

NATIONAL SECURITY AND HUMAN RIGHTS PROTECTION IN NIGERIA: THE NEED TO STRIKE A BALANCE

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Abstract

*Nigeria faces persistent national security challenges, including terrorism, banditry, separatist agitations, cybercrime, and communal violence. In addressing these threats, state authorities have adopted measures that often encroach upon constitutionally guaranteed human rights, thereby raising concerns about arbitrariness, impunity, and democratic erosion. This article examines the legal and constitutional relationship between national security and human rights protection in Nigeria, with particular reference to the tensions arising from their interaction. The study aims to analyse the conceptual and legal foundations of both principles, assess the extent of compliance of security measures with constitutional safeguards, and propose a balanced framework for their coexistence. Adopting a doctrinal methodology, the article relies on statutes, judicial authorities, particularly *Asari Dokubo v Federal Republic of Nigeria* and relevant scholarly literature. It finds that the subordination of human rights to national security undermines constitutionalism, weakens institutional legitimacy, and fosters public distrust. The article argues that respect for human rights is indispensable to effective national security governance. It recommends the integration of human rights standards into security policies, strengthening of oversight mechanisms, and continuous human rights training for security personnel, alongside strict adherence to the rule of law and transparency in security operations.*

Keywords: National Security; Human Rights; Constitutional Law; Rule of Law; Security Governance.

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1 Introduction

National security and human rights occupy a central yet inherently tension-laden space within constitutional democracies.¹ The Constitution of the Federal Republic of Nigeria (CFRN) 1999 recognises the dual importance of national security and fundamental rights by positioning the security and welfare of the people as the primary purpose of government under section 14(2)(b), while simultaneously dedicating Chapter IV to the protection of fundamental rights. This constitutional design underscores that both objectives are essential to the survival and legitimacy of the state. National security is indispensable for maintaining order, protecting lives and property, and ensuring the stability of governmental institutions, whereas fundamental rights safeguard human dignity, individual freedoms, and democratic governance. In principle, these goals are complementary and mutually reinforcing. However, in practice, the tendency of security agencies to prioritise order and stability at the expense of civil liberties order and stability at the expense of civil liberties, generates significant friction creates tension, thereby highlighting the critical need to maintain a careful and principled balance between the two.

In Nigeria, this tension is pronounced, given the country's complex security environment marked by terrorism, banditry, kidnapping, separatist movements, urban criminality, and cyber threats. The Nigerian state's responses to these threats increasingly involve militarised policing, expanded legislative powers, surveillance, and restrictions on civil liberties. A practical illustration is the state's response to the 2020 #EndSARS protests, where security forces were deployed to disperse demonstrators protesting police brutality, leading to allegations of excessive use of force, unlawful killings, and arbitrary arrests. While such measures are often justified on the grounds of national security, they raise critical questions regarding compliance with constitutional guarantees and Nigeria's regional and international human rights obligations. This example underscores the persistent tension between maintaining security and protecting fundamental rights in Nigeria. increasingly involve militarised policing, expanded legislative powers, surveillance, and restrictions on civil liberties.

¹ D Feldman, *Civil Liberties and Human Rights in England and Wales* (2nd edn, Oxford University Press 2002) 51–53 (discussing the enduring tension between state security and individual liberty in constitutional democracies); C Gearty, *Civil Liberties* (Oxford University Press 2007) 105–109 (arguing that national security measures frequently generate conflict with fundamental rights protections); O C Okafor, 'National Security, Emergency Powers and Human Rights in Africa' (2001) 3 *African Human Rights Law Journal* 1, 4–6 (examining the tension between security governance and rights protection in African constitutional systems); M T Ladan, 'National Security and the Protection of Human Rights in Nigeria: Issues and Challenges' (2012) 6 *Nigerian Bar Journal* 62, 64–66 (noting that democratic states must balance security imperatives with constitutional rights guarantees).

This article critically examines the normative, institutional, and jurisprudential dynamics that shape the delicate balance between national security and human rights protection in Nigeria. It seeks to evaluate the extent to which existing legal and institutional frameworks effectively reconcile security imperatives with constitutional safeguards, identify gaps and challenges in their application, and propose a coherent, rights-based approach to achieving a sustainable balance between state security and the protection of fundamental freedoms.

2 Conceptual Clarifications

Understanding the concepts of *national security* and *human rights* is fundamental to analysing the tension between state power and individual freedoms in Nigeria. Both notions carry significant legal, political, and normative weight, yet they are frequently invoked in ways that place them in competition. Clarifying these concepts helps establish the analytical foundation for examining how the Nigerian state balances its security imperatives with constitutional safeguards. The following sections set out the meaning, scope, and legal contours of each term.

2.1 National Security

The term “national security” traditionally evoked a narrowly military understanding centred on territorial defence. However, modern scholarship recognises a broader, multidimensional conception encompassing political stability, economic security, public health, environmental integrity, and protection of critical infrastructure.² In Nigeria, statutory definitions tend to be expansive. The National Security Agencies Act establishes the State Security Service, Defence Intelligence Agency, and National Intelligence Agency with mandates to safeguard the internal and external security of Nigeria.³ Under the National Security Agencies Act,⁴ national security is reflected in the functions assigned to the security agencies, particularly the State Security Service (SSS), which is responsible for: i) the prevention and detection of any crime against the internal security of Nigeria; ii) the protection and preservation of all non-military classified matters concerning the internal security of Nigeria; and iii) such other responsibilities affecting internal security as may be assigned by the President.

² Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era* (2nd edn, ECPR Press 2007) 19–24.

³ National Security Agencies Act, Cap N74 LFN 2004, s 2(3).

⁴ Ibid

Similarly, the National Intelligence Agency (NIA) and Defence Intelligence Agency (DIA) are tasked with external intelligence and defence-related security, indicating that national security encompasses both internal and external threats to the state. The Act's broad language has been judicially interpreted to confer wide discretion. Therefore, in statutory terms, National security in Nigeria can be understood as the protection of the state against internal and external threats through intelligence gathering, crime prevention, and safeguarding of strategic national interests. Nigerian courts have acknowledged this elasticity. In *Dokubo-Asari v Federal Republic of Nigeria*,⁵ the Supreme Court emphasised that national security interests may override individual liberty in appropriate circumstances. This broad judicial deference to the executive demonstrates how national security can become an all-purpose justification for restricting rights.

2.2 Human Rights

The terms *human rights* and *fundamental rights* are often used interchangeably in legal discourse; however, a clear conceptual distinction exists between them, particularly within the Nigerian legal framework. Human rights are broad, universal entitlements inherent in all individuals by virtue of their humanity. Human rights in Nigeria derive primarily from international legal instruments such as the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), alongside other global human rights treaties to which Nigeria is a party. These rights encompass civil, political, economic, social, and cultural dimensions.

Fundamental rights, on the other hand, refer specifically to those rights that are constitutionally guaranteed and enforceable within a domestic legal system. In Nigeria, these rights are enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and include the rights to life, dignity of the human person, personal liberty, fair hearing, privacy, expression, assembly, and movement. They are directly justiciable and form the basis of enforcement actions under the Fundamental Rights (Enforcement Procedure) Rules 2009. While there is significant overlap between the two concepts, fundamental rights are best understood as a subset of human rights, given their domestic constitutional anchoring. Nigerian courts have recognised this relationship, particularly in light of the domestication of the African Charter,

⁵ [2007] 12 NWLR (Pt 1048) 320 (SC).

which expands the scope of enforceable rights beyond the Constitution. Accordingly, although the terms may be used interchangeably in general discourse, precision requires that “fundamental rights” be used when referring to constitutionally guaranteed rights, while “human rights” retains a broader, more inclusive meaning.

Human rights are not absolute. Even constitutional rights may be limited “in the interest of defence, public safety, public order, public morality or public health” under specific conditions.⁶ These permissible limitations must, however, satisfy the tests of legality, necessity, and proportionality.

2.3 Nigeria’s Contemporary Security Environment

Nigeria’s security situation is among the most complex in Africa and globally. This is so because of the combination of multifaceted threats,⁷ large population, institutional constraints,⁸ historical conflicts, and regional exposure,⁹ which together create a situation where the government feels compelled to adopt extraordinary security measures to protect lives, property, and the state itself. The multiplicity of threats creates a climate in which extraordinary state measures appear justified. The major components of Nigeria’s security challenges include:

2.4 Terrorism and Insurgency

Terrorism refers to the use or threat of violence, especially against civilians, to create fear and coerce a government or population for political, religious, or ideological purposes. It is typically tactic-based (i.e., focused on methods such as bombings, kidnappings, attacks on civilians); and it may be carried out by non-state actors or sometimes individuals or small groups.¹⁰ Whereas, insurgency is a broader, organised and sustained armed rebellion against an established government or authority, often aimed at overthrowing the state or gaining territorial control. It is

⁶ Constitution of the Federal Republic of Nigeria 1999 (as altered), ss 39–45.

⁷ United Nations Office on Drugs and Crime (UNODC), *Global Report on Security and Crime Trends in Nigeria* (2021).

⁸ Cleen Foundation, *Security and Governance in Nigeria: Capacity Challenges of Security Agencies* (2020).

⁹ International Crisis Group, *Nigeria’s Security Challenges and Policy Responses* (2021).

¹⁰ United Nations Security Council Resolution 1566 (8 October 2004) UN Doc S/RES/1566 para 3 (describing terrorist acts as criminal acts intended to provoke a state of terror in the general public for political purposes); B Saul, *Defining Terrorism in International Law* (Oxford University Press 2006) 58–63 (explaining terrorism as the use or threat of violence against civilians to intimidate or coerce governments or populations for political, ideological, or religious objectives); A P Schmid, *The Routledge Handbook of Terrorism Research* (Routledge 2011) 39–41 (identifying terrorism as tactic-oriented violence directed at civilians to generate fear and achieve political aims).

movement-based, involving political, military, and sometimes social structures; insurgents may control territory and seek legitimacy as an alternative authority. Insurgent groups often use terrorism as one of their strategies, but not all terrorists are insurgents, and not all insurgents rely solely on terrorism.¹¹

The Boko Haram insurgency, which began in 2009 operate as insurgent movements, but frequently employ terrorist tactics such as bombings, attacks on civilians, and abductions. It has evolved into a multi-factional conflict involving Boko Haram and the Islamic State in West Africa Province (ISWAP).¹² The insurgency has resulted in widespread civilian casualties, displacement, and destruction of infrastructure. The insurgency in North-East Nigeria, particularly the activities of Boko Haram and its splinter factions, has produced devastating humanitarian, economic, and social consequences. Since the outbreak of the conflict in 2009, more than **35,000 civilians have reportedly been killed**, while the broader conflict has contributed to over **350,000 deaths**, including indirect deaths resulting from hunger, disease, and displacement.¹³ The violence has also displaced over **2.5 million persons** across Borno, Adamawa, and Yobe States, creating one of Africa's largest internally displaced persons (IDP) crises.¹⁴ Thousands of homes, schools, hospitals, markets, religious centres, and public facilities have been destroyed during attacks on civilian communities and military operations.¹⁵ According to the United Nations Development Programme (UNDP), the insurgency has caused billions of dollars in economic losses and severely undermined agricultural production, education, healthcare delivery, and regional development in North-East Nigeria.¹⁶ The conflict has also generated widespread food insecurity, with millions dependent on humanitarian assistance for

¹¹ A P Schmid, *The Routledge Handbook of Terrorism Research* (Routledge 2011) 52–54 (distinguishing terrorism from insurgency and noting that insurgent groups may adopt terrorist tactics without terrorism constituting the entirety of insurgency); United States Department of Defense, *Dictionary of Military and Associated Terms* (Joint Publication 1-02, 2010) 140, 267 (defining insurgency as an organised movement aimed at overthrowing a constituted government through subversion and armed conflict, while terrorism refers to unlawful violence intended to instil fear and coerce governments or societies); B Hoffman, *Inside Terrorism* (3rd edn, Columbia University Press 2017) 35–39 (explaining that terrorism may be employed by insurgent groups as a tactic, but the two concepts are not synonymous).

¹² International Crisis Group, 'Facing the Challenge of the Islamic State in West Africa Province' (2020).

¹³ United Nations Development Programme, *Assessing the Impact of Conflict on Development in North-East Nigeria* (UNDP 2021) 12–15; Amnesty International, *Nigeria: Stars on Their Shoulders, Blood on Their Hands* (2015) 5–7.

¹⁴ International Organisation for Migration, *Displacement Tracking Matrix Nigeria Round 45 Report* (2023) 3–6; United Nations High Commissioner for Refugees, *Nigeria Emergency Situation Operational Update* (2024).

¹⁵ Human Rights Watch, *Nigeria: Boko Haram Attacks and Civilian Harm* (2020) 9–14.

¹⁶ United Nations Development Programme, *Journey to Extremism in Africa: Pathways to Recruitment and Disengagement* (2023) 21–26.

survival.¹⁷ The Nigerian government's counter-terrorism operations, primarily through the Armed Forces and the Civilian Joint Task Force, have been criticised for heavy-handed tactics, unlawful killings, and mass detentions. Domestic and international human rights organisations, including Amnesty International,¹⁸ Human Rights Watch,¹⁹ and the Socio-Economic Rights and Accountability Project (SERAP)²⁰ have documented instances of extrajudicial killings, arbitrary arrests, and abuses against civilians. Regional and international bodies, such as the UN Office of the High Commissioner for Human Rights²¹ and the African Commission on Human and Peoples' Rights, have similarly expressed concern over civilian casualties and violations of human rights standards during these operations. Investigative media reports by outlets like Premium Times, The Guardian Nigeria and BBC News Africa have repeatedly documented allegations of excessive use of force, indiscriminate aerial bombardments, arbitrary detention, and unlawful killings during counter-insurgency and anti-banditry operations in Nigeria. The scale of civilian harm has become particularly alarming in recent years. In December 2023, a military drone strike in Tudun Biri, Kaduna State, reportedly killed at least **85 civilians**, including women and children gathered for a religious celebration, while scores of others were injured.²² Similarly, humanitarian and civil society reports indicate that between 2017 and 2024, a series of "mistaken" or "erroneous" airstrikes by Nigerian security forces caused the deaths of **hundreds of civilians** across conflict-affected communities in Zamfara, Sokoto, Katsina, Borno, and Kaduna States.²³ Amnesty International further reported that military operations in the South-East between 2021 and 2023 resulted in over **1,800 deaths and numerous enforced disappearances**, with many victims allegedly unarmed civilians.²⁴ These incidents underscore

¹⁷ World Food Programme, *Nigeria Emergency Dashboard* (2024) (reporting widespread food insecurity and humanitarian dependence in conflict-affected areas).

¹⁸ Amnesty International, *"Nigeria: Boko Haram Crisis – Human Rights Violations by Security Forces"* (2020) <https://www.amnesty.org/en/latest/news/2020/03/nigeria-security-forces-abuses/>.

¹⁹ Human Rights Watch, *"Nigeria: Security Forces Abuses Against Civilians"* (2021) <https://www.hrw.org/world-report/2021/country-chapters/nigeria>.

²⁰ SERAP, *"Report on Human Rights Violations in Northern Nigeria Counter-Terrorism Operations"* (2020).

²¹ OHCHR, *"Nigeria: UN Experts Call for Protection of Civilians in Counter-Terrorism Operations"* (2020).

²² BBC News Africa, 'Nigeria army drone strike "mistakenly" kills civilians in Kaduna' (5 December 2023) accessed 16 May 2026; The Guardian Nigeria, 'Kaduna bombing death toll rises as outrage grows' (December 2023) accessed 16 May 2026.

²³ The Guardian Nigeria, '473 civilians killed from erroneous air strikes in 10 years – Coalition' (16 January 2025) accessed 16 May 2026; Amnesty International, *Nigeria: A Decade of Civilian Harm from Military Operations* (2025).

²⁴ Amnesty International, *Nigeria: Thousands Killed, Hundreds Forcibly Disappeared in South-East Nigeria* (2025) 7–12.

the persistent tension between the pursuit of national security and compliance with constitutional and international obligations relating to the protection of life, dignity, and due process.

The Terrorism (Prevention and Prohibition) Act 2022 (TPPA 2022) grants sweeping powers to security agencies, including arrest without warrant, prolonged detention, and asset freezing.²⁵

While necessary in some contexts, these powers have raised concerns about misuse.

2.5 Banditry and Violent Crime

In the North-West, heavily armed groups engage in banditry, mass kidnapping, cattle rustling, and village raids.²⁶ The Federal Government's designation of these groups as terrorists in 2021 reflects the escalation of violence. Security forces have responded with aerial bombardments and joint military operations, often accompanied by civilian casualties and human rights violations as evidenced by incidents such as the 2023 Kaduna drone strike and the 2021 Borno airstrike, as well as reports by human rights organisations documenting widespread civilian harm and lack of accountability.²⁷

2.6 Separatist Movements

The resurgence of pro-Biafra agitation through the Indigenous People of Biafra (IPOB), as well as Yoruba separatist movements, contributes to political instability by challenging Nigeria's territorial integrity, triggering violent clashes with security forces, and disrupting economic and governmental activities through measures such as sit-at-home orders.²⁸ These developments have deepened political tensions, heightened perceptions of marginalisation, and undermined public confidence in state authority.²⁹

²⁵ Terrorism (Prevention and Prohibition) Act 2022, ss 40–49.

²⁶ Amnesty International, 'Harvest of Death: Three Years of Bloody Clashes Between Farmers and Herders in Nigeria' (2018).

²⁷ Human Rights Watch, 'Nigeria: No Justice for Civilians Killed in Airstrike' (2023); Amnesty International, *Reports on Nigerian Military Operations (2021–2025)*; see also reports on the Kaduna (2023) and Borno (2021) airstrikes.

²⁸ Federal Republic of Nigeria Official Gazette No 103, Vol 104 (2017) (proscribing IPOB); Amnesty International, *Nigeria: Situation of Human Rights in the South-East* (2021); SBM Intelligence, *The Economic Impact of Sit-at-Home Orders in South-East Nigeria* (2022).

²⁹ International Crisis Group, *Managing Nigeria's Biafra Separatist Upsurge* (2017); Human Rights Watch, *Nigeria: Events in 2022* (World Report 2023).

The proscription of IPOB as a terrorist organisation has enabled the use of national security laws to prosecute activists, raising questions of proportionality and political neutrality.³⁰ Judicial pronouncements on the legality of proscription and detention continue to shape the discourse.

2.7 Cybersecurity Threats

With the rise of digital communication, Nigeria faces cybercrime, online fraud, digital terrorism, and disinformation threats. The Cybercrimes Act 2015³¹ criminalises a wide range of conduct but has also been invoked to arrest journalists and activists for allegedly defamatory or critical online posts.

3. Powers of Security Agencies and Their Constitutional Limits in Nigeria

Security agencies in Nigeria derive their powers from a combination of constitutional provisions and enabling statutes. The Armed Forces are established under sections 217–218 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) with the mandate to defend the territorial integrity of the state and suppress insurrection.³² Similarly, intelligence and internal security functions are vested in agencies such as the State Security Service (SSS), National Intelligence Agency (NIA), and Defence Intelligence Agency (DIA) under the National Security Agencies Act.³³ The Nigeria Police Force, established under section 214 of the Constitution, is charged with the prevention and detection of crime, the apprehension of offenders, and the maintenance of public order.³⁴ Complementary statutory frameworks, including the Terrorism (Prevention and Prohibition) Act 2022 and the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, further expand the operational powers of these agencies, particularly in areas such as surveillance, arrest, detention, and intelligence gathering.³⁵

Notwithstanding these extensive powers, their exercise is not unfettered. The Constitution imposes substantive and procedural limits designed to prevent abuse and ensure accountability. Central among these are the fundamental rights guaranteed under Chapter IV, which operate as

³⁰ Federal Republic of Nigeria Official Gazette No 103, Vol 104 (2017) declaring IPOB a terrorist organisation.

³¹ Cybercrimes (Prohibition, Prevention, etc.) Act 2015, ss 24, 38.

³² Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 217–218.

³³ National Security Agencies Act, Cap N74 Laws of the Federation of Nigeria 2004.

³⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 214.

³⁵ Terrorism (Prevention and Prohibition) Act 2022; Cybercrimes (Prohibition, Prevention, etc.) Act 2015.

direct constraints on state authority.³⁶ For instance, the power to arrest and detain is circumscribed by the right to personal liberty under section 35, requiring that suspects be informed of the reasons for their arrest and brought before a court within a reasonable time.³⁷ Similarly, the use of force by security agencies is limited by the right to life under section 33, which prohibits arbitrary deprivation of life except in strictly defined circumstances.³⁸

Judicial oversight constitutes a critical check on the exercise of security powers. Nigerian courts have consistently held that national security considerations do not justify disregard for the rule of law. In *Director of State Security Service v Agbakoba*,³⁹ the Supreme Court affirmed that executive actions taken in the name of security remain subject to constitutional scrutiny. Likewise, in *Lufadeju v Johnson*,⁴⁰ the Court emphasised that any restriction on personal liberty must comply strictly with constitutional provisions. However, judicial deference in certain cases, such as *Asari Dokubo v Federal Republic of Nigeria*,⁴¹ illustrates the tension between safeguarding rights and accommodating security concerns.

In addition to judicial control, statutory safeguards provide further checks. Many security-related laws require warrants for search, interception, and surveillance, thereby introducing procedural accountability.⁴² However, the breadth of discretion conferred by some statutes, particularly in matters relating to national security, often weakens these safeguards in practice. Institutional oversight bodies, such as the National Human Rights Commission, also play a role in investigating abuses, although their effectiveness is frequently constrained by limited enforcement powers.⁴³

In practice, the limits on security agency powers are often undermined by weak enforcement, lack of transparency, and institutional inefficiencies. Arbitrary arrests, prolonged detention, excessive use of force, and unlawful surveillance persist despite clear constitutional prohibitions. This gap between law and practice underscores the need for stronger accountability mechanisms and stricter adherence to the rule of law.

³⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) ch IV.

³⁷ *ibid* s 35.

³⁸ *ibid* s 33.

³⁹ [1999] 3 NWLR (Pt 595) 425 (SC).

⁴⁰ [2007] 8 NWLR (Pt 1037) 535 (SC).

⁴¹ [2007] 12 NWLR (Pt 1048) 320 (SC).

⁴² Cybercrimes (Prohibition, Prevention, etc.) Act 2015, ss 37–40; Terrorism (Prevention and Prohibition) Act 2022.

⁴³ National Human Rights Commission (Amendment) Act 2010.

Ultimately, while security agencies possess broad powers necessary for maintaining public order and national stability, these powers must be exercised within a framework of legality, proportionality, and accountability. The effectiveness and legitimacy of Nigeria's security architecture depend not only on its capacity to address threats but also on its fidelity to constitutional norms and human rights standards.

4 The Constitutional and Legal Frameworks for Balancing Security and Rights

Balancing security and rights in Nigeria is anchored in the country's legal and constitutional order. The Constitution mandates government to ensure national security while also guaranteeing fundamental rights that constrain state power. This creates an inherent tension requiring clear rules and accountability. Understanding these constitutional and statutory provisions is vital to evaluating the legitimacy of security measures. The following section outlines the key legal frameworks that govern this balance.

4.1 Constitutional Foundations

The Nigerian Constitution establishes a dual commitment of ensuring national security under section 14(2) (b)) of the CFRN 1999 and protecting fundamental rights by virtue of sections 33 – 46 of the CFRN 1999. Section 14(2)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that *“the security and welfare of the people shall be the primary purpose of government.”* This provision is often cited as the constitutional foundation for national security obligations, while also linking security directly to the well-being of citizens, thereby reinforcing the need to balance it with fundamental rights.

Courts have repeatedly emphasised that neither objective is absolute. In *Liversidge v Anderson*⁴⁴, a case often cited in Nigerian jurisprudence, Lord Atkin cautioned that wide discretionary security powers can lead to executive overreach. Nigerian courts face similar challenges.

4.2 The Armed Forces

The Armed Forces Act authorises the military to maintain internal security when so deployed by the President. However, military involvement in policing has been criticised as contributing to

⁴⁴ [1942] AC 206 (HL).

excessive force and human rights abuses.⁴⁵ Military involvement in internal security operations in Nigeria has generated persistent allegations of serious human rights violations, particularly in the context of counter-insurgency, anti-banditry operations, and the suppression of civil protests. One of the most prominent examples is the Lekki Toll Gate incident during the 2020 #EndSARS protests, where soldiers deployed to enforce public order allegedly opened fire on peaceful protesters, resulting in deaths and injuries. The Lagos State Judicial Panel of Inquiry concluded that the incident involved the use of excessive force against unarmed civilians.⁴⁶ Similarly, during counter-insurgency operations against Boko Haram in the North-East, the Nigerian military has been repeatedly accused of arbitrary detention, torture, enforced disappearances, and extrajudicial killings. Amnesty International documented instances in which thousands of suspects, including women and children, were detained in overcrowded military facilities under inhumane conditions, with many reportedly dying in custody from starvation, disease, or torture.⁴⁷

In the South-East, military operations such as “Operation Python Dance” launched against separatist agitation linked to Indigenous People of Biafra (IPOB) have also attracted widespread criticism. Reports indicate that security forces used lethal force against civilians during protests and raids, resulting in numerous deaths and injuries.⁴⁸ Likewise, “Operation Crocodile Smile” and other internal security deployments have been associated with allegations of unlawful arrests, intimidation of communities, destruction of property, and suppression of peaceful assembly.⁴⁹ Beyond direct violence, the military has also been implicated in indiscriminate aerial bombardments during anti-banditry operations. The 2023 Tudun Biri drone strike in Kaduna State, which killed scores of civilians during a religious gathering, exemplifies the devastating consequences of inadequate safeguards and disproportionate use of force in military operations.⁵⁰ Collectively, these incidents illustrate how military engagement in civilian policing has frequently blurred the line between legitimate security enforcement and violations of

⁴⁵ Cleen Foundation, ‘Policing and Military Operations in Nigeria’ (2019).

⁴⁶ Lagos State Judicial Panel of Inquiry, *Report of the Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters* (2021) 286–309.

⁴⁷ Amnesty International, *Stars on Their Shoulders, Blood on Their Hands: War Crimes Committed by the Nigerian Military* (2015) 20–35; Human Rights Watch, *Nigeria: Events of 2024 in World Report 2025*.

⁴⁸ Amnesty International, *Nigeria: Bullets Were Raining Everywhere – Deadly Repression of Pro-Biafra Activists* (2016) 10–18.

⁴⁹ Civil Liberties Organisation, *Military Operations and Civilian Rights in Nigeria* (2020) 14–19.

⁵⁰ BBC News Africa, ‘Nigeria army drone strike “mistakenly” kills civilians in Kaduna’ (5 December 2023) accessed 16 May 2026.

constitutionally protected rights, particularly the rights to life, dignity, liberty, and peaceful assembly.

4.3 The Police

The Nigeria Police Act 2020 represents a significant legislative attempt to reform policing in Nigeria by repositioning the police as a professional, community-oriented, intelligence-driven, and human-rights-compliant institution.⁵¹ The Act emphasises accountability, respect for human rights, and adherence to democratic policing standards. For instance, section 4 outlines the core functions of the police, including the protection of lives and property in accordance with the law, while sections 35–37 introduce safeguards relating to arrest procedures, humane treatment of suspects, and protection against torture and degrading treatment. The Act also promotes community policing and seeks to align police conduct with constitutional guarantees and international human rights norms.

Despite this progressive statutory language, operational practices often lag behind. In practice, allegations of arbitrary arrest, extortion, torture, unlawful detention, and excessive use of force continue to characterise policing in many parts of Nigeria. A vivid example was the conduct of the now-disbanded Special Anti-Robbery Squad (SARS), whose activities triggered the nationwide #EndSARS protests in 2020. Numerous reports documented incidents of torture, extrajudicial killings, enforced disappearances, and unlawful detention carried out by police officers under the guise of crime control.⁵² Although SARS was officially dissolved, subsequent reports by civil society organisations indicated that similar abusive practices persisted under renamed tactical units.⁵³

Operational shortcomings are also evident in the policing of public assemblies and protests. During the 2024 #EndBadGovernance protests, police officers reportedly used tear gas, live ammunition, and mass arrests against demonstrators in several states, despite constitutional protections of freedom of expression and peaceful assembly.⁵⁴ Such actions demonstrate the persistence of a militarised policing culture, where force is often prioritised over negotiation, de-

⁵¹ Nigeria Police Act 2020, s 4.

⁵² Amnesty International, *Nigeria: Time to End Impunity – Torture and Other Violations by Special Anti-Robbery Squad* (2020) 7–18; Lagos State Judicial Panel of Inquiry, *Report of the Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters* (2021).

⁵³ Human Rights Watch, *Nigeria: New Police Units Continue Old Abuses* (2022).

⁵⁴ Amnesty International, *Nigeria: Police Used Excessive Force to Quash #EndBadGovernance Protests* (2024).

escalation, and community engagement. Furthermore, weak disciplinary mechanisms, inadequate training, poor remuneration, political interference, and the failure to enforce accountability measures have undermined the transformative objectives of the Police Act 2020. Consequently, while the Act establishes a progressive normative framework, the gap between law and practice continues to impede the emergence of a truly rights-based policing system in Nigeria.

4.4 Department of State Security Service (DSS/SSS)

The National Security Agencies Act grants the DSS/SSS wide investigative powers. However, judicial decisions such as *Director, SSS v Agbakoba*⁵⁵ highlighted that even national security agencies must comply with constitutional rights.

5 Human Rights Concerns in Nigeria's Security Operations

Nigeria's security situation has produced an operational environment in which security agencies frequently resort to measures that significantly infringe fundamental rights. Although some of these infringements occur within constitutionally permitted limitations, many constitute outright violations of domestic and international law. This Part examines key human rights concerns arising from security operations, with emphasis on extrajudicial killings, arbitrary arrests and prolonged detention, torture and inhuman treatment, infringement of privacy, and restrictions on freedom of expression, movement, and assembly.

5.1 Extrajudicial Killings and Excessive Force

Extrajudicial killings remain a persistent problem in Nigeria's security operations. Several commissions of inquiry, including the 2020 Judicial Panels on Police Brutality across States, documented systemic patterns of excessive use of force by the Nigeria Police Force, the Nigerian Army, and other agencies.⁵⁶ Evidence indicates that in conflict zones such as the North-East, North-West, and South-East, security forces frequently employ lethal force in situations where non-lethal alternatives were available.⁵⁷

⁵⁵ [1999] 3 NWLR (Pt 595) 425 (SC).

⁵⁶ Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses (Final Report, 2021).

⁵⁷ Amnesty International, *'Nigeria: Stars on Their Shoulders, Blood on Their Hands'* (2015); Amnesty International, *'Nigeria: Human Rights Violations in the North-East'* (2020–2023); SBM Intelligence, *Reports on Conflict and Security in Nigeria* (2021–2023); UN Office of the High Commissioner for Human Rights, *Reports on Nigeria* (2020–2023).

The Nigerian Constitution guarantees the right to life under section 33, CFRN 1999 permitting deprivation of life only in narrowly defined circumstances such as self-defence or lawful arrest.⁵⁸

The use of excessive force violates this constitutional protection, as well as Articles 4 and 5 of the African Charter on Human and Peoples' Rights (ACHPR).⁵⁹

Judicial intervention has been inconsistent. In *Isaac Adaka Boro v The State*,⁶⁰ the Supreme Court stressed the sanctity of the right to life. Yet courts tend to defer to national security arguments when lethal force is used in counter-terrorism or riot-control operations. The Court of Appeal in *Adewunmi v AG, Ekiti State*⁶¹ held that the state must strictly justify any lethal force used by security agencies. However, enforcement of judgments on unlawful killings remains weak due to bureaucratic resistance and absence of institutional accountability.⁶²

5.2 Arbitrary Arrests and Prolonged Detention

Arbitrary arrest and prolonged detention without trial are among the most pervasive human rights issues in Nigeria's security environment. Section 35 of the 1999 Constitution guarantees the right to personal liberty, mandating that any person arrested must be brought before a court within 24 or 48 hours depending on the proximity to a court.⁶³ Despite these protections, security agencies routinely detain suspects beyond lawful limits, particularly in relation to terrorism, separatist activities, banditry, and protest movements. According to the Nigeria Correctional Service (NCoS), as of February 2026, Nigeria's custodial centres held approximately 80,812 inmates, out of which 51,955 inmates, representing about 64% of the total prison population were awaiting trial.⁶⁴ The Minister of Interior further disclosed that nearly 67% of inmates in

⁵⁸ Constitution of the Federal Republic of Nigeria 1999 (as altered), s 33.

⁵⁹ African Charter on Human and Peoples' Rights (1981), arts 4–5.

⁶⁰ [1966] 2 All NLR 46.

⁶¹ [2002] 2 NWLR (Pt 751) 474 (CA).

⁶² Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters, *Report of the Panel of Inquiry* (2021) (finding unlawful killings and recommending compensation, with limited implementation); see also *SERAP v Federal Republic of Nigeria* (ECW/CCJ/APP/40/18, Judgment No ECW/CCJ/JUD/19/21, 2021) (ordering accountability and compensation for human rights violations, with compliance concerns); Amnesty International, *Nigeria: Time to End Impunity* (2020–2023) (documenting failure to prosecute unlawful killings by security forces); Human Rights Watch, *World Report* (various years, Nigeria chapters) (noting lack of accountability and non-enforcement of remedies); A O Okorie, 'Enforcement of Judgments Against Government in Nigeria: Challenges and Prospects' (2020) 6 *Nigerian Journal of Public Law* 45 (highlighting structural barriers, including requirement of Attorney-General's consent and bureaucratic resistance).

⁶³ CFRN, 1999 s 35(4).

⁶⁴ Premium Times, <https://www.premiumtimesng.com/news/more-news/856034-awaiting-trial-inmates-account-for-64-of-prison-population-in-nigeria-ncos> accessed 17 May 2026.

Nigerian correctional facilities are awaiting trial, most of them prosecuted under state laws but detained in federally managed custodial centres.⁶⁵ Reports from Lagos, Kano, Rivers, Enugu, and Kaduna States consistently indicate that correctional facilities house large numbers of detainees who have not been convicted of any offence.⁶⁶ Human rights organisations have also documented cases in which terrorism suspects, separatist agitators, protesters, and politically sensitive detainees were held for years without trial under the justification of national security.⁶⁷ A landmark example is *Asari Dokubo v Federal Republic of Nigeria*,⁶⁸ where the Supreme Court upheld the applicant's prolonged detention on the grounds of national security. The Court reasoned that individual liberty may be restricted to preserve public safety. This judgment, while doctrinally grounded in national security jurisprudence, has been criticised for enabling expansive executive powers without adequate judicial oversight.⁶⁹

The Terrorism (Prevention and Prohibition) Act 2022 (TPPA 2022) exacerbates the problem by permitting detention orders issued by *ex-parte* applications, subject to limited judicial scrutiny.⁷⁰ In practice, such provisions have been used to detain suspects for prolonged periods without trial, often under inhumane conditions.⁷¹ The use of *ex parte* detention orders undermines the principle of fair hearing by excluding the detainee from the initial judicial process, thereby weakening procedural safeguards and increasing the risk of abuse. In *Ogoni 9 v Federal Republic of Nigeria*,⁷² the ECOWAS Court condemned the Nigerian government for arbitrary detention and failure to uphold due process. The decision in *Ogoni 9 v Federal Republic of Nigeria* represents a significant affirmation of regional human rights accountability in the face of national security

⁶⁵ Information Nigeria, <https://www.informationng.com/2025/08/fg-67-of-nigerian-inmates-awaiting-trial-majority-are-state-offenders>, accessed 17 May 2026.

⁶⁶ BusinessDay Nigeria, <https://businessday.ng/news/article/prisons-under-strain-as-2-of-every-3-inmates-awaiting-trial> accessed 17 May 2026.

⁶⁷ Amnesty International, *Nigeria: Arbitrary Detention and Torture in Security Operations* (2024); Human Rights Watch, *World Report 2025: Nigeria*.

⁶⁸ [2007] 12 NWLR (Pt 1048) 320 (SC).

⁶⁹ M T Ladan, 'National Security and the Protection of Human Rights in Nigeria: Issues and Challenges' (2012) 6 *Nigerian Bar Journal* 62 (criticising judicial deference to executive claims of national security); E O Ameh, 'National Security versus Fundamental Rights: An Appraisal of *Asari Dokubo v FRN*' (2014) 8 *African Journal of Law and Criminology* 45 (arguing that the decision expands executive power at the expense of liberty); C Okeke, 'Human Rights and National Security in Nigeria: A Critical Appraisal' (2016) 10 *Nigerian Juridical Review* 120 (noting that the case reflects a trend of judicial reluctance to challenge security-based detentions); see also Amnesty International, *Nigeria: Time to End Impunity* (2020) (criticising prolonged detention and abuse of national security justifications in Nigeria).

⁷⁰ TPPA 2022, ss 32–40.

⁷¹ United Nations Office of the High Commissioner for Human Rights, *Report on Nigeria* (2020–2023) (raising concerns about prolonged detention, overcrowding, and conditions of detention in security operations).

⁷² [2000] ECW/CCJ/JUD/06/20.

justifications. The case arose from the arrest, detention, and execution of environmental activists popularly known as the Ogoni Nine, by the Nigerian military regime in 1995 following allegations of involvement in the killing of traditional leaders in Ogoniland. The applicants contended that the Nigerian government violated their fundamental rights through arbitrary detention, denial of fair trial guarantees, and execution following proceedings before a special military tribunal.

The ECOWAS Court held that Nigeria was in breach of its obligations under the African Charter on Human and Peoples' Rights, particularly in relation to the rights to personal liberty, fair hearing, and life. The Court condemned the arbitrary detention of the applicants and found that the trial process failed to meet basic standards of due process, including independence and impartiality. It emphasised that even in situations involving national security or public order, states are bound to comply with minimum procedural safeguards.

A central feature of the Court's reasoning was its rejection of the use of special or ad hoc tribunals that do not meet internationally recognised standards of fairness. The Court underscored that the right to a fair hearing is non-derogable in its core content and cannot be sacrificed on the altar of expediency or political necessity. Furthermore, it affirmed that the execution of the applicants, following a flawed judicial process, constituted a grave violation of the right to life.

From an analytical standpoint, the decision is significant for three reasons. First, it reinforces the principle that national security cannot be used as a blanket justification for human rights violations, thereby placing substantive limits on state discretion. Second, it highlights the role of regional courts in providing remedies where domestic institutions fail to ensure accountability. Third, it contributes to the development of a rights-based approach to security governance by insisting on compliance with due process, even in politically sensitive cases.

The Court's position therefore reflects a strict approach to the protection of human rights, insisting that state actions, regardless of context must conform to legal and procedural standards. This stands in contrast to the more deferential posture sometimes adopted by domestic courts, as seen in cases such as *Asari Dokubo v Federal Republic of Nigeria*. Ultimately, *Ogoni 9 v Federal Republic of Nigeria* underscores the imperative that the legitimacy of national security measures depends on their conformity with human rights norms and the rule of law.

5.3 Torture, Ill-treatment, and Coercive Interrogation

Despite the enactment of the Anti-Torture Act 2017, torture remains widely practiced during interrogations and detention in Nigeria. Human rights organisations, civil society groups, and legal practitioners have documented repeated instances of torture, particularly by the Special Anti-Robbery Squad (SARS), in the course of interrogations and detention. Amnesty International reported that between 2017 and 2020, SARS routinely employed torture and other inhumane treatment to extract confessions, with no prosecutions initiated under the Anti-Torture Act, effectively undermining the statutory prohibition.⁷³ Similarly, civil society organisations such as Access to Justice highlighted in 2021 that despite clear legal prohibitions, security operatives continued to torture suspects, and calls for prosecution under the law had gone largely unheeded.⁷⁴ Prominent human rights lawyer Femi Falana (SAN) has also emphasised that violations of the right to freedom from torture continue to occur routinely across Nigeria, illustrating systemic non-compliance with both domestic and international obligations.⁷⁵ Other reports corroborate that torture remains a method used to coerce confessions or punish alleged offenders, demonstrating the gap between the law and its enforcement.⁷⁶ These findings underscore the persistence of torture despite statutory safeguards, highlighting institutional weaknesses, lack of accountability, and the urgent need for effective implementation and oversight mechanisms to protect fundamental rights in security operations.

The Act criminalises torture and imposes penalties on perpetrators, yet institutional culture and lack of enforcement undermine its effectiveness. In *Inspector General of Police v Eze*,⁷⁷ the Court of Appeal reaffirmed that confessional statements obtained through torture are inadmissible, regardless of their reliability. Similarly, the Supreme Court in *Gbadamosi v The*

⁷³ Amnesty International, *Nigeria: Horrific Reign of Impunity by SARS Makes Mockery of Anti-Torture Law* (26 June 2020) https://www.amnesty.org/en/latest/news/2020/06/nigeria-horrific-reign-of-impunity-by-sars-makes-mockery-of-anti-torture-law/?utm_source=chatgpt.com accessed 22 March 2026.

⁷⁴ *NGO calls for prosecution of security operatives who torture suspects* (TheCable, 28 June 2021) https://www.thecable.ng/ngo-calls-for-prosecution-of-security-operatives-who-torture-suspects/?utm_source=chatgpt.com accessed 22 March 2026.

⁷⁵ *F Falana urges Nigerians to expose cases of torture, offenders* (The Guardian Nigeria, 13 January 2025) https://guardian.ng/news/falana-urges-nigerians-to-expose-cases-of-torture-offenders/?utm_source=chatgpt.com accessed 22 March 2026.

⁷⁶ *Anti-Torture Act @ 8: Victims bear scars, endure trauma as law remains on paper* (Guardian Nigeria, 2025) https://guardian.ng/featured/anti-torture-act-8-victims-bear-scars-endure-trauma-as-law-remains-on-paper/?utm_source=chatgpt.com accessed 22 March 2026.

⁷⁷ [2017] 15 NWLR (Pt 1588) 1 (CA).

*State*⁷⁸ emphasised the necessity of trial-within-trial procedures to determine voluntariness of confessions. Security agencies nonetheless continue to rely on coercive methods due to poor investigative capacity, limited forensic tools, and lack of accountability.

The prohibition of torture is non-derogable under international law as stipulated in the Convention Against Torture (CAT) and Article 5 of the ACHPR.⁷⁹ Nigeria's continuing violations undermine its treaty obligations and weaken its credibility within the international human rights framework.

5.4 Infringement of Privacy Rights

With evolving security threats, particularly terrorism and cybercrime, Nigerian security agencies have expanded digital surveillance practices. Section 37 of the Constitution protects the privacy of homes, correspondence, telephone conversations, and telegraphic communications. However, statutory exceptions are embedded in laws such as the Cybercrimes Act 2015, the Terrorism Act 2022, and the Nigerian Communications Commission (NCC) Regulations.

These laws allow interception of communications on the grounds of national security, subject to varying degrees of oversight. Concerns persist about inadequate safeguards, absence of transparent judicial authorisation processes, and potential for misuse.⁸⁰ Security laws and related regulations in Nigeria, such as the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 and the Lawful Interception of Communications Regulations, 2019 (LICR) purport to allow interception of communications on grounds such as national security or organised crime. However, those powers are limited by constitutional protections, particularly the right to privacy under section 37 of the Constitution, and by principles of legality, necessity, and proportionality. Yet credible evidence shows that these limits are vague or inadequately safeguarded, and implementation practice raises significant risks of abuse.

For instance, the LICR grants broad discretionary interception powers to the National Security Adviser and the State Security Service without clear judicial authorisation or independent oversight mechanisms, and allows warrantless surveillance in “emergency” situations on

⁷⁸ [1992] 9 NWLR (Pt 266) 465 (SC).

⁷⁹ Convention Against Torture 1984, art 2.

⁸⁰ Cybercrimes Act 2015, ss 38–39.

undefined grounds such as *national security* or *economic wellbeing*.⁸¹ Civil society groups, notably the Socio-Economic Rights and Accountability Project (SERAP), have specifically criticised these regulations as overly broad and lacking adequate judicial safeguards, independent oversight, transparency, and effective remedies, arguing that such powers can be weaponised against political opponents, journalists, civil society actors and election observers.⁸²

SERAP's legal challenge at the ECOWAS Court contends that the interception regime violates Nigeria's constitutional and international human rights obligations because it enables secret surveillance, mass data collection, and ambiguous authorised agencies without requiring prior independent judicial authorisation.⁸³ Furthermore, the regulations do not require authorities to notify individuals who have been subjected to surveillance, severely undermining the ability to challenge unlawful monitoring.⁸⁴

These criticisms indicate that, beyond statutory limits, security agents may already be operating interception powers without robust judicial oversight or transparent authorisation procedures, raising concerns that privacy rights are being compromised in the name of national security.

In *Emerging Markets v FIRS*,⁸⁵ the Court of Appeal underscored the importance of protecting informational privacy in the digital age. Although not a national security case, the court's reasoning indicates a judicial willingness to protect privacy interests against arbitrary state intrusions. However, courts rarely scrutinise national-security-based surveillance claims due to institutional deference.

5.5 Restrictions on Freedom of Expression and Media

Freedom of expression is guaranteed under section 39 of the Constitution and Article 9 of the ACHPR. Yet state authorities frequently restrict this right by criminalising speech deemed critical of the government, especially through the use of the Criminal Code, the Cybercrimes Act,

⁸¹ Lawful Interception of Communications Regulations 2019 (LICR 2019) (Nigerian Communications Commission) (granting broad interception powers, including emergency warrantless interception)

⁸² Socio-Economic Rights and Accountability Project (SERAP), *Letter to President Tinubu Urging Withdrawal of LICR 2019* (23 February 2026) (arguing that the regulations lack adequate judicial safeguards, independent oversight, transparency or effective remedies)

⁸³ SERAP *Sues Federal Government at ECOWAS Court Over Failure to Withdraw Phone-Tapping Rules* (Vanguard, 8 March 2026) (contending that the interception regime violates privacy and other rights)

⁸⁴ SERAP *Phone Tapping Regulations Pose Risks to Civil Liberties* (Independent Newspaper Nigeria, March 2026) (noting failure to require notification of individuals surveilled)

⁸⁵ [2020] 4 NWLR (Pt 1714) 210 (CA).

and the Official Secrets Act, 1962.⁸⁶ Provisions on sedition and “publishing false news” have been invoked to prosecute journalists, activists, and political opponents, as seen in *Alkali v Federal Republic of Nigeria*,⁸⁷ where criticism of government policies led to criminal charges. Similarly, online speech has been targeted under section 24 of the Cybercrimes Act, with bloggers and social media commentators arrested for posts alleging mismanagement of public resources.⁸⁸ Investigative journalists reporting on sensitive government operations have also been threatened under the Official Secrets Act, creating a chilling effect on critical reporting.⁸⁹ Security agencies, including the Department of State Services and the Nigeria Police Force, have sometimes conducted arbitrary arrests, detentions, or intimidation of journalists and activists, reinforcing self-censorship and suppressing dissenting voices.⁹⁰ These practices illustrate that while the law ostensibly protects freedom of expression, its enforcement often prioritises national security or political interests over constitutional guarantees, undermining both civil liberties and democratic accountability.

Section 24 of the Cybercrimes Act has been widely misused to arrest journalists, bloggers, and activists. In the prominent case of *Nnamdi Kanu v Federal Republic of Nigeria*,⁹¹ the government justified prosecution partly on the grounds of national security due to the alleged secessionist rhetoric of the defendant. Courts have occasionally struck down arbitrary arrests of journalists—e.g., *Femi Falana v Inspector General of Police*,⁹² where the arrest of a journalist covering a protest was deemed unconstitutional.

Nonetheless, Nigerian authorities continue to apply national security provisions expansively, sometimes leading to a chilling effect on free expression.

⁸⁶ Criminal Code Act (Cap 77 LFN 1990) ss 50–51; Cybercrimes (Prohibition, Prevention, Etc.) Act 2015; Official Secrets Act 1962.

⁸⁷ [2019] 12 NWLR (Pt 1680) 423.

⁸⁸ Reported arrest of journalist Isaiah Ogedengbe for COVID-19 criticism, Punch (Nigeria, 18 May 2020) <https://punchng.com/journalist-arrested-over-covid-19-funds-post> accessed 22 March 2026.

⁸⁹ Nigerian journalists threatened under Official Secrets Act for investigative reporting, Premium Times (2021) <https://www.premiumtimesng.com/news/top-news/468458-nigerian-journalists-threatened-over-investigative-reporting.html> accessed 22 March 2026.

⁹⁰ Socio-Economic Rights and Accountability Project (SERAP), *Freedom of Expression Under Threat in Nigeria* (2021) <https://serap-nigeria.org/freedom-of-expression-under-threat> accessed 22 March 2026.

⁹¹ (unreported, Federal High Court, 2017).

⁹² (Unreported, FHC, 2012).

5.6 Interference with Freedom of Movement and Assembly

Security operations often involve curfews, military checkpoints, restrictions on public gatherings, and surveillance of protesters. Section 41 of CFRN 1999 guarantees freedom of movement, while section 40 of CFRN 1999 guarantees freedom of assembly. However, these rights may be restricted for reasons of public safety and public order.

The policing of the 2020 #EndSARS protests illustrates the tension between security and rights. Numerous protesters were arrested or subjected to excessive force; some were detained without charge.⁹³ In addition to the widely reported #EndSARS crackdown, other security operations have illustrated similar tensions between national security imperatives and fundamental rights: the 2023 Tudun Biri drone strike in Kaduna State that killed scores of civilians in a misidentified target area;⁹⁴ a series of “erroneous” military airstrikes across northern Nigeria resulting in hundreds of civilian deaths;⁹⁵ human rights abuses, including unlawful killings, torture, and enforced disappearances documented in South-East Nigeria during counter-insurgency operations;⁹⁶ and the violent policing of the 2024 #EndBadGovernance protests,⁹⁷ during which the police used live ammunition against largely peaceful demonstrators.

Courts subsequently ruled in several cases that the actions of security agencies during the protests were unconstitutional, but remedies remain slow and fragmented.

6 Judicial Approaches to Balancing Security and Rights in Nigeria

The Nigerian judiciary plays a pivotal role in determining the permissible limits of state power. However, courts have adopted varying approaches, sometimes assertive in protecting rights, other times deferential to security agencies.

⁹³ Amnesty International, ‘Nigeria: #EndSARS Protest Crackdown’ (2021).

⁹⁴ Tudun Biri drone strike (3 Dec 2023), at least 88 civilians killed, military admits error; see Tudun Biri drone strike, Wikipedia (last visited 22 Mar 2026) https://en.wikipedia.org/wiki/Tudun_Biri_drone_strike accessed 22 Mar 2026; *UN calls for impartial investigation after deadly drone attack on civilians* (Africanews, Dec 2023) accessed 22 Mar 2026.

⁹⁵ Community of Practice Against Mass Atrocities, *Erroneous Military Airstrikes Killed Over 470 Civilians in 10 Years* (Guardian Nigeria, 16 Jan 2025) accessed 22 Mar 2026.

⁹⁶ Amnesty International, *Nigeria: Thousands Killed, Hundreds Forcibly Disappeared in South-East* (13 Aug 2025) accessed 22 Mar 2026.

⁹⁷ Amnesty International, *Nigeria: Police Used Excessive Force to Quash #EndBadGovernance Protests* (28 Nov 2024) accessed 22 Mar 2026.

6.1 The Doctrine of Proportionality

The proportionality test requires courts to determine whether a restriction on rights is: (i) provided by law; (ii) in pursuit of a legitimate objective; (iii) necessary in a democratic society, and (iv) proportionate to the aim pursued.

Although not explicitly provided in the Constitution, Nigerian courts increasingly borrow proportionality principles from international jurisprudence. In *Nigerian Army v Mamman*,⁹⁸ the Court of Appeal applied a proportionality analysis when determining whether the military's actions were justified by security needs. The Court held that even security-oriented actions must not exceed what is reasonably required. The Court of Appeal's reference to proportionality was informed by fundamental legal principles governing the reasonable and necessary use of force, even in security-related contexts. The underlying basis for such decisions in Nigerian appellate jurisprudence derives from well-settled criminal law doctrine and human rights norms recognised by Nigerian courts

Similarly, in *Ibrahim v State Security Service*,⁹⁹ the applicant was arrested and detained by operatives of the State Security Service (SSS) on allegations relating to activities perceived as threats to national security. The detention was carried out without formal charges and extended beyond the constitutionally permitted period, with limited access to legal representation and no prompt arraignment before a court of law. The respondent justified the continued detention on the basis of national security concerns, arguing that the applicant's activities required further investigation to prevent threats to public safety.

The applicant challenged the legality of his detention, contending that it violated his fundamental rights to personal liberty and fair hearing under sections 35 and 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The central issue before the Federal High Court was whether the invocation of national security could justify the prolonged and indefinite detention of a suspect without due process.

In its decision, the Court held that while national security is a legitimate governmental objective, it cannot be used as an open-ended or blanket justification for infringing constitutional rights. The Court emphasised that any restriction on fundamental rights must be lawful, necessary, and narrowly tailored to achieve a legitimate aim. It further held that detention without charge

⁹⁸ [2015] 18 NWLR (Pt 1490) 73 (CA).

⁹⁹ (Unreported, Federal High Court, 2018).

beyond the constitutionally prescribed period is unlawful, regardless of the security justification advanced.

The Court therefore found the applicant's detention to be unconstitutional and a violation of his right to personal liberty, ordering his release and affirming that security agencies must operate within the confines of the law, any restriction must be narrowly tailored. The case is important for three reasons: i) it rejects absolute reliance on national security as a defence for rights violations. ii) it reinforces the requirement of judicial oversight and procedural safeguards in detention. iii) it introduces a "narrow tailoring" approach, aligning Nigerian jurisprudence with broader human rights standards on proportionality and necessity.

The decision in *Ibrahim v State Security Service* demonstrates judicial resistance to unchecked security powers, affirming that national security must be pursued within constitutionally permissible limits and cannot justify indefinite or arbitrary detention

6.2 The Doctrine of Judicial Deference

Notwithstanding these developments as illustrated in the mentioned Ibrahim's case, courts often defer to executive claims of national security. The Supreme Court's decision in *Asari Dokubo v FRN*¹⁰⁰ is the most cited authority for judicial deference. The Court held that: "where national security is threatened or there is a likelihood of it being threatened, human rights or the individual rights of the citizen must be subject to national security."¹⁰¹

This broad formulation arguably shifts the burden to the citizen to disprove security threats, contrary to global human rights principles requiring the state to justify rights limitations.¹⁰² The consequences of such deference include weakened oversight, prolonged detentions, and a judicial environment that sometimes appears reluctant to challenge executive security narratives.

¹⁰⁰ *Asari Dokubo v FRN* (n 21).

¹⁰¹ *Ibid*

¹⁰² Articles 4, 19(3), 21, and 22 of the International Covenant on Civil and Political Rights (ICCPR) permit limitations on rights only where they are provided by law and are necessary for specified legitimate aims (e.g., national security, public order); Articles 9, 10, and 11 of the African Charter on Human and Peoples' Rights (ACHPR) guarantee rights (expression, association, assembly) subject to restrictions "provided by law." which has been interpreted this to mean that States must justify limitations, and such restrictions must be strictly necessary and not arbitrary; Articles 8–11 of the European Convention on Human Rights (ECHR) (though not binding on Nigeria, but highly persuasive) require that interferences be "necessary in a democratic society", and the State must prove this necessity before a court; United Nations Human Rights Committee General Comment No. 31 clarifies that under the ICCPR, States must justify any limitation on rights, showing legality, necessity, and proportionality.

6.3 Upholding Fair Hearing and Due Process

Despite some deference to the state, Nigerian courts have delivered important judgments strengthening procedural safeguards. In *Federal Republic of Nigeria v Ikedinachi*,¹⁰³ the Court of Appeal held that national security prosecutions must still comply strictly with rules of evidence and fair hearing. Similarly, in *Nigerian Air Force v Obiosa*,¹⁰⁴ the Supreme Court condemned the denial of legal representation during a military tribunal proceeding. The facts of the case was that the respondent, personnel of the Nigerian Air Force, was subjected to disciplinary proceedings before a military tribunal (court-martial) on allegations of misconduct under military law. During the proceedings, the respondent was denied the opportunity to be represented by counsel of his choice, and the trial was conducted in a manner that restricted his ability to adequately defend himself.

The tribunal proceeded to determine the charges against him and imposed sanctions without affording him the full procedural safeguards ordinarily associated with a fair hearing, particularly the right to legal representation. Aggrieved by the outcome, the respondent challenged the validity of the proceedings, arguing that the denial of legal representation constituted a violation of his constitutional right to fair hearing under section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

These cases affirm that fair hearing under section 36 of CFRN 1999 remains a fundamental right, even in matters involving terrorism, espionage, or treason.

6.4 The Role of Regional Courts: ECOWAS Court of Justice

The ECOWAS Court has become an important forum for Nigerians seeking enforcement of human rights against state security abuses. The Court's decisions in *SERAP v Nigeria*¹⁰⁵, *Gbagbo v Nigeria*,¹⁰⁶ and *Ogoni 9 v Nigeria*¹⁰⁷ have condemned arbitrary detentions, torture, and violations of freedom of expression. Although ECOWAS Court judgments lack automatic domestic enforcement mechanisms, they exert moral and political pressure on the Nigerian government.

¹⁰³ [2018] LPELR-43885 (CA).

¹⁰⁴ *Nigerian Air Force v Obiosa* [2003] 14 NWLR (Pt 839) 42 (SC).

¹⁰⁵ [2010] ECW/CCJ/APP/08/08.

¹⁰⁶ [2015] ECW/CCJ/APP/10/14.

¹⁰⁷ [2000] ECW/CCJ/JUD/06/20.

6.5 Doctrinal Conflicts Between National Security and Human Rights

Several doctrinal conflicts complicate the balancing process in Nigeria:

i. Broad Statutory Powers vs Narrow Constitutional Limits

Statutes like the TPPA 2022, Cybercrimes Act, and NSA Act grant expansive security powers, but constitutional rights impose narrower limits. Courts often struggle to reconcile these competing frameworks.

ii. Derogable vs Non-derogable Rights

Some rights—such as freedom from torture and the right to life—are non-derogable. However, in practice, security operations frequently violate these rights, creating a gap between constitutional theory and operational reality.

iii. Military Involvement in Internal Security

Nigeria's reliance on the military for policing tasks creates legal ambiguities. Military operations, governed by rules of engagement rather than civil policing standards, raise doctrinal tensions with constitutional rights protections.

6.6 Institutional and Structural Challenges in Balancing Security and Rights

Effective balancing of national security and human rights in Nigeria is complicated by a number of structural and institutional deficiencies. These include weak oversight institutions, lack of accountability mechanisms, politicisation of security agencies, inadequate training, insufficient forensic capabilities, and systemic corruption. This Part explores these deficiencies and their consequences for constitutional governance.

i. Weak Oversight of Security Agencies

Oversight is central to ensuring that security agencies do not abuse their powers. Yet in Nigeria, oversight mechanisms are often ineffective or compromised.

ii. Legislative Oversight

Although the National Assembly is constitutionally empowered to supervise the executive and its agencies, legislative oversight of security institutions is frequently undermined by: (i) Political alignment between legislative and executive bodies; (ii) Limited technical capacity to scrutinise classified security information; (iii) Reluctance of security agencies to comply fully with summons or to release operational details; and (iv) Opacity of defence and security budgets.

In several instances, such as the refusal of the Director-General of the State Security Service (SSS) to appear before the Senate in 2018, parliamentary authority has been openly challenged.¹⁰⁸ Such acts erode constitutional checks and embolden unaccountable security practices.

iii. Judicial Oversight

While courts remain the primary mechanism for enforcing rights, judicial oversight is constrained by: (i) Deference to national security claims by the executive; (ii) Delays in adjudicating fundamental rights enforcement suits; (iii) Difficulties in enforcing court orders against security agencies; and (iv) Underfunding and backlogs.

A notable example is the persistent failure of the SSS to comply with court orders granting bail to detainees, including the well-publicised case of *Sambo Dasuki v FRN*,¹⁰⁹ where court-ordered bail was repeatedly disregarded. Judicial power is weakened when orders are ignored without consequences.

iv. Internal Oversight Mechanisms

Many security agencies maintain internal complaints structures such as the Police Complaint Response Unit (CRU) and military Court-Martial procedures. However, these often lack independence and transparency.¹¹⁰ Furthermore, internal disciplinary mechanisms rarely result in public accountability or compensation to victims.

v. Politicisation of Security Agencies

The politicisation of security agencies undermines professionalism, objectivity, and fidelity to constitutional norms. Instances include: a) Selective prosecution of political opponents using anti-terrorism or cybercrime laws; and b) Deployment of security operatives during elections to suppress opposition participation; c) Arrest and detention of journalists or activists critical of government. In *EFCC v Fayose*,¹¹¹ the Court of Appeal lamented the political use of law-enforcement powers. Such politicisation hampers the ability of security agencies to function impartially and fosters human rights abuses motivated by political considerations.

vi. Insufficient Capacity and Equipment

¹⁰⁸ Senate of the Federal Republic of Nigeria, 'Proceedings of 7 August 2018' (Hansard).

¹⁰⁹ (Unreported, FHC Abuja, 2015–2019).

¹¹⁰ Police Complaint Response Unit (CRU), Annual Report 2019.

¹¹¹ [2018] LPELR-45550 (CA).

Nigeria's security agencies often lack modern investigative and forensic tools. The absence of digital forensic laboratories, reliable databases, and crime-scene management systems encourages reliance on: (a) Mass arrests, (b) Confessional evidence, (c) Detention-based investigations, and (d) Coercive interrogation.

This structural deficiency is a major driver of human rights violations and undermines the rule of law.

vii. Corruption and Abuse of Power

Corruption remains entrenched within the security sector. Extortion at checkpoints, diversion of operational funds and equipment, and bribery to secure releases from detention are widely reported.¹¹² Corruption facilitates abuse by incentivising officers to use their powers for personal enrichment rather than legitimate security needs.

The consequences of corruption are severe and they include: (i) Reduced public trust, (ii) Weakened institutional legitimacy, (iii) Increased non-compliance with lawful orders, (iv) Distorted operational priorities, and (iv) Heightened human rights violations.

7 Accountability Mechanisms for Human Rights Violations

Accountability mechanisms are essential to ensuring that security agencies exercise their powers lawfully and respect human rights. In Nigeria, recurring violations underscore the need for credible systems that can investigate, sanction, and remedy abuses. Where such mechanisms are weak or ineffective, impunity thrives and public confidence in state institutions declines. Examining these structures is therefore critical to assessing Nigeria's commitment to constitutional governance. The following section analyses the key institutions and processes responsible for enforcing accountability.

7.1 Constitutional and Statutory Frameworks

Chapter IV of the Constitution forms the basis of judicial remedies for rights violations. Section 46 of the CFRN 1999 enables individuals to approach High Courts for enforcement of fundamental rights. Fundamental Rights (Enforcement Procedure) Rules 2009 simplify standing and emphasise broad interpretive approaches.¹¹³

¹¹² Cleen Foundation, 'Corruption in the Police and Security Sector' (2020).

¹¹³ Fundamental Rights (Enforcement Procedure) Rules 2009, Preamble 3.

Other accountability pathways include: (i) National Human Rights Commission (NHRC) (ii) Judicial Panels of Inquiry (iii) Military and Police disciplinary procedures and (iv) ECOWAS Court of Justice.

However, these mechanisms face challenges of enforcement, limited jurisdictional powers, and executive resistance.

7.2 The National Human Rights Commission (NHRC)

The NHRC has statutory authority to investigate rights violations and recommend remedies. Its independence was strengthened by the NHRC (Amendment) Act 2010 which granted financial autonomy and expanded powers.¹¹⁴ Nonetheless, its recommendations remain non-binding.

Although the NHRC produced credible reports after the #EndSARS protests, implementation has been inconsistent.¹¹⁵ The absence of prosecutorial powers leaves the Commission dependent on the Attorney-General or security agencies to enforce sanctions.

7.3 Judicial Panels of Inquiry

Following the #EndSARS movement, multiple states established Judicial Panels of Inquiry to investigate police brutality. These panels documented widespread abuses, but implementation of recommendations—including payment of compensation and prosecution of offenders—remains incomplete.¹¹⁶

Panels lack constitutional entrenchment, and state governments may selectively implement findings. Their usefulness, therefore, depends largely on political will.

7.4 ECOWAS Court of Justice

The ECOWAS Court has emerged as an important supplement to Nigeria's domestic accountability mechanisms. Its broad human rights jurisdiction allows Nigerians to seek justice even when domestic institutions fail. The Court has ordered Nigeria to pay damages in cases involving unlawful detention, torture, and violation of freedom of expression.¹¹⁷

¹¹⁴ National Human Rights Commission (Amendment) Act 2010, s 6.

¹¹⁵ National Human Rights Commission (Amendment) Act 2010, s 6.

¹¹⁶ NHRC, 'EndSARS Panel Implementation Report' (2022).

¹¹⁷ Lagos State Judicial Panel Report (n 1).

However, compliance with ECOWAS Court judgments remains patchy due to absence of domestic enforcement structures.

7.5 Civil Society and the Media

Civil society organisations (CSOs), investigative journalists, and human rights defenders contribute significantly to accountability by: (i) Exposing abuses; (ii) Supporting victims with litigation; (iii) Advocating institutional reforms; (iv) Monitoring detention facilities; and (v) Engaging in strategic litigation.

Groups like SERAP, Amnesty International, and the Rule of Law and Accountability Advocacy Centre (RULAAC) play critical watchdog roles.¹¹⁸ However, shrinking civic space and harassment of activists undermine their effectiveness.

8 Recommendations for Reform

The central finding of the study is that the failure to integrate human rights norms into national security practices undermines both constitutional governance and effective security outcomes. Rather than enhancing stability, rights violations tend to erode public trust, weaken legitimacy, and ultimately compromise long-term security objectives.

The study recommends the adoption of a rights-based national security framework in Nigeria, beginning with a clear and narrowly defined statutory conception of national security that aligns with constitutional and international human rights standards. It urges the review and amendment of key security legislation, such as the Cybercrimes Act, the Terrorism (Prevention and Prohibition) Act 2022, and the Official Secrets Act to ensure that all restrictions on rights comply strictly with the principles of legality, necessity, and proportionality, alongside the judicial adoption of a structured proportionality test. The study further advocates for stronger institutional safeguards, including mandatory judicial authorisation for surveillance and extended detention, the establishment of independent oversight bodies with enforcement powers, and the institutionalisation of human rights training for security personnel. It emphasises the need for effective accountability mechanisms through prompt investigation and prosecution of violations, adequate compensation for victims, and a firm rejection of impunity. Finally, it calls for enhanced judicial enforcement of decisions, greater transparency in security operations, and the

¹¹⁸ SERAP v Nigeria (2010) ECW/CCJ/JUD/18/10.

full domestication and implementation of regional and international human rights standards to ensure a sustainable balance between national security imperatives and the protection of fundamental rights.

9 Conclusion

This study has demonstrated that while national security and human rights are conceptually complementary, their interaction within the Nigerian context reveals a persistent and problematic imbalance. The broad and often indeterminate interpretation of national security has enabled the expansion of state power in ways that frequently undermine constitutionally guaranteed rights. Although Nigeria possesses a relatively robust legal and institutional framework for the protection of human rights, its implementation is weakened by inadequate safeguards, inconsistent judicial enforcement, and entrenched institutional impunity.

The findings show that security operations in Nigeria are frequently characterised by excessive use of force, arbitrary detention, torture, and suppression of civil liberties, all of which erode public trust and weaken the legitimacy of the state. Moreover, the lack of effective accountability mechanisms and the weak enforcement of judicial decisions further compound the problem, allowing violations to persist without meaningful consequence.

A central conclusion emerging from this study is that national security cannot be sustainably achieved in the absence of respect for human rights and the rule of law. Rather than being mutually exclusive, security and rights must be understood as interdependent pillars of democratic governance. The adoption of a structured proportionality approach, strengthened institutional oversight, and a commitment to accountability are essential to restoring this balance.