

Insecurity, Rule of Law and Human Rights: Are We on the Right Path?’

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By

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1. Protocol;

- **Thank Unity Bar** for their invitation, opportunity and honor to be the key note speaker;
- **Topic** - Insecurity, Rule of Law and Human Rights: Are We on the Right Path?
- Who are the **‘WE’** in this topic?
- Ostensibly, the ‘WE’ here **may be referring to Nigeria** as nation;
- In view of the possible interpretation of the ‘WE’ on the topic, I take the **liberty to reset the topic;**
- My topic today is re-couched as **Insecurity, Rule of Law and Human Rights: Is the Bar on the Right Path?;**

2. Why should I narrow the topic to calibrate if the Bar is on the right path and not if the government is on the right path as may have been the likely intendment of the organizers of this conference? The first reason is that making this presentation from the prism of government alone will

obscure the optics of distilling the topic from the double barreled lens of both the government and the Bar. Secondly, my principal audience today is not the government of Nigeria, but learned members of the Unity Bar and thirdly, it is my considered opinion that while it is necessary for the contemporary insecurity trajectory of the government of Nigeria to be scrutinized, it is also pertinent to, probably and more importantly scrutinize the contribution and response of the Bar to the current state of our nation.

3. As a precursor to my presentation and to further justify why I unilaterally chose to focus on lawyers and not the government, please permit me to remind you that there has been more lawyers in the governance of this country since independence than any other profession. May I also advert your attention to the fact that out of the three arms of government, lawyers exclusively dominate and control one arm of government, the judiciary. Lawyers, over and above other profession often dominate the legislature numerically and most likely competitive in the statistical strength of members of the executive arm of government.
4. In the power-hierarchy of the three arms of government, lawyers, to the exclusion of all others professionals dominate the most powerful arm of government. Lawyers rule over the judiciary which is the only arm of government with the exclusive power to nullify actions of the other two arms of government that fail to conform to constitutional provisions. However powerful a President is, he or she cannot quash the orders of a court, exception being a lawless climate where impunity prevails. Same applies to the legislature. Irrespective of their numbers and strengths of their votes, a combined team of States Houses of Assembly,

House of Representative and Senate cannot override an action of a single judge.

5. Conversely and in very simplistic and statistical analogy, a single judge or an appellate panel of between 3 to 5 Justices can overturn the combined votes of 109 Senators, 360 House members, including consequential presidential assent. There is no gainsaying the fact that the power of the judicial arm of government is enormous and seemingly for a reason. The reason is simple and self-explanatory. The reason why the judiciary is made to be this powerful the world over is because the exclusive actors of that arm of government are learned men and women who are thus distinctively qualified to defend humanity when it matters most. No wonder the court is often described as the last defense or hope of a common man.
6. In the context of Nigeria, and even though our judiciary is still struggling with asserting its financial autonomy nationwide, the powers exercised by lawyers both at the Bar and on Bench in the governance of this country is certainly weighty and should come with some social responsibility. Whereas individuals and groups in Nigeria from other professional inclinations and trades may helplessly complain about the slippery slope of Nigeria, the same should not be tenable for members of the legal profession because they have been adequately enabled and empowered to make a difference in the polity of our nation from the temple of justice.
7. It is trite that the direct correlation of power is responsibility and by extension accountability. For purposes of accountability, these enormous powers exercised by lawyers as sole actors in the judicial arm

of government must certainly come with responsibilities. According to the United Nations Basic Principles on the Role of Lawyers, professional associations of lawyers have a vital role and responsibility in cooperating with governmental and other institutions in furthering the ends of justice and public interest. That public interest responsibilities of lawyers certainly extend to their involvement in the management of the ongoing insecurity, human rights and rule of law challenges in the country.

8. The topic of my presentation in either its original or revised form requires clarification of some thematic glossaries, but since my audience is mainly lawyers, I guess this task is avoidable. For the benefit of doubt and for the sake of uniformity of understanding, please permit me to attempt a cursory description or definition of the three key terms of my topic.

Insecurity;

9. Like many social science concepts, there is no consensus as to the exact definition of the term insecurity. By the way, insecurity in Nigeria today does not need definition or the consensus of academics, because it is everywhere now and visibly felt by all and sundry. If I may be compelled to attempt a simplistic definition, insecurity is taken to mean real or perceived absence of protection. It also means the state of being subject to danger or injury, or the anxiety one experiences when he or she feels vulnerable. In practical terms, contemporary insecurity in Nigeria, ranges from insurgency, armed banditry, violent communal conflicts, kidnapping, unknown gun men, to outright lawlessness. The level of insecurity in Nigeria is such that our country unfortunately holds the gold medal as the country with the highest numbers of persons

kidnapped and held hostage in one single raid. Our dear country also ranks highest in the world as the country with the highest number of persons in the custody of their kidnappers as at today.

10. Insecurity in Nigeria has grown exponentially, traversed geopolitical zones and permeated all aspects of our national life. Current insecurity in Nigeria has infiltrated into our 'national security' as well as 'human security'. By national security, we mean the ability of the Government of Nigeria to protect and defend its sovereignty. For purposes of this presentation, insecurity is not viewed from the point of national security, but rather, from the perspective of human security. By human security, we mean the ability of the Government of Nigeria to protect and defend its citizens as an integral part of the defense of its sovereignty.
11. According to the Secretary General of the United Nations, there are several interrelated building blocks of human security, including freedom from want, freedom from fear and the freedom of future generations to inherit a healthy natural environment. The challenges of human security in Nigeria has over the years eroded one of the core mandate of the government, which is the protection of its citizenry. According to Section 14(2)(b) of the 1999 Constitution (as amended) 'the security and welfare of the people shall be the primary purpose of government'.
12. It is also a well-known principle of customary international law that the first duty of government is the protection of its citizens which is the foundation of the social contract between the state and the citizens. It is under the auspices of that social contract that citizens owe

allegiance to the state and for which reasons citizens give up arms believing that the state will provide security.

13. The slippery-slope in Nigeria is that insecurity has further bred insecurity and is at the point of engendering total breakdown of law and order, undermining the rule of law and festering systemic and gross violation of human rights. The remote and immediate causes of insecurity in Nigeria are litany and mutually reinforcing. For purposes of this presentation, I will limit myself to the issue of bad governance. Endemic and systemic bad governance is the strongest scaffolding for insecurity in Nigeria. Bad governance has perverted wealth distribution in Nigeria, obliterated the middle class status and created two dangerous and irreconcilable extremes of very rich and very poor Nigerians. It has equally midwived millions of adolescent Nigerians to adulthood without the requisite skills and character to lead a decent life.
14. Bad governance has created social inequalities of the magnitude that is cancerous to our national life and unprecedented in the comity of nations. It has unwittingly recruited, indoctrinated and graduated hungry, angry and frustrated, but energetic youthful Nigerians into the polity without any means of livelihoods or recourse to social safety nets. Bad governance and the concomitant harshness inflicted on the citizenry has radicalized platoons and battalions of Nigerians youth to suicidal quest for survival or in extreme situations, to retaliation against the system and nation. It has condoned and entrenched impunity to the level unprecedented in the annals of nations.
15. Bad governance, on the one hand, has exonerated Nigerians who should be incarcerated and kept out of civic circulation, and on the other hand, imprisoned excusable felonious offenders. It is bad governance

that has elevated corruption to becoming a permissible and acceptable order of the day. There is no doubt that bad governance is the reason why the hand of the law is long when the suspect is poor and suddenly short when the suspect is rich and influential. Bad governance is the reason why successive governments in Nigeria have fought insecurity substantially from the prism of military warfare while overlooking the socio-economic factors that breed and fester the propensity of its teeming youths to take to crime and criminality.

16. Bad governance is the reason why the contemporary debate in relation to security in Nigeria today is mostly tilted towards multiplying the number of military and para-military agencies and personnel and cascading police formations to all tiers of government, instead of developing and implementing policies and plans that will sustainably guarantee decent life for every Nigerian youth outside the parameters of crime and criminality. Bad governance is the reason why it is difficult or seemingly impossible for our leaders to appreciate that the security and tranquility of Nigeria would not be achieved solely by the number of military and police officers deployed to the polity, but by the number of youths enabled and capacitated by the government to lead a gainful life.

17. It is certainly the toxins of bad governance that will shamelessly make a sovereign state to present excuses for its inability to protect its citizens because some areas within its territory are 'ungoverned spaces'. Overall, bad governance is the key reason why the government has failed in its 'Responsibility to Protect'.

18. How did we get here in the first place? And if I may ask, is the Bar on the right path? Before I attempt to indict or acquit the Bar, kindly allow me to x-ray the other themes of my topic.

Rule of Law

19. Rule of law is an essential ingredient of democracy and by extension the minimum standard of assessment of civilized societies. Like so many other legal terms, it is fraught with varied definitions which I should not belabor you with since this is not an academic class. Rule of law refers to ideals for ensuring an orderly and just society where no one is above the law, where everyone is treated equally under the law, where everyone is held accountable to the same laws, where there are clear and fair processes for enforcing laws, where there is an independent judiciary and where human rights are guaranteed for all. For purposes of this presentation, I will adopt the definition of rule of law as enunciated by the United Nations.
20. According to the United Nations, rule of law is the principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.
21. To contextualize our understanding of rule of law in Nigeria and to make this presentation participatory, please permit me to pose the following questions and feel free to respond Nah or Yeh on the spot

according to your conscience. These questions elicit your responses to the cardinal ingredients of a system governed by rule of law.

22. Are all persons, institutions entities, including the government accountable to our laws in Nigeria? Do we have a government that is bound by law, including respecting court orders? Does our legal system ensure that all persons are equal before the law irrespective of status and creed? Is our law publicly promulgated in an open parliament? Is our law independently adjudicated by courts of law? Are our court systems characterized by predictable and just rulings? Is the promulgation, enforcement and adjudication of our laws in compliance with international human rights standards?
23. The list of possible questions is many. With the prevailing insecurity in Nigeria, upholding the rule of law is an uphill task because insecurity in itself is a manifestation of the absence of rule of law. On the other hand, can a State legitimately procure and enforce continued 'obedience to the law' in a situation of rising insecurity and weakening rule of law? It goes without saying that a government unable to protect its citizens due to insecurity, can hardly succeed in securing citizen's adherence to rule of law.
24. What is the legal justification and moral bases for adherence to 'rule of law' in an environment where rule of law actually does not exist? When the law does not rule to protect the citizenry, is there a legal or moral basis for the citizenry to rise and protect the rule of law?
25. As was posed on the issue on insecurity in Nigeria, is the Bar culpable, either through its actions or inactions, directly or indirectly in

the current state of rule of law in Nigeria? Before I respond to this question, I respectfully seek leave for you to allow me to briefly canvass the last, but not the least theme of my topic

Human Rights

26. Respect for human rights and freedoms is one of the indices of a civilized society, one that is ruled by law and not by whims and caprices of a dictator. There is no doubt that human right is another theme subject to contestable philosophical underpinnings. Generally speaking, human rights are those rights that accrue to us because we are humans. In other words, they are also natural entitlements that are not granted, but rather protected by government under its constitutional and treaty obligations.
27. Without attempting to delve deep into the theoretical and philosophical foundations of human rights, please permit me to highlight only two theories to facilitate a clearer understanding of this presentation. Two major conflicting philosophies that are relevant to my presentation are the natural law and legal positivism. From the perspective of natural law theory, human rights are propelled by morality and as such “no human laws are of any validity, if contrary to the law of nature”. The crux of the natural law theory is that human rights accrue to us by the singular fact that we are human beings and need not be enunciated or protected by any law.
28. Conversely, the central tenet of legal positivism is that it entrusts upon the state the mandate to institutionalize what is considered ‘right’ or ‘wrong’ and establish a legal regime separate from the moral

foundation of the society. On the other hand, positive law theory of human rights presupposes that for human rights to be enforceable, it should as a matter of necessity be provided and protected by law.

29. There is validity in the conceptualization of human rights both from the natural law and positive law schools of thought. In any case, the conceptual appreciation of human rights from the lens of the United Nations combines the complementary and mutually reinforcing strengths of the natural law and legal positivism to form what I may call 'inclusive legal positivism'. And it is for that reason that the United Nations position on the philosophical and theoretical foundation of human rights is a hybrid of both the natural and positive law philosophies. Consequently, this presentation will define human rights as those broadly recognized fundamental global standards that inhere in human beings by virtue of their humanity and normatively instituted by national governments and community of nations.

30. As a staff of the United Nations, I am compelled to regurgitate the position of Member States on the subject matter, to the effect that, whereas human beings are born with rights, these rights are legally protected to be enforceable. Nigeria draws from the UN philosophy and as such has outlined plethora of protected human rights in Chapter IV of the Constitution of the Federal Republic of Nigeria as amended. In addition to its constitutional provisions on human rights, Nigeria is a signatory to the 9 major international human rights treaties which are also applicable in Nigeria.

31. The obligation of the Government of Nigeria to promote and protect human rights guaranteed in Chapter IV of the 1999 Constitution

and those applicable by virtue of other international human rights treaties are in three folds. The first obligation of the Government of Nigeria on human rights is to **RESPECT** human rights. The obligation to respect means that the government of Nigeria must refrain from interfering with or curtailing the enjoyment of human rights.

32. The second obligation of the government towards human rights is to **PROTECT** human rights. The obligation to protect requires the Government of Nigeria to protect individuals and groups against human rights abuses. The third obligation of the government of Nigeria towards human rights is to **FULFIL** the enjoyment of human rights. The obligation to fulfil human rights means that the government of Nigeria must take positive actions to facilitate the enjoyment of human rights.

Nexus Between Insecurity, Rule of Law and Human Rights

33. Human rights, rule of law and protection of citizens are the mutually reinforcing mandate of the government. This point has been made severally by United Nations Special Rapporteurs and Treaty Bodies. The rule of law and human rights are two sides of the same principle metamorphosing into the freedom to live a secure life in dignity. The rule of law and human rights therefore have an indivisible and intrinsic relationship which has been fully recognized by Member States since the adoption of the Universal Declaration of Human Rights and other incidental treaties most of which are applicable in Nigeria.

34. Without rule of law, human rights are paper promises and without human rights, rule of law becomes rule by law and a system for repression. Therefore, rule of law, properly understood, provides not

only certainty and predictability of the law, but also substantive justice. In an insecure environment, there is often the tendency for political leaders to fall into the temptation of trumping national security over rule of law and human rights. At the 58th Annual General Conference of the Nigeria Bar Association in 2018, a statement was credited to the Government of Nigeria which posited that rule of law must be subject to the supremacy of the nation's security and national interest. This statement, assuming is true, sounds like the rhetoric of Taliban's spokesperson.

35. The alleged claim that national security should override the rule of law cannot stand the scrutiny of Section 1(1) & (3) of 1999 the Nigerian Constitution that emphasizes the supremacy and bindingness of the Constitution on persons and authorities throughout the Federal Republic of Nigeria. There is no doubt therefore that the Government of the Federal Republic of Nigeria is expected to uphold the rule of law as envisaged by the constitution in all its operations and at all times, including in the fight against insecurity. Fighting insurgency, terrorism and any other forms of criminality is not an exception to this rule.
36. With a cursory understanding of the three key terms of the topic (insecurity, rule of law and human rights), the golden question becomes how well or otherwise has the government of Nigeria performed on these three benchmarks of modern democracy? In other words, how well has the Government of Nigeria respected, protected and fulfilled the human rights of its citizens and residents, particularly in the context of the prevailing insecurity.
37. On the basis of my reformulated topic which focuses on the Bar and not necessarily on the government, please allow me to revert back

to my primary audience – lawyers. How well has the Bar performed in assisting or compelling the government to address the insecurity the citizens are exposed to, guided by human rights and rule of law?

38. With the enormous powers highlighted earlier wherein I postulated that lawyers are very powerful in the governance architecture of this country, I beg to add further that lawyers are, or ought to be the strongest pressure group in Nigeria, a power which I opine has not been used maximally for the common good of humanity. For instance, lawyers as a collective are seized with the propensity to make any positive change that they collectively desire, and I guess the society is looking up to us, on all of us here, to make that desired change. Has it occurred to lawyers here present and all over Nigeria that the way and manner our electoral system is structured, the preponderance of Nigerian politicians owe their electoral mandates not necessarily to the electorates, but to the legal or street smartness of lawyers.

39. On the other hand, most of our politicians that were privileged to secure their electoral mandates directly through the ballot still require a lawyer or lawyers to defend the victory across the permissible court hierarchies. Similarly, those of our politicians who lost in the first ballot resort to the hook or crook dexterity of lawyers like all of us here to reclaim their victories in court, rightly or wrongly.

40. Simplistically, lawyers are at the epicentre of every Nigerian politician's conscience (if they still have any). Lawyers are principal shareholders in the political victory of most, if not all politicians in Nigeria. If we as lawyers, are this powerful and a bug in the conscience or gratitude of our politicians, why have we not exploited this rare

privilege to pressure them to chart the country to the common good of all. For instance, there are several ongoing debates on vital national issues trending in the country today, including constitutional amendment, open grazing, ranching, etc. Where is the voice of the Bar on these issues and what learned leadership or thought guidance is the Bar providing to sail the county safely to shores.

41. Has it also occurred to all of us that if lawyers, do just one thing, stick to the application of the electoral laws and disregard the out of court and gratification orientation relationships with our judges, the candidates of choice of our respective constituencies will be validated or vindicated in our various electoral tribunals. By so doing, we would have our first eleven playing for all of us in our local governments, state governments and federal government and consequently able to make impactful contribution to governance, including addressing insecurity in a holistic manner. Shouldn't the Bar be held liable in the quality of leadership that we have in Nigeria today in elected offices because of our actions or inactions at the election tribunals? Can't the Bar make the necessary connection between the quality of successive leaders in Nigeria and the present insecurity in the country?

42. Does it not occur to us as lawyers that we are vicariously responsible for the situation we are in today as a country whereby most of our politicians are undeserving of the post they occupy both in character and learning, yet we fight in defence of their wrong and unethical cause from the high court or tribunal to the supreme court. We defend and petition on their behalf and depose to spurious affidavits and counter affidavits undeserving of their integrity. The citizenry would have been more forgiving if lawyers stop at using the technical and

substantive manoeuvres of the law and court process to win undeserved victory for their clients. The citizenry is deeply pained that lawyers, our dear learned luminaries, who should know better, have contributed or acquiesced to taking our country from grace and placed it dangerously at the cliff of calamity by the crop and calibre of politicians we have aided and abetted their victories through the tribunal.

43. Why have some lawyers, and sometimes senior lawyers, become clandestine lobbyist for undeserved electoral victories in the tribunal. By extension, why are some judicial officers yielding to the pressure to pervert justice and enthrone mediocrity at all tiers of government. This reversible trend has given birth to where we are today as a nation, an insecure country for all of us, including our children yet unborn, a country where rule of law and enjoyment of human rights is evasive, a country drawing dangerously close to the pinnacle of a slippery to the abyss.

44. To reclaim our lost grounds as a country, can lawyers retreat and apply their unique skill set and training to positively sway politicians within their sphere of influence to do the needful and not use it to impress upon judges to do the un-needful? Since lawyers are the star actors of one arm of government, can we show good example and initiate the much desired change from that powerful arm of government under our exclusive control.

45. Despite the national pressure exercitable on politicians by lawyers, there are numerous other international law mechanisms at their disposal to make the desired change in our polity. Under customary international law, the defense of territorial sovereignty is no longer tenable where

there is gross violation of human rights within its territory by the government itself or other non-state actors. This legal window that has acquired the status of customary international law facilitates the Bar to rise to the occasion and activate the Responsibility to Protect (R2P) under international law. The trust of responsibility to protect, as approved by Member States of the United Nations is to the effect that each individual State has the responsibility to protect its population and where a government fails in its 'Responsibility to Protect', the residual powers would rest with the international community.

46. Pursuant to the Outcome Document on 'Responsibility to Protect' where a state's authority fails, is incapable, unwilling or is the perpetrator of violations, the international community can step in to take a "collective action" guided by the UN Security Council. The intended collective action is not limited to diplomatic, humanitarian, or other peaceful means, they could extend, where peaceful means is inadequate or fails, to coercive means such as sanctions, or military (armed) intervention. Whereas the international community can take action suo moto, national professional pressure groups like the Bar or civil society organizations can preemptively bring it to the attention of the international community through communication to the Secretary General of the United Nations.

47. On receipt of the communication, the Secretary General of the United Nations, if he or she deems it expedient may direct the communication to the President of the General Assembly or President of the Security Council for the consideration of these organs of the United Nations. The communication from the Bar on the state of the nation can also be addressed to the United Nations High Commissioner for Human

Rights who may, if he or she deems it pertinent, place the matter on the agenda of the Human Rights Council. Last but not the least, the Bar can address these communication to bilateral entities that share historical and strong ties with Nigeria.

48. The crucial question for lawyers is what should be the threshold of insecurity in Nigeria before the solidarity of the Bar can be condensed into detribalized national and international actions? How many more lives do we need to loose in this country before the level of insecurity in Nigeria is placed on the agenda of the United Nations Security Council or the Human Rights Council? What more should be the wakeup call for the Bar and others to do the needful through the instrumentality of both the national and international channels? What is the threshold of mortal statistics that should be achieved and sufficient to precipitate the Bar to action?

49. Without appearing to be propagating anarchy, I crave your indulgence to state that in an atmosphere of pervading insecurity where the state is obviously unable or unwilling to protect its citizens, the only instinctive action for the populace to take is self-protection, until the international community rises to the occasion or until the national government assumes its responsibilities. Bearing in mind that the resort to 'self-help' is the antithesis of rule of law and neither authorized by national and international law and practice; what can the Bar do to help shape the discus of 'self-help' in Nigeria within the parameters of the law.

50. Why can't the Bar elaborate and analyze the applicability of the 'doctrine of human security' which enables the citizenry to engage in

self-help to safeguard themselves from acute threats where the state is unwilling, deficient in capacity or unable to guarantee the security of its citizens and constituents. Recognizing that many constitutions and international law instruments recognize self-help in its narrow sense called "self defence" in appropriate circumstances, why can't the Bar embark on public interest advocacy and litigation to stretch the elasticity of the jurisprudence of self-defense to include 'self-help' in our situation of acute insecurity.

As I conclude,

51. I most respectfully postulate that human rights and rule of law are sustainable enablers to counter insecurity in Nigeria. Therefore, our current state of insecurity cannot be addressed without resort to the protection of human rights and rule of law. I will end with the hypothesis that the Bar has an onerous responsibility to contribute to addressing contemporary insecurity in Nigeria, the erosion of rule of law and gross violation of human rights in our country. Consequently, I call on the Bar to pronounce itself on the numerous matters of national interest presently on the national agenda and those that are on the waiting list and will soon make it to the already overburdened agenda.

52. Finally, I crave your indulgence to permit me to put two votes to the plenary of the Bar here present. The first vote is on Nigeria and the second is on the Bar. Those who hold the view that Nigeria is on the right path on the issue of insecurity, rule of and human rights should say **Yea!** Those against should say **Nay!** Those who hold the opinion that the Bar is on the right path on its response to the issues of

insecurity, rule of and human rights should say **Yea!** Those against should say **Nay!**

53. Thank you for your attention and invitation to share my thoughts.

God Bless Nigeria