

Legal Analysis of the Role of the Judiciary in Enhancing National Security in Nigeria

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Abstract

This work examined the legal analysis of the role of the judiciary in enhancing national security. Despite the avalanche of laws in the statute books, Nigeria is still battling with many security threats particularly internal insecurity. Internal insecurity presents great challenges to the economic, social, religious and political stability of the nation if not ensured. However, it should be understood that the issue of insecurity is a global crisis and not peculiar to Nigeria alone. This work showed the nexus between the judiciary and national security.

It was found that although it is the primary responsibility of the executive arm of government to ensure National security, this arm ineptitude has put nation's security into jeopardy. However, in an attempt to restore the sanctity of lives and properties, the judiciary as an independent umpire has played and would continue to play a pivotal role in the enhancement and protection of National security.

The work having taken a cursory look at the contemporary challenges to National security, causes, measures to tackling this menace and the role of the judiciary in enhancing National security vis-à-vis its challenges, it recommended a better coordination between the judiciary and relevant agencies saddled with responsibility ensuring National security.

The fight against insecurity in Nigeria is not a fight that could be won without the firm support of the judiciary. As such the judiciary should be without regards to personal bias and political influence if National security is to be sustained.

1.0 Introduction

The ineptitude of government towards ensuring National Security has invariably plunged the nation into many security dilemmas.¹ This state of affairs has degenerated into uncontrollable and devastating consequences for the nation's peace and stability. These challenges include the Boko Haram insurgency and nefarious activities, Fulani Herdsmen killings in the Northern part of the country, kidnapping and militancy, hired assassination, terrorism and armed robbery.

The fundamental obligation of the government is to provide adequate security in the country. The Constitution specifically provides that "The security and welfare of the people shall be the primary purpose of government".² The concept of national security is not limited to freedom from external aggression or internal protection of life and property but includes and not limited to employment security, payment of salaries and wages, protection and enforcement of human rights.³ As a developing nation and most especially in its recent history, Nigeria has had to grapple with critical issues of national security of multi-dimensional proportions which have been ascribed to failure of governance.⁴ This can be traced to earlier years of military rule when arms were imported into the country to prosecute the Nigerian civil war. Some of these weapons got into the hands of civilians and have been deployed during communal clashes, religious violence and crime in different part of the country destroying life and properties, disrupting economic and business activities,⁵ and thereby creating an insecure environment.

Insecurity is one of the greatest challenges to economic development and stability of Nigeria. It connotes the absence of safety⁶ and a state of being open to danger or anxiety,⁷ stemming from a concrete or alleged lack of protection. In abating this menace of insecurity of lives and property, the judiciary by its role as guardian,⁸ custodian and enforcer of the Constitution has a responsibility to ensure that the Constitutional provision which guarantees national security at all spheres are observed, and applied in the cause of governance.

2.0 Conceptual Review

National Security

¹ J I Ebeh, "National Security and National Development: A Critique" (2015) 4 (2) *International Journal for Arts and Humanities*, 1; C Onifade and D Imhonopi and U M Urim, "Addressing the Insecurity Challenges in Nigeria: Moral Values and Virtue Ethics (2013) 13 (2) *Global Journal of Human Social Science*, 53

² S.14(2)(b) Constitution of the Federal Republic of Nigeria, 1999 (as amended)

³ B Ogwo, "Impact of the judiciary in Enhancing National Security" in *Law, Security and National Development* G.N Okeke, et.al (eds) in Proceedings of the Conference of the Nigerian Association of Law Teachers (NALT) (Anambra: Amaka Dreams Ltd, 2017) 160

⁴ Y Y Dadem, et.al "Constitutional Indices of Good Governance and National Security" in *Law, Security and National Development* G.N Okeke, et.al (eds) in Proceedings of the Conference of the Nigerian Association of Law Teachers (NALT) (Anambra: Amaka Dreams Ltd, 2017) 208

⁵ O Olabanji and U. Ese, "Insecurity and Socio-Economic Development in Nigeria" (2014) 5 (1) *Journal of Sustainable Development Studies*, 482

⁶ D Beland, "The Political Construction of Collective Insecurity: From Moral Panic to Blame Avoidance and Organized Irresponsibility" Center for European Studies, Working Paper Series (2005) 216

⁷ I C Achumba and O S Ighomereho and MOM Akpan-Robaro, "Security Challenges in Nigeria and the Implications for Business Activities and Sustainable Development" (2013) 4 (2) *Journal of Economic Sustainable Development*. 79-99.

⁸ B Nwabueze, *The Judiciary as the Third Estate of the Realm* (1st edn, Gold Press limited 2007) 1

Security is a dynamic condition which involves the relative ability of a state to counter threats to its core values and interest.⁹ It is the action calculated to protect and safeguard the citizens and resources of individuals, groups, business and the nation against sabotage or violent occurrence whether foreign or domestic. Security ordinarily means the protection against something that might happen in the future. It covers the activities involved in protecting a country, building or person against attack, and danger.¹⁰ Security is recognized as going beyond the traditional military issues and to involve social, political, economic and even environmental factors.¹¹ It is consequently defined as an all-encompassing concept that enables citizens to live in peace and harmony and to participate fully and freely in the process of governance.¹²

Insecurity is the presence of those tendencies which could undermine internal cohesion and corporate existence of the state and its ability to sustain its institution for the promotion of essential values. The challenge of insecurity is not limited to Nigeria. It has been asserted that insecurity especially internal insecurity is not a problem limited to Nigeria. The United State, United Kingdom and many other countries face the challenges of insecurity within their borders on a daily basis. The difference between them and our country Nigeria is how they manage the threats, how knowledgeable and prepared they are; how they deploy resources against the threats; how effective they are; how patriotic and united the people are against threat of insecurity.¹³

In relating security to the nation, national security means the absence of threat to acquire values and subjectively the absence of fear that such values will be attacked.¹⁴ National security constitutes multitude of activities that are targeted at protecting a country from all forms of internal and external attack or danger.¹⁵ National security is examined from various perspectives in the area of personal security, food security, employment security, financial security, transport security, educational security, security of properties of individuals and corporate bodies which includes government facilities as well as properties of corporations, housing security and health security.¹⁶ National security connotes the capacity to control those domestic and foreign conditions that the public opinion of a given community believes necessary to enjoy its own self determination or autonomy, prosperity and well being.¹⁷ Section 14(1) of the 1999 Constitution

⁹ A J Omede, "Nigeria: Analysing the Security Challenges of the GoodLuck Jonathan Administration" (2011) 7 (5) *Canadian Social Science Journal*

¹⁰ A S Hornby, Oxford Advanced Learners Dictionary of Current English (9th edn, Oxford University Press Reprint 2007) 881; E J Igbogo, National Security and National Development: A Critique (2015) 4 (2) *International Journal of Arts and Humanities*.

¹¹ L Nathan, Good Governance, Security and Disarmament in Africa (1998) 3 (2) *African Journal of political Science*, 69

¹² Ibid

¹³ A Adejumo, "The Problems and Challenges of Insecurity in Nigeria" available at <<http://www.chatafrik.com>> assessed 21st January, 2020.

¹⁴ P Prabhakaran, National Security Imperatives and Challenges (New Dehli: Tata Mcgraw Hill Pages, 2008)

¹⁵ A A Okene, "National Security, Good Governance and Integration in Nigeria since 1999: A Discourse"(2011) 7 (10) *Asain Social Science Journal*, 167

¹⁶ A Adejumo, (n12)

¹⁷ C S Mayer, "Peace and Security in the 1980" Unpublished paper for the Mac Arthur Fellowship Program Social Science Research Council 12th June 1990 as cited in J J Romm "Defining National Security: The Non-Military Aspect"

of the Federal Republic of Nigeria conceptualizes national security as a collective or public good that government try to provide for all their citizens regardless of the quantum of resources which individuals and communities contributes to national security.

In the main, national security refers to a state where the unity, well-being, values and beliefs, democratic process, mechanism of governance, and welfare of the nation and her people are perpetually improved and secured through military, political and economic resources. It must be noted that national security is a dynamic issue, thus, it has shifted from the state of centric conception of security to the strategic indices which indicates that¹⁸:

- (i) Security is conceived as a holistic phenomenon that is not restricted to military matters but broadened to incorporate political, social, economic and environmental issues.
- (ii) The object of security are not confined to states but extended to different levels of the society to include people, religion and the global community.¹⁹
- (iii) Threats to security are not limited to military challenges, to state sovereignty and territorial integrity; they include poverty, oppression, social injustice and ecological degradation.²⁰
- (iv) The objectives of security policy therefore go beyond achieving an absence of war to encompass the attainment of democracy, sustainable economic development, social justice and protection of the environment.²¹
- (v) The state's responsibility for ensuring the security of its citizens does not lie exclusively or even predominantly with the police, military and intelligence services. It is a matter of shared responsibility by many government departments and themselves.²²

Amidst this contemporary broad understanding of national security and bearing in mind the shift to strategic indices of security, the responsiveness of government is the only vehicle for guaranteeing national security. A nation is secured when it does not have to sacrifice its legitimate interest to avoid war and is able if challenged, to maintain them by war.²³ However, today Nigeria cannot boast of territorial security as it is constantly sacrificing her interest to avoid war with neighbouring countries that infiltrate the country under the guise of diplomatic

(New York: Council on Foreign Relations Press 1993) 5; H Brown, "Thinking about National Security and Foreign Policy" in Watson Cynthia Ann, *A Dangerous World* (2nd edn, Reference Handbook on Contemporary World Issues A B C-C L O, 2008); D A Baldwin, "The Concept of Security" (1997) (23) *Review of International Studies*, 5-26; P. Upeke, "Reconciling the Irreconcilable": The Use of Reasonable Consequentialism for the Conundrum of National Security and Fundamental Rights" (2016) available at <<http://www.researchgate.net>> assessed 21st January, 2020; Y Ali, "National Security and Development in Contemporary Nigeria" (2014) (5) *The Lord Justice. Essay in Honour of His Excellency, Prince Bola Ajibola, A Journal of Law Students' Society, University of Ibadan*, 1-15

¹⁸ L Nathan, (n10)

¹⁹ *Ibid*

²⁰ *Ibid*

²¹ *Ibid*

²² *Ibid*

²³ S.E Olarinde and S. Fabamise and I. Bamidele, "Militancy, Terrorism and National Security 1914-2014: The Role of Law" Being Paper Presented at 47th Annual Conference of Nigerian Association of Law Teachers (NALT) held on 2nd -6th June, 2014 at Ebonyi State University, Abakaliki, 290-314

relations. As such, both the national and territorial security of the country is on the same pedestal.

Judiciary

Judiciary is defined as the branch of government responsible for interpreting the laws and administering justice. Judiciary means the Judges, the Courts and the body interpreting the laws and administering justice.²⁴ In Nigeria, to be specific the judiciary is the third arm of government, its primary role is to interpret laws enacted by the Legislature and apply the existing laws to individual cases to determine any question as to the civil rights and obligations between persons or between government or authority and to any person in Nigeria.²⁵ The judiciary is acknowledged as the guardian of our constitution, the protector of our cherished governance under the Rule of Law, the guardian of our fundamental rights, the enforcer of all the laws without which the stability of the society can be threatened, the maintainer of public order and public security, the guarantee against arbitrariness and generally the only insurance for a just and happy society.²⁶

Section 6(1) of the Constitution²⁷ provides that the “judicial power of the federation shall be vested in the court to which this section relates, being courts established for the federation”. The Constitution investing judicial powers on the courts automatically grants to them the power of judicial review of the action of other arms of government and their agencies generally.

Conventionally, under a democratic government, the statutory mandate to provide internal security is given by the government to the Nigerian Police and other security and law enforcement agencies, while external security and territorial integrity is the statutory responsibility of the military. However, the judicial arm also plays a fundamental role in the administration of justice. The courts are the final medium to confirm the guilt of security breaches or criminal breach suspects and the judiciary has the mandate to sentence such suspect to prison.²⁸

3.0 Contemporary Challenges to National Security in Nigeria

The issue of challenges of national security is not prominent to Nigeria alone. Thus, it has been earlier stated that countries around the world also face both internal and external insecurity challenges on a daily basis. The ability of the government of a nation to confront the challenge of

²⁴ Y Ali. “The Evolution of Ideal Nigerian Judiciary in the Millennium”(2001) 1 (1) Bar Journal, 39-56

²⁵ S A Fagbemi, “Role and Impact of Nigerian Judiciary in Enhancing National Security” in *Law, Security and National Development* G.N Okeke, et.al (eds) in Proceedings of the Conference of the Nigerian Association of Law Teachers (NALT) (Anambra: Amaka Dreams Ltd, 2017) 187

²⁶ N Nnamani, “The Judiciary in the 1990: Expectations and Challenges in Justice”(1990) 1 (3) *A Journal of Contemporary Legal Problems*, 27

²⁷ Constitution of the Federal Republic of Nigeria, 1999 (as amended); V C Maduekwe and U G Ojukwu and I Agbata, “Judiciary and the Theory of Separation of Powers in Achieving Sustainable Democracy in Nigeria” (The Fourth Republic)(2016) 4 (8) *British Journal of Education*, 84-104; S O Obikeze and E A Obi, *Government and Politics of Nigeria: The Struggle for Separation of Power in African State* (Onitsha: Book Point Ltd, 2003)23

²⁸ O Ehigiamusoe and U Kizito, “Niger Delta Militancy and Boko Haram Insurgency: National Security on Nigeria” (2013) 4 (3) *Global Security Studies Journal*, 35

insecurity is dependent on the political will and determination of such government.²⁹ There is no doubt that the inability of the present government in Nigeria under the leadership of President Buhari to effectively manage the dwindling economy has resulted in lack of foreign investments in Nigeria, most foreign investors now prefer to invest in neighboring countries such as Ghana where security on investments is guaranteed. The government has shut borders to importation, with the aim of promoting locally made goods and stabilizing the economy, however, the government has neglected in creating a secured enabling environment for domestic entrepreneurs.

Apart from the foregoing, the current national security challenge which is on the front burner is the herdsmen incessant and indiscriminate killing of innocent citizens who attempts to defend their rights to own and acquire landed property as guaranteed by the Constitution of Nigeria³⁰ and the proposed creation of cattle colonies in states of the federation. The failure of government to nip this challenge in the bud has resulted in many violent conflicts as well as ethnic and religious crises in several parts of the country. The creation of these colonies is at the disposal of the government, however, it should be noted that such creations should not be done at the expense of vulnerable citizens.

Furthermore, recent rift across the political scene eminently validates the strong link between good governance and national security, as majority of the political acrimony were not from external aggression but internal conflicts within the country fueled by a combination of social and political factors. The ripple effect of this rift between the Executive and Legislature has invariably put on hold governmental programs such as the passage of the 2018 national budget, forgetting that the sustainability of the nation's national security is not just based on social, economic factors but also on political inferences.

4.0 Causes of Insecurity in Nigeria

The causes of insecurity have been identified as both internal and external factors.³¹ It should be noted that in Nigeria, the internal factors poses greater challenge to socio-economic development than the external factors. Beyond the external-internal dichotomy, sources of insecurity in Nigeria have been classified as either remote or proximate and immediate sources /casual factors. In Nigeria, the challenge is not so much about insecurity of external sources, but rather that of internal sources.³² These causes would be appraised below.

Illiteracy

The writer observed that most people involved in threatening the security of Nigeria are the young ignorant people who are brain washed by other people who have influence over them. These youths just do as they are told without asking any question because they

²⁹ S A Akinnimi, "The Challenges of National Security and Nation Building in Nigeria"(2016) 3 (1) *International Journal of Social Science in Humanities Research*, 20-24

³⁰ S. 43, Constitution of the Federal Republic of Nigeria, 1999 (as amended)

³¹ B Salawu, "Ethno-Religious Conflict in Nigeria: Casual Analysis and Proposals for New Management Strategies" (2014) 13(3) *European Journal of Social Sciences*

³² I C Achumba and O S Ighomereho and MOM Akpan-Robaro, (n6) 80

don't know any better. They are used as thugs before, during and after elections to disrupt peace. An example is the suspect arrested in connection with Offa Robbery in Kwara State, who was linked to the former Senate President (Senator Bukola Saraki). Illiteracy therefore is a major issue that has led to the prolonged insecurity in Nigeria.³³ It is a strong factor leading people against their own country. In Northern Nigeria, illiterate northerners came up with the ideology that education is bad (Boko Haram). In the end the nation is faced with an existential threat to the nation; several major attacks in the country have been attributed to this group, this is nurtured mostly by illiteracy. This has led to political, social, and economic disruptions which in turn slow economic growth and development.³⁴

Imbalanced Development

Nigeria is a large nation with diverse ethnic groups that expect the government to pay equal attention to them.³⁵ However, it has been discovered that there is an uneven pace of developments in different parts of the country. Areas perceived as the oil rich region have its people looking out for more in terms of development and when this does not happen, they feel cheated and would often want to take laws into their hands via vandalization of oil pipe lines in a bid to claim their right.³⁶ This endangers and raises insecurity amongst the people. This may also be responsible for the Fulani-farmer conflict since the Fulani's want to graze their cattle while farmers want to cultivate crops.³⁷

Ethno-Religious Conflicts

This form of conflict arises from distrust among the various ethnic groups and the major religion in the country. It has been identified as a major cause of insecurity in Nigeria. Ethno-religious conflict is a situation where the relationship between members of one ethnic or religious group and another in a multi-ethnic and multi religious society is characterized by lack of cordiality, mutual suspicion and fear, and a tendency towards violent confrontation.³⁸ Frequent and persistent ethnic conflict and religious clashes between the dominant religions (Christianity and Islam), present the country with a major security challenge. The claim over scarce resources, power, land, chieftaincy, local government, councils, control of market and sharia as resulted to large scale killings and violence amongst groups. They have become the disintegrative and destructive social

³³A Eskey, "10 Causes of Insecurity in Nigeria" (2018) available at <<https://infoguidenigeria.com>> assessed 21st January, 2020

³⁴S Nadabo, "Insecurity in Nigeria: Causes and Resolution" (2013) available at <<https://nigeriavillagesquare.com>> assessed 21st January, 2020

³⁵ Ibid

³⁶G Ibenegbu, "Top 10 Sources of Insecurity in Nigeria" (2017) available at <<https://www.naija.com>> assessed 21st January, 2020

³⁷ Ibid

³⁸J Ibrahim and O Igbuzor, "Memorandum Submitted to the Presidential Committee on National Security in Nigeria"

elements threatening the peace, stability and security in Nigeria.³⁹ An example is the recent killing of two (2) Catholic Priest in Benue State and seventeen (17) parishioners.⁴⁰

Unemployment

The overwhelming rate of unemployment and poverty in Nigeria has grave consequences on national security as most of its productive force is unengaged. This is particularly obvious when it comes to Nigerian youths. As a result, the disposition to violent crimes that undermine the security of the nation is very high. Thus, the failure of government to address challenges of poverty, unemployment and inequitable distribution of wealth is one of the major causes of insecurity in the country. The effect of this is that poverty and unemployment has increased the number of people who are prepared to kill or be killed for a cause for a token benefit.⁴¹

High Influx of Arms

It is no news that our porous coastal borders have been used to sell arms into the country and to bunker oil along this region. Boko Haram and Herdsmen insurgency has lingered on without abatement because they flee into neighboring countries when they are been attacked in Nigeria. This would not have been possible if our borders were secured by the necessary agencies. However, it should be noted that this security agencies lack the expertise and equipment to handle situations, and apart from that they cannot separate their personal interest from that of the nation.⁴² These inadequacies has resulted into an unchecked inflow of fire-arms into Nigeria,⁴³ many Nigerians now possess illegal fire-arms purchased during this crisis. With the high influx of arms, cases like the penetration of insurgency are seen and these have led to wide spread of insecurity particularly in the Northern-East. These arms are now used in robberies, and other terrorist activities in the country which affect the peace of the nation.⁴⁴

5.0 Measures for Tackling Insecurity in Nigeria

In general, a number of methods or approaches have been identified as solution to insecurity, by different people as citizens both within the country and outside, and as foreign observers. The

³⁹O I Eme and A. Onyishi, "The Challenges of Insecurity in Nigeria: A Thematic Exposition" (2011) 3 (8) *Interdisciplinary Journal of Contemporary Research in Business*.

⁴⁰The Vanguard Newspaper, 25th April, 2018, available at <<http://www.vanguardngr.com>> assessed 21st January, 2020

⁴¹According to the National Bureau of Statistic, 37.7% of Nigerian Youths aged 15-24 years and 22.4% of those between the ages of 25-44 were willing to work but could not get jobs; S E Edeko, (n34)

⁴²I C Achumba and O S Ighomereho and MOM Akpan-Robaro, (n6)

⁴³J M Hazen and J Horner, "Small Arms, Armed Violence and Insecurity in Nigeria: The Niger Delta Perspective" (2007) Switzerland Small Arm Survey; G L Adeola and F Oluyemi, "The Political and Security Implications of Cross Border Migration between Nigeria and her Francophone Neighbour" (2012) 1 (3) *International Journal for Social Sciences Tomorrow* ; S E Edeko, "The Proliferation of Small Arms and Light Weapons in Africa: A Case Study of Niger Delta (2011) 1 (2) *Sacha Journal of Environmental Studies*.

⁴⁴A Eskey, (n31)

array of solutions in both short term and long term perspectives, commonly recommend and emphasize a strong fight against and removal of the sources and causative factors of insecurity. It is theorized that once these factors are eliminated, dissatisfaction and disaffection will be reduced and therefore the tendency for violence and criminal behavior will naturally be reduced, because both economic security and social security will have been enhanced.⁴⁵

Youth Employment

It is noted that unemployment increases governments' expenditure or transfer payments where welfare programs are implemented in favour of the unemployed.⁴⁶ Employment opportunities are lacking resulting in too many young people jobless and without a means of livelihood. The frustrating effect from this is that youths become vulnerable and are easily manipulated into committing crimes for very little reward.⁴⁷ Corruption hinders economic growth as it lowers the incentive to invest. Foreign investors tend to withdraw their interest from countries with incidence of corruption. It is the responsibility of government to create new jobs, thus, unemployment could only be curtailed by providing enabling and business friendly environment for foreign investors and entrepreneurs to create the desired jobs.

Leadership Development

It is viewed that Nigeria will have to develop visionary leadership, a leadership that is detribalized such that it has at leadership positions only people who are able to inculcate in their people or followers, the ideal of common citizenship as the transcendent factor among all Nigerians, no matter the tribe, gender, religion, economic and social status. In other words, it is imperative that we have leaders who "would not be limited to championing the causes of their home state, tribe or religious groups, but rather focus on deeds and pronouncements which convincingly and positively impact on the entire citizenry of the federal republic".⁴⁸ The argument for this is that such leaders "will help to mould the contending ethnic and religious groups into harmony and help to remove the perceived mutual distrust among them. The process of developing visionary leadership can be challenging, but it can however be overcome by using institutions of the Nigerian constitution as a nursery ground to produce leaders with national outlook and with a missionary zeal to transform the nation."⁴⁹

Good Governance

Good governance is the panacea for the insecurity challenge in Nigeria. The war against insecurity would be won only by raising governance standards that is, cultivating the culture of

⁴⁵ I C Achumba and O S Ighomereho and MOM Akpan-Robaro, (n6) 91

⁴⁶ A Epele, "Corruption and the Nigerian Society: Causes, Effects and the Futility Solutions" *The Politics Magazine*, (University of Benin, Benin City, 2016).

⁴⁷ N Dinim, "10 Problems of Security in Nigeria and Possible Solutions" (2018) available at <<https://infoguidenigeria.com>> assessed 21st January, 2020.

⁴⁸ J Kufour, Nigeria: Imbalanced Development Causes Insecurity in Nigeria, *Thisday Newspaper*, (2012).

⁴⁹ Ibid

good governance where the government is responsible and accountable to the people.⁵⁰ Indeed, security engagement cannot be separated from good governance. Many others have also linked security to governance system. The general view is that peace and security is determined by good governance. However, good governance is a function of effective, visionary, transparent, trustworthy and credible political leadership whose driving force is an improvement in the collective wellbeing of the citizens through well conceived, effectively implemented economic policies and human development programmes.⁵¹ The state of insecurity in Nigeria calls for a leadership that is unbiased, detribalized and non-religious fanaticism that will look beyond championing the cause of tribe or religion and focus on the well being of the entire citizenry of the country.⁵² The underlying principle of good governance is the focus on people as the ultimate objective of governance.

Elimination of Corruption and Entrenchment of Social Justice

Corruption is viewed by everybody as the cog in the Nigerian wheel of progress and development. It is the bane of our society. It is both a social and economic monster. It is the cause of inequality and un-equitable distribution of the nations' wealth among its citizens, a situation that is the root cause of disaffection among Nigerians.⁵³ It is theorized by many that fighting corruption and winning the war will bring about an egalitarian society, where fairness, social justice and equal right for all will reign supreme; where rights will not be privileges for some people, and for others, privileges are their rights: where every Nigerian will be treated and accorded position not based on tribe and sect, but on merit defined in terms of the content of his character, mental capacity and ability to deliver; where there will be no discrimination.⁵⁴

Fortification of National Borders

The national strength of a nation largely depends on its territorial security from any form of external aggression, invasion or attack.⁵⁵ It is the maintenance of this form of security that called for the establishment of the Armed Forces of the Federal Republic of Nigeria.⁵⁶ The fortification of our national borders will prevent smuggling of arms into the country and curb the influx of immigrants.⁵⁷

Judicial Intervention

Policies that tackle the issues confronting the vast majority of the populace have to be authorized and implemented. It is an indisputable phenomenon that the judiciary in performing its duty of

⁵⁰ A Oluwarotimi, "United States to use more Balanced Security Strategy to Fight Insecurity in Nigeria", *Leadership Newspaper*, (2012).

⁵¹ K Oluwa, Fixing "Nigeria: Good Governance as the Missing Link" (2012) available at <https://www.newsbreaknigeria.com> assessed 21st January, 2020.

⁵² *Ibid*

⁵³ I C Achumba and O S Ighomereho and MOM Akpan-Robaro, (n6) 92; N Dinim, (n48)

⁵⁴ *Ibid*

⁵⁵ B Ogwu, (n2)

⁵⁶ S.217(2)(a)(b) Constitution of the Federal Republic of Nigeria, 1999 (as amended)

⁵⁷ N Dinim, (n48)

interpreting the Constitution and the law has contributed immensely to the national security of the nation. The judiciary in ensuring the security of the nation should promptly intervene in matters of conflict which poses imminent threat to the survival of the nation. The judiciary should be responsive at all times to bail out the nation from serious crisis that could divide the nation into various factions and hostilities that are capable of leading the nation into another civil war.

6.0 Judicial Independence

Judicial independence as a concept has become a globally accepted norm with different degree of adherence. The new role of the judiciary under the modern constitutional democracy has risen to unprecedented prominence. The common tradition of judicial independence is credited to the British system which is regarded as the cradle of judicial independence.⁵⁸ Judicial independence is the important element of judicial and anticorruption reform in Nigeria. This extends to independence from the Executive and Legislative arms of government and freedom from political and social influences.⁵⁹ It is the intention of the Constitution that each arm of the government should function and perform its roles or duties independently of one another.⁶⁰ The evil of concentration of powers in one person or body of persons leads to tyranny because power corrupts and absolute power corrupts absolutely.⁶¹

The most significant innovation of the 1999 Constitution on the appointment and discipline of judicial officers was the establishment of the National Judicial Council (NJC) which plays a vital role in the selection, appointment, discipline and removal from office of judicial officers.⁶² The Constitution of Nigeria has made provisions with an aim of securing independence of the judiciary beginning with the appointment of judicial officers, the discipline of judicial officers and how their emoluments are not made subject to the whims and caprices of the other arms of government *per se*.⁶³ However, despite these provisions, in reality there has been elements of interference by one arm of government over the other in order to promote check and balance and reduce gross abuse of power.

7.0 Role of the Judiciary in Enhancing National Security

The issue of national security is one that been prominent on the agenda of the national government in recent years. The current state of affairs in the country particularly the killings

⁵⁸ V C Maduekwe, (n26)

⁵⁹ H A Igbanugo, "The Rule of Law, Judicial Corruption and the Need for Drastic Judicial Reform in Sub-Saharan Africa's Nation (2013) 42 (3) *International Laws News (ILN)* 67-90; A M Akinwumi, "Towards an Independent and Effective Judiciary in Africa". Speech Delivered at African Development Forum, Governance for a Progressing Africa, Addis Ababa, 11th October, 2014.

⁶⁰ Ss. 4, 5 and 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) It expressly provides for Legislative, Executive and Judicial Powers respectively

⁶¹ E Malemi, *The Nigerian Constitutional Law* (Princeton Publishing Co, 2006) 66

⁶² T Osipitan, "Safeguarding Judicial Independence under the 1999 Constitution" in Akinseye-George Yemi and G. Gbadamosi, (eds) *The Pursuit of Justice & Development: Essay in Honour of Hon. Justice M.O Onalaja* (Abuja: Diamond Publication Limited, 2004)17

⁶³ B Ogwo, (n2)

and spate of violence experienced in the Northern part of Nigeria has no doubt posed security threat to the national existence of the nation. As such, the role of the judiciary in the dispensation of justice has a high moral value attached to it. The manner in which it performs its function has serious consequences and security implication for the country. The Constitution of Nigeria expressly declared that the security and welfare of the people shall be the primary purpose of government.⁶⁴

Traditionally, under a democratic government, the statutory mandate to provide internal security is given by the government to the Nigerian police and other security and law enforcement agencies while external security and territorial integrity of the Nigerian state is the statutory responsibility of the military and para-military security and intelligent services.⁶⁵ However, the judiciary been a law enforcement institution also plays a key role in the administration of justice and is today part of security management mandate. The law courts are the final medium to confirm the guilt of security breaches or criminal breach suspects and the judiciary has the mandate to sentence such security threat element to prison with such sentence as penalties against security or law breaches.⁶⁶

The judiciary as the last arbiter in the judicial process clearly stands apart as the fate of all cases is in its hands. Section 6(1) of the 1999 Constitution vests the judicial powers of the Federation in the courts. The power of the courts and tribunals (judicial) to adjudicate in matters between persons, government and authorities, and to determine questions of civil rights and obligations of persons is very wide.⁶⁷ The judiciary is presumed to have the capacity to deliver justice based on equity and what is right and fair to all. In delivering justice, judges are faced with moral dilemma when different and seemingly incompatible moral values direct them to take different and obviously incompatible courses of action in a given situation.⁶⁸ To avoid this dilemma, the judge should avoid the pitfalls of moral skepticism and moral knowledge.⁶⁹ There is no excuse for delivering a judgment that does not accord with justice. Thus, any judgment that has no justice in it destroys the society, with the effect that everyone could conduct himself in a negative, lawless, fraudulent and illegal manner and get away with under the guise of technicality.

Sadly to note that nowadays counsels hardly allow high profile cases to proceed, especially cases of official corruption and looting of public funds. The fad of today is for counsel to appear for the accused on the day of arraignment, when the accused is remanded in prison pending an application for bail which is filed promptly. The counsel now brings an application for preliminary objection and from then on, it is one adjournment after the other until the case fizzles

⁶⁴ S. 14(2)(b) Constitution of the Federal Republic of Nigeria, 1999 (as amended)

⁶⁵ S A Fagbemi, "Role and Impact of Nigerian Judiciary in Enhancing National Security in *Law, Security and National Development* G.N Okeke *et.al.*, (eds) in Proceedings of the Conference of the Nigerian Association of Law Teachers (NALT) (Anambra: Amaka Dreams Ltd, 2017) 194

⁶⁶ O Ehigiamusoe and U Kizito (n26) 35

⁶⁷ *Bakare v. Attorney General of the Federation* (1990) 5 NWLR Pt. 152 at 156

⁶⁸ M Stingl, "An Introduction to Bioethics (Unpublished) Dept of Philosophy", University of Letheridge (2015)

⁶⁹ *ibid*

out or the accused is let off on technicality.⁷⁰ However, it should be noted that when a judgment with security implications is rendered timeously it gives majority of citizens a sense of security; that justice is on their side.

In times of national emergency, greater weight is given to national security rather than individual. The judiciary balances government's interest vis-à-vis individual liberty in times of war. As courts often recognise, government's interests in protecting the nation's security are heightened during period of military conflict. Accordingly, particular searches or detention that might be unconstitutional during peace time may well be deemed constitutional during times of war not because the role of the judges is any different and not because courts curtail their constitutionally mandated role but because a governmental interest that may be insufficient to justify such deprivation in peace time may be sufficiently substantial to justify that action during that time of national emergency⁷¹

Although, it is worthy to mention that the judiciary has done so much towards the sustenance of order and national security. Electioneering in Nigeria under the Fourth Republic has carried along with it violence particularly when discontented political parties take to violence, leading to the destruction of lives and properties. Often time incidence like this threatens the security of the nation. However, the judiciary has been allaying the fears and anxiety of citizens through the instrumentalities of the court, tribunal and other institutions while it explores other avenues to achieve justice and maintain national peace.⁷²

The conduct of the judiciary in enforcement of law and order should not be a clog in the process of maintaining national security in the country. With the relevant statutory power and instrument in place, speedy trial which is an aspect of public justice which sets standards fixed by law and society should be attainable with dedication from judicial officers. Officers in the temple of justice should uphold the standard of justice and ensure that cases of sensitive nature and with security implication are treated without bias and nepotism.⁷³ The judiciary should also not turn to an escape route for indicted persons whose activities have undermined the nation's security.

8.0 Challenges of the Judiciary in Enhancing National Security

The judiciary like every law enforcement institution in Nigeria is not without challenges. It has been said that the judiciary is not helping matters on the preservation of national security. It is believed that the institution has heavily compounded the nation's problems particularly with the endless adjournment of cases, especially criminal cases. The judiciary ought to have at this stage in our development involved time scale for cases; there ought to be a time to determine a case; time to close that case; and time to deliver judgment and pass sentence.⁷⁴ A similar issue is the bureaucracy and delay in the administration of justice which has constituted a major challenge in

⁷⁰M A Ojo, Professional Ethics and the Legal Profession in Nigeria, discussion on the paper presented by O.O Onadeko, at the Ogun State Bar and Bench Forum Workshop held on 11th October, 2012 in Abeokuta.

⁷¹S Reinhardt, "The Judicial Role in Nation Security" at a Symposium sponsored by the Boson University School of Law on *The Role of the Judge in the 21st Century*, delivered on 22nd April, 2016, p.12

⁷²*Amaechi v. I.N.E.C* (2008) ALL FWLR Pt. 377, P.807

⁷³*Liversage v. Anderson* (1942) AC 206, p. 244

⁷⁴A Adejumo, (n12)

the judiciary. This has led to the congestion of cases in the court's cause list and inherent in commencement of action which sometime deters many litigants from seeking justice from the court and thus making recourse to self help, which is a threat to national security of any modern society.⁷⁵

Again, another challenge faced by the judiciary in enhancing national security is the status of certain members of society who are parties to a suit before the court, as this largely affects and determines the atmosphere of the court. If the case goes in their favour, everything goes smoothly; however, if the court's decision swings in another direction not favourable to them, there would be an atmosphere of tension created by thugs in the service of this high and mighty. This undue sway would affect the decision of the judgment which would be reached with tension and fear.⁷⁶ An example was the incident at the Owerri High Court on 27th January, 2017 when some unknown gun men invaded the premises and setting free their member a notorious kidnapper.⁷⁷

Also, the judiciary in their struggle for enhancement of national security is faced with the challenge of court officials which include the Registrar, Bailiff, Court Workers, Sheriffs and the likes. Some of these officials have the tendency to go out of their way to frustrate the cause of justice because of pecuniary gain. Some corner the lawyers and the court and go behind to collect gratification in a bid to smuggle in or out vital evidence, the weight of which the justice of the matter depends. Some even threaten that unless such extortions are paid in addition to the normal charges, orders of court, judgments and proceedings will not be released.⁷⁸

The issue of technology is fast advancing and the world is becoming a global village. However, Nigeria is lacking behind as far as technology is concerned. In some developed countries of the world, actions are commenced on-line and managed with accredited on-line judges to moderate trials like regular courts, and its judgment will be considered binding on both parties in the suit. Considering the slow pace of cases in Nigeria as a result of congestion, this method would have been ideal as some cases will be dealt with on-line, while technical ones are canvassed in the regular courts. Countries like Singapore, United Arab Emirate, Namibia and others have implemented the e-judiciary solution in addition to developed countries of Europe, America, Australia and the likes. Furthermore, the poorly equipped nature of our court is a challenge, as some judges complain of non-readiness for judgments and rulings as a lack of functional computer set.⁷⁹

9.0 Conclusion

⁷⁵ MOI Nwabuoku, "The Judiciary and the Enhancement of National Security" in *Law, Security and National Development* G.N Okeke et.al., (eds) in Proceedings of the Conference of the Nigerian Association of Law Teachers (NALT) (Anambra: Amaka Dreams Ltd, 2017) 202

⁷⁶ *Ibid*

⁷⁷ The Guardian Newspaper, 28th January, 2018 available at <www.guardian.ng/News/Gunmen> assessed 21st January, 2020

⁷⁸ MOI Nwabuoku, (n76) 203

⁷⁹ *Ibid*

This work has examined the concept of national security, its features as well as the role of the judiciary in enhancing national security. It is conspicuously clear that the impact of the judiciary in enhancing national security cannot be over-emphasized. There is no doubt, that the Nigerian state is in crisis and its survival depends on its ability to manage its challenges. This battle cannot be won without the firm support of the judiciary.

The role of judges with respect to national security is not different from the role of jurists that is weighing, balancing, exercising independent judgment and safeguarding the Constitution. In summary the role of the judiciary is to interpret the law to the best of its ability without regards to personal bias or outside pressure in times of war and peace. It is agreed that the security of Nigerian nation should be of the highest priority to the government and legal institutions; as such the complimentary role of the judiciary in the process cannot be denied, because when justice is seen to have been delayed, justice is denied and by extension, national security is compromised.

10.0 Recommendations

This work has been able to highlight the important relationship between national security and the role of the judiciary. This paper also identified the challenges encountered by the judiciary in ensuring the sustainability of national security and peace. Hence, these recommendations;

- (i) There should be a better coordination between the judiciary and the agencies involved in the investigation and prosecution of crimes for the effective and speedy administration of justice thereby combating the challenges in the administration of justice. Nigeria should take a leave from developed countries like Singapore and Namibia who have introduced the e-judiciary system for the quick dispensation of justice.
- (ii) Justice institutions should be fully automated; driven by digital technology and powered by digital literate judicial officers and legal service providers. Thus, training in modern methods of intelligence gathering and deploying advanced technology in managing issues of national security should be carried out on a regular basis and made prerequisite for the appointment of judges.
- (iii) A proper monitoring system should be put in place to check extremes of court officials. This could be achieved by ensuring that any erring officer is made to work under a collective responsibility system whereby each would serve as a watch dog to the other.
- (iv) It is recommended that our courts should adopt an activist approach to the interpretation of law. This is known as judicial activism which is necessary in order to meet up with the requirement of a modern democratic society.
- (v) Judges appointed to administer the law should be able to perform this function freely and independently without fear or favour. Thus, the appointment of judicial officers by the President on the recommendation of the National Judicial Council should be based on integrity, competence and courageousness as against the back drops of appointment made on the basis of connection.

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