



Law and administration of justice in Nigeria: The newparadigm for enhancing national security

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Abstract

The paper examines the roles of law and administration of justice in enhancing national security in Nigeria. Insecurity appears to be the greatest challenge threatening the integrity of the country. There is Boko Haram insurgency in the North-East, militancy and kidnapping for ransom are very rampant in virtually all parts of the country and Herdsmen/farmers clashes which originally began in the Middle Belt areas, is now a phenomenon in the whole territorial space, and there is rising incidence of armed robbery. Presently, the whole country is enveloped in an atmosphere of insecurity and this for a serious concern. Specifically, the paper examines the place of law in the scheme of national security and evaluates the existing national law and policy on crimes that continue to threaten the security of the nation of law in promoting national security and the administration of justice in Nigeria. The study recommends that The actors in the administration of justice system, the judges should imbibe, in particular, progressive legal ideology that emphasizes social justice; they should in specific clear cases avoid strict application of unjust legal rules which they consider oppressive or unfair.

Keywords: law, security, national security, administration of justice

Introduction

Nigeria as a nation is presently bedeviled with a number of Socio-economic, political, cultural and legal challenges which appear to threaten the corporate existence of the country. Socially, there is palpable tension among the various ethnic nationalities that constitute the country; economically, there is acute and widespread poverty caused by unemployment especially among the youth. The political system we run in the country is bloated, costly and the leadership of the country appears to have lost focus.

Insecurity appears to be the greatest challenge threatening the integrity of the country. There is Boko Haram insurgency in the North-East, militancy and kidnapping for ransom are very rampant in virtually all parts of the country and Herdsmen/farmers clashes which originally began in the Middle Belt areas, is now a phenomenon in the whole territorial space, and there is rising incidence of armed robbery. Presently, the whole country is enveloped in an atmosphere of insecurity and this for a serious concern.

This paper focuses on law and administration in Nigeria and how it can enhance national insecurity. The paper is divided into three parts: the first part examines the concept of national security, the theoretical framework underpinning and Agenda for Effective National Security.

The second part examine the place of law in the scheme of national security and evaluates the existing national law and policy on crimes that continue to threaten the security of the nation of law in promoting national security and the administration of justice in Nigeria. The third and final part concludes and offers suggestions for effective national security.

The Concept of National Security

Security is a concept that has been variously defined. It has been diversely conceived and the concept thus appears nebulous, lacking any precise form.

The Chambers 21st Century Dictionary defines security as protection from physical harm especially assassination. Others define it as protection against attack or robbery; still it is defined as protection from the possibility of future financial difficulty; and again it is viewed as freedom from vulnerability to political or military takeover of government (Mesjase, 2004) ^[12].

In modern times, the concept of security, and in the present discourse, national security has become amplified, embracing economic security, environmental security in addition to the physical aspect of it. Kofi Annan, the former United Nations Secretary General defined security in this broader sense when he said security could no longer be understood in purely military terms; rather it must encompass economic development, social justice, environmental protect, democratization, disarmament and respect for human rights and the rule of law.

Security has been an issue at the heart of man, perhaps from the very beginning of human existence. In political philosophy, philosophers have advanced theories of social contract between the state and individuals whereby the former agreed to guarantee the security of individuals, among other things, in exchange for the individual

giving up his right to self-preservation. Thomas Hobbes, in his book „Leviathan“, put it thus: “That a man be willing when others are so too, as far-forth as for peace and defence of himself as shall think it necessary, to lay down the right to all things, and be contented with so much liberty against other men, as he would allow other men against himself” (Hobbes, 1651). He said further “without security, there is no place for industry no arts, no letters, no society, and which is worst of all, continual fear and the danger of violent death, and the life of a man solitary, poor, nasty, brutish and short” (ibid). John Locke, another notable philosopher agreed no less when he said legitimate political government is a product of social contract where people in the state of nature conditionally transfer some of their rights to the government in order to better ensure the single and comfortable enjoyment of their lives, liberty and property. According to him since governments exist by consent of the people in order to protect the rights of the people and promote public good, governments that fail to do so can be resisted and replaced with a new government. As he put it “men by nature are free, equal and independent; no one can be put out of his estate and subjected to the political power of another without his consent. The only way whereby any one divests himself of his natural liberty and put on the bond of civil society is by agreeing with other men to join and unite into a community for their comfortable, safe and peaceable living one among another in a secure environment of their properties (Locke, 1689). Thus from philosophical perspective, the need to protect and guarantee personal liberties and freedoms among which security is very critical, is the reason for the existence of the nation-state of modern societies.

In the contemporary times, the concept has further been elucidated. It is described as “a basic value because it is an essential requirement or a condition of a successful and fulfilling existence. It liberates people both physically and mentally to get on with the business of building their lives without undue fear of those around them... It is also a peace of mind, liberation from the anxiety and apprehension associated with fear of those who are in a position to harm us” (Jackson, 2004) ^[14]. To some scholars security embraces all measures designed to protect and safeguard the citizenry and the resources of individuals, groups, businesses and the nation against sabotage or violent occurrence (Olukayode Olabanji and Urhriese, 2004). According to Beland (2005), the concept of insecurity connotes absence of safety, danger, hazard, uncertainty and lack of protection, “It is the state of fear, anxiety stemming from a concrete or alleged lack of protection” (Beland, 2005). Omede (2006) sees security as a dynamic condition which involves a relative ability of a state to counter threats to its core values and interests (Omede, 2011) ^[15].

Others have described national security as a state of being secured or free from danger and risks; it is a situation where either an individual, social group or geo-political entity is protected against any form of danger, espionage or attack of any sort, internally or externally, (Okeke, 1999) ^[17] as a condition of feeling safe from harm or damage, the defence, protection and preservation of values and lack of threats to acquired values, (George-Genyi, 2013) as a state of being protected from danger and anxiety for a nation, security connoting order and progress (Ebeh , 2015) ^[5]; and the absence of those tendencies which could undermine internal cohesion and corporate existence of a state and its ability to maintain its vital institutions for the promotion of its core values and socio-political and economic objectives as well as meet the legitimate aspirations of the people (Ekoko and Vogt, 1990) ^[7].

The concept of national security suggests that the government and its legislature should protect the state and its citizens against all kinds of national crisis through a variety of power projections such as political power, diplomacy, economic power, military power amongst others. According to Emmanuel (2017), measures usually taken to ensure national security include:

1. Using diplomacy to rally allies and isolate threats;
2. Mobilizing economic power to enhance or compel cooperation;
3. Maintaining effective control of the armed forces;
4. Implementing civil defense and emergency readiness measures, including anti-terrorism legislation;
5. Ensuring the resilience and redundancy of cultural infrastructure using intelligence services to detect and defeat or avoid threats and espionage, and to protect classified information; and
6. Using counter-intelligence services or secret police to protect the nation from internal attack.

Theoretical Underpinning

This study is anchored on Democratic Peace Theory: According to this theory, security is largely a function of virile liberal institutions; active and strong civil institutions functioning optimally and creditably will birth effective security, and that a security policy must have its long-term objectives, the spread of liberalism (Doyle, 1998) ^[4]. In other words security is best secured by promoting democracy, respect for human rights and development of civil society.

Agenda for Effective National Security

As earlier highlighted in the study, most of the causes of insecurity arose from the imbalance in the political structure of the country. The political structure engenders ills such as ethno-religious conflicts, herdsmen/farmer clashes, corruption, pipeline vandalism, kidnapping for ransom, terrorism and militant activities generally. In the light of the above it becomes imperative to redesign the entire socio-economic, political and legal framework of the country along the lines of federal principles. The police should be a state matter, to ensure an effective policing of the whole country. States also should control the resources in their respective domain, giving only the central authority an agreed percentage.

Good governance is yet another panacea to insecurity challenges in the country. Accountable, transparent and responsible leadership whose driving force is the improvement of the collective well-being of the citizens and who is committed to implementing economic policies and human development programmes is an imperative for effective national security.

The law against corruption as highlighted above must be made more effective. The institutions of the economic and financial crimes must be made to spread throughout all the states of the federation. As it is now, its activities are majorly concentrated in the major cities of the country.

The judiciary must be an active partner in the fight against corruption. Judicial officers should imbibe a progressive legal ideology and approach law mainly from the perspective of social justice, national objectives and aspirations. The courts should jettison Austinian positivist ideology that employs strict legal rules as the basis of adjudication. As noted by a writer.

“Our collective recognition that corruption is the common enemy leaves us with only one alternative to muster all our strength and resources and wage a massive, awesome and relentless war against it until we achieve a complete eradication. And the soldiers at the forefront of this battle must incidentally be judicial officers” (Maxwell, 1998) ^[13].

And echoing this point, Anthony Aniagolu said.

“Two departments of governments, the police and the judiciary need to be cleaned up and the other arms of the government will automatically follow suit. Once the police can be trusted to apprehend criminals and the courts trusted to give them immediate trial and punishment, every member of the society would soon wake up and law and order established”(Aniagolu, 1999) ^[2].

The measures highlighted above are imperatives to effectively combat the challenges of insecurity in the country.

The concept of law

Studies of relationships between law and national security use varying definitions of the term law.

In this study, we define a legal system (i.e., a system of laws) as a system of norms propositions that purport to guide action administered, or at least endorsed, by state officials in a particular society. A legal system will include norms that guide the behavior of both state officials and other actors. For example, security law will include both the norms that regulate crime, protection of lives and property as well as regulation and selection of people to adjudicate disputes. Within a legal system, we use the term “legal institution” to refer both to legal norms and to the organizations which are themselves constituted by legal and non-legal norms that administer them. Functioning legal institutions are products of the interaction of official legal norms (the law on the books), the legal officials who administer them, and the environment in which they operate (Kornhauser, 2004) ^[11].

The Role of Law in Promoting National Security and Advancing National Development

The discourse here will focus more on the functional or teleological aspect of law and less on conceptual analysis. For our purpose, it is apt to consider how law could function to promote national security and enhance national development. In this regard, it is also pertinent to analyse the conduct, attitudes, orientation or the dominant legal ideology of the principal actors in the administration of justice system – the judges, lawyers, e.t.c. This is imperative, given that law plays a critical role in the socio-economic and political progress of any nation.

Law as a Tool of Social Ordering

Sociological jurists have long recognized the value of law as an instrument of social control. From Jeremy Bentham’s utilitarianism which posits that law functions to achieve the greatest happiness of the greatest number, Von Ihering’s jurisprudence of interest which emphasizes the purpose or the end of law, Duguit’s social solidarity which stresses harmonious co-existence among the various elements of human society and Roscoe Pound’s idea of law as a mechanism of social engineering, it is incontestable that law, indeed, plays a critical role in human societies. It is not only an instrument to achieve stability and order but also, and perhaps more importantly, a vehicle for socio-economic and political development.

Law and Administration of Justice as an Aid to National Security.

The critical role of the actors particularly the judges in the administration of justice of any nation cannot be over-emphasized. Gray, an eminent English jurist, exaggerated this point when he defined law almost exclusively in terms of the rulings and decisions of the court. According to him “the law of a state or any organized body of men is composed of rules which the court, that is the judicial organs of that body, lay down for the determination of legal rights and duties” (Gray, 1921) ^[8]. Holmes had earlier defined law as the prophecies of what the court would decide (Holmes, 1887). Although these perspectives of the eminent jurists have been criticised as being unduly restrictive as they ignore other critical dimensions of the phenomenon, it does emphasize the pivotal role of the court in the administration of justice of any nation. Mr Justice Arthur T. Vanderbilt further explained the crucial role of the judiciary when he said”

“..... it is the courts and not the legislature that citizens primarily feel the keen cutting-edge of law. If they have respect for the work of the courts, their respect for the law will survive the short coming of every other branch of government, if they loose their respect for the work of the courts, their respect for law and order will varnish with it to the great detriment of society” (Abraham, 1975) ^[9].

In the light of the foregoing, it is apposite to examine, albeit briefly, the general attitudes of the Nigerian judges to statutory interpretation or the dominant legal ideology.

Many jurists have expressed the view that the quality of a legal system is largely a reflection of the dominant legal ideology of the judges. Eugene Ehlich, an Austrian jurist said:

“There is no guarantee of justice except the personality of the judge” (Cardozo, 1921) ^[3].

Austinian positivism which conceives law strictly in terms of the application of formal rules appears to be the dominant ideology. Justice Belgore M. B, a former Chief Justice of Nigeria articulates this position as follows:

“.....a Judge is obliged to enforce the law laid down by the legislature or created by a higher court whether such law is unfair, absurd or even dangerous. It is justice according to law, not necessarily according to justice. So a judge is constrained if there is a wrong which cannot be fixed into any compartment created by parliament or laid down by a higher court. The legislature is the law giver and the courts operate within the confines of the circle down” (Hon Justice Belgore, 1999).

Earlier, Kayode Eso J.S.C opined “the court is to administer the law as it is and not as it ought to be” (Ransom Kuti Olufumilayo) A notable justice and author succinctly captured this dominant orientation when he said of the Nigerian Judges:

“they must disentangle themselves from the cocoon of conservatism which many of them have woven around themselves by their training in British Universities, Faculties of Law manned by those trained in the former. They must break loose from what some of them consider to be maximum prison unto which Austinian positivism confine them. They must gallop quickly into the light of economic and social justice and into an innovative judicial interpretative processes designed to lead to the same and in order to justify their very existence which has the responsibility and mandate of their people to lead them into the Cannon of redemption. Austinian positivism has blinded many of our law men from seeing or possibly acknowledging the evils that have been perpetrated in the name of the law by generation of our political leader. For too long have many of our judges given unqualified support to the Leviathan ruler...” (Aguda, 1988) ^[1].

Other notable scholars have equally condemned the undue emphasis placed on legal rules as the driver, as it were, of judicial rulings and decisions. Lloyd remarked in this respect.

“Conceptualism or legalism is a vice to which lawyers too readily succumb. Rules are means to an end, purposive instruments. They embody social objectives and policy choices. Thus when a judge is confronted with a rule, he is not met by a bloodless category but a living organism which contain within itself value choices”

(Freedman M. D. A).

It is important that our judges must approach law from the angle of social justice, seen largely from prisms of the common man not school in the intricacies of jurisprudence but nevertheless endowed with the elementary principles of justice. In this respect I commend the approach of a foremost English Judge, Lord Denning as stated by Schmittholf while paying tribute to him; he said about the distinguished jurist:

“He looks at law as an instrument of doing justice, doing justice now in the case before him, justice which is founded on what the majority of right-thinking people regard as fair solutions, justice which the common people understand which give them confidence that those occupying the judgment seat do not live in a different world ideals from their own and understand their hopes and anxieties. The belief that law is an instrument of doing instant justice is the explanation of Lord Denning’s often misunderstood radicalism. His approach is teleological. He thinks of the result before he considers the legal reasoning on which it was to be founded. If the result to which established legal doctrine leads is obviously unfair or out of touch with what ordinary people would expect to be law, he will examine first the principles in order to ascertain whether they really compel an unjust solution and after whether this method, will enable him to arrive at an answer which is more adequate to modern needs.....” (Ogundipe, 1987).

Conclusions

The study through extant review of literature has shown that there is a relationship between law, administration of justice and national security in Nigeria. Law is a veritable instrument to achieve effective national security and enhance peaceful coexistence among people. As we have examined in this paper, insecurity in Nigeria is largely induced by the imbalance in the political structure of the country poverty and, now, debased value-system of the nation. These need to be addressed to solve the challenges of insecurity in the country.

The issue of security is inextricably linked to development because no meaningful development can take place in an atmosphere of insecurity. The legal framework for national security should be strengthened, be made more effective in combating crimes that threaten the nation's security. The actors in the administration of justice system, the judges should imbibe, in particular, progressive legal ideology that emphasizes social justice; they should in specific clear cases avoid strict application of unjust legal rules which they consider oppressive or unfair. Law enforcement agents should also carry out their duties in full compliance with the existing to guide against civil unrest as experienced during the end SARS protest.

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