

# The Department of State Service and the Abuse of Investigative Powers: Taming the Behemoth in the Interest of the Rule of Law

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## Abstract

This paper critically examines the legal frameworks regulating the Department of State Services (DSS) also known as State Security Service (SSS) in Nigeria, highlighting concerns regarding the abuse of investigative powers and the implications for human rights and the rule of law. It explores the National Security Agencies Act of 1986 and the Constitution of the Federal Republic of Nigeria 1999 (as amended 2023), which outline the DSS's mandate and the limits of its authority. The paper also analyses the regulatory supervision of the DSS by the National Assembly, the President, and the Judiciary, emphasizing the need for independent checks on the agency's broad powers. Through case studies, the paper illustrates how the DSS has exceeded its legal boundaries, violated fundamental human rights, and undermined the separation of powers. The cases highlight a pattern of executive overreach, raising concerns about accountability and transparency in the agency's operations. The paper argues for comprehensive reforms to ensure that the DSS operates within legal and constitutional limits while balancing national security with civil liberties. Proposed reforms include establishing independent oversight panels, strengthening judicial review, enhancing transparency, and clarifying the DSS's legal mandate. Ultimately, these measures aim to restore public trust, uphold the rule of law, and prevent the DSS from operating beyond its constitutional authority while ensuring Nigeria's security interests are protected responsibly. To achieve the above, this paper adopts the doctrinal research methodology by analyzing and interpreting legal doctrines, principles of law, and rules found in primary legal sources like statutes, case laws, and regulations.

## Keywords

Accountability, Department of State Services (DSS), Human Rights, National

## 1. Introduction

The Department of State Services (DSS), also known as the State Security Service (SSS), is Nigeria's premier domestic intelligence agency responsible for intelligence gathering within the country, and safeguarding national security. The DSS was established to protect the country from internal threats, and it plays a crucial role in preventing and detecting crimes such as terrorism, espionage, and subversion. Additionally, the agency is tasked with protecting important political figures, preserving non-military classified matters related to internal security, and investigating security threats. Operating under the Presidency, the DSS reports directly to the President<sup>1</sup>, working to ensure the security of citizens and address domestic security concerns.

The investigative powers vested in the DSS are a crucial tool for maintaining national security, enabling the prevention, detection, and combating of crimes that threaten the stability and well-being of the nation. Effective investigation and intelligence gathering can help to disrupt terrorist plots, uncover corruption, and bring perpetrators to justice. However, these powers can also be vulnerable to abuse, especially if left unchecked. The risk of abuse is heightened in contexts where institutions are weak, accountability mechanisms are inadequate, and the rule of law is not strictly adhered to. In such situations, investigative powers can be exploited to target political opponents, frustrate judicial officers, suppress dissent, or perpetuate human rights violations, and this ultimately undermines the very security and stability they are intended to protect. The inevitable question is who watches the watchmen?<sup>2</sup> Represented in Latin as (*Quis custodiet ipsos custodes?*). It was Lord Acton, the British historian, who warned as early as 1887 that absolute power corrupts absolutely and that concentrated, unchecked authority inevitably erodes moral integrity<sup>3</sup>.

The DSS's alleged abuse of investigative powers has become a pressing concern in Nigeria, with far-reaching implications for human rights and the rule of law. Reports of arbitrary arrests, detention without trial (Suleiman, 2023), and harassment of political opponents, activists, and journalists (Chioke, 2024) have raised alarm bells about the agency's disregard for due process and constitutional guarantees of fundamental human rights contained in chapter 4 of the Constitution and the African Charter of Human and Peoples Rights<sup>4</sup>. The perceived impunity and lack of accountability within the DSS have led to a crisis of trust, not only in

<sup>1</sup>National Security Agencies Act, 1986, section 3(2)(a).

<sup>2</sup>Famous phrase from the Roman poet Juvenal.

[https://en.wikipedia.org/wiki/Quis\\_custodiet\\_ipsos\\_custodes%3F](https://en.wikipedia.org/wiki/Quis_custodiet_ipsos_custodes%3F), accessed 29 January 2026.

<sup>3</sup>Lord Acton quote archive on power and authority;

<https://www.acton.org/research/lord-acton-quote-archive> accessed 29 January 2026.

<sup>4</sup><https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights/> accessed 29 January 2026.

the agency but also in the Nigerian government as a whole. This growing distrust has severe consequences, threatening the stability of Nigeria's democracy and underscoring the urgent need for reforms that will control the DSS's abuse of power and restore the rule of law.

This paper contends that establishing effective mechanisms and ensuring transparency and accountability within the DSS are crucial steps towards regulating their investigative powers. Furthermore, implementing constitutional reforms, and upholding the principles of the rule of law and separation of power would help to curb the DSS's abuse of investigative powers and protect human rights in Nigeria. By adopting these measures, Nigeria can strike a balance between national security and individual freedoms, and restore trust in the DSS as a responsible and accountable security agency. Consequently, this paper will attempt to conduct a surgical analysis of acts tantamount to the breach of human rights by the DSS; the paper will also beam a searchlight on the conformity of the actions of the DSS to extant laws relating to criminal justice administration in Nigeria and constitutional provisions on fundamental human rights.

## 2. Historical, Conceptual and Theoretical Context

### 2.1. Historical Background on the Department of State Service

The Department of State Service has a rich history that dates back to Nigeria's pre-colonial era. However, the modern DSS began taking shape in 1948. This modern version started with the establishment of the "E" Department, also known as the Special Branch, within the Office of the Inspector General of the Nigeria Police Force. A significant milestone in the evolution of the DSS was the 1976 abortive coup, which led to the assassination of General Murtala Mohammed, prompting General Olusegun Obasanjo to promulgate Decree No. 16, establishing the Nigerian Security Organization (NSO)<sup>5</sup>.

The NSO was later revised in 1986 by General Ibrahim Babangida's military administration, creating three separate agencies, including the DSS. The DSS is responsible for domestic intelligence, while the National Intelligence Agency (NIA) handles external intelligence and counterintelligence, whilst the Defence Intelligence Agency (DIA) is responsible for military-related intelligence. The DSS' headquarters was initially located at 15, Awolowo Road, Ikoyi, Lagos, but was later moved to Abuja during General Sani Abacha's military regime and is known as the "Yellow House"<sup>6</sup>.

Although the DSS operates under the control of the National Security Adviser (NSA), it reports directly to the President<sup>7</sup>. Today, the DSS remains a critical component of Nigeria's national security architecture, working assiduously to protect

<sup>5</sup>History and Evolution of SSS' *Department of State Service* [2022] <[https://www.dss.gov.ng/dss\\_about](https://www.dss.gov.ng/dss_about)> accessed 26 March 2025.

<sup>6</sup>*Ibid.*

<sup>7</sup>National Security Agencies Act, 1986, section 3(2)(a).

the country and its citizens from domestic threats. Ultimately, the Department of State Services has evolved significantly over the years, shaped by Nigeria's complex history, and continues to play a vital role in the country's national security framework.

## **2.2. Conceptual Clarification**

### **2.2.1. Investigative Powers**

Investigative powers refer to the legal authority granted to individuals, agencies, or organizations to collect, examine, and analyse information for uncovering facts, solving problems, or enforcing laws (Landis, 1926). This authority is typically exercised in criminal investigations, regulatory enforcement, or intelligence-gathering efforts. Investigative powers encompass actions such as surveillance, search and seizure, interrogation, summons, and accessing digital or financial records to uncover evidence. Law enforcement agencies within governmental organizations are often granted these powers to collect evidence, interview witnesses, and gather intelligence for solving crimes and preventing future ones.

### **2.2.2. Human Rights**

Human rights are inherent, universal, and inalienable rights possessed by all individuals simply by being a human. They are universal, applying to every person everywhere, and inherent, not granted by any government or state. Human rights are also inalienable, meaning they cannot be taken away or given up (Morsink, 2009).

These rights belong to individuals or groups simply for being human, protecting them from severe political, legal, and social abuses. Examples include the right to freedom of expression, the right to personal liberty, and the right to freedom of movement. Human rights impose duties on others to respect and protect these rights, which are essential for a rational and just society. In the case of *Niger Delta Power Holding Company Limited v Ulonna Michael (2025)*<sup>8</sup>, the Supreme Court held that Fundamental rights are intrinsic to the dignity and liberty of individuals, and are protected to ensure a just and equitable society. They are guaranteed under the Constitution to ensure protection from arbitrary actions by the State and other entities. Even though the courts are enjoined to protect human rights, it must be mentioned that where national security is threatened, the human rights of citizens become secondary. In *Ogwuche v Federal Republic of Nigeria (2021)*<sup>9</sup>, the Supreme Court held that where national security is threatened or there is a real likelihood of it being threatened, the courts must be circumspect in handling issues of human rights of persons standing trial in such cases.

### **2.2.3. Rule of Law**

The Rule of Law is a governance principle where all persons, institutions, and entities are accountable to publicly promulgated laws that are equally enforced and

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<sup>8</sup>(2025) 4 NWLR (Pt. 1983) 489 SC.

<sup>9</sup>(2021) 6 NWLR (Pt. 1773) 540.

independently adjudicated. This principle is underpinned by four core principles: accountability, which ensures that everyone, including state actors and governments, is answerable to the law; just laws, which are clear, publicized, and applied evenly; open government, which ensures that principles governing the law are accessible, fair, and efficient; and impartial justice, which is delivered timely by competent, ethical, and independent representatives (Stein, 2019).

The Rule of Law emphasizes fairness, rationality, predictability, consistency, equality, and impartiality. It ensures that all citizens are equal before the law, prevents arbitrary government, and safeguards against the arbitrary use of power. Ultimately, the Rule of Law asserts that everyone, including governments, is subject to the law and must obey it. Consequently, the need for the investigatory powers of all security agencies and indeed the DSS to be conducted within the ambit of the law was recently re-echoed by the Supreme Court in the case of *Ajuwon v. Governor of Oyo State & Ors* (2021)<sup>10</sup>. The court held on the actual meaning and import of the rule of law as follows:

“The Nigerian Constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the frame-work of recognized rules and principles which restrict discretionary power as opposed to the uncertain and crooked cord of discretion. Rule of law means that disputes as to the legality of acts of government are to be decided by Judges who are independent of the executive”.

Furthermore, in the case of *National Agency for Food and Drug Administration v Reagan Remedies* (2019)<sup>11</sup> the admonition of the Court of Appeal on the need for government agencies to act within the scope of the law that created them, and with human face, in dealing with fellow humans/citizens when they exercise their discretion in service is apt when it opined as follows:

“I also think this case should serve as useful caution or warning to government agencies, to act within the scope of the law that created them, and with human face, in dealing with fellow humans/citizens when they (institutions) exercise their discretion in service.

Sealing up the respondent for about 5 years, in the circumstances that appellant did, grounding respondent’s business and services, and hounding down the company, as shown in the unsuccessful prosecution of the respondent in the courts, in my view, smacks of high-handedness, prosecution, impunity and misuse of statutory powers. With a little show of sensitivity and due care, appellant would still have discharged its oversight function over the respondent without so much injury, and saved the situation and the huge damages it has now caused itself and the Nation by its misadventure.

Appellant is expected to learn from this decision and pronouncement of

<sup>10</sup>(2021) 16 NWLR (Pt.1803) 485.

<sup>11</sup>(2019) 17 NWLR (Pt. 1700) 57-58 CA.

court in its conduct and services, and be properly guided in the discharge of its duties.”

#### 2.2.4. Transparency

Transparency refers to the quality of being open and honest, allowing for easy detection, appraisal, or criticism (Strathern, 2000). In governance and civil responsibility, transparency builds trust and confidence by making policies, procedures, data, information, and decision-making open to the public. Transparency is essential for accountability and detection of corruption, peace, conflict evasion, and security cooperation, as well as confidence and security building. By making information more accessible and understandable, transparency lowers the information barrier, enabling citizens, organizations, and governments to scrutinize, monitor, and deter corrupt behaviour, ultimately promoting a more secure and peaceful environment.

#### 2.2.5. Internal Security

This refers to the measures a government takes in order to maintain peace, law and order within its territorial border by ensuring the protection of all persons, institutions and infrastructures within its borders from internal threats like terrorism, organized crime, ethnic cleansing, religious crimes, cyber-attacks, and insurgency<sup>12</sup>. This paper believes that it is the responsibility of every sovereign to ensure through just means the maintenance of peace and order by the deployment of security agencies to superintend over the security architecture of the State. Such agencies include, Police, paramilitary forces and in exceptional cases the military. Section 14 (2)(b) of the Constitution provides that the security and welfare of the people shall be the primary purpose of government<sup>13</sup>. Part of the key functions of the DSS whose action and *modus operandi* is the subject of this research is to collate, analyze, and disseminate intelligence on potential threats to Nigeria’s stability to other security agencies<sup>14</sup>.

### 2.3. Theoretical Context

The Abuse of Power Theory, Institutional Theory, Principal-Agent Theory, and Human Rights Theory collectively provide insight into the complexities of institutional behaviour, particularly in the context of the DSS.

According to the Abuse of Power Theory, institutions with unchecked power tend to misuse it for personal gain or political advantage, as seen in the DSS’s disregard for court orders and intimidation of opposition figures (Vermeule, 2014). Similarly, the Institutional Theory posits that institutions shape behaviour and decisions based on deeply embedded norms, such as secrecy, political loyalty,

<sup>12</sup><https://policycommons.net/topics/internal-security/> accessed 5<sup>th</sup> March 2026; <https://askfilo.com/user-question-answers-smart-solutions/what-is-mean-by-internal-security-3434393839393233> accessed 5<sup>th</sup> March 2026.

<sup>13</sup>1999 Constitution of the Federal Republic of Nigeria (as amended).

<sup>14</sup><https://www.dss.gov.ng/about> accessed 5<sup>th</sup> March 2026.

and disregard for judicial independence, which can lead to resistance to change (Munir, 2015).

Furthermore, the Principal-Agent Theory explains that when authority is delegated from a principal (such as the government or president) to an agent (like the DSS), the agent may prioritize its own interests or act based on incomplete information, leading to decisions that may not align with the principal's intentions or the public's best interests (Clucas, 2001). Ultimately, the Human Rights Theory provides a moral and legal foundation for holding institutions like the DSS accountable for human rights violations, emphasizing the importance of respecting, protecting, and fulfilling inherent human rights (Shestack, 2017).

### 3. Analysis of Legal Frameworks Regulating the Department of State Service

#### 3.1. Examination of Existing Laws Governing the Department of State Service

The DSS in Nigeria operates under various laws. Here are some key ones:

##### **National Securities Agencies Act of 1986**

The National Securities Agencies Act which came into effect on 5<sup>th</sup>, June 1986 was created to disband the Nigerian Security Organisation and in its Section 1, it created three security agencies such as the Defence Intelligence Agency, the National Intelligence Agency, and the State Security Service. The Act sets out the functions of these agencies in Section 2 and particularly, the functions of the State Security Service are set out in Section 2(3):

- (a) The prevention and detection of crime of a military nature against the security of Nigeria;
- (b) The protection and preservation of all non-military classified matters concerning the internal security of Nigeria;
- (c) Such other responsibilities affecting internal security within Nigeria as the National Assembly or the President, as the case may be, may deem necessary.

Section 3(2)(a) of the Act is to the effect that the State Security Service shall report directly to the President. This reinforces the president's power to confer other responsibilities on the DSS as may be deemed necessary. The ambiguous scope of powers granted to the State Security Service raises significant concerns about accountability and potential abuse of power. The Act allows the President to confer additional responsibilities on the Service, which may justify actions that encroach on the powers of other arms of the government such as the Legislature or Judiciary. This concern is highlighted by the case where the DSS invaded judicial officers' homes at night, allegedly on corruption grounds in October 2016<sup>15</sup>, and it was argued that they can lawfully carry out directives given by the President (Abiola, 2023). However, complaints against judicial officers should be directed

<sup>15</sup><https://www.thisdaylive.com/2016/10/08/dss-operatives-invade-judges-homes-in-abuja-rivers-gombe/> accessed 30 January 2026.

to the National Judicial Council (NJC), which is empowered to investigate such allegations under Paragraph 21 of Part One of the third schedule of the Constitution of the Federal Republic of Nigeria, 1999. Condemning the invasion of the residences of judicial officers and their arrest the National Judicial Council in its emergency meeting of 11<sup>th</sup> October 2016 unequivocally said amongst others that no Judicial Officer shall be invited by any Institution including the DSS, without complying with the Rule of Law and Due Process<sup>16</sup>. If the President authorizes the DSS to probe judicial officers, it may be inconsistent with the Constitution, which established the National Judicial Council and its functions<sup>17</sup>. While the agency has recorded successes in maintaining national security, its actions must be balanced against potential constitutional inconsistencies and respect for other arms of government. The NJC in condemning the invasion said that the action of the DSS is a denigration of the entire Judiciary, as an institution<sup>18</sup>.

### **Expansion of the Powers and Duties of the Department of State Services**

Meanwhile, pursuant to Section 6 of the National Security Agencies Act, General Abdulsalami Abubakar, the former Head of State, issued the State Security Service Instrument No. 1 of 1999 (Deji, 2019)<sup>19</sup>. This instrument expanded the agency's duties to include preventing, detecting, and investigating economic crimes that threaten national security, among other responsibilities. This marks a significant expansion of the agency's mandate, and effectively positions it as a key player in Nigeria's national security framework, with far-reaching implications for the country's economic and political stability. The inevitable question that will agitate the mind is what nature of offence can be classified as an economic crime that threatens national security? It seems that offences of economic sabotage, official corruption by public and political office holders, vandalization of oil pipelines, oil theft (bunkering), human trafficking, illegal arms dealing, smuggling, narcotic drug trafficking, and kidnapping for ransom could be an example of economic crime of national security dimension (Agu, 2026). The National Securities Agencies Act, which predates the 1999 Constitution, is effectively given constitutional backing by Section 315 (5)(c) of the Constitution as an existing law. This provision effectively validates the continued relevance and authority of the National Securities Agencies Act, ensuring its provisions remain enforceable alongside the Constitution.

Notably, Section 2(4) of the National Securities Agencies Act provides that "this section shall have effect notwithstanding the provisions of any other law to the contrary, or any matter therein mentioned." This clause may be perceived as an attempt to shield the State Security Service from judicial scrutiny, potentially en-

<sup>16</sup><https://placng.org/i/the-position-of-the-national-judicial-council-on-the-recent-invasion-of-the-residences-and-arrest-of-judicial-officers-by-the-department-of-state-services-dss/> accessed 30 January 2026.

<sup>17</sup>See section 160 1999 Constitution (as amended).

<sup>18</sup>*Ibid*, note 20.

<sup>19</sup>(Instrument No. SSS1, 1999).

abling them to operate without accountability despite conflicting laws. However, it remains subject to the supremacy of the Constitution, which takes precedence over any inconsistent legislation<sup>20</sup>.

The State Security Service and the DSS are indeed two sides of the same coin. Although the Act does not explicitly mention the DSS, the agency's website indicates that they are interchangeable terms<sup>21</sup>. This ambiguity has sparked debate, particularly since the Act does not explicitly mention the DSS. A legal practitioner has pointed out that this omission means that the DSS cannot be sued, as it is not recognized by law (Braithwaite, 2023). This raises significant concerns about the DSS's accountability. With its broad mandate and authority to investigate crimes of national security significance, the DSS wields considerable power. However, without explicit legal recognition, it is unclear how the agency can be held accountable for its actions. It is beyond dispute that a non-juristic entity cannot be sued or sue in Nigerian courts so held the Nigerian Supreme Court in *Socio-Political Research Development v Ministry of the Federal Capital Territory & Ors* (2018)<sup>22</sup>. This research contends that the SSS can be sued even though it is not formerly incorporated as a juristic person or corporate body. It appears that the style of suing the agency as in 'Director-General SSS' whilst also joining the Attorney-General of Federation seems to be an acceptable practice<sup>23</sup> since his functions of the Director-General of the agency are as provided in section 2(3) (a), (b), and (c) of the NSA Act.

#### **The Constitution of the Federal Republic of Nigeria, 1999 (as amended 2023)**

The Nigerian Constitution is the supreme law of the land, and its provisions have binding force on all authorities and persons throughout the Federal Republic of Nigeria. Specifically, Section 1(3) states that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall be void to the extent of the inconsistency. In *Ude Jones Udeogu v. Federal Government of Nigeria & 2 Ors* (2022)<sup>24</sup> in nullifying section 296(7) of the Administration of Criminal Justice Act, 2015, the Supreme Court emphasized that any law, including the Administration of Criminal Justice Act (ACJA) 2015, that contradicts the 1999 Constitution is null and void to the extent of its inconsistency.

Chapter IV of the Nigerian Constitution guarantees fundamental human rights, including:

- a) Right to Life (Section 33);

<sup>20</sup>Constitution of the Federal Republic of Nigeria, (Fifth Alteration) Act, 2023, s.1.

<sup>21</sup>Department of State Service, 'History and Evolution of SSS' [2022]

<[https://www.dss.gov.ng/dss\\_about](https://www.dss.gov.ng/dss_about)> accessed 26 March 2025.

<sup>22</sup>(2018) LPELR-45708 (SC).

<sup>23</sup>Suit No: NICN/LKJ/06/2017 Between Peter Olawole Olur v The Director-General Department of State Security Service; Appeal No: CA/L/770/2018 Between Mr Imonikhe Murtala v Director-General SSS & 4 Ors.

<sup>24</sup>(2022) 3 NWLR [Part 1816] SC 41.

- b) Right to Personal Liberty from arbitrary detention (Section 35);
- c) Right to Fair Hearing (Section 36);
- d) Right to Dignity of Human Person (Section 34);
- e) Right to Freedom of Expression (Section 39);
- f) Right to Privacy (Section 37);
- g) Right to Freedom of Movement (Section 41).

The Constitution's provisions underscore the importance of protecting human rights and upholding the rule of law, which is particularly relevant when considering the powers and limitations of national security agencies like the DSS, whose enabling law is preserved by Section 315(5)(c) of the Constitution. These constitutional provisions are further fortified by the provisions of Article 1-13, in Part 1, Chapter 1 of the ACHPR which Nigeria is a signatory having ratified same on 22<sup>nd</sup> June 1983<sup>25</sup>.

### 3.2. The Regulatory Authorities Which Oversee the DSS

1) The National Assembly: The National Assembly plays a crucial role in regulating the activities of the DSS through the enactment of laws. The Nigerian Constitution and the National Security Agencies Act are two key laws that govern the operations of the DSS. The National Assembly has the power to amend these laws and enact new ones to clearly define the extent of the powers of the DSS. For instance, the National Assembly can pass a law that outlines the specific circumstances under which the DSS can conduct searches, arrests, and detain some persons assuming without conceding that the copious provisions of the Administration of Criminal Justice Act<sup>26</sup>, on arrest and searches are inadequate or inferior to the status of the DSS.

2) The President: The President of the Federal Republic of Nigeria also exercises major significant control over the DSS. Pursuant to Section 2(3) of the National Security Agencies Act, the President has the power to confer on the DSS other responsibilities as may be deemed necessary. Furthermore, the DSS reports directly to the President, which underscores the President's oversight role. This direct reporting line enables the President to exercise control over the DSS's activities and ensure that they align with national security objectives.

3) The Judiciary: The judiciary plays a vital role in regulating the activities of the DSS through case law. Judicial decisions have the effect of interpreting the laws governing the DSS, thereby limiting or expanding their powers. For instance, in *Director of SSS & Anor v. Agbakoba* (1999)<sup>27</sup>, the Supreme Court held that the State Security Service (SSS) had no power to impound or withdraw a citizen's passport as such action violates the constitutional right to freedom

<sup>25</sup>African Charter of Human and Peoples Rights, 1981; [https://www.oas.org/en/sla/dil/docs/African\\_Charter\\_Human\\_Peoples\\_Rights.pdf](https://www.oas.org/en/sla/dil/docs/African_Charter_Human_Peoples_Rights.pdf) accessed 31 January 2026.

<sup>26</sup>Administration of Criminal Justice Act, 2015, being the applicable criminal procedural law regulating criminal proceedings in all Federal Courts in Nigeria and the Federal Capital Territory, Abuja.

<sup>27</sup>*Director of SSS & Anor v. Agbakoba* is [1999] 12 NWLR (Pt. 680) 1.

of movement and the right to travel outside Nigeria. This landmark decision demonstrates the judiciary's ability to curb the excesses of the DSS and ensure that their actions comply with the Constitution. Through judicial review, the courts can hold the DSS accountable for any violations of human rights or breaches of the law.

#### 4. The DSS and the Abuse of Investigative Powers: Case Studies and Consequences

The DSS has been involved in several controversies regarding its investigative powers, including the invasion of judicial officers' residences at midnight in 2016 (Nwadioke, 2016). The DSS justified this action as being "in line with its core mandate" and based on allegations of corruption and professional misconduct against the judicial office holders. However, experts argue that judicial corruption falls outside the DSS's core mandate, which is guaranteeing internal national security. As the former President of the Nigerian Bar Association, Mr. Abubakar Mahmoud (SAN) has observed,

"The DSS must be restricted to its constitutional and statutory duties. Its core mandate is guaranteeing internal national security. It is not its duty to conduct police investigations or arraign and prosecute cases of corruption. It is not its responsibility to conduct sting operations on judges for corruption or professional misconduct in the middle of the night." (Nwadioke, 2016).

Moreover, the Nigerian Judicial Council (NJC) is statutorily empowered to handle allegations of judicial misconduct pursuant to the Constitution, and only after a guilty verdict can the appropriate agency proceed with criminal charges against the judicial officers as held by the Nigerian Supreme Court in the case of *Federal Republic of Nigeria v Nganjiwa*<sup>28</sup>. In other words, there are clear disciplinary procedures set out by the Constitution to deal with judicial officers who abuse their office. It needs no mention that the powers of DSS cannot override the Constitution.

In *Saraki v Federal Republic of Nigeria*<sup>29</sup> in upholding the no-case-submission filed by the appellant, the Supreme Court held that the investigation of the appellant for allegedly breaching the Code of Conduct was conducted by persons (DSS and EFCC) not recognized by the law. In the words of the court "...contrary to the constitutional provisions, other security agencies hijacked the functions of the Bureau. In the circumstance, the respondent did not comply with paragraphs 11(2) and 12 of Part I of the Fifth Schedule to the 1999 Constitution. Accordingly, a *prima facie* case cannot be said to have been made out against the appellant." This is instructive, as the intrusion of these agencies in spheres outside their purview of operation helped in spoiling the case. This ultimately destroys the reputation of the agency and renders it an interloper.

<sup>28</sup>Federal Republic of Nigeria v Nganjiwa (2022) JELR 111506 (SC).

<sup>29</sup>(2018) 16 NWLR (Pt. 1646) 405.

As the previous case highlighted the dangers of unchecked powers, the detention of high-profile individuals by the DSS in 2023, including former Governor of the Central Bank of Nigeria, Godwin Emefiele and former Chairman of the Economic and Financial Crimes Commission, Abdulrasheed Bawa, generated debates about the agency's disregard for due process and the rule of law (Suleiman, 2023). These detentions without clear charges or sufficient reasons not only infringed on their rights to personal liberty and freedom of movement but also undermined the country's democratic principles. Many Nigerians perceived these detentions as arbitrary and politically motivated, leading to worries about the DSS's involvement in political battles. The DSS cited vague reasons for their detention, stating that it was for "investigative reasons" and "some investigative activities concerning him" in the respective cases (Suleiman, 2023). This lack of clarity raised concerns about the agency's commitment to upholding the law and protecting individual rights.

This incident is not an isolated one. In July and August 2018, the DSS was involved in another controversy when it prevented Senate President Dr. Bukola Saraki from leaving his house and later locked out members of the National Assembly from the National Assembly (Braithwaite, 2023). These actions demonstrate a concerning pattern of behaviour relating to lawlessness by the DSS, highlighting the need for increased transparency, accountability, and respect for the rule of law.

Furthermore, the DSS's disobedience to court orders in Mazi Nnamdi Kanu's case also raises questions about the rule of law and human rights in Nigeria. Kanu, the leader of the Indigenous People of Biafra (IPOB), has been in DSS custody since 2021 until late 2025 after his conviction and sentence by the Federal High Court of Nigeria, and despite court orders, the DSS has repeatedly denied his lawyers and relatives visitation rights most times. This refusal to comply with court orders frustrated efforts by Kanu's legal team to have an audience with him, as ordered by the court. The team, then, has accused the DSS of frustrating efforts to give Kanu a fair hearing, which raises concerns about the violation of human rights in Nigeria (Oko, 2024).

The DSS's blatant disregard for a court order in 2023 is another disturbing incident that highlights the agency's disrespect for the judiciary and the rule of law. By forcibly returning Godwin Emefiele to their custody, despite a court order to remand him at Ikoyi Correctional Facility, the DSS demonstrated a staggering lack of regard for the judiciary. More so, the presence of armed DSS operatives in the court premises posed a significant threat to the safety of judges, lawyers, staff, and members of the public. The incident went beyond contempt of the court and was particularly unsettling, as it demonstrated a willingness to use force to disregard the law (Oko, 2024). This disregard for the judiciary is symptomatic of a broader issue in Nigeria, where the doctrine of Separation of Powers is not respected. The executive arm of government seems to hold sway over the other arms, with the judiciary treated as inferior. This imbalance undermines the rule of law and dem-

ocratic principles.

On the need for DSS to comply with the provisions of the constitution and other extant laws in carrying out their duties, the Court of Appeal pronounced in the case of *The State Security Service & Or. v. The Incorporated Trustees of the Peace Corps of Nigeria* (2016)<sup>30</sup> as follows:

“The 1st appellant and its leadership ... are established and regulated by law and must act within the confines of the law in the exercise of their discretion; they cannot be arbitrary, excessive or overzealous in their service, to undermine the constitutional and fundamental rights of members of the public they are enjoined to protect, defend and serve.”

Again, in *Inspector General of Police v Ikpila* (2016)<sup>31</sup> the court of appeal held on the matter security agencies to consider the public interest in the discharge of their duties that:

“The police and all other security agencies of government at whatever level in Nigeria charged with the responsibility of keeping law and order at all times in the discharge of their duty must bear in mind and take into consideration the two-sided interest of the public, whom they serve namely, the protection afforded by law to the fundamental rights of the citizen particularly the rights to life, liberty and dignity of the human person on the one hand and the public policy requirement to ensure the un-interfered with performance of the primary duty of the police in the protection of life and property, prevention and detection of crime for the protections of the generality of the citizenry of Nigeria.”

#### 4.1. The Rule of Law and the Need for Accountability

##### The Rule of Law

The rule of law is a fundamental principle that emphasizes that no individual or institution, including government agencies, is above the law. It requires that laws are applied fairly, consistently, and without bias. In democratic societies, upholding the rule of law is necessary because it ensures that public authorities like the DSS act within legal limits, respecting citizens' rights and freedoms. The researchers however commends the action of the DSS in handling the matter of Professor Patrick Utomi, who had announced plans to form what he described as a shadow government under the banner of the Big Tent Coalition Shadow Government<sup>32</sup>. The agency rather than use brute force to intimidate, harass and arrest him resolved to approach the Federal High Court in Suit No: FHC/ABJ/CS/937/202 to constitutionality of such action arguing that such action was intended to create chaos and destabilize the country<sup>33</sup>. The Federal High Court in a considered

<sup>30</sup>CA/OW/171/2016, delivered on 12/4/19 unreported.

<sup>31</sup>(2016) 9 NWLR (Pt. 1517) 236.

<sup>32</sup><https://www.vanguardngr.com/2025/05/pat-utomi-forms-shadow-govt/> 3<sup>rd</sup> March 2026.

<sup>33</sup><https://thenationonlineng.net/dss-a-gradual-departure-from-old-self/> accessed 3<sup>rd</sup> March 2026.

judgment declared the proposed shadow government initiate unconstitutional<sup>34</sup>.

#### The Need for Accountability

Effective security and the protection of human rights require that the DSS is held accountable for its actions. This accountability is crucial to prevent abuses of power and ensure that the agency operates within the bounds of the law. The following highlights the importance of accountability in the DSS:

- **Preventing Abuse of Power:** Transparency in DSS operations helps ensure that its powers are not used to suppress dissent, infringe on human rights, or intimidate political opponents.
- **Safeguarding Citizens' Rights:** Accountability mechanisms help to protect citizens from unlawful surveillance, arbitrary arrests, and detention.
- **Public Trust and Legitimacy:** When the DSS is held accountable, it fosters public confidence in the agency's commitment to national security while respecting democratic norms.

Therefore, achieving a balance between effective security operations and accountability is vital for maintaining the rule of law, public trust, and the protection of fundamental rights.

## **4.2. Balancing National Security with Human Rights and Civil Liberties**

Balancing national security with human rights and civil liberties is essential for maintaining a democratic society. The DSS, tasked with protecting the nation from internal threats, must operate within legal boundaries to prevent the abuse of power. While it is necessary for the DSS to gather information to prevent terrorism and other threats, this must not come at the expense of fundamental rights of citizens or the rule of law in society. Unchecked surveillance or arbitrary detentions can lead to violations of fundamental rights and foster public distrust.

To maintain this balance, there must be clear legal frameworks that guide the agency's actions and ensure that any restrictions on civil liberties are justified, necessary, and proportionate. Additionally, mechanisms for judicial review and legislative scrutiny of the laws are crucial to prevent abuses of power and ensure accountability. Transparency and accountability measures, such as regular reporting and public disclosure of DSS activities where it will not endanger classified information, can also help build trust and credibility. Furthermore, the DSS should prioritize de-escalation techniques and proportional responses to threats, rather than relying on excessive force or coercion. It is a truism that threat to national security can override the observance of certain rights<sup>35</sup>, but when the DSS operates transparently and within the law, it strengthens public trust while effectively safeguarding national security.

This paper argues that abuse of powers by security agencies is not peculiar to

<sup>34</sup><https://www.premiumtimesng.com/news/top-news/824539-court-declares-pat-utomis-proposed-shadow-government-initiative-unconstitutional.html> 3<sup>rd</sup> March 2026.

<sup>35</sup>Alhaji Mujahid Dokubo-Asari v. Federal Republic of Nigeria (2007) 12 NWLR (Pt. 1048) 320.

Nigeria as same occurs frequently in most countries outside Nigeria and such must be addressed for the benefit of humanity. According to a 42 page report by the Human Rights Watch, it contends that Tunisian Government has turned arbitrary detention into a cornerstone of its repressive policy, aimed at depriving people of their civil and political rights to crush dissent<sup>36</sup>. Again, a recent report by Amnesty International, the Rwandan-backed March 23 Movement (M23) has killed, tortured and forcibly disappeared detainees, held some as hostages, and subjected them to inhumane conditions at detention sites in Goma and Bukavu in eastern Democratic Republic of Congo (DRC)<sup>37</sup>. A South African 2023 Human Rights Report indicated that arbitrary arrest, arbitrary detention of suspects, lack of prosecution of officers involved in these violations by the government, Police use of torture and physical abuse on detainees which at times results in death were replete in that country<sup>38</sup>.

## 5. Taming the Behemoth: Proposals for Reform and Accountability

The DSS's abuse of investigative powers is a symptom of a broader systemic issue, one that requires comprehensive reforms to ensure accountability, transparency, and respect for human rights. To address these concerns, this paper proposes the following reforms:

1) Establish Independent Review Panels: Comprised of impartial experts, including human rights lawyers, judges, and civil society representatives, these panels will review investigations made by the DSS, ensuring they adhere to legal standards and respect human rights. These panels will also provide an additional layer of supervision, helping to identify and prevent abuses of power.

2) Strengthen Judicial Oversight: Empower courts to conduct regular reviews of DSS activities, ensuring they operate within the bounds of the law and respect human rights. While judicial review is typically initiated by an affected individual or organization, courts can also conduct regular reviews through:

- Initiating inquiries on their motion, if empowered by law;
- Periodic reporting requirements, where the DSS submits regular reports to the court;
- Independent monitoring bodies, established to monitor DSS activities and report concerns to the court or relevant authorities.

These mechanisms enable courts to proactively ensure the DSS operates lawfully.

3) Enhance Transparency and Accountability: Implement strong reporting mechanisms, enabling the public to track the actions of the DSS and hold them

<sup>36</sup><https://www.hrw.org/news/2025/04/16/tunisia-arbitrary-detention-crushes-dissent> accessed 26 February 2026.

<sup>37</sup><https://www.amnesty.org/en/latest/news/2025/05/drc-m23-kill-torture-and-hold-civilians-hostage-at-detention-sites-new-investigation/> accessed 26 February 2026.

<sup>38</sup>[https://www.state.gov/wp-content/uploads/2024/02/528267\\_SOUTH-AFRICA-2023-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2024/02/528267_SOUTH-AFRICA-2023-HUMAN-RIGHTS-REPORT.pdf) accessed 3rd March 2026.

accountable. This can include regular publications of activities done by the DSS, including the number of arrests, detentions, and investigations conducted. Additionally, the DSS should be required to provide detailed justifications for their actions, ensuring that they are transparent and accountable to the public.

4) Reform the DSS's Organizational Culture: Foster a culture of respect for human rights, transparency, and accountability within the DSS, through training programs and performance evaluations. This can include training on human rights law, investigative techniques, and ethical conduct. Performance evaluations should prioritize respect for human rights and adherence to legal standards, rather than solely focusing on the number of arrests or convictions secured.

5) Establish a Whistle-blower Protection Mechanism: Create a safe and confidential channel for DSS officials to report abuses of power, human rights violations, or other unethical conduct within the agency. This will help to identify and address systemic issues, promoting a culture of accountability and transparency within the DSS.

6) Strengthen Legislative Review: Enhance the National Assembly's authority to conduct regular supervision of the DSS, including public hearings, investigations, and reviews of DSS activities. This can be achieved by amending the National Security Agencies Act to mandate regular reporting and give the National Assembly the authority to summon DSS officials and enforce compliance. This will help to ensure that the DSS operates within the bounds of the law, respecting the constitutional rights of citizens.

7) Establish a Human Rights Desk: Create a dedicated unit within the DSS to monitor and report human rights violations, provide guidance on human rights laws, and develop policies that promote compliance and respect for human rights within the agency.

8) Legislative Clarification of the DSS's powers: To prevent the usurpation of powers, the legislature should make laws or amend existing ones to clearly define the scope of the DSS's powers. This can be achieved by specifying the DSS's mandate and outlining the agency's responsibilities, authority, and limitations to prevent overreach. Additionally, defining investigative boundaries and establishing accountability mechanisms will ensure the DSS operates within the bounds of the law. A clear definition of internal security is also necessary, as it will help the DSS understand its limits and responsibilities in providing internal security, ultimately promoting transparency, accountability, and respect for human rights.

9) Compliance with the provisions of section 29 (1) of the Administration of Criminal Justice Act, 2015 (ACJA): It has become a desideratum that to ensure accountability the Director-General of DSS must be made to comply with the provisions of section 29 (1) ACJA which makes it mandatory for the head of every agency authorized by law to make arrest to remit quarterly to the Attorney-General of the Federation a record of all arrests made with or without warrant as it relate to federal offences within Nigeria containing full particulars of arrested suspects. This will enable the Attorney-General of the Federation to forbid the con-

tinuous detention of a suspect without arraignment or in breach of an order of court for his release.

10) Establishment of an electronic and manual database of all records of arrests at the Federal and State level pursuant to section 29 (5) ACJA in the Federal Ministry of Justice: For purposes of accountability it is also mandatory that the AGF shall establish an electronic and manual database in the Federal Ministry of Justice containing all records of arrests at the Federal and State level to ensure that security agencies complies with relevant laws relating to detention time limit after arrest in order to prevent any potential abuse of citizens' rights emanating from such arrests and detention beyond acceptable time limits.

11) Oversight functions of the Magistrate to be immediately implemented: To ensure the release of suspects detained contrary to the constitutional provisions, DSS must be made to mandatorily comply to the provisions of section 33 (1) ACJA. This section mandates an official in charge of an agency authorized to make arrest to compulsorily on the last working day of every month, report to the nearest Magistrate the cases of all suspects arrested without warrant within their station whether such persons have been admitted to bail or not. These reports according to section 33 (3) ACJA, the Magistrate shall forward to the Criminal Justice Monitoring Committee whose duty it is to analyse the reports and advice the Attorney-General of the Federation as to the trends of arrests, bail and related matters affecting the agency including but not limited to fundamental rights. Relevant stakeholders, the office of the Attorney-General of the Federation at the Federal Ministry of Justice and the judiciary must be intentional to champion the course to hold the DSS and by extension other agencies accountable upon allegation of breach of fundamental rights.

The researchers believe that the Attorney-General of the Federation could be constrained in this regard by lack of political will since he is a member of the executive and appointed the President. On the other hand, due to lack of judicial independence, the courts may when confronted with relevant suits of abuse of citizen's right by the DSS shy away from timely justice. Finally, the extremely weak institutions may not be able to rise above the insurmountable vaulting ambition of the head of agency.

These proposals address the concerns highlighted in the case studies under 4.0, ensuring that the DSS operates within the bounds of the law, respects human rights, and maintains public trust. By implementing these reforms, Nigeria can move towards a more balanced approach to national security, one that prioritizes both public safety and human rights.

## 6. Conclusion

The DSS is a critical institution in Nigeria's national security architecture, tasked with protecting internal security and preventing threats to the State. However, an examination of the legal frameworks governing the DSS, along with case studies of its operations, reveals a troubling pattern of abuse of investigative powers, lack

of transparency, and disregard for constitutional provisions. The broad and ambiguous powers conferred on the DSS by the National Security Agencies Act of 2004, particularly the ability of the President to assign additional responsibilities, raise concerns about executive overreach and the agency's ability to act beyond its legal mandate.

Case studies, such as the midnight invasion of judges' residences in 2016, the detention of high-profile individuals in 2023, and the defiance of court orders, illustrate the dangers of unchecked power. These actions not only violate fundamental human rights guaranteed under Chapter IV of the Nigerian Constitution but also undermine judicial independence and democratic accountability. The DSS's conduct, particularly in politically sensitive cases, suggests a misuse of its powers to serve political interests rather than the public good. The balance between national security and human rights is essential for maintaining a just and democratic society. While the DSS has a legitimate role in addressing security threats, its operations must be conducted within the bounds of constitutional and statutory limitations. Unchecked power without effective oversight erodes public trust, weakens the rule of law, and threatens democratic governance.

To address these concerns, comprehensive institutional reforms are necessary. These should include independent supervisory panels, enhanced judicial and legislative scrutiny, greater transparency in DSS operations, and legal clarification of the agency's mandate. Strengthening accountability mechanisms—such as regular reporting, judicial reviews, and whistle-blower protections—will ensure the DSS operates lawfully while respecting fundamental rights and democratic principles. Most importantly, institutions must be strengthened and built to be powerful and stronger by laying down unbreakable operational protocols that cannot be circumvented by the individuals occupying leadership positions in the security agencies, thereby making the leaders less powerful and accountable to the people.

In the end, taming the DSS's broad powers is essential to safeguarding human rights and preserving the separation of powers in Nigeria. By instituting these reforms, Nigeria can strike a fair balance between effective national security and the protection of civil liberties, fostering a security environment where the rule of law prevails, and no institution is above constitutional accountability.

## Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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