

## WAR AGAINST INSURGENCY AND ABUSE OF FUNDAMENTAL RIGHTS TO PRIVACY AND FREEDOM OF MOVEMENT: ANY JUSTIFICATION?

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### ABSTRACT

*The Constitution guarantees the rights of every Nigerian regardless of tribes, religion, etc. The courts, in recognition of this fact, have always risen in protection these rights. The breadth of these rights notwithstanding, the government has the duty of ensuring and maintaining the security of lives and properties. Thus, in certain circumstances, these rights are jettisoned in defence of national security. This article examines rights of citizens to privacy and freedom of movement in the face of the ongoing war against insurgency in some states in the North-West of the country and the justification for curtailing these basic rights. In doing this, the constitutional provisions relating to the inalienable rights of citizens to private life and free movement in any part of the country are carefully examined. The limitation imposed on the same by the Constitution as well as the judicial pronouncements are also examined. It is discovered that although the rights to privacy and freedom of movements are intrinsic to every citizen, governments do curtails them in certain identified situations. Some recommendations are also proffered in the end.*

**Keywords:** State of Emergency; Terrorism; Insurgency and Human Right.

### Introduction

At the heart of the contemporary terrorism is globalisation and how it impacts on the national systems, cultures and faith-communities. Nigeria is an ethnically diverse country, with some of the most ancient civilisation known to man. Governance in Nigeria has experienced a number of

military interregnums; the first being the January, 1966 coup<sup>1</sup>. After decades of military rule, the country returned to democratic rule in May 1999. Since the return of democracy, the country has been faced with series of violent agitations which in most cases are ethnic and/or religious based. The recent, and perhaps the most disturbing in the history of the country, being the Boko Haram insurgence in some states of the North as well as incessant attacks by Fulani Herdsmen. The security situation in the North-East geo-political zone of the country deteriorated beyond tolerable limits in 2009 after the death of Mohammed Yusuff, the leader of Boko Haram. Since then, there had been skirmishes between members of the sect and security forces thereby resulting in the killings of thousands of people and properties worth billions of naira destroyed. This prompted the Federal Government to take a decisive step by declaring a state of emergency which is aimed at taming the 'monster'. The '*militarization*' of the affected states (that is, Adamawa, Yobe and Borno States) and the attendant effects on the fundamental rights of the citizens. The violations notwithstanding, the Federal Government of Nigeria on May 13 2014, extended the emergency rule for another period of six (6) months<sup>2</sup>. This is not the first time the Northern part of the country, particularly North East, will experience a religious war being waged against the country. As far back as 1980s, states in the North-East fell under the sway of the *Maitatsinesect*.

The declaration of a state of emergency has the attendant effect of curtailing certain normal functions of government in the state<sup>3</sup>. One of such is the power of the military to arrest and detain suspects, taking into possession and control, any structure being used for terrorism purposes as well as locking down any area of terrorist operation without recourse to prescribed procedure. In other words, some basic rights of citizens will not be operative during a period of

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1. NowaOmoigui, *Account of Military Coups in Nigeria: 1966-1999*. Available at: [http://www.waado.org/nigerdelta/nigeria\\_facts/MilitaryRule/Omoigui/CoupPage.htm](http://www.waado.org/nigerdelta/nigeria_facts/MilitaryRule/Omoigui/CoupPage.htm). Assessed on October 18, 2014.

<sup>2</sup> This has been further extended for another period of six (6) months.

<sup>3</sup> The European Court of Human Right in the case of *Lawless v. Ireland* qualifies the time of public emergency as 'an exceptional situation of crisis or emergency which afflicts the whole population and constitutes a threat to the organized life of the community of which the community is composed. Cited in Rule of Law in Armed Conflict (RULAC) Project, "*Derogation from Human rights Treaties in Situation ofEmergency*". Available at: <http://www.geneva-academy.ch/RULAC/derogationfrom-human-rights-treaties-in-situation-of-emergency.php>. Assessed on June 4, 2014.

emergency. This power of the military, obtained during a period of emergency, constitutes a derogation from the fundamental rights of citizens, particularly citizens' right to privacy and free movement as enshrined in the 1999 Constitution.

### Origin of Boko Haram

The emergence of *JamaatulAlhus Sunnah Lid Da'awatiWal Jihad*<sup>4</sup>, also known as Boko Haram<sup>5</sup>, was not the first incident of Islamic fundamentalist agitation against the Nigerian secular state. The emergence of violent Islamic sect in the north can be traced to the early 1980s with the activities of a group known then as '*Maitatsine*'<sup>6</sup>. The *Maitatsine* uprising was inspired by a Cameroonian dissident and Muslim fundamentalist, MohammaduMarwa<sup>7</sup> who rejected the influence of the education system imposed by the British when it conquered the Sokoto Caliphate. Although *Maitatsine* was killed, his proselytes rose up again in 1982, 1984 and 1985. Boko Haram origin is believed to be influenced by the *Maitatsine* doctrine. The group was formed in 2002 under the control of its leader, Mohammed Yusuff<sup>8</sup>. It emerged as a result of the clash between the moderate Islamic teachings of (late) Sheik Jafar at MuhammadIndimi Mosque in Maiduguri and the militant interpretation of the Quran by Yusuff. It is the belief of Yusuff that there was the need for the creation of a new order in the Islamic world. Yusuff was later banished from Maiduguri and in 2004 moved to Kanamma, Yobe State where he set up a base called "Afghanistan" with his followers referred to as "*Yussuffiya*". The group believes only in the enthronement of Islamic teaching and abhors democracy as well as secular education. Its

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<sup>4</sup> This is translated to mean "Association of Sunnis for the Propagation of Islam and Jihad". In this article the group will simply be referred to as 'Boko Haram' for ease of reference.

<sup>5</sup> It literally means '*anything about western education is forbidden*'.

<sup>6</sup> Meaning 'He who curses'

<sup>7</sup> See Femi Owolabi, *Origin of Boko Haram*, March 27, 2014. Available at: [www.gatestoneinstitute.org/4232/boko-hara-nigeria/fn1m](http://www.gatestoneinstitute.org/4232/boko-hara-nigeria/fn1m). Accessed 27th May, 2014.

<sup>8</sup> There are divergent of opinion as to the emergence of the group. While some are of the opinion that the group might have been formed as far back as 1995, majority opinions, however, showed that the group was formed in 2002. See particularly, Umar Mamodu, *Boko Haram – The Beginning*, Lagos (2011) cited in Owolabi, F, *Origin of Boko Haram*. March 27, 2014. Available at: <http://www.gatestoneinstitute.org/4232/boko-hara-nigeria/fn1m>. Accessed 17<sup>th</sup> June 2014.

leader (Yusuff) was killed sometimes in July 2009 and about a year after his death his deputy, Abubakar *bin* Muhammad Shekau, re-launched the group, using Al-Qaeda style. The activities of the group attracted a global attention with the abduction of about 300 school girls from Chibok on 14<sup>th</sup> April, 2014. Although the activities of the Boko Haram appear similar to that of the *Maitatsine* in terms of ideology, philosophy, objectives, etc., its modes of operation, organization as well as armed resistance are in consonance with that of *Al-Qaeda*<sup>9</sup>. President Jonathan in one of his speeches referred to Boko Haram as the 'Nigerian Taliban' due to its anti-Western ideology as well as the willingness to use violence. This position is further supported with the classification of the group as a foreign terrorist organization by the United State of America in November, 2013<sup>10</sup>. One of the cardinal objectives of the group is the enthronement of an Islamic state in Nigeria that will adhere strictly to Islamic Law.

### **Methodology**

The article considers, essentially, the available literature on the subject. It examines sections 37 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The various newspaper reports (and other reports) and the decisions of the courts in Nigeria on the limits to which a citizen can enjoy his/her fundamental rights as entrenched in the constitution are also examined. Some of the international instruments aimed at protecting the fundamental rights of the citizens across the globe are also examined. The aim is being to ascertain whether these rights (that is, right to privacy and freedom of movement) are immutable or not.

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<sup>9</sup> Recently at a peace summit held in Paris France which ended on Saturday 17<sup>th</sup> May, 2014, the Nigeria President Goodluck Ebele Jonathan described Boko Haram as African variant of Al-Qaeda. Al Jazeera English. Available at <http://m.aljazeera.com/story/201451716358410917>. Accessed 23<sup>rd</sup> April, 2014. . See also Danjibo, N. D., "Islamic Fundamentalism and Sectarian Violence: The '*Maitatsine*' and the '*Boko Haram*' Crises in Northern Nigeria". Peace and Conflict Paper Series, Institute of African Studies, (University of Ibadan: 2009), pp. 1-21, on the growth of Islamic fundamentalism in Nigeria.

<sup>10</sup> *Nigeria: FG Welcomes U.S. New Position on Boko Haram*. This Day November 16, 2013. Available at: <http://www.thisdaylive.com/articles/fg-welcomes-us-new-position-on-boko-haram/164475/> . Retrieved on April 8, 2015.

## The Idea of Human Rights

The idea of human rights is as old as humanity itself. Available literature shows that the expression ‘human rights’ as a term or art, though of recent origin, predates the very political system, which produced the law-making institutions, as we know them today<sup>11</sup>. Many believe that the idea is traceable to the Natural Law Theory of the early time; it is said to be the basic foundation of human existence. Rights confer an entitlement and are said to be given by God who in His wisdom made them fundamental<sup>12</sup>. This explains why in some jurisdictions these rights are being referred to as fundamental human rights. In *Kuti and Ors. v. A-G Federation*<sup>13</sup>, Oputa JSC opined thus:

*“Not every civil or legal right is fundamental right. The ideal and concept of fundamental rights both derive from the premise of the inalienable rights of man -life, liberty, and the pursuit of happiness. Emergent nations with written constitutions have enshrined in such Constitutions some of these basic human rights. Each right that is so considered fundamental is clearly spelt out.”*<sup>14</sup>

These rights, already codified in the constitution of some countries, are said to be derived from natural rights which individual possessed in a state of nature<sup>15</sup>. In Nigeria, the fundamental rights of citizens are provided for in Chapter IV of the 1999 Constitution (as amended). The importance

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<sup>11</sup>The history of fundamental rights is said to be traceable to the fears of the minorities and the need to allay such fears, in the process the rights of the ordinary man were guaranteed. Whatever may be the historical background of such rights, what is of immediate importance to the common man and for the present exercise is: to what extent is the common man, the ordinary man on the street, enjoying rights in actual fact in this country today? Oluyede P.A.O., *“Constitutional Law in Nigeria”*, (2001) P. 144. Also at: <http://www.vanguardngr.com/2012/10/understanding-human-rights-law-in-nigeria2/#sthash.GYf90jZ1.dpuf>.

<sup>12</sup>According to Fortescue J, in *R v. Chancellor of Cambridge University, Ex Parte Sussex*, God himself observed fairness when dealing with Adam, as He did not pass sentence upon him before being heard. According to the learned Judge, God called upon Adam to make his defence first. This is a clear example of observance of the principle of fair hearing, now enshrined in section 36 of the 1999 constitution (as amended).

<sup>13</sup>[1985] 2 NWLR (Pt. 6) 211.

<sup>14</sup>*Kuti&Ors. v. A-G Federation* ( Note 17 Supra) at p. 257, paras. B-C.

<sup>15</sup>John Locke regarded these rights as a fundamental law of nature that ‘no one ought to harm another in his life, health, liberty or possessions. See Richard Clayton and Hugh Tomlinson, *‘The Law of Human Rights’*, Volume 1, Second Edition, (Oxford University Press: London), P 24.

of these rights is underscored in terms of the priority courts in Nigeria have accorded those right<sup>16</sup>.

### **What is Human Right?**

Human rights have been variously defined. Rights have been commonly understood as inalienable rights to which a person is inherently entitled. The term has been variously defined, both locally and in the international documents. According to Black's Law Dictionary human right is defined as:

*“A significant component of liberty, encroachment of which are rigorously tested by courts to ascertain the soundness of purported governmental justifications.”*<sup>17</sup>

Amnesty International (USA) defines human rights in the following words:

*Human rights are basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language or other status.*<sup>18</sup>

The Nigerian Supreme Court in *Kuti v. A-G Federation*, per Esho, JSC, defines human rights in the following words;

*It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized society itself. It is a primary condition to a civilized existence . . .*<sup>19</sup>

A person is said to have a right when he/she deserves to be treated in a particular way. The fundamental nature of these rights presupposes that they (rights) cannot be taken away from a citizen except where such derogation is justified under the law. In *Raymond v. Honey*<sup>20</sup>, the English court, per Lord Wilberforce, held that a prisoner retained his civil rights which were not

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<sup>16</sup> For instance, the determination of an appeal on question of fundamental right by the Supreme Court requires a 7-member panel of the court (section 234 of the Constitution).

<sup>17</sup> Black's Law Dictionary, Deluxe Ninth Edition, p. 744.

<sup>18</sup> Amnesty International USA, Human Rights Basics. Available at: <http://www.amnestyusa.org/research/human-rights-basics>. Accessed 19<sup>th</sup> July, 2014.

<sup>19</sup> Supra (Note 17, Supra) at p 229 – 230.

<sup>20</sup> [1983] 1 AC 1.

taken away expressly or by necessary implication. That section 47 of the Prison Act 1952 was not sufficient to authorize the restriction on a prisoner's fundamental right of access to courts.

In most common law jurisdictions, human rights have a protected status as they are derived from a written instrument. The law now recognizes a wide variety of fundamental rights including a constitutional right of access to courts<sup>21</sup>. The development of human rights at both national and international levels has resulted in a modern concept quite different from the philosophy of natural law of the past 16<sup>th</sup> and 17<sup>th</sup> centuries. Human rights today are understood as those contained in the instruments such as United Nation Declaration of Human Rights adopted on 10<sup>th</sup> December, 1948, African Charter on Human and Peoples Rights, etc. The Universal Declaration of Human Rights, for instance, recognizes certain categories of right; economic, social political and cultural. They are expressed and guaranteed by law in the form of treaties, customary international law, general principles and other sources of international law.

In Nigeria, these rights are broadly described in the constitution, leaving the court to fill and infuse them with life<sup>22</sup>. This position was explained by the Court of Appeal in *Adinoso v. Omeire*<sup>23</sup> as follows:

*"The provisions of chapter four of the 1979 constitution which are replicated in the 1999 Constitution and the African Charter on Human and People's Right (etc.) are sacrosanct; they touch on the very core of the dignity of the human being – freedom. These provisions must therefore be addressed with utmost judicial and judicious caution. The provisions of chapter four must be interpreted with as broad a legal perspective as would uphold and protect the fundamental rights of the individual."*<sup>24</sup>

Fundamental rights provisions under the 1999 Constitution (as amended) are contained in Chapter IV (that is, sections 33–46). These rights were first entrenched in the 1963 Constitution and have continued to feature prominently in successive Constitutions of the Federal Republic of

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<sup>21</sup>See section 6 of the 1999 Constitution (as amended). Also the English case of *A – G v. Guardians Newspaper*(1974) AC 373.

<sup>22</sup> See the case of *Adinoso v. Omeire* [2006] All F.W.L.R (Pt. 310) 1759 CA.

<sup>23</sup> Note 26 Supra.

<sup>24</sup> Per Dongban-Mensem, JCAat p. 1775, paras. G – H

Nigeria. Human rights are not a creation of the constitution but rather meant to be protected by the constitution; the rights being by nature. According to the Chief Justice of Japan:

*“Fundamental rights were not created by the state but are eternal and universal institutions, common to all mankind and antedating the state and founded upon natural law.”<sup>25</sup>*

These rights apply to all citizens regardless of sex, tribe, religion or nationality.

### **Fundamental rights of Citizens to Privacy and Freedom of Movement**

#### **Rights to Private and Family Life**

Of all the human rights available to men privacy is perhaps the most difficult to define and circumscribe. The right to respect for private life in human rights’ instruments is said to have its origin in traditional human right concerns about state interference with individuals<sup>26</sup>. Bible has numerous references to privacy<sup>27</sup> as there was substantive protection of privacy in early Hebrew culture, Classical Greece and ancient China. This protection focused mostly on the right to solitude.

Right to private life can simply be described as right to be left alone. It is provided for in section 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The section provides as follows:

*The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.*

The right to privacy and respect for the homes are less well established in human rights jurisprudence than the traditional rights such as right to life, liberty or freedom from slavery. With modernity most international instruments now have clear provisions seeking to protect the privacy of individuals. At the heart of right to privacy lies the notion of personal liberty and

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<sup>25</sup> Cited in Aguda, T. A., *The Judiciary in the Government of Nigeria*. (Nigeria; New Horn Press Limited: 1983) p. 41.

<sup>26</sup> Clayton R and Tomlinson H, *The Law of Human Rights*, 2nd Ed. Vol. 1 (Oxford University Press: 2008), P. 1006.

<sup>27</sup> See for instance, Proverb Chapter 25 v 17. See also Quran Chapters 24 v. 27 and 49 v. 12.



autonomy. In addition to the right to be left alone, the right to privacy has been said to cover matters as diverse as an individual's dignity or moral integrity, control of personal information, freedom from media intrusion, right not to use a person's personal information without his/her consent, etc. At a minimum, these provisions include rights to inviolability of the home and secrecy of communications

Although the right of persons to be secure in their homes from unreasonable searches has long been acknowledged, a more general right to privacy and respect for the home was only clearly recognized in the twentieth century. Numerous international human right covenants/articles give specific reference to privacy as a right. The International Covenant on Civil and Political Rights (ICCPR), the UN Convention on Migrant Workers and the UN Convention on Protection of the Child adopt the same language. Privacy as a fundamental human right is also recognized in the United Nation's Declaration of Human Rights, the International Covenant on Civil and Political Rights and in many other international and regional treaties. For instance, Article 12 of the Universal Declaration of Human Rights provides:

*“No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to protection of the law against such interference or attacks.”*

International agreements that recognize citizens' right to privacy such as the International Covenant on Civil and Political Rights, the European Convention on Human Rights, African Charter on Human and Peoples' Rights, Universal Declaration of Human Rights, etc. have been ratified and domesticated in Nigeria<sup>28</sup>. In many of the countries where privacy is not explicitly recognized in the Constitution, such as the United Kingdom, Ireland and India, the courts have found that right in many other provisions. Privacy underpins human dignity and other key values such as freedom of association and freedom of speech. It has become one of the most important human rights issues of the modern age.

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<sup>28</sup> By virtue of the provisions of section 12 of the 1999 Constitution (as amended) no treaty between Nigeria and any country shall have effect except to the extent to which such law has been enacted in Nigeria.

In a bid to curb the present insurgency by the Boko Haram, the Federal Government declared a state of emergency in the affected states<sup>29</sup>. Since the declaration of the state of emergency, there have been cases of invasion of citizens of the affected states. Some of these instances of abuses will be examined below.

### **Instances of Abuse of Right to Privacy**

Although most modern international human right instruments protect the right of the individual to private and family life, the limits are still not clearly defined. Even with the adoption of legal and other protections, violations of privacy remain a concern. In some countries, laws have not kept up with the technology, thus leaving significant gaps in the protections of privacy, while in some others, the law enforcement and intelligence agencies have been given significant exemptions. The increasing sophistication in information technology with capacity to collect, analyze and disseminate information about individuals has introduced a sense of urgency on the demand for legislation to further protect the attendant violations of privacy. Furthermore, new developments in medical research, telecommunications, advanced transportation systems and financial transfers have dramatically increased the level of information generated by each individual.

Computers linked together by high speed networks as well as advanced processing systems can create comprehensive dossiers on any person without the need for a single central computer system. New technologies developed in the defense industry are gaining acceptance within the law enforcement, civilian agencies and private companies. As a result of this, there are widespread violations of laws relating to protection of privacy of citizens, even in the most democratic countries, Nigeria inclusive. Consequence upon this, privacy is still being exposed to some forms of abuse in Nigeria. The ongoing war against insurgency in the three states of the North West of the has its attendant effects on the fundamental rights of citizens to private life as enshrined in the 1999 Constitution (as amended). Some of the instances of abuse of the citizens' right to privacy are examined hereunder.

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<sup>29</sup> Initially, the state of emergency was only declared in 15 Local Government Areas of Borno, Yobe, Plateau and Niger states. Borno 5 Local Government Areas, Niger State (1 Local Government Area), Plateau State (4 Local Government Areas) and Yobe State (5 Local Government Areas).

*a. House-To-House Search:*

The most recent in Nigeria, and perhaps as a response to the present war against insurgency, is the house-to-house search being carried out by the security operatives which are carried out, in most cases, without a warrant from a court of law. This constitutes a flagrant abuse of the right to private and family life as enshrined in the 1999 Constitution (as amended). Offices as well as places of worships are not spared of this abuse. Security operatives have raided houses, hotels and other places without warrant<sup>30</sup> in flagrant disrespect of citizen's constitutional right to privacy. They carry out this in an attempt to make some arrest or mop up arms.

Similar to the above is the cordon and search tactic by the security agencies. This is usually embarked on immediately after an attack. Various regulations have been made empowering security agencies not only to stop and search but to also enter into any premises upon suspicion and to taking certain steps to prevent the occurrence of acts of terrorism<sup>31</sup>. These regulations empower security agencies to search any place with or without a warrant. For instance, one of the regulations provides:

*Any superior police officer or any member of the armed forces not below the rank of a Captain or its equivalent may, at any time, enter without warrant and search any building (including a dwelling house), ship, aircraft, vehicle or place where he has reasonable cause to believe that there is or likely to be*

*anything which may provide evidence of the preparation, instigation or commission of any act referred to in regulation 2 of these Regulations.*<sup>32</sup>

Security operatives, thus, either in the wake of an attack or on suspicion of the same can enter into any premises or place in furtherance of their duties to prevent attacks on the state. This act has further engendered the privacy of individuals in the affected states.

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<sup>30</sup> Even where a warrant is obtained security operative tend to go beyond is contained in the warrant.

<sup>31</sup> See for instance Terrorism Prevention (Freezing of International Terrorists Funds and other Related Matters) Regulations) 2011.

<sup>32</sup> Regulation 3 (1), Emergency Powers (Detention of Persons) Regulations, 2012 and also the provisions of section 25 of the Terrorism (Prevention) Act, 2011.

*b. Monitoring of Communication:*

The development in modern information technology offers a range of means through which surveillance can be carried out. This includes telephone tapping<sup>33</sup>, bugging and taking of photography of various forms. Nearly all countries of the world have established some form of wiretapping capability over telephone, fax and telex communications. In most cases, these intercepts are initiated and authorized by law enforcement agencies in a bid to gather intelligent information. Wiretapping abuses have been detected in some countries, sometimes occurring on a vast scale, involving thousands of illegal taps. Targets include political opponents, student leaders and human rights activists. As part of the measures to effectively combat the insurgency, security agencies have put the entire communication system in the affected states under strict security surveillance. In some cases the GSM network has been totally cut-off, thus making it difficult for people in those states to reach out to their loved ones. There have also been cases of security agencies tapping into individuals' phones, while some have been placed on security watch list<sup>34</sup>. Closely related to invasion of right to privacy is also the use of "listening device" by security agencies. It is a gross violation of the privacy of an individual to intercept telephone calls to a person's home or workplace or to install a listening device. One of the most far-reaching policies ever designed in the Nigeria's history to invade the privacy of citizens is the internet monitoring by Government. In a similar vein, the Federal government of Nigeria in April last year awarded a contract to an Israeli Company, Elbis Systems, for monitoring computers and internet communications by Nigerians<sup>35</sup>. This project has been suspended following the citizens' outburst about the potential violations of their rights.

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<sup>33</sup> By virtue of the provisions of section 26(1) of the Terrorism (Prevention) Act, 2011, the National Security Adviser or the Inspector General of Police may, for the purpose of the prevention or detection of offences, give such directions as appear to him to be necessary to any communication service provider.

<sup>34</sup> This is one of the concerns raised by Ex-President Olusegun Obasanjo in his letter dated 2<sup>nd</sup> December, 2013 titled *Before It Is Too Late* and addressed to President Goodluck Ebele Jonathan.

<sup>35</sup> See particularly the Premium Times edition of 27<sup>th</sup> April, 2013 under the caption, "Jonathan Awards \$40m Contract to Israeli Company to monitor Internet Communications by Nigerians". Retrieved from: [www.premiumtimesng.com/news/131249-exclusive-jonathan-awards-40m-contract-to-israeli-company-to-monitor-computer-internet-communication-by-nigerians.html](http://www.premiumtimesng.com/news/131249-exclusive-jonathan-awards-40m-contract-to-israeli-company-to-monitor-computer-internet-communication-by-nigerians.html).

## Right to Freedom of Movement

Right to freedom of movement can simply be described as the right of everybody to move freely within the territory of a state without any hindrance or permission. In the American case of *Paul v. Virginia*<sup>36</sup>, freedom of movement is defined as the right of free ingress into other states and egress from them. Citizens have the liberty to travel, reside in, and/or work in any part of the state where one pleases, as well as right to exit the country<sup>37</sup>. The Nigerian Supreme Court in the case of *Director S.S.S v. Agbakoba*<sup>38</sup> held that by virtue of section 38(1) of the 1979 Constitution [now section 41(1)], citizens have the right to exit the country anytime. Section 41 of the Constitution provides:

*Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refuse entry thereto or exit therefrom.*

The U.S. Supreme Court in *Crandall v. Nevada*<sup>39</sup> declared that freedom of movement is a fundamental right and therefore a state cannot inhibit people from leaving the state by taxing them. This right has four basic components. These are; (a) right to move freely within a given territory; (b) right to choose a residence within a territory; (c) right to leave any country, including one's own country; and (d) right to enter one's own territory<sup>40</sup>.

## Instances of abuse of Freedom of Movement

### a. Restriction of Movement:

Although the 1999 Constitution (as amended) recognises the right of citizens to move freely from one part of the country state to another, this right is not absolute. Since the declaration of the state of emergency in May 2013, the right to free movement of persons in the affected states

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<sup>36</sup> 75 U.S. 168 (1869). See also *Ward v. Maryland*, 79 U.S. 418 (1871).

<sup>37</sup> See the Supreme Court decision in *Director of S.S.S v. Olisa Agbakoba* [1999] 3 S. C 59; [1999] 6 N. W. L. R (Pt. 595) 314

<sup>38</sup> (Note 41 Supra)

<sup>39</sup> 73 US 35 (1867)

<sup>40</sup> Icelandic Human Right Centre, 'The Human Right Education Project'. Available at: [www.humanrights.is/the-human-rights-projects/humanrightsandmaterials](http://www.humanrights.is/the-human-rights-projects/humanrightsandmaterials) . Accessed 23rd April, 2014.

has been curtailed<sup>41</sup>. This is further compounded with the attendant imposition of curfew as it greatly affects the free movement of people. By curfew it means the restriction of movement of persons within certain hours of the day. There are various regulations made by the government to effectively curtail movement. For instance a regulation on the imposition of curfew provides as follows:

*Where a curfew has been imposed in any area, no person other than a police officer, a member of the armed forces of the Federation, a person registered as a medical practitioner or any other person authorized in writing under these Regulations shall be outdoors within the area between such hours as may be specified in the curfew order (hereinafter referred to as 'the hours of curfew')<sup>42</sup>.*

This provision of the Regulation has a significant effect on movement of persons in the affected areas. For instance, when the state of emergency was declared in May, 2013, 24 hours curfew was imposed on the affected states<sup>43</sup>.

**b. Cordon and Search:**

Another restriction affecting free movement of persons is cordon and search tactic by security agencies. This has also curtailed the free movement of persons in the affected states. This restriction is a clear violation of the fundamental rights of citizens to free movement.

**Justification for Derogation from Rights to Privacy and Movement**

Although the right of citizens to enjoy fundamental rights is enshrined in the constitution, the enjoyment of these rights is not absolute. These rights cannot be enjoyed to the detriment of other people living in the same society. The curtailment of individual rights stems from the need to ensure harmonious co-existence in the society. The 1999 constitution of the Federal Republic of Nigeria (as amended) provides for instances whereof the fundamental rights provided for the

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<sup>41</sup> See regulation 4 of the Emergency Powers (Curfew) Regulations, 2012.

<sup>42</sup> Regulation 4, Emergency Powers (Curfew) Regulations, 2012.

<sup>43</sup> See particularly ThisDay of 21<sup>st</sup> May, 2013 with the caption, *Curfew Relaxed in Borno, Yobeas 200 Troops Storm Adamawa*. Available at: [http://: www.thisdaylive.com/article/curfew-relaxed-in-borno-yobe-as-200=troops-storm-adamawa/1488078/](http://www.thisdaylive.com/article/curfew-relaxed-in-borno-yobe-as-200=troops-storm-adamawa/1488078/) . Accessed 9<sup>th</sup> January, 2014.

in the constitution can be derogated from<sup>44</sup>. The Nigerian Court of Appeal puts the position as follows:

*I go further to say that freedom from unwarranted interference, with an individual citizen's right to do his or her own things lies at the heart of that legal study known as human rights. But there can never be absolute freedom for any citizen for as long as we all live in a common society.*<sup>45</sup>

The constitution already provides for instances where derogations from the fundamental rights of citizens may be justified. The implication is that these right can only be enjoyed subject to the qualification provided for in the Constitution. The Supreme Court in the case of *Medical and Dental Practitioners Disciplinary Tribunal v. Emewulu & Anor*<sup>46</sup> held that all freedoms are limited by state policy or overriding public interest<sup>47</sup>. The constitutional provisions limiting the rights guaranteed are somewhat imprecise, indeed nebulous<sup>48</sup>. In other words, these provisions are not well defined, thus leaving certain issues outside its scope. It is on this premise that some of the instances where derogation is justified will be examined. Section 45(1) of the 1999 Constitution (as amended) provides for instances where derogations from certain fundamental rights will be justified. The section provides thus:

*"Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-*

*(a) in the interest of defence, public safety, public order, public morality or public health; or*

*(b) for the purpose of protecting the rights and freedom of other persons.*

By the provisions of subsection 2 thereof, an Act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of

<sup>44</sup> Section 45 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

<sup>45</sup> Per Aderemi, JCA in *Adinoso v. Omeire* (Note 26 Supra) at p. 1768, paras D – E

<sup>46</sup> [2001] 3 S.C.N.J 10

<sup>47</sup> Similarly, in the case of *DPP v. Chike Obi* [1961] 1 N.L.R. 186 the Court held that the sedition law, though it evidently gravely circumscribed the constitutionally guaranteed right of freedom of speech, was "reasonably justified in a democratic society."

<sup>48</sup> For instance, what law is "reasonably justifiable in a democratic society", as used in section 41(2) of the 1999 Constitution (as amended), does not enjoy any definition and neither is it capable of any precise articulation.

measures that derogate from the provisions of section 33 or 356 of the 1999 Constitution. By the foregoing provisions, the right to private and family life, and right to freedom of movement may be circumscribed or limited in the following instances:

a. National Security and Defence:

The maintenance of national security and defence is one of the cardinal objectives of every state. It is incumbent on the government to ensure security of lives and property. The Constitution allows derogation from the rights of citizens to privacy or movement or any other rights in the interest of defence and public safety<sup>49</sup>. The belief is that the interest of the state is above individual interest. That the existence of individual is subject to the existence of the state. Therefore, any effort made towards the sustenance of national security cannot and will not amount to violation of fundamental rights of citizens. Thus, the invasion of fundamental rights of citizens to privacy and free movement in the face of the ongoing war against insurgency is justified by the need to maintain and preserve national security. Consequently, the tapping of conversation, raiding of houses and hotels by security operatives, cordon and search, house-to-house search as well as restriction of movement in certain areas are justified on ground of national security and defence of the country against external aggression.

b. Protection of Rights and Freedom of other Persons:

The activities of the insurgence have seriously impaired on the enjoyment of certain fundamental rights of the citizens in the area. The insurgency has claimed more than 10,000 lives and property worth billions of naira destroyed since its inception. In order to curb further derogation of this sacred and most fundamental right of citizens, that is, right to life, the Federal Government launched an attack on the insurgents. Parts of the measures include the declaration of the state of emergency in the affected states. In the process of this, the rights of citizens to privacy and freedom of movement have been impaired which in law amounts to derogation from the fundamental rights of the citizens to privacy and movement. However, this derogation is justified in the light of the provisions of section 45(1)(b) of the 1999 Constitution (as amended). By virtue of the said provisions, the Federal Government of Nigeria is permitted to derogate from the

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<sup>49</sup> Section 45(1)(a) of the 1999 Constitution (as amended).



provisions of section 37 and 41 of the 1999 Constitution in order to protect the rights and freedom of other person.

**c. Need to Respond to Threats:**

The recent approaches being adopted by the insurgents in carrying out deadly attacks on innocent citizens and villages have made it imperative for security agencies to be proactive in terms of their approaches and tactics. Certain measures have been put in place in order for the security operatives to be able to curtail these security challenges, and one of such measures aimed at meeting the challenges frontally is the constant monitoring of communications among individuals. It has been said that for the present war against insurgency to be won, intelligence gathering effort must be stepped up. The belief in some quarters is that the recent kidnap of more than 230 girls was made possible because of poor intelligence gathering on the part of our security agencies. Therefore, any breach of right to privacy occurring on account of being proactive, and which in turn will help in sustaining the national security, will be justified; any violation notwithstanding.

**d. Need to Prevent Destruction of Evidence:**

The dastardly acts being perpetrated by the dreaded Boko Haram group include bombing in some place with the aid of improvised explosive device. Whenever this bombing happens the security agencies do move-in immediately to pick those pieces of evidence that may assist them in tracking down the perpetrators. Thus, to prevent the destruction of whatever pieces of evidence that may assist the security operatives in this regard, the affected area is usually cordon off to ensure that possible evidence is not destroyed. Security agencies sometimes set up perimeter. The rationale behind the setting of this perimeter is to ensure that the yet-to-be identified perpetrators are arrested before leaving the scene. Therefore, this restriction of movement created by the cordon off or setting of perimeter, though violates the fundamental right of citizens to free movement, is justified on ground of preventing the destruction of evidence

## **Conclusion**

Although the constitution recognizes the fundamental rights of every citizen to privacy and freedom of movement, there are instances when the same will be derogated from such as cases of protection of public interest, protection of national security, need to respond promptly to security threat and the need to protect the violation of rights of other persons. The existence of any of these circumstances will justify derogation from citizens' right to privacy and freedom of movement. Although the Constitution jealously guards against any violation of these rights, in certain instances, as highlighted above, these violations will be justified. Government must ensure that in the course of the ongoing fight against the insurgency, the security operative must adhere to the laid down procedure and conduct themselves within the confines of the law, otherwise the citizens in the affected state can seek redress in a competent court of justice.

## **Recommendation**

In order to prevent the abuse of the fundamental rights of the citizens, particularly citizens' right to privacy and freedom of movement, in the affected states, the following points are recommended:

- ❖ Proper education and orientation of the people regarding the ongoing war against insurgency;
- ❖ Establishment of well-designed rules of engagement for military operatives;
- ❖ Constant and continuous training of security personnel on constitutional rights of citizens; and
- ❖ Constructive engagement and dialogue with Boko Haram sect members.

This, it is believed, will go a long way in educating the citizens on their rights and the instances where derogations from the same will be justified.