

THE WHITE COLLAR

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Where is the Last Line of Defence for Nigerians?

On December 2nd 2015 a married couple, the husband an American-born citizen and his wife a young Pakistani woman, who had both lived in the US California town of San Bernardino for nearly 2 years, on an uneventful afternoon, suddenly began to shoot and kill members of the public. Together they shot and killed 14 people injuring 22 others. Eventually both were killed in a shoot out with American Law Enforcement authorities after a highway chase. The couple had amassed a personal arsenal of assault rifles, pistols, pipe bombs and explosives

The American-born husband shooter used an Apple iPhone, which authorities found, but given the phone's high level encryption technology they were not able to access the contents of the phone and so they approached the phone manufacturer Apple for assistance with retrieving content from the iPhone. Apple did oblige the authorities but lines were drawn between the Government and the US' largest company when the Federal Bureau of Investigation (FBI) sought to force Apple to create a "backdoor" access to the phone by hacking into their own product in order to bypass the phone's four digit code with a court order. Such technology does not exist today but Apple could in theory create it, meaning that all of Apple's 700 million plus iPhones in existence could be forcefully unlocked using the same technology.

Apple's Argument

In what has become the iconic "battle" between the right to Privacy and National Security for some time now, Apple opposed an ex parte order of a District Court directing the US Company to create the "backdoor" software that would allow the FBI access to the information on the recovered phone. Apple explained that the act of hacking into this product was opening the door to the infringement of all their customers' rights to privacy guaranteed by the use of their product and the United States Constitution. Apple's legal team, which include the Bush Administration's Solicitor General Theodore Olson, argued that creating this "master key" to the iPhone would create a dangerous precedent for future cases, especially in light of the fact that the US Congress, the equivalent of our National Assembly, has consistently refrained from enacting a law that does precisely what the Court order was seeking to do. They argue that if a law to compel a US Company create backdoor access to its own product is to be made, it should be made by the Legislature not by "Judicial decree".

Potentially if this one phone was hacked, what is to stop the Government in other cases from compelling any technology company to give it access to financial records, banking information, health information,



real-time gps location data, calendars, personal and political beliefs, family photographs, information about customers' children and so on? Or taking it one step further, what is to stop the Government from taking advantage of other technologies available in the iPhone- remotely turning on the phones microphone to listen in on citizens or their cameras? There is also a further argument that such a court order infringes Apple's 1st Amendment right to Free Speech-security encryption having been found to be covered under the 1st Amendment in **BERNSTEIN v US DEPARTMENT OF JUSTICE 922 F. Supp. 1426** where a University Student designed a software encryption algorithm called "Snuffle" that was capable of being protected under the American Constitution.

A Familiar Argument

Apart from the cognizant value of this legal battle, anyone would be forgiven for asking "Why exactly is this relevant to us now in Nigeria?" and we should explore exactly that here. On the one hand we see the very familiar arguments that the US Government raises in support of the request to force Apple to create the backdoor. The State argues that the Company is the only party departing from longstanding norms, it asserts that mandating compliance with the court order is no different from honouring any other court warrant and that the State regularly requests assistance from entities that have specialty in areas that the Government is trying to gain access to.

Now while this may in fact be true, we ought to ask ourselves, especially bringing the discussion home, what restrictions have been put in place to prevent the abuse of these kind of powers? If the use of delegated power becomes arbitrary for absence of effective controls, does it still remain legitimate? Or what is to stop it from becoming a tool of oppression and self-perpetration? The reason these questions become even

more pertinent to us as a nation is our history of leaders and governments that are quick to use powers delegated to them for exactly that. We see it everyday in Nigeria; from the security guard to the politician, it has become an endemic problem not just in Nigeria but as an element of the human condition- a propensity to use our influence and authority for our own benefit instead of that of the greater good.

Put another way- who do those we delegate our powers to, account for the use of those powers? Who monitors whether the Government's use of powers delegated for specific purposes, take the discretionary Police powers of granting bail, or a Judge's discretion to sentence? The answer may appear straightforward- the Magistrate, the appeal's process etc. but when we realise that these processes shut out the ordinary Nigerian and these powers are monitored by the same people that wield them we are more likely to look more closely at how they use them.

Who is Guarding Your Rights Jealously?

At a more fundamental level, the illustration of this national discourse in the US shows just how jealously the freedoms and liberties of the ordinary American are guarded. The difference between the US and Nigeria in this regard is not so much that citizens' rights are not breached in the US, even frequently, but rather that the ordinary American has access to an effective and practical means of restitution, the Police, the Court, your constituency representative; they all bear the burden of guarding those rights jealously, and if they do not it is quickly discovered and before they know it they are out. Take a moment to think about this next question before you answer- who guards your own constitutional rights jealously?

The kind of protection against abuse by the Government we are discussing is so far from our common experience in Nigeria that it is incredibly easy

to misunderstand its purpose. We are not referring to individuals of questionable character, or people with agendas against the Government, or "something to hide" (even though these people are also entitled to their constitutional rights). Rather, we are talking about the young man arrested and detained for three years without trial because he had the same model of Nokia phone that a complainant reports was stolen from him at night, or a young woman detained in a Police station because she is accused of insulting the local chairman. Who is responsible for protecting them from the abuse of constituted authority? And while we may be tempted often to think that our most pressing problems as a nation derive from how rich or poor we are, we ought to imagine how *wealthy* we would be if every Nigerian irrespective of economic, or socio-cultural background was guaranteed the protection of their rights.

The Ordinary Nigerian's Solace-Hoping and Praying

Where can an ordinary Nigerian citizen with no money, no influence and nothing to bargain with go for justice, for protection? He wouldn't be able to find his constituency representative, and even if he did the Representative would be doing a "favour" to speak with him since Representatives owe their loyalty to their Political Parties. The Reps job is to follow party lines everything else appears optional. The ordinary Nigerian cannot go to the Judiciary, the Courts are full, Judges the closest to understanding their obligation to the proverbial "Nigerian on the bus" are inundated with cases, others have become numb to the pain they see everyday, even in the Courts we often cannot find justice. The ordinary Nigerian cannot go to the Police, the men of the Police Force are weather beaten and themselves neglected. It is not hard to find sympathy for them in their service, but through their neglect they make for unpredictable saviours.

Small wonder then that we have the worlds' largest population of churches, mosques and all sorts of spiritualists. It begins to make sense when you wonder how exactly this nation continues to tick along. The Nigerian finds justice in their hope and faith. As Nigerians we have seen the impractical, the illogical, the absurd, some of us have even seen the impossible. That is why we are so impossibly optimistic, because we have lived through adversity and we still survive.

Nigerians Speak Out

Not every semblance of authority should immediately force us to lay down our God-given rights as Nigerians, to make us surrender the authority we have as citizens, as men and women who make this country work, as examples of proud Nigerians working for the good of our country, as its sweat and blood, as taxpayers, and as the electorate. The truth is if we do we will have no one to blame but ourselves when our rights disappear.