 4)’ UN Doc CCPR/C/21/Rev.1/Add.11 (31 August 2001) [4].

¹⁸ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1985) UN Doc E/CN.4/1985/4, annex.

¹⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 222 (ECHR).

²⁰ *Lawless v Ireland (No 3)* (1961) 1 EHRR 15 [22].

²¹ *Ireland v United Kingdom* (1978) 2 EHRR 25.

²² *A v United Kingdom* (2009) 49 EHRR 29 [186]–[190].



3.3 UN Security Council and Counter-Terrorism Obligations

The UN Security Council's counter-terrorism resolutions most significantly Resolution 1373 (2001) adopted in the wake of the September 11 attacks have obligated all UN member states to criminalize terrorism, freeze terrorist assets, and enhance international cooperation in counter-terrorism.²³ Resolution 2178 (2014) further extended these obligations to address the phenomenon of foreign terrorist fighters.²⁴

These binding obligations have generated a notable structural tension with international human rights law: states are simultaneously obligated by Chapter VII resolutions to adopt expansive counter-terrorism measures and by treaty obligations to ensure those measures are consistent with their human rights commitments. Alston has observed that the absence of any human rights conditionality in Security Council counter-terrorism mandates has produced legislative outputs in many member states that fall short of human rights standards.²⁵

4. PRINCIPAL AREAS OF TENSION

4.1 Detention without Trial and Preventive Detention

Among the most acute points of conflict between human rights and national security is the question of detention without trial. The right to liberty, guaranteed by the ICCPR, article 9 and the ECHR, article 5 prohibits arbitrary detention and entitles every person deprived of liberty to challenge the lawfulness of that detention before a court.²⁶ Yet security services have argued that the criminal process with its evidentiary standards, disclosure requirements, and public proceedings is ill-suited to dealing with individuals who pose a security threat but against whom prosecution evidence cannot be adduced in open court without compromising intelligence sources.

The UK's control order regime, and its successor Terrorism Prevention and Investigation Measures (TPIMs) under the Terrorism Prevention and Investigation Measures Act 2011, exemplify legislative attempts to manage this tension.²⁷ In *Secretary of State for the Home Department v JJ*, the House of Lords held that control orders imposing restrictions equivalent to 18 hours of daily confinement amounted to a deprivation of liberty in violation of the ECHR, article 5.²⁸ The case illustrated the limits of executive creativity in fashioning security measures that circumvent the requirement of criminal charge and trial.

4.2 Torture, Extraordinary Rendition, and the Absolute Prohibition

The absolute prohibition on torture and cruel, inhuman, or degrading treatment is perhaps the most severely tested norm in the post-9/11 security environment. The programmes of extraordinary

²³ UN Security Council Resolution 1373 (2001) UN Doc S/RES/1373.

²⁴ UN Security Council Resolution 2178 (2014) UN Doc S/RES/2178.

²⁵ Philip Alston, 'The "Not-a-Cat" Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?' in Philip Alston (ed), *Non-State Actors and Human Rights* (OUP 2005) 3.

²⁶ ICCPR art 9.

²⁷ Terrorism Prevention and Investigation Measures Act 2011 (UK).

²⁸ *Secretary of State for the Home Department v JJ* [2007] UKHL 45, [2008] 1 AC 385.



rendition operated by the United States Central Intelligence Agency under which terror suspects were transferred to third countries with poor human rights records for interrogation represented a systematic attempt to circumvent this prohibition by geographical displacement.²⁹

In *El-Masri v Former Yugoslav Republic of Macedonia*, the European Court of Human Rights found Macedonia responsible for the torture and inhuman treatment suffered by a German national who was rendered by Macedonian agents to the CIA and subsequently to Afghanistan, where he was subjected to severe ill-treatment.³⁰ The Court's judgment underscored the extraterritorial application of the ECHR and the complicity of European states in violations perpetrated through cooperation with unlawful programmes.

Non-derogable rights demand enforcement regardless of security context. As the European Court affirmed in *Chahal v United Kingdom*, the prohibition on torture admits of no exceptions and cannot be balanced against the threat posed by the individual to national security: the greater the threat, the greater the temptation to resort to torture, and thus the more essential the absolute nature of the prohibition.³¹

4.3 Mass Surveillance and the Right to Privacy

Advances in digital technology have enabled states to conduct surveillance at a scale previously inconceivable, raising profound questions about the compatibility of bulk data collection with the right to privacy guaranteed by the ICCPR, article 17 and the ECHR, article 8.³² The revelations of Edward Snowden in 2013 confirmed that intelligence agencies in the United States and United Kingdom were engaged in mass interception of communications programmes whose legal basis, oversight mechanisms, and proportionality were all deeply contested.

In *Big Brother Watch v United Kingdom*, the Grand Chamber of the European Court of Human Rights found that the UK's bulk interception regime under the Regulation of Investigatory Powers Act 2000 violated Article 8 of the Convention because it lacked adequate safeguards against abuse, particularly in relation to the selection of intercepted material for examination.³³ The Investigatory Powers Act 2016, enacted partly in response to earlier adverse rulings, sought to provide a more robust legal framework for bulk interception, including judicial authorisation and stronger oversight.³⁴

In Nigeria, the Cybercrime (Prohibition, Prevention, etc) Act 2015 grants law enforcement agencies significant powers to intercept communications and compel service providers to produce data, with

²⁹ *El-Masri v United States* 479 F 3d 296 (4th Cir 2007).

³⁰ *El-Masri v Former Yugoslav Republic of Macedonia* App No 39630/09 (ECtHR, 13 December 2012).

³¹ *Chahal v United Kingdom* (1996) 23 EHRR 413 [80].

³² ICCPR art 17; ECHR art 8.

³³ *Big Brother Watch v United Kingdom* App No 58170/13 (ECtHR GC, 25 May 2021).

³⁴ Investigatory Powers Act 2016 (UK) s 2.



limited judicial oversight.³⁵ The absence of robust procedural safeguards and independent review mechanisms raises substantial concerns about the compatibility of this regime with the right to privacy under Chapter IV of the Constitution and the African Charter on Human and Peoples' Rights.³⁶

4.4 Emergency Powers and the Rule of Law

Emergency powers represent the most dramatic assertion of state authority in the name of security. Ackerman has identified the 'emergency constitution' as a distinct legal regime that operates alongside and potentially undermines ordinary constitutional governance.³⁷ The danger is not the existence of emergency powers as such but their indefinite continuation and their use to normalise restrictions that, in times of peace, would be constitutionally impermissible. The norms that govern emergencies must themselves be legally constrained if the rule of law is to survive emergency governance.

Nigeria's Constitution empowers the President to proclaim a state of emergency in any state where there is in existence any crisis or calamity or natural disaster or other public danger to public order and public safety.³⁸ Since 2013, states in the north-east of the country principally Borno, Yobe, and Adamawa have been subjected to recurring states of emergency in response to the Boko Haram insurgency. Human rights organisations have documented extensive abuses perpetrated by security forces operating under the emergency regime, including extrajudicial killings, enforced disappearances, and unlawful detention.³⁹

5. JUDICIAL APPROACHES TO THE BALANCE

5.1 Proportionality as the Master Principle

Proportionality has emerged as the cardinal principle governing judicial review of measures that interfere with human rights in the name of security. Lord Steyn's formulation in *R (Daly) v Secretary of State for the Home Department* remains the *locus classicus*: proportionality requires the court to assess whether (i) the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the objective are rationally connected to it; and (iii) the means used to impair the right are no more than is necessary to accomplish the objective.⁴⁰ Lord Steyn further observed that, unlike the traditional *Wednesbury* standard,

³⁵ Cybercrime (Prohibition, Prevention, Etc.) Act 2015 (Nigeria) s 38.

³⁶ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 (Banjul Charter) art 60.

³⁷ Bruce Ackerman, 'The Emergency Constitution' [2004] 11(3) *Yale Law Journal* 1029.

³⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 305.

³⁹ Human Rights Watch, 'Nigeria: Boko Haram — Civilians Bear the Brunt' (2012) <<https://www.hrw.org/news/2012/08/28>> accessed 1 April 2026.

⁴⁰ *R (Daly) v Secretary of State for the Home Department* [2001] UKHL 26, [2001] 2 AC 532 [27] (Lord Steyn).



proportionality review requires the court to assess the balance which the decision-maker has struck not merely the reasonableness of the decision-making process.⁴¹

Proportionality review is not an invitation to courts to substitute their judgment for that of the legislature or executive on political questions. Rather, as Dyzenhaus has argued, it is a mechanism for holding the executive to the rule of law by requiring that security measures be not merely politically defensible but legally justified by reference to standards capable of principled application.⁴² The enquiry is demanding but not unlimited: courts retain appropriate institutional humility about executive expertise in threat assessment while insisting on scrutiny of the legal basis, necessity, and proportionality of any measure that restricts fundamental rights.

5.2 Judicial Deference and its Limits

A recurring theme in the case law is the appropriate degree of deference owed by courts to the executive's assessment of security threats. In national security cases, governments frequently invoke institutional competence arguments: security services possess intelligence not available to courts; threat assessment requires specialised expertise; and judicial second-guessing of operational decisions may compromise counter-terrorism effectiveness. These arguments have some force, and courts have generally accorded a degree of latitude to executive assessments of the gravity of the security threat.

However, deference has its limits. As the Belmarsh case demonstrated, courts will not accept executive assertions about necessity or proportionality at face value where fundamental rights are at stake. The margin of appreciation doctrine in European human rights law, while permitting states some latitude in determining what measures are necessary, does not immunise security measures from substantive scrutiny. The Court in *Gillan and Quinton v United Kingdom* found that stop and search powers granted to police under the Terrorism Act 2000, which required no suspicion of terrorist activity, were incompatible with the ECHR, article 8 because they lacked adequate procedural safeguards and were too broad in their application.⁴³ The judgment illustrates that deference is not a carte blanche: where the rights impact is severe and the legal basis for interference is inadequate, the courts will intervene.

5.3 Nigerian Judicial Approaches

The Nigerian judiciary has shown a growing willingness to scrutinise security measures that infringe fundamental rights, though the pace of this development has been uneven. In *Fawehinmi v Abacha*, the Court of Appeal affirmed that the fundamental rights provisions of the Constitution cannot be overridden by administrative fiat and that even in times of security emergency, the courts

⁴¹ Ibid [28].

⁴² David Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency* (CUP 2006) 3.

⁴³ *Gillan and Quinton v United Kingdom* (2010) 50 EHRR 45 [87].



retain jurisdiction to review the lawfulness of executive action.⁴⁴ The court held that detention without charge beyond the constitutionally prescribed period is unlawful regardless of the security context.⁴⁵

In *Gani Fawehinmi v Inspector General of Police*, the Supreme Court reinforced the right of Nigerian citizens to challenge security-related restrictions on fundamental rights, holding that freedom of assembly and association cannot be restricted by executive decree without lawful authority.⁴⁶ The ECOWAS Community Court of Justice, in *SERAP v Nigeria*, further held that the right to education, a socio-economic right protected by the African Charter imposes enforceable obligations on the Nigerian state notwithstanding resource constraints.⁴⁷ While the SERAP case did not directly engage national security, it signals the expanding reach of rights-based judicial review in the Nigerian and regional context.

6. NIGERIA IN FOCUS: SECURITY, RIGHTS, AND THE RULE OF LAW

6.1 The Security Context

Nigeria presents a particularly acute case study in the tensions between human rights and national security. According to the Global Terrorism Index 2023, Nigeria remains one of the country's most severely affected by terrorism in the world, with Boko Haram and its affiliated faction; Islamic State West Africa Province (ISWAP), banditry in the north-west, and separatist agitation in the south-east collectively generating a security environment of extraordinary complexity.⁴⁸

The Nigerian state's response to these challenges has been characterized by a combination of legislative expansion, military deployment, and too frequently documented abuses by security forces. Amnesty International has extensively documented extrajudicial executions, enforced disappearances, and torture of persons in military detention, particularly in the context of operations against Boko Haram in the north-east.⁴⁹ These abuses are not only grave violations of fundamental rights in themselves; they undermine the state's moral authority, alienate affected communities, and thereby perpetuate the very insecurity they purport to address.

6.2 The Constitutional Framework

The 1999 Constitution guarantees an extensive catalogue of fundamental rights in Chapter IV, including the right to life, the right to dignity of the human person, the right to liberty, the right to fair hearing, and the right to private and family life, as well as freedoms of thought, conscience,

⁴⁴ *Fawehinmi v Abacha* [1996] 9 NWLR (Pt 475) 710 (CA).

⁴⁵ *Ibid* 742.

⁴⁶ *Gani Fawehinmi v Inspector General of Police* [2002] 7 NWLR (Pt 767) 606 (SC).

⁴⁷ *Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v Nigeria* (2010) AHRLR (ECOWAS 2010) ECW/CCJ/JUD/18/12.

⁴⁸ Global Terrorism Index 2023 (Institute for Economics and Peace 2023) 22.

⁴⁹ Amnesty International, 'Nigeria: Human Rights in the Context of Counter-Terrorism Operations' (2015) AFR 44/1657/2015.



religion, expression, peaceful assembly, and association. These rights are subject to limitation by section 45, which permits the derogation from or curtailment of rights guaranteed by specified provisions to the extent reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality, or public health.⁵⁰ Section 45(1)(b) further expressly authorises laws imposing restrictions upon persons seeking to overthrow the government of the Federation or of a State by force or by other acts of subversion.⁵¹

The limitation clause is broadly comparable to those found in the ECHR and the ICCPR, and it carries a similar requirement of proportionality: restrictions must be ‘reasonably justifiable in a democratic society’, a formulation that imports a structured inquiry into necessity and least-restrictive-means. As Agbakoba has observed, the challenge lies in ensuring that the constitutional limitation clause does not become an instrument for the executive to circumvent rights protections entirely, but rather functions as a narrow and legally regulated exception.⁵²

6.3 Legislative Responses and Their Challenges

The Terrorism (Prevention) (Amendment) Act 2013 significantly expanded the scope of the 2011 Act, *inter alia* by extending pre-charge detention of terrorism suspects and creating new offences related to the financing and facilitation of terrorism.⁵³ While these amendments were necessitated by the escalating Boko Haram crisis, they have attracted criticism from civil society for the breadth of their definitions and the limited judicial oversight of extended detention. The State Security (Detention of Persons) Act further entrenches executive discretion over security-related detention with minimal judicial scrutiny.⁵⁴

The Cybercrime Act 2015, while primarily directed at digital fraud and related offences, confers on law enforcement agencies sweeping powers of interception that exceed what is strictly necessary for cybercrime investigation and have been deployed in ways that affect journalistic and civic activity.⁵⁵ The structural weakness of Nigeria’s security legislation lies not in the scope of the powers it confers but in the absence of institutional mechanisms, independent oversight bodies, specialised courts, and robust disclosure rules capable of ensuring that those powers are exercised lawfully and proportionately.

6.4 The Role of the Judiciary and Civil Society

The Nigerian judiciary has, at its best, served as an important counterweight to executive overreach in the security domain. The jurisprudence of the Federal High Court and the Court of Appeal on

⁵⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 45.

⁵¹ *Ibid* s 45(1)(b).

⁵² O Agbakoba, ‘Human Rights and National Security in Nigeria’ in Epiphany Azinge (ed), *Topical Issues in Nigerian Law* (2009) 192.

⁵³ Terrorism (Prevention) (Amendment) Act 2013 (Nigeria).

⁵⁴ State Security (Detention of Persons) Act Cap S5 LFN 2004.

⁵⁵ Cybercrime (Prohibition, Prevention, Etc.) Act 2015 (Nigeria) s 38.



fundamental rights enforcement has provided legal relief in numerous cases of unlawful detention, enforced disappearance, and extrajudicial action by security forces. However, the judiciary faces significant structural constraints: judicial appointments remain susceptible to political influence; the backlog of cases is enormous; and the enforcement of court orders against security agencies is frequently problematic in practice.

Civil society organizations including the Civil Liberties Organization, the Socio-Economic Rights and Accountability Project (SERAP), and the Nigerian Bar Association have played an indispensable role in challenging security-related rights violations through strategic litigation, public advocacy, and engagement with regional and international human rights mechanisms. Their contribution to the protection of rights in the security context cannot be overstated. The engagement of the African Commission on Human and Peoples' Rights and the ECOWAS Court provides an additional tier of accountability that has proven significant in high-profile cases.

7. RECOMMENDATIONS

The foregoing analysis suggests several concrete recommendations for states and Nigeria in particular, seeking to achieve a principled balance between human rights and national security.

First, legislative framework governing security powers must satisfy the requirements of legality: they must be accessible, foreseeable, and sufficiently precise to enable individuals to regulate their conduct accordingly. Vague or overbroad definitions of terrorism and national security threats create a risk of criminalizing legitimate political and civil society activity. The legislature should adopt precise definitions and include explicit safeguards, including judicial authorization requirements, sunset clauses, and mandatory periodic reviews as standard features of security legislation.

Second, proportionality review by courts must be substantive rather than merely formal. Courts should not regard themselves as institutionally incompetent to review security measures that engage fundamental rights. The experience of the UK House of Lords in the *Belmarsh* case, and of the European Court of Human Rights across a generation of security jurisprudence, demonstrates that principled proportionality analysis is both feasible and essential. The UN Special Rapporteur on Counter-Terrorism and Human Rights has similarly affirmed that courts must be empowered to conduct genuine review of the necessity and proportionality of counter-terrorism measures.⁵⁶

Third, independent oversight bodies, such as the Investigatory Powers Commissioner in the United Kingdom should be established to provide ongoing scrutiny of the exercise of security powers, particularly those involving surveillance, data collection, and intelligence operations.

⁵⁶ UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 'Report on the Use of Investigative Detention' UN Doc A/HRC/16/51 (22 December 2010) [20].



Parliamentary oversight committees with access to classified material can perform a complementary institutional function. Nigeria should move urgently to establish a statutory independent oversight body with real investigative powers and the capacity to refer unlawful conduct for prosecution.

Fourth, accountability for human rights violations committed by security forces must be pursued rigorously. The culture of impunity that has shielded military and police personnel from accountability for extrajudicial killings, enforced disappearances, and torture not only violates the rights of victims but delegitimizes the state's entire counter-security enterprise. Pillay has argued that the long-term effectiveness of any counter-terrorism strategy depends on the perception of the state as a legitimate actor committed to the rule of law.⁵⁷ This perception is fundamentally incompatible with systematic impunity for security force abuses.

Fifth, human rights education within security services should be institutionalized. Officers engaged in counter-terrorism and public order operations should receive comprehensive training in international human rights law, the law of armed conflict, and the constitutional framework of rights protection. The long-term goal must be the internalization of rights-respecting norms within security culture rather than their imposition through external legal constraint alone.

8. CONCLUSION

The tension between human rights and national security is not a problem admitting of a once-and-for-all solution. It is a perennial challenge inherent in the dual character of the state as both the guarantor of security and the custodian of rights. The resolution of this tension in any given case requires a nuanced, context-sensitive, and legally principled inquiry not the reflexive invocation of security to trump all other considerations, nor the maximalist assertion of rights without regard to the legitimate security interests of the community.

International human rights law provides a sophisticated framework for navigating this challenge: distinguishing between absolute and qualified rights; specifying the conditions under which qualified rights may be limited or derogated from; and insisting that any limitation must be prescribed by law, necessary, proportionate, and consistent with democratic values. Judicial review, whether by domestic courts or by regional human rights tribunals is the institutional mechanism through which these standards are applied to the particular acts of security-minded governments.

The challenge for Nigeria is particularly acute, given the convergence of severe security threats, institutional weaknesses, and a historical deficit of accountability in the security sector. But it is

⁵⁷ N Pillay, 'Upholding Human Rights in the Context of Security: A Shared Responsibility' (2013) (95) *International Review of the Red Cross* 7.



precisely in the most challenging conditions that adherence to rights-respecting principles matters most. As Hunt has observed, the value of a rights framework is not that it produces easy answers to hard questions, but that it insists on the asking of the right questions: is this measure lawful? Is it necessary? Is it proportionate? Is it consistent with the dignity of those it affects?⁵⁸

A national security strategy grounded in the rule of law and respectful of fundamental rights is not a weaker strategy than one premised on coercion and impunity. It is, on any honest assessment of the comparative evidence, a more durable and ultimately more effective one. States that protect rights, maintain institutional accountability, and govern with the consent of their populations are demonstrably more resilient against security threats than those that sacrifice rights on the altar of security. The balance, once properly understood, is not a compromise of security. It is a precondition of it. To strike that balance correctly is among the highest obligations of the modern democratic state; to fail it is to betray not only the individuals whose rights are violated, but the constitutional order in whose name the sacrifice of rights is purportedly made.

⁵⁸ M Hunt, 'The Horizontal Effect of the Human Rights Act' [1998] *PL* 423, 431.