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Safeguarding the Sanctity of the Rule of Law and Human Rights in Counter-Terrorism Measures

Christiana Tom Edward*

Abstract
The fight against terrorism requires the use of force. However the use of disproportionate force undermines the very essence of human rights and may cause the violation of the rights of innocent civilians and citizens. The grundnorm, the Constitution of the Federal Republic of Nigeria, 1999, is clear on basic rights such as the right not to be subjected to torture and inhumane treatment premised on the principle of dignity of a person. Additionally, under the adversarial system which is obtainable in Nigeria, it is trite that everyone suspected of a crime remains innocent, until proven guilty and the same applies to suspects of terrorism. In this light, this paper discusses the need to safeguard human rights as well as the challenges of protecting human rights in the fight against terrorism in Nigeria. The paper among other things highlights the dangers inherent in the use of undue force on a suspect of terrorism especially when such a person eventually ends up being innocent. The paper equally made recommendations as to the adoption of preventive measures that address the root causes of terrorism while safeguarding the rights and dignity of all individuals.

Keywords: Terrorism, judiciary, constitution, rights, force, torture, law

1. Introduction

Over the years, the rule of law and human rights have become crucial components to countering terrorism and the global community has pledged to implement measures that guarantee the protection of human rights. In this light, upholding the rule of law has become the cornerstone of counter-terrorism efforts, through the adoption of the United Nations Global Counter-Terrorism Strategy by the General Assembly in its resolution 60/288. The General Assembly of the United Nations and the Commission on Human Rights have also emphasized that States must ensure that any measure taken to combat terrorism comply with their obligations under international human rights law.[1] Therefore, this paper discusses the need to safeguard human rights as well as the challenges of protecting human rights in the fight against terrorism in Nigeria.

2. The Concepts of Rule of Law and Human Rights

2.1 Rule of Law

The rule of law and human rights are broad concepts which have stood the test of time. The rule of law, is described in modern contemporary jurisprudence as the condition in which all members of the society including the rulers and the followers accept the authority of the law.[2] As a political ideal, the rule of law was largely neglected, taken for granted more than a subject of discussion. Dicey's *Introduction to the Study of the Law of the Constitution*[3], initially published in 1888, and contained the first prominent modern formulation and analysis of the rule of law in a liberal democratic system. Dicey thereafter went on to articulate the rule of law as follows:

> *no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint*[4]

***Christiana Tom Edward,** Studies Fellow, National Judicial Institute, Mohammed Bello Centre, Abuja. Tel: (234) 8084065426, Email: christiewardssfnji@gmail.com.

[1] International Commission of Jurists, 'The Berlin Declaration: The ICJ Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism' (2005) Human Rights Quarterly 350 – 356.
[2] I Shapiro (ed), *The Rule of Law* (NYU Press, 1994)
[3] Ibid.
[4] Ibid, p.110

Dicey reiterated the position that there can be no punishment without a pre-existing law. He further made the separate point that the ordinary courts were the proper institutions in which cases must be heard.

The Black's Law Dictionary defines rule of law as:

> *A legal principle that states that nobody, not even a king, President, or prime minister, is above the law. Rule of law is foundational in many countries, the concept of the rule of law goes back to ancient times and it can essentially be summed up by the well-known phrase, nobody is above the law. It is the predominance that is absolute of an ordinary law over every citizen regardless of that citizen's power.*[5]

As defined above, rule of law means the equality of all persons before the law or equal subjugation of all classes to the ordinary laws of the land, administered by the ordinary courts. This therefore connotes that no man is above the law and that every man whatever his rank or status or condition is subject to the law of the land and the jurisdiction of the ordinary courts. Of course, it could not be gain said that though not the originator, A. V. Dicey contributed immensely to the exposition of the principle of the rule of law as we have it in the modern times. In practical parlance, the rule of law presupposes the following as enunciated by the Supreme Court in the case of *Military Governor of Lagos State & Ors v Chief Emeka Odumegwu Ojukwu & Ors*[6] per Oputa JSC namely:

i. That the state is subject to the law;
ii. That the judiciary is a necessary agency of the rule law;
iii. That governments, should respect the right of the individual citizens under the rule of law;
iv. That to the judiciary is assigned both by the rule and by our Constitution, the determination of all actions and proceedings relating to matters in dispute between persons or between government and or authority and any person in Nigeria.

The import and connotation of the term "Rule of law" would be better appreciated if recourse is had to the observation of the Supreme Court in the case of *Apostolic Church v Olowoleni*[7]. In that case, Obaseki JSC as he then was, put the matter in proper perspective in the following eloquent expression: "The Rule of law and the Rule of force are mutually exclusive. Law Rules by reason and morality, force rules by violence and immorality."[8]

Additionally, the rule of law as proposed by A.V Dicey comprises two senses. In the first sense is the idea that at the heart of the rule of law is the absolute supremacy or predominance of regular courts as opposed to arbitrary power. In this light, no man is above the law. In the second sense, the concept connotes the equality before the law, that is to say, the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts.[9]

Thus, the concept of the Rule of Law, though expansive, fundamentally rests on core principles postulated by both ancient and modern scholars, which include the prohibition of punishment or suffering without a distinct breach of law, the proof of which is established by due process in the ordinary Courts of the land; the principle that no person is above the law and that every person is subject to the jurisdiction of the Courts and the supremacy of the constitution as the highest law of the land, binding governments, institutions, and individuals alike, as interpreted by the courts. Consequently, the Rule of Law forms the foundation for the smooth running of any nation, be it Nigeria or any other country across the globe.

2.1.1 Historical Development of the Rule of Law

The Rule of Law has been an important ideal in our political tradition for millennia (several thousands of years), and it is impossible to grasp and evaluate modern understandings of it without fathoming that

[5] *Blacks Law Dictionary*, 2nd edition,< https://thelawdictionary.org> accessed 16 May 2024 at 4:52pm.
[6] (1986) 1 NWLR (PT. 18)621
[7] (1990)6 NWLR (PT. 158)514
[8] Ibid.
[9] A V Dicey, *Lectures Introductory to the Law of the Constitution* (Macmillian, 1885)

historical heritage. Indeed the concept of the Rule of Law has evolved from the ancient Greek Scholars, through Medieval Scholars till now.

Historically, it is on record that the heritage of the argument about the Rule of Law begins with Plato[10] and Aristotle[11]; it proceeds with medieval theorists like Sir John Fortescue[12], who sought to distinguish lawful forms of kingship from despotic forms of kingship; it goes on through the early modern period in the work of John Locke[13]; in the European Enlightenment in the writings of Montesquieu[14], Thomas Hobbes[15] and others; in American constitutionalism[16]. In the modern era, the concept of the Rule of Law was further embellished and enriched in Britain in the writings of A.V. Dicey[17], in addition to other scholars in Europe such as F.A. Hayek[18], Jurgen Habermas[19], Joseph Raz[20], Unger[21] and John Finnis[22]; and in America in the writings of Lon Fuller[23] and Ronald Dworkin[24]. Another important legal theorist that must be mentioned is Jeremy Bentham[25], as well as Jean-Jacques Rousseau[26].

2.1.2 The Contribution of Early Philosophers to the Principles and Concept of Rule of Law

The contribution of early philosophers to the principles and concept of the Rule of Law has increasingly been accepted by different sectors of the global judiciary and by international agencies interested in the integrity of the judicial process. Furthermore, the fundamental contributions of the early philosophers to the concept of Rule of Law are seen more and more as a foundation upon which Governments of nation States can build (and have indeed built) their Constitutions upon. This is worthy of note because the heritage of this idea is so much a part of its modern application. Many accounts of the rule of law identify its origins in classical Greek thought, quoting passages from Plato and Aristotle. As recorded, neither Plato[27] nor Aristotle[28] advocated rebellion against the law, even against unjust laws. On its own part, the Roman contribution to the rule of law tradition was advocated by Cicero in the first century BC. A contemporary of Julius Caesar, Cicero wrote during the stage where the Roman Republic was dying and giving way to autocratic rule. Cicero's *The Laws* contains the following passage on the rule of law:

> *You appreciate, then, that a magistrate's function is to take charge and to issue directives which are right, beneficial, and in accordance with the laws. As magistrates are subject to the laws, the people are subject to the magistrates. In fact, it is true to say that a magistrate is a speaking law, and Law a silent magistrate.*[29]

[10] T Sanders, *The Laws* (London: Penguin 1970).
[11] S Everson (ed), *Politics* (Cambridge: Cambridge Univ. Press 1988) 1292a, p. 89
[12] Ibid.
[13] J Locke, *Second Treatise of Government* (Indianapolis: Hacket 1980) Chap. 2, p. 8-14
[14] J V Pritchard (ed), *Spirit of Laws*, (London: Bell and Sons 1914) p 161 (Book XI, s. 3)
[15] J C A Gaskin, *Leviathan* (Oxford: Oxford Univ. Press 1996) p 176, 215.
[16] The Rule of Law was expounded in the Federalist Papers and (even more forcefully) in the writings of the Federalists' opponents. See James Madison, Alexander Hamilton, and John Jay, The Federalist Papers, (New York: Arlington House 1966) No. 10, p. 82
[17] See A V Dicey, *Introduction to the Law of the Constitution* (Indianapolis: Liberty Fund, 1982)
[18] F A Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944)
[19] Habermas, Jurgen, *Beyond Facts and Norms*, translated by William Rehg (1996) (Cambridge: MIT Press).
[20] J Raz, 'The Rule of Law and Its Virtue,' in Robert L Cunningham, ed., *Liberty and the Rule of Law* (College Station: Texas A&M University Press, 1979) p.4.
[21] See R M Unger, *Knowledge and Politics* (New York: Free Press, 1975).
[22] J Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980)
[23] L L Fuller, *The Morality of Law,* (2nd revised ed. , New Haven: Yale University Press, 1969)
[24] R Dworkin, *Taking Rights Seriously* (London: Duckworth 1977); see also R Dworkin, 'Political Judges and the Rule of Law,'64 Proceedings of the British Academy 259.
[25] J Bentham, ''Bentham Manuscripts, LXIX'', 44, quoted in A. J. Ayer and J O'Grady, eds., *A Dictionary of Philosophical Quotations* (Oxford: Blackwell, 1992) p. 48.
[26] Jean-Jacques Rousseau, *The Social Contract* (Middlesex: Penguin 1968).
[27] Ibid.
[28] Ibid.
[29] Cicero, The Laws, Book Three, 2-3, p. 151; see also Cicero, *The Republic and The Laws*, trans. Niall Rudd (Oxford: Oxford University Press 1998)

A key contribution Cicero made, echoing Plato and Aristotle, but put in more forceful terms, was his insistence that the law must be for good of the community and comport with natural law. Cicero conditioned the supremacy of law on its consistency with justice.

2.1.3 Democracy Today and the Rule of Law

The doctrine of rule of law,[30] can be seen to go hand in hand with democracy. Thus, where there is true democratic governance, same must be tailored in its operation in accordance with the rule of law. Where rule of law is absent, it would be apparent that true democracy is absent in that society. It should be recalled however, that the United States of America adhered to the rule of law even when slavery was legally enforced. It is indeed an aspect of the rule of law ideal that Government acts through law; but everyone in the society is better off, no matter where they live and who they are regardless of ethnicity, race or religion, if government officials operate within a legal framework. This sort of framework in a democracy should be such that there are limits on law-making power and the makers of the law equally must be subject to same[31]. Even when this is more rhetoric than reality, it is of fundamental importance to set up mechanisms in society to remind government officials to sublimate their powers to existing laws[32].

2.1.4 The Judiciary and the Rule of Law: Expectation of the Citizenry

The concept of the judiciary and the rule of law is one of the prominent and important constitutional concepts. It is a fundamental principle accepted as a standard not only for judging the performance of government, but also for determining what is beneficial or destructive to humanity. This concept is the bedrock of our system of justice, as such, it is of great importance, so as to justify the legal order and legitimize the system of a given society. The rule of law collectively symbolizes the most important features of democratic governance such as government of the people, by the people and for the people; separation of power and checks and balances; representative democracy and substantive limits of governmental actions against the individuals (the protection of human freedom and dignity); limited government; and the review by an independent judiciary as a central mechanism for constitutional enforcement[33]. In a constitutional democracy, it is of utmost importance that the judiciary should fully play its role in upholding the rule of law. For the judiciary to achieve this, independence, impartiality and easy accessibility to courts, must be guaranteed. The jurisdiction of the Courts should also be protected and guarded jealously for the protection of rights of citizens. This proposition was expounded by Aniagolu, JSC, in *Safekun v Akinyemi & Ors*[34] thus:

> *It is essential in constitutional democracy such as we have in this country, that for the protection of rights of citizens, for the guarantee of the rule of law, which include according to fair trial to the citizen under procedural irregularity, and for checking arbitrary use of power by the executive or its agencies, the power and jurisdiction of courts under the Constitution must not only be kept intact and unfettered but also must not be nibbled at … Indeed, so important is that preservation of and non-interference with, the jurisdiction of the Courts that our present Constitution has specifically provided in S. 4(8) that neither the National Assembly or House of Assembly shall enact any law that ousts or purports to oust the jurisdiction of a Court of law or a judicial tribunal established by law.*[35]

The Constitution of the Federal Republic of Nigeria[36] preserves the jurisdiction of the Courts precluding ouster of court's jurisdiction in legislations; this is very commendable of a constitutional democracy. Hence, there are checks and balances and arbitrariness is reduced. In *Governor of Lagos State v Ojukwu*[37], the Supreme Court dealt passionately and extensively with the need to obey court orders and thus held inter alia, that **"**it is a very serious matter for anyone to flout a positive order of a court and

[30] Ibid.
[31] Terence Irwin (ed), *Nichomachean Ethics*, (Indianapolis: Hackett, 1985) p. 117
[32] O Taiwo, 'The Rule of Law: The New Leviathan?,' (199) 12 *Canadian Journal of Law & Jurisprudence* 151, 152
[33] Ibid.
[34] . (1980) 5 – 7 SC, p. 25
[35] . Ibid.
[36] . S. 4(8), the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[37] (1986) 1 NWLR (Pt. 18), p. 622

proceed to insult the court further by seeking a remedy in a higher court while still in contempt."[38] In *Nigerian Army v Mowarin*,[39] Ubaezeonu, JCA reading the lead judgement of the Court of Appeal said inter alia that; 'An order of Court must be obeyed even if such an order is perverse, until such a time that the order is set aside by a competent court … a flagrant flouting of an order of the court by the executive is an invitation to anarchy **….'**[40]

Furthermore, respect for civil liberty is the fundamental requirement of the rule of law and democracy. In other words, the rule of law serves to protect the shared liberty interests of all members of the society. It does this by establishing a dynamic equilibrium between power and law. Pure power is arbitrary might; law is a system by which institutions channel power so that it conforms to people's values and established patterns of expectations. Neither power nor law alone will lead to a stable society[41]. Advocating the need for respect of civil liberties and rule of law, Justice Louis D. Bradis of the United States Supreme Court in *Whitney v California* opines as follows:

> *In government, the deliberative forces should prevail over the arbitrary; the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of the political truth, that without free speech and assembly, discussion would be futile … That the greatest menace to freedom is an inert people … that it is hazardous to discourage thought, hope and indignation … that the part of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies*[42]**.**

In *A. G. Bendel State v Aideyan*,[43] the appellant State Government purportedly acquired the plaintiff respondent's building. Not being satisfied, the respondent sued the State Government. On appeal, the Supreme Court of Nigeria held that the respondent was entitled to his building. Nnaemeka-Agu J.S.C. had this to say:

> *The right to property in Nigeria is entrenched under Section 40 of the 1979 Constitution. That right is inviolable and such property or any right attendant thereto can only be taken possession of or compulsorily acquired by or under the provisions of a law. Further, such law must provide for the payment of adequate compensation to the owner … It follows therefore that any purported acquisition which is not according to a law containing the above provisions is no acquisition at all in the eyes of the Constitution*.[44]

In *Okogie v A. G. Lagos State*[45], the defendant in this case, that is, the Lagos State Government abolished private ownership of primary schools by issuing Government circular dated 26th March, 1980, by which no private primary school would be allowed to operate in the State with effect from 1st September, 1980. The plaintiff contended that the Government's action was in breach of the right to freedom of expression and press under the Constitution[46]. The Court, per Agoro J. held that the Lagos State Government had no power under the relevant laws to abolish private ownership of primary schools in Lagos and that the right of the plaintiff to own and operate schools under the Constitution must be protected[47].

In *Director of SSS v Agbakoba,*[48] the plaintiff/appellant brought an action for a declaration that the forceful seizure of his passport by agents of the State Security Services (SSS) was a violation of his right to personal liberty, freedom of thought, freedom of expression and freedom of movement as guaranteed by the Constitution, (as amended) and for an order of mandatory injunction directing the

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[38] Ibid., p. 622.
[39] . (1992) 4 NWLR (Pt. 235), p. 345.
[40] Ibid., p. 345
[41] W Y Daniel, 'The Rule of Law' (1997) , Nigerian Law and Practice Journal, Nigerian Council of Legal Education, Nigerian Law School, 115
[42] (1957) 274 US, p. 357 at p. 367
[43] (1989) 4 NWLR (Pt. 118), p. 646; *Bello & Diocesan Synod of Lagos v LEDR* (1973) ALL NLR 1966 and *Adewole v Jakande* (1981) 1 NCLR, p. 262.
[44] Ibid., p. 667*; Governor of Lagos State v. Ojukw**u***, op. cit., p. 621.
[45] *Okogie v A. G. Lagos* State (1981) 1 NCLR, p. 218.
[46] . S. 36, Constitution of the Federal Republic of Nigeria (C.F.R.N) 1979
[47] *Okogie v A. G. Lagos State* (1981) 1 NCLR, p. 218.
[48] (1999) 3 NWLR (Pt. 595), p. 314 SC; *Ubani v Director of SSS* (1999) 11 NWLR (Pt. 625), p. 129

defendants/respondents to release the passport forthwith. On appeal to the Supreme Court, it held, inter alia, that the respondents were liable and were ordered to release the applicant's passport forthwith[49].

Also, the Constitution of the Federal Republic of Nigeria 1999 (as amended), preserves the jurisdiction of the Courts; this is very commendable of a constitutional democracy. Hence, there are checks and balances and arbitrariness is reduced. Therefore, disputes as to the legality of acts of government must be decided by Courts and by judges who are wholly independent of the executive. This is illustrated in the case of *All Nigerian Peoples Party & Ors. v Benue State Independent Electoral Commission & Ors*.[50] Here, the appellants sponsored candidates for election into the Office of the Chairman and Vice Chairman of the Kwande Local Government Council of Benue State. After the elections, the results were collated and the officials of the respondents on 28/04/2004 declared the results of the poll and gave the copies of the certificate of return to agents of the appellants, the police and other agents present at the collation centre. To the appellants' greatest surprise, instead of the 1st respondent publishing the result and declaring same in the Gazette as required by law, they announced the following day over the State radio that the election had been postponed indefinitely. Aggrieved by this action, the appellants filed a suit in the State High Court. The State High Court said it has no jurisdiction. Dissatisfied, the appellants appealed to the Court of Appeal. The Court of Appeal, Jos Division unanimously allowing the appeal held that the Constitution of the Federal Republic of Nigeria 1999 (as amended), is founded on the rule of law, the primary meaning of which is that everything should be done according to law.

Disputes as to the legality of acts of government are to be decided by judges who are wholly independent of the executive. According to the Court of Appeal in this instance, the judiciary cannot ignore its sacred responsibility to the nation to maintain the rule of law, for this is both in the interest of the government and all persons in Nigeria[51]. It is worthy of note that the rule of law and the rule of force are mutually exclusive. Law rules by reason and morality, force rules by violence and immorality. Thus, where the rule of law operates, the rule of self-help by force is abandoned. Therefore, once the Court is seized of a matter no party has a right to take the matter into his own hands. This is the ratio in *Nwadiajuebowe v Nwawo & Ors*[52], where the Court of Appeal Benin Division per Augie, J.C.A. (as he then was) observed that there is no dispute to the fact that the Delta State Government published the said Delta State Legal Notice No. 6 of 1996. This was done on August 16, 1996, during the pendency of the suit, which had been filed by the plaintiff/respondents on the 7th day of December, 1995, wherein they claimed that the rulership of Onicha-Olona was rotational. For the Delta State Government to go ahead and promulgate a legal notice, which favours one of the parties, is clearly to undermine the proceedings before the Court, and amounts to treating the Court with levity and contempt. The Court went further to state that the law is trite that once the court is seized of a matter, no party has the right to take the matter unto his own hands.

There is no gainsaying that the application of the rule of law principle is predominant in democratic system of government as can be seen in a plethora of cases discussed above. Moreover, it has gained tremendous credence with the new democratic dispensation in Nigeria. This is evident in a number of decided cases and issues in the polity. In *Peter Obi v INEC*[53], the appellant aggrieved with the declaration of Dr. Chris Ngige, as the Governor of Anambra State by INEC, filed a petition at the Governorship and Legislative Houses Election Tribunal, challenging the declaration and return of Dr. Chris Ngige, as the candidate who won. The tribunal upheld the appellant's petition stating that he was the candidate who was validly and duly elected. Dr. Ngige dissatisfied, appealed to the Court of Appeal. The Court of Appeal dismissed the appeal and affirmed the decision of the tribunal. Consequently, Peter Obi took the oath of office as the Governor of Anambra State on the 17th day of March, 2006. In 2007, INEC announced that the election to the Office of the Governor of Anambra State would be conducted on the 14th day of April, 2007. The appellant, that is, Peter Obi aggrieved, commenced an action at the Federal High Court against INEC asking the Court to declare that his tenure of office as Governor of Anambra

[49] Ibid, n49
[50] (2006) 11 NWLR (Pt. 992), p. 587
[51] Ibid. ***Governor of Lagos State v. Ojukwu*** (1986) 1 NWLR (Pt. 18), p. 621.
[52] (2004) 6 NWLR (Pt. 869), p. 439
[53] . (2007) 11 NWLR (Pt. 1046), p. 436 at p. 616

State began to run from the date he took the oath of allegiance and office on the 17th day of March, 2006. That he, the incumbent Governor has not served his four-year tenure of office. The trial court held that it lacks jurisdiction, since the suit is related to election matters. On appeal, the Court of Appeal upheld the decision of the trial court that it indeed lacked jurisdiction and dismissed the appeal. The appellant then appealed to the Supreme Court and the Supreme Court unanimously allowed the appeal, stating that jurisdiction should be examined not when it is invoked, but when the cause of action arose. It is the claim of the plaintiff that determines the jurisdiction of a court entertaining same. For this, the four-year term of the office of Peter Obi, as Governor of Anambra State starts to run from the day he took his oath of allegiance and office, from the 17th day of March, 2006 to 16th day of March 2010, as is provided by Section 180 (2) (a)[54]. The Federal High Court has unfettered jurisdiction to entertain and determine the suit. The most striking issue was that this decision was welcomed by the President, who even ordered, the immediate reinstatement of Peter Obi as Governor of Anambra State, as directed by the Court. This decision by the Supreme Court is actually an example of the rule of law in action.

In *Ladoja v INEC,*[55] the appellant was elected as the Governor of Oyo State and took his oath of allegiance and office, later on he was impeached. The impeachment was declared unconstitutional, null and void by the Supreme Court, resulting in his reinstatement into office. The appellant having been unlawfully removed from office for eleven months asked the court to declare that he is entitled to a period of four uninterrupted years, and that his tenure should be extended by eleven months. The Supreme Court held that neither itself nor any other Court has power to extend the period of four years prescribed for the Governor of a State beyond the terminal date calculated from the date he took the oath of office. To accede to this request will occasion much violence to the Constitution.

Furthermore, it is important to note that the Constitution[56]entrusts the Attorney General of the Federation with enormous powers, which are to institute or undertake criminal proceedings against any person before any court of law in Nigeria, to take-over and continue any such criminal proceedings that may have been instituted by any other authority or person; and to discontinue at any stage before judgement is delivered in any criminal proceedings instituted. These powers conferred on the Attorney General under the Constitution are important powers that ought to be exercised with utmost passion and the greatest sense of responsibility, and always in the interest of the public, justice and the need to prevent the abuse of legal process. Such powers should not be exercised whimsically, so as not to detract from the rule of law. This is manifest in *Kalu v EFCC*[57]. In this case, there was a Court Order on May 31st, 2007, restraining EFCC from arresting, detaining and prosecuting Orji Uzo Kalu, the then Governor of Abia State. But the EFCC went ahead and prosecuted him for flouting the Court Order. Therefore, the Counsel to Kalu petitioned the President of the Federal Republic Nigeria and the Attorney General of the Federation that the charge against his client was in breach of the rule of law. The Attorney General of the Federation wrote to EFCC directing it to comply with the Court Order. Having not complied with the court order, the Attorney General of the Federation came to Court on the adjourned date to take-over the matter and rightly too. This is actually in compliance with the rule of law.

The judiciary has in a long line of recently decided cases[58], carried out judicial review into the procedural irregularities of the legislature and giving wise and correct decisions following laid down rules and principles. Positively too, various election petition tribunals in the country have overturned the unlawful declarations of winners of elections made by INEC in the 2007 elections; where there were no elections but candidates were declared winners or elections were rigged. The tribunals in arriving at these decisions followed laid down principles and rules, hence upholding the rule of law.

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[54] Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[55] (2007) 12 NWLR (Pt. 1047), p. 136
[56] S. 174, Constitution of the Federal Republic of Nigeria, 1999
[57] A Debo, '*The Attorney General takes over Kalu's case*' Guardian Newspaper, Guardian Newspapers Ltd., Lagos, 6th September, 2007, p. 2; A Gbenga – '*Attorney General takes over Kalu's cases*', Vanguard Newspaper, Vanguard Media Ltd., Lagos, 8th September, 2007
[58] *Inakaju & Ors. v Adeleke & Ors*. (2007) 4 NWLR (Pt. 1025), p. 423 at p. 668; Dapialong ***& Ors. v.*** *Dariye & Ors*. (2007) 8 NWLR (Pt. 1036), p. 239; *Alamieyseigha v. Igoniwari* (No. 2), 2007, 7 NWLR (Pt. 1034), p. 443; *Maikyo v. Itodo* (2007) 7 NWLR (Pt. 1034), p. 412.

2.2 Human Rights

Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions, primarily by State agents, that interfere with fundamental freedoms, entitlements and human dignity.[59] The complete range of human rights encompasses the recognition, safeguarding and realization of civil, cultural, economic, political and social rights. In Nigeria, human rights are guaranteed under Chapter IV of the Constitution with provisions covering mainly guarantees of a civil and political nature. Complementing the Constitution with a broader range of social and economic rights is the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983. On the nature of human rights, the Court of Appeal, in *Mbaeyi v EFCC & Ors*,[60] had recently reiterated the words of Niki Tobi JSC in *F.R.N. v Ifegwu,*[61] in the following words:

> *Fundamental human rights are rights which stand above the ordinary laws of the land. The factum of their enshrinement in the Constitution of the Federal Republic of Nigeria, 1999 ("CFRN") which is the supreme law of the land, confers on them a preeminent status over and above other human rights. Although the origin of fundamental rights is said to date back to the Magna Carta of 19th June 1215, these rights are in fact antecedent to the political society itself: they are "inherent in man because they are part of man.*

What is clear from the foregoing analysis is that both the rule of law and human rights determine the objective notion of criminal justice in very crucial and fundamental ways. Crucial, because their absence cannot bear justice in any case especially if it is in the scenario where a suspect is being tried or is on trial for terrorism; and fundamental because where they are lacking, illegality is deep-seated at the threshold of any efforts at justice.

3. Safeguarding the Sanctity of the Rule of Law and Human Rights in the Fight Against Terrorism

Terrorism represents a deviation from the principles of peace, justice and respect for human dignity.[62] The heart-breaking toll of terrorism has ravaged communities across Nigeria, causing untold hardship with the emergence of the Boko Haram group in 2009. Efforts to curb this menace, eventually led to the enactment of the Terrorism Prevention Act (TPA) 2011. The TPA 2011 was subsequently amended by the Terrorism Prevention (Amendment) Act 2013 and finally repealed by the Terrorism (Prevention and Prohibition) Act, 2022, the current counter terrorism legislation in Nigeria.

Thus, the relationship between criminal justice, the rule of law and human rights is very intricate, particularly in the context of counter-terrorism. Firstly, the rule of law ensures that counter-terrorism measures are implemented within a legal framework that respects human rights. When States respond to terrorism, there is often the proclivity to bypass legal processes and resort to authoritarian or repressive measures in the name of national security.[63] However, such actions can lead to the erosion of civil liberties, arbitrary detention, torture, extrajudicial killings and other human rights abuses. By adhering to the rule of law, governments can strike a balance between security imperatives and individual rights, ensuring that counter-terrorism measures are effective, proportionate and consistent with international legal standards. Secondly, respect for human rights is not only a moral imperative but also a strategic necessity in combating terrorism. Violations of human rights can fuel grievances, alienate communities, and serve as recruitment tools for terrorist organisations. Conversely, upholding human rights can help build trust and cooperation between communities and law enforcement agencies, leading to more effective intelligence-gathering, prevention and rehabilitation efforts.

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[59] *Omatseye v FRN* (2017) LPELR-42719 (CA)
[60] (2022) LPELR-57515 (CA)
[61] (2003) 1 8 MJSC 36 at 701 – 102
[62] Office of the United Nations High Commissioner for Human Rights, "Human Rights, Terrorism and Counterterrorism" Fact sheet No. 32
[63] Office of the United Nations High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-Terrorism' Fact sheet No. 32

Essentially, the protection and preservation of human rights is a sacred rule that applies to national governments under international, regional and domestic human rights laws and the Nigerian authorities are not exempted. As such, the peoples' trust in the protective powers of human rights might be eroded where government security agencies hide under the shroud of counter-terrorism to perpetrate vengeful acts and occasion the abuse of human rights. The fight against terrorism must be firmly rooted in the principles of the rule of law and human rights. If counter-terrorism efforts fail to uphold these fundamental principles, public trust in the government's legitimate security measures may erode. It becomes counter-intuitive for people to support such measures if human rights protections cannot serve as a safeguard against the overreach or excesses of security and law enforcement agencies.

Therefore, counter-terrorism agencies must uphold the human rights principles of fairness, non-discrimination and equality upon which the fundamental rights of the citizens stand, in fighting terrorism. Upholding these principles strengthens the legitimacy and effectiveness of counter-terrorism efforts, fostering a balanced approach that both combats terrorism and preserves civil liberties.

4. Conclusion and Recommendations

In recent insurgent attacks in Nigeria, it is noted that most direct perpetrators of terrorist attacks are illiterates, thus, it is hard to imagine that they may have access to the means to finance their goals, as this is not realistic nor practical. Therefore, it is recommended that investigations into terrorist attacks should extend to financiers. It is not enough that terrorists are caught, tried and jailed for their offences. This only means one terrorist off the street but does not affect the many others being prepped for many more terrorism acts. The financiers form the backbones of terrorist syndicates and when forced to face the music, this will catalyse a plummeting in the proliferation of terror activities in Nigeria.

Additionally, the rule of law and human rights should be upheld in terrorism trials because sometimes investigators, prosecutors and judges can be blinded by emotions and sentiments in terrorism trials. It becomes even more imperative that the rule of law and the sanctity of human rights principles become the guide in terrorism trials. Judges therefore must remain impartial arbiters when deciding terrorism cases due to the sensitivity and seriousness of such matters.

In addition, there is the need to create awareness in society especially among the poor and largely illiterate people residing in rural areas, to enlighten this category of citizens on the resulting legal consequences for participation. Finally, guidelines must be enforced on security agents when carrying out counter-terrorism operations. These guidelines can be such that would clearly spell out the permissible and non-permissible actions of security operatives in combating terrorism. This will enable clear balance between national security and human rights such that the fundamental human rights of the people are respected and upheld in counter terrorism methods.