

THE RULE OF LAW AND NATIONAL SECURITY: WHICH IS SUPREME?

By

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Abstract

The supremacy agreement and discuss between the Rule of Law and National Security was largely sparked in recent times after the then President, President Muhammadu Buhari addressed the Nigerian Bar Association during an Annual Conference. He infamously declared that, “the rule of law must be subject to the supremacy of the nation’s security and national interest.” This statement brought about a whole discussion in many societal circles with varying views and perspectives. The author, in this paper, we will be juxtaposing these various arguments, evaluating its strengths and weaknesses before reaching the opined position.

1.0 Introduction

a. What is the Rule of Law?

According to the Black’s Law Dictionary, the rule of law is the supremacy of regular law as opposed to arbitrary power. The rule of law is a concept with various interpretations but one singular meaning of equality. The rule of law simply means everything must be done according to the law. Therefore, the law in itself is placed above every person and every interest. The rule of law leaves little or no room for discretion or special exemptions but rather provides for the absoluteness and unrivalled supremacy of the law.

Onnoghen JSC (as he then was) in the case of AG Abia State V. AG Federal Republic of Nigeria (2006)16 NWLR (PT 1005) had this to say on the rule of law: “Where the rule of law reigns, political expediency ought to be sacrificed on the altar of rule of law so as to guarantee the continued existence of democratic institutions fashioned to promote social values of liberty, orderly conduct and development, particularly in a republic founded on the principle of federalism where power is further apportioned among three arms of government, termed legislature, executive and judiciary. Section 4, 5 and 6 of the 1999 Constitution (as amended).

b. What is National Security?

National security or national defense is the security and defense of a nation-state, including its citizens, economy, and institutions, which is regarded as a duty of government. It can be defined as the security and defense of a sovereign state, including its citizens, economy, and institutions, which is regarded as a duty of government. Originally conceived as protection against military attack, national security is widely understood to include also non-military dimensions, including security from terrorism, minimization of crime, economic security, energy security, environmental security, food security, and cyber-security.

2.0 The Relationship between the Rule of Law and National Security

In certain situations where the government and its agent are making efforts to secure the nation and perform their duties as a protector, the rule of law is one of things that have been considered but does not contradict the principle of national security. National security and the rule of law do not contradict one another, neither are they mutually exclusive concepts. The rule of law embodies the principle of governance that all persons, institutions and entities, including the state itself, are bound by duly made laws, including laws on national security. A state of war or emergency may be legitimate grounds for limiting the exercise of some human rights, but even then, the limitations have to be imposed in accordance with law. There is, therefore, no conflict between the two notions.

This makes the statement made by the former president of Nigeria, Muhammadu Buhari at the Annual General Meeting very troubling to say the least, suggesting that Nigerian courts have upheld the notion that rule of law can be suspended on account of national security.

For instance, in *Dokubo-Asari v Attorney General of the Federation* it was held that on account of national security, fundamental rights could be suspended. However, fundamental rights is not the same with the rule of law. The rule of law is the overarching principle which binds society and all its facets, including national security. The rule of law is the foundation for society. The courts have held that at all times, the law must reign supreme.

If one of the concepts should be call for superiority over it would be the rule of law that would take superiority over National Security. If anything, the rule of law ensures that we have National security as a nation. Lord Atkins of the House of Lords echoed this view in his dissent in the case of *Liversidge v Anderson* (1946) AC 206 that, "In this country, amidst the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace." A suspension of the rule of law is an invitation to anarchy. This is because the coercive powers of the state are authorized by law. If the law is suspended, then the citizenry would not obey the state and respect the rights of others. This would mark a return to the Hobbesian state wherein life was "nasty, brutish and short".

The Constitution of Federal Republic of Nigeria enshrines the rule of law and states that the law is above all other interests and persons, this does not exclude national security. The law of the land is more paramount than the government's interest to ensure security. In ensuring security the government is expected to hold the rule of law as a guiding principle and not a suggestion. More importantly the rule of law should not be seen as an hinderance or limiting factor of ensuring national security.

Without the rule of law, you cannot possibly be talking about national security. But under a military rule where the constitution or portions of it are suspended, the notion that the rule of law is subject to national security can stand. However, we are currently in a democratic dispensation, and it is not acceptable to say that the rule of law should bow to national security.

3.0 Conclusion

While national security and the rule of law are both crucial, they should not be seen as mutually exclusive. Rather, they should be viewed as complementary and interdependent. Upholding the rule of law is vital for a just society, and national security measures should be implemented in a manner that respects legal principles and protects individual rights.