

APPRAISAL OF THE STATUTORY IMPEDIMENTS TO THE
PROTECTION AND REALISATION OF HUMAN RIGHTS IN NIGERIA

BY

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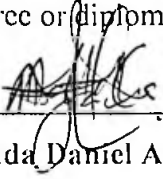
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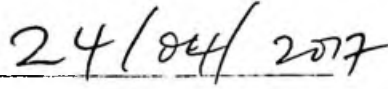
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DECLARATION PAGE

I hereby declare that this thesis titled: Appraisal of the Statutory Impediments to the Protection and Realisation of Human Rights in Nigeria is my original work carried out in the Faculty of Law, Nasarawa State University, Keffi, Nigeria under the supervision of Professor J. O. Adedoyin-Raji. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously submitted for another degree or diploma in this University or any other University.



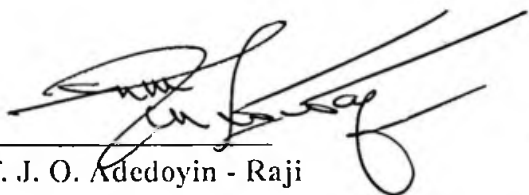
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APPROVAL PAGE

This thesis titled: Appraisal of the Statutory Impediments to the Protection and Realisation of Human Rights in Nigeria by Agada Daniel Attah meets the regulations governing the award of Master of Laws (LL.M) Degree of Nasarawa State University, Keffi, Nigeria and is approved for its contribution to knowledge and literary presentation.



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DEDICATION

This thesis is dedicated to God Almighty and my family especially my mother, Miss Esther Iye Musa, my sisters, brothers, uncles, aunties, nieces, nephews and in-laws as well as friends for their respective invaluable support and encouragement throughout the period of this study.

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African Charter on Human and Peoples' Rights, which was adopted in Nairobi, Kenya on 27 June, 1981 and entered into force on 21 October, 1986. Nigeria signed (1982), ratified (1983), and domesticated the African Charter as Cap 10, LFN, 1990 or Cap A9, LFN, 2004.

Constitution of the Federal Republic of Nigeria, 1999 (as amended)

Convention for the Elimination of all forms of Discrimination against Women, adopted 18 December, 1979 and came into force 3 September 1981

Fundamental Rights (Enforcement Procedure) Rules 2009.

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International Covenant on Economic, Social and Cultural Rights (1966), adopted on December 16, 1966 and in force from 3 January, 1976.

United Nations Convention against Torture, adopted 10 December, 1984 and came into force 26 June, 1987.

United Nations Convention on the Rights of the Child adopted 20 November, 1989 and came into force 2 September, 1990.

Universal Declaration of Human Rights, adopted 10 December 1948.

ABBREVIATIONS

CFRN – Constitution of the Federal Republic of Nigeria.

FREP Rules – Fundamental Rights (Enforcement Procedure) Rules

ICCPR – International Covenant on Civil and Political Rights.

ICESCR – International Covenant on Economic, Social and Cultural Rights.

LFN – Laws of the Federation.

NIALS – Nigerian Institute of Advanced Legal Studies.

NLR – Nigerian Law Reports.

NWLR – Nigerian Weekly Law Reports.

UDHR – United Nations Declaration of Human Rights.

UN – United Nations.

UNDP – United Nations Development Programme.

ABSTRACT

The protection and realisation of human rights have engaged the attention of the world community, and though Nigeria has subscribed to major international human rights instruments such as the Universal Declaration of Human Rights, 1948; the International Covenant on Civil and Political Rights, 1966 (ICCPR); The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR); and other regional human rights instruments, violations continue to occur with disturbing frequency and regularity in the nation. Indeed, today, as in the inglorious days of military rule, frequent cases of extra-judicial killings, unjustifiable torture of detainees by security agents, unbridled curtailment of freedom of the press, and objectionable discrimination against women, are still witnessed. Also, politically motivated arrests and detentions have continued unabated, and lengthy pre-trial detentions of detainees have continued with impunity. The pertinent question therefore is: what are the factors responsible for human rights violations in Nigeria despite the nation's subscription to, and adoption of, many human rights instruments? The study investigated these impediments, with emphasis on those that are statutory. The statutory impediments refer to the drawbacks, inhibitions and snags provided in our statute books and range from express statutory derogation to reservation clauses provided by law. The study adopted the doctrinal research method. In doing this, primary and secondary sources including statutes, law reports, provisions of the constitution, articles in learned Journals, books and internet materials were used in appraising these statutory impediments. The study attempted an examination of the concept of human rights, its categories and historical background in Nigeria. The study also examined the legal framework for the protection, enforcement and realization of human rights in Nigeria. The study further x-rayed the statutory impediments to the protection and realization of human rights in Nigeria, being the crux of this study. Some of these statutory impediments include the problem of primacy between international human rights norms and domestic legislation, reservation clauses in human rights instrument, constitutional derogations and locus standi. The study also examined other impediments to the protection and realization of human rights in Nigeria, to wit; leadership factors, people oriented factors and cultural factors. The study discovered, among other things, that inspite of increased awareness on human rights as well as the existence of human rights provisions in our statute books, cases of violations of human rights still abound. The study observed, among other things, that this is engendered in part by the derogation or reservation clauses contained in the statutes themselves. The study recommended, among others, the abridgement of the various derogations or reservation clauses in our statutes. This will, in no small measure, ensure the smooth protection, enforcement and realisation of human rights in Nigeria.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND TO THE STUDY

The foundation of genuine democracy is embedded in the rule of law, a democratic ideal presently being assimilated into the people's consciousness in Nigeria as the nascent democratic experiment gradually solidifies. There is increasing awareness by the citizenry of the existence of human rights.

The utility of these rights can only be attained through the processes set out by laws for their protection, realization and enforcement. The Nigerian lex corpus however provide some derogations from these rights which essentially constitute impediments, snags, clogs and drawbacks to the protection, realization and enforcement of human rights. These statutory derogations are the focus of this study.

Human rights have enjoyed tremendous attention and expansion at the global level¹. Human rights have indeed become a global subject, with global appeal. The fact that human rights have gained remarkable attention, prominence, and significance in our world of pluralism, diversity, and interdependence stems from their very nature². Human rights are rights which all human beings have by virtue of their humanity, such as right to life, dignity of human person, personal

¹ S. Abila and others, 'Human Rights Under the Nigerian Constitution: Issues and Problems' (2012) 2(12) *International Journal of Humanities and Social Sciences*, 1

² Universal Declaration of Human Rights, G.A.Res. 217A, pmbl., U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948) [hereinafter Universal Declaration of Human Rights]; U.N. Charter pmbl. The preambles of both the UDHR and the U.N. Charter recognize human rights as inherent in man. Paragraph 2 of the U.N. Charter, for instance, "reaffirm[s] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."

liberty, fair hearing and freedom of thought, conscience and religion. They provide a common standard of behavior among the international community.³

To demonstrate the important character of human rights, a learned author insightfully declared that: "the issue of human rights in the recent past, has penetrated the international dialogue, become an active ingredient in interstate relations and has burst the sacred bounds of national sovereignty."⁴ It is for the foregoing reason that virtually all nations of the world, including Nigeria, have subscribed to the major international human rights instruments, such as the Universal Declaration of Human Rights, 1948; the International Covenant on Civil and Political Rights, 1966 (ICCPR); The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR); and other regional human rights instruments.

However, it must be remembered—as perceptibly noted by an astute author—that "human rights are more than a collection of formal norms, they are dynamic political, social, economic, juridical, as well as moral, cultural and philosophical conditions which define the intrinsic value of man and his inherent dignity."⁵ The practical implication of this is that international human rights promotion, protection, and enforcement transcend mere formal subscription⁶ to their ideals or—more poignantly put—mere domestication. As Bhagwati⁷ has noted, the language of human rights carries great rhetorical force of uncertain practical significance. At the level of

³ Universal Declaration of Human Rights, *supra* note 2, at 8. See also Muhammad Haleem, 'The Domestic Application of International Human Rights Norms, *Developing Human Rights Jurisprudence: The Domestic Application Of International Human Rights Norms*' [1988] 91, 91-92.

⁴ T. W. Wilson, Jr., *A Bedrock Consensus of Human Rights*, in *Human Dignity: The Internationalization Of Human Rights* 47, 47 (Alice H. Henkin ed., 1979).

⁵ Moses Moskowitz, *International Concern With Human Rights* 3 (London Publishers, 1974).

⁶ 6. *Ibid.*

⁷ P. N. Bhagwati, *Inaugural Address*, in *Developing Human Rights Jurisprudence: The Domestic Application Of International Human Rights Norms* (1988). Bhagwati's address was given at the Judicial Colloquium in Bangalore, held February 24-26, 1988.

rhetoric, human rights have an image which is both morally compelling and attractively uncompromising. But what is necessary is that the highly general statements of human rights which ideally use the language of universality, inalienability and indefeasibility should be transformed into more particular formulations, if the rhetoric of human rights is to have major impact on the resolution of social and economic problems in a country. Although Nigeria is a signatory to many international human rights instruments⁸ and has laudable and inspiring constitutional provisions for their protection⁹ there are varying degrees of human rights violations in the nation, and governance is characterized by acute disregard for, and sadistic undermining of, these basic rights and fundamental freedoms¹⁰.

Indeed, today, as in the inglorious days of military rule, frequent cases of extra-judicial killings¹¹, unjustifiable torture of detainees by security agents, unbridled curtailment of freedom of the press¹², and objectionable discrimination against women¹³, are still witnessed. Also, politically motivated arrests and detentions have continued unabated, and lengthy pre-trial detentions of

⁸ Such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), and the African Charter on Human and Peoples' Rights (1981).

⁹ Two chapters of the 1999 Constitution (chapters 2 and 4) are exclusively dedicated to human rights. In addition, Nigeria has established ostensibly strong institutional infrastructure for human rights promotion and protection. Apart from the judicial organ, Nigeria has extrajudicial bodies for human rights promotion and protection. These include the National Human Rights Commission and the Public Complaints Commission.

¹⁰ For recent examples of human rights violations in Nigeria, see the 2009 Human Rights Report submitted by the U.S. Department of State to the U.S. Congress, available at <<http://www.state.gov/documents/organization/160138.pdf>> accessed 20 January, 2017. For more examples, see Adejuwon Soyinka, *On Death Row*, TELL Magazine, Apr. 20, 2009 at page 22.

¹¹ On December, 28, 2006, the then Inspector General of Police, Tafa Balogun, announced that police killed 1,694 suspected armed robbers during the year as reported in NTA Newslines on 31 December, 2006.

¹² As exemplified in the repeated raid of newspaper houses like the *Insider*, and confiscation of issues of the magazines and newspapers, in 2009, the office of *Leadership Newspaper* was sealed and its operatives arrested allegedly for publishing a false story about the health of President Umaru Yar'Adua as reported on AIT News, on 30 November, 2009 at 8.00 pm.

¹³ Examples of such objectionable practices include, widowhood rites and female genital mutilation as reported in Human Rights Watch (2012) World Report 2012, <<http://www.hrw.org/world-report/2012/country-chapters/nigeria?>> 2 accessed 6 March, 2017

detainees have continued with impunity. The pertinent question therefore is: what are the factors responsible for human rights violations in Nigeria despite the nation's subscription to, and adoption of, many human rights instruments? There are multifarious and multi-dimensional impediments to the full realization of human rights in Nigeria. The primary burden of this research is to investigate, interrogate, and articulate these impediments, with emphasis on those that are statutory. The statutory impediments refer to the impediments provided in our statute books and range from express statutory provisions to derogation clauses and reservations provided by law.

1.2 STATEMENT OF PROBLEM

In spite of the fact that our statute books are replete with human right provisions and notwithstanding the fact that Nigeria is a signatory to several international human rights instruments, human rights violations are still prevalent in the Nigerian society. This is in part engendered by the provision of some derogations contained in many of our statute books. These derogations constitute impediments to the protection, realisation and enforcement of human rights in Nigeria.

Questions have been asked as to why there still is the prevalence of human right violations in spite of the plethora of guarantee for the realization and protection of human rights in Nigeria.

Flowing from the above, the following questions are raised:

- a. what are the categories of human rights in Nigeria?;
- b. what are the constitutionally/statutorily guaranteed rights in Nigeria?;
- c. what is the legal framework for the enforcement, protection and realization of these rights in Nigeria?; and

- d. what are the constitutional/statutory impediments to the enforcement, protection and realization of these rights in Nigeria?

1.3 AIM AND OBJECTIVES OF THE STUDY

It is the aim of this work, to appraise, analyse and contextualize the various statutory provisions/factors, like the derogations from human rights as provided in Sections 33 and 45 of the 1999 Constitution, among others, that inhibit or militate against the enjoyment, enforcement, protection and realisation of the rights of individuals in Nigeria .

The objectives are:

- (a) to ensure that the various rights are understood, as provided in the various statutes;
- (b) to ensure that the procedure for the enforcement of these rights is properly understood:
and
- (c) to succinctly expouse the various inhibitions to the enforcement, protection and realisation of these rights in Nigcria.

1.4 SCOPE AND LIMITATION OF THE STUDY

This research shall be limited to Nigeria and Nigerian Laws with specific focus on the various human rights statutes, laws and rules. However, where necessary, reference shall be made to the various international instruments bothering on human rights ratified by Nigeria.

1.5 SIGNIFICANCE OF STUDY

Inspite of the fact that our municipal laws (lex loci) is replete with provisions on human rights, the violations of these rights still abound. Several factors account for these violations. It is even

interesting to note that some of these violations are engendered by the provisions of our laws which ironically provide for derogations from these rights.

What then are the issues militating against enforcement, adequate protection and realisation of human rights in spite of these statutory provisions? This paper therefore is an attempt to identify and discuss the statutory drawbacks, inhibitions or prohibitions that tend to militate against the protection and realization of these human rights. It is believed that this research work will provide useful information that will be helpful tools for addressing problem areas of human rights issues in Nigeria.

This research, it is hoped, will enrich our legal discuss in the field of human rights, will benefit lawyers, legal academics, law libraries and even the average Nigerian with regards to human rights consciousness.

1.6 RESEARCH METHODOLOGY

There exist two broad methodologies/approaches to legal research. They include the doctrinal methodology/ approach and the non-doctrinal methodology/ approach.

The doctrinal approach, otherwise referred to as 'black letter' approach is arguably the most prevalent approach adopted in legal research. It places heavy reliance on primary sources of law, systematically analyzes the rules governing the specific area of research, investigates the relationships between the rules. It, basically, lays emphasis on principle and doctrine.

The non-doctrinal or socio-legal approach presupposes the examination of the social development of law. It focuses on the reasons for, and the benefits of the legal principles and

doctrines. It studies the perceptions of those affected by the law, and also the rationale for change. It is otherwise referred to as research that 'goes beyond a book'.

The method of research adopted in this research is the doctrinal approach. In doing this, primary and secondary sources were used. Statutes, law reports, provisions of the constitution, articles in learned Journals, books, internet materials, etc. These materials have been analyzed and observation made. Recommendations have been made based on the observations.

1.7 LITERATURE REVIEW

There appears to be a plethora of literature on the subject of impediments to the protection and realisation of human rights in Nigeria. Some of these are reviewed thus:

Megwara¹⁴ treats the subject matter as derogation from fundamental rights. He posits that rights and freedom are not absolute as the law provides certain derogation from these rights.

Idris and Oke¹⁵ agree with Lloyd as they view the subject matter from the perspective of derogation to fundamental rights¹⁶. These learned authors also treat the subject in the restricted sense as their work limit itself to the derogation and limitations imposed by law or the operation of law on the enforcement of fundamental rights. These restrictions range from constitutional impediment on justiciability of human rights to the restrictions on the application of the African Charter on Human and Peoples Rights vis-à-vis the provision of Chapters II and IV of the constitution as well as the issue of jurisdiction.

¹⁴ L. Megwara, *The Law and Practice of Human Rights in Nigeria* (Olive Printing and Publishing House, 2010) 4

¹⁵ M. Baba and Y. Oke, *The Law and Procedure for the Enforcement of Human Rights in Nigeria* (Lawlords Publications. 2013)120

¹⁶ Ibid 121

It is the researcher's respectful view that the learned authors gave the subject matter a restricted approach.

Dada¹⁷, on the subject matter appears to be very extensive as he goes beyond the statutory limitations or derogation to the protection of human rights in Nigeria. The writer goes further to categorize the impediments and limitations to the protection of human rights in Nigeria into Constitutional, social, political and economic impediments. He goes farther than the restrictive approach employed by the other authors with respect to the impediments to the protection and realization of human rights in Nigeria.

Aniekan¹⁸ posits that 'the term, "limit" used about rights entails the lawful extent to which a right beneficiary can enjoy his right; beyond with there may be lawful deprivation'.

Obilade¹⁹, on the subject matter, observes that '*since human freedom is part of human and human is a finite being, it follows that human freedom is necessarily limited. For there can be no such thing as absolute or unlimited human freedom*'. He further observes that "*man's exercise of freedom is obstructed by various factors of physical, psychological, social and environmental nature*".

The focus, however, at this stage is fixed on the limitations imposed by the law of constitution and other legislation on the citizen's exercise of fundamental human rights.

¹⁶ Ibid 121

¹⁷ J. A. Dada, 'Human Rights Protection In Nigeria' (2012) 18 1(6) *Annual Survey of International and Comparative Law* <<http://www.connection.ebscohost.com/c/articles//impedimentstohumanrightsprotectioninnigeria>> accessed 20 January, 2017.

¹⁸ A. Mendie, 'Status and Limits of Rights: Right to Life Under the Nigerian Constitution, 1999 with a focus on Rural Women in Akwa Ibom' (2012) 5(26) *Mediterranean Journal of Social Sciences*, 2.

¹⁹ P. O. Obilade, *Legal Methods* (Jexel Commercial and Security Printers, 2005) 8

1.8 CHAPTER ANALYSIS

In chapter one, the researcher made attempts to give a background of the study outlining the statement of the problem which includes but not limited to; what are the categories of human rights in Nigeria?; what are the constitutionally/statutorily guaranteed rights in Nigeria?; what is the legal framework for the enforcement, protection and realisation of these rights in Nigeria? : and what are the constitutional/statutory impediments to the enforcement, protection and realization of these rights in Nigeria? The method of Research used is the doctrinal mode of research in which the primary and secondary sources of law were used. The scope and limitation of this study is limited to Nigeria with reference to international legal instruments where necessary. This researcher consulted works in this field by authors like Megwara, Idris and Oke, Dada, Aniekan and Obilade.

In chapter two, the researcher makes an attempt at defining human rights, its categories and the constitutional development of the concept in Nigeria. The meaning of the concept; human rights as provided by various authors is discussed extensively. The constitutional categorization of human rights into justiciable and non-justiciable rights is also treated as well as the history of the constitutional development of human rights in Nigeria.

In chapter three, the researcher discusses the legal framework for the protection and realisation of human rights in Nigeria as well as the procedure for the enforcement of human rights in Nigeria.

In chapter four, the researcher discusses the drawback, snags, limits and impediments provided by law which inhibit the protection and realisation of human rights in Nigeria. The researcher

also goes further to discuss other impediments to the protection, realization, enforcement and enjoyment of human rights in Nigeria.

In chapter five, the researcher attempts a conclusion of this research work by providing a summary of findings, observations, recommendations, contribution to knowledge, suggested areas for further research and conclusion.

CHAPTER TWO

THE CONCEPT OF HUMAN RIGHTS

2.1 THE MEANING OF HUMAN RIGHTS

The concept of human rights has become increasingly popular especially as the global movement for democracy continues to gather strength in all continents in the past decades. Human Rights are conceived as an entitlement of all human beings, irrespective of circumstances of birth, race, sex and color as well as individual groups of people, refugees and aliens. However, there is yet no comprehensive and widely accepted definition of the concept. Some of the legal instruments like the African Charter on Human and People's Rights did not define the concept of Human Rights²⁰. They merely prescribe conditions that institute human rights. Thus, most of the definitions are only descriptive and vague. A clear and concise definition of the concept is necessary for the protection of the rights of citizens in general and gays/homosexuals in particular.

The Collins Cobuild English Language Dictionary defines Human Rights as 'basic rights which most nations agree that all people should have'²¹. while the Black's Law Dictionary defines Human Rights as 'a freedom, immunities and benefits that according to modern value (especially at the International level) all human beings should be able to claim as a matter of rights ...'²²

²⁰ Article 2 of the African Charter on Human and Peoples' Rights, which was adopted in Nairobi, Kenya on 27 June, 1981 and entered into force on 21 October, 1986.

²¹ Collins Cobuild, *Collins Cobuild Dictionary* (Publication of University of Birmingham, 1992)

²² A. B. Garner, *Blacks law Dictionary* (7th edn, West Group Publishers, 1999)

These definitions suggest what human rights ought to be but not what is possible and enforceable at law. It also implies that where the rights of human are not defined in definite terms it may be difficult to sustain enforcement in the court of law.

Falana sees human rights as ‘...the specific rights which can be said to inhere in every human being’²³. This presupposes that human rights can be viewed as rights which are inherent in human beings solely on account of their being human. Such rights may be taken to derive from reason, good, nature or any other source whatsoever the case. They are supposed to apply to human beings regardless of their codification in any possible law.²⁴

Similarly, Human Rights have also been defined as those rights which inhere in the very nature of the human persons.²⁵ They are the rights possessed by all persons by virtue of their common humanity to live a life of freedom and dignity²⁶. Human Rights have also been defined by Cranston as “something of which no one may be deprived without a great affront to justice.... Certain freedom should never be invaded ...”²⁷

Eze on the other hand defines Human Rights as "Demands or claims which individuals or groups make on society, some of which are protected by the law and have become

²³ Femi Falana, *Fundamental Rights Enforcement* (Legal Text Publishing Company Limited, 2004). 1

²⁴ U. Emblonye, ‘Rule of Law and Human Rights Development’, Monday 1 November, 2010
<<http://www.nigeriabestforum.com/generaltopics/p>> accessed 8 November, 2016.

²⁵ J. N. Aduba, ‘Inquiries on Human Rights Practice in Nigeria, Past Present and Future’, being an inaugural lecture delivered at the Unijos Inaugural Lecture Series 54 on 29 June 2012 8.

²⁶ UNDP ‘Human Rights and Millennium Development Goals: Making the link’ .8
<<http://www.undp.org.isolo.centre>> accessed 8 November, 2016.

²⁷ M. Cranston, ‘Human Rights: Real and Supposed’ in Raphael (ed) *Political Theory and the Rights of Man*. (Bloomington, 1967) 107.

part of *lex lata* while others remain aspirations of the future".²⁸

With Regards to Eze's definition, Gasiokwu observes that:

From the definition of the learned author, Human Rights encompasses those claims some of which are contained in and enforceable by the extent of law or because they have not found expression in an objective law or because of other circumstances which may make their enforcement impracticable²⁹

The aspiration status of some of the rights as defined above is considered unhealthy as it may render those rights implacable or unenforceable at law.

Another definition worth considering is that of Professor Umzurike. He observes that Human Rights are:

Claims which are inevitably supported by ethics and which should be supported by law, made on society especially on its official managers by individuals or groups on the basis of their humanity. They apply regardless of race, color, sex or other distinction and may not be withdrawn or denied by governments, people or individuals... they are those rights which every individual claim or aspire to enjoy irrespective of his race, colour, religion and status in life ...³⁰

From this definition, it does appear that Human Rights derive its legitimacy from values and ethics that are thereafter to be supported by law and that human rights are

²⁸ O. C. Eze, *Human Rights in Africa: Some Selected Problems*, (NIALS/Macmillan Nigeria Publishers, 1984), 5.

²⁹ M. O. U. Gasiokwu, *Human Rights: History, Ideology and Law*, (FAB Educational Books, 2003), 2.

³⁰ U. N. Umzurike, *African Charter on Human People' Rights* (Martinus Nijhoff Publishers 1979), 4.

universally applicable to individuals or groups regardless of race, colour, sex or other distinction and may not be withdrawn or denied by governments, people or individual. Government through her law enforcement agencies must reckon with same.

For Dowrick, Human Rights are ‘Those claims made by men for themselves or on behalf of other men supported by some theory which concentrates on the humanity of man, on man as a human being, a member of human kind ...’³¹

These types of rights appear to be self-acclaimed rights of which if such rights are left theoretically at the instance of the individuals without being backed up by any sanction, may reduce such rights to mere statements and wishes, unenforceable at law. Summarizing the reality of the conceptual definition is that Human Rights may be difficult to attract a hundred percent compliance when it comes to enforcement. However, the doctrine constitutes an ideal that all nations must aspire to fulfill and in compliance with all existing Human Rights provisions in the United Nations legal instruments.

2.2 CATEGORIES OF HUMAN RIGHTS IN NIGERIA

Enebe³², and Nwaofor³³ in their publications, explained the different generations of rights. The first generation of human right contains the civil and political rights. The second generation of human rights contains the Economic, social, and cultural rights. The third generation of human

³¹ F. E. Dowrick, *Human Rights, Problems, Perspectives and Text*, (West Mead: UK Saxon House 1979).8-9.

³² G. C. Enebe, ‘The Concept of Human Right: Origin, Meaning and Place in the New World’ in Obiora Anichebe (ed), *Logic, Philosophy and Human Existence* (8th edn, Afro- Orbis Publication, 2008) 10

³³ J. E. Nwofor, ‘Human Right and Human Right Education in Nigeria’ in, Nnadozie O. Uche (ed.) *Topical Issues in Social Sciences*, (Rek Books, 2010) 29

rights, which tends to turn the world to a global community, contains the right to self determination, the right to development, the right to share in the common heritage of mankind, the right to international peace and security, and the right to clean and healthy environment. There is also an emerging category referred to as fourth generation of rights which basically refers to the right to sustainable development and future generations.

In Nigeria, however, under our laws, human rights are broadly categorized into two groups, viz; Civil and Political rights; and Economic, Social and Cultural rights. They are, otherwise, referred to as justiciable and non-justiciable rights respectively as provided for in Chapters II and IV of the Nigerian Constitution³⁴ respectively. The concept of justiciability centres around two primary concerns namely, the legitimacy of judicial intervention and the competence of courts to adjudicate issues in the sphere of socio-economic and cultural rights³⁵.

These two broad categories are examined thus;

2.2.1 JUSTICIABLE RIGHTS

Nwabueze³⁶, a prominent Nigerian legal scholar defines justiciability as 'a combination of judicial power and duty bestowed constitutionally on the courts to adjudicate violations of the law'

Justiciable rights refer to the rights which are guaranteed and enforceable under the Nigerian Constitution³⁷. They are also categorized and referred to as the Civil and Political Rights. They are provided for under chapter IV of the 1999 Constitution as

³⁴ Constitution of the Federal Republic of Nigeria, 1999 (as amended)

³⁵ P. Hunt, *Introduction in Reclaiming Social Rights: International and Comparative Perspective* (1996) 24

³⁶ B. Nwabueze, *Judicialism in Commonwealth Africa: The Role of Courts in Government* (1977)21

³⁷ Constitution supra

Fundamental Rights. The infringement of any of such rights can be challenged in the appropriate High Court. These fundamental rights are reproduced hereunder:

Chapter IV

Fundamental Rights

33. (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary -

(a) for the defence of any person from unlawful violence or for the defence of property:

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purpose of suppressing a riot, insurrection or mutiny.

34. (1) Every individual is entitled to respect for the dignity of his person, and accordingly -

(a) no person shall be subject to torture or to inhuman or degrading treatment;

(b) no person shall be held in slavery or servitude; and

(c) no person shall be required to perform forced or compulsory labour.

(2) for the purposes of subsection (1) (c) of this section, "forced or compulsory labour" does not include -

(a) any labour required in consequence of the sentence or order of a court;

(b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;

(c) in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service:

(d) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or

(e) any labour or service that forms part of -

(i) normal communal or other civic obligations of the well-being of the community.

(ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or

(iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.

35. (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law -

(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law:

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(1) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

(2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

(3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.

(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of -

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further

proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(5) In subsection (4) of this section, the expression "a reasonable time" means -

(a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and

(b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

(6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law.

(7) Nothing in this section shall be construed -

(a) in relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and

(b) as invalidating any law by reason only that it authorises the detention for a period not exceeding three months of a member of the armed forces of the federation or a member of the Nigeria Police Force in execution of a sentence

imposed by an officer of the armed forces of the Federation or of the Nigeria police force, in respect of an offence punishable by such detention of which he has been found guilty.

36. (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

(2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law -

(a) provides for an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and

(b) contains no provision making the determination of the administering authority final and conclusive.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.

(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that -

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

(b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty;

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

(6) Every person who is charged with a criminal offence shall be entitled to -

(a) be informed promptly in the language that he understands and in detail of the nature of the offence;

(b) be given adequate time and facilities for the preparation of his defence;

(c) defend himself in person or by legal practitioners of his own choice;

(d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and

(e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

(7) When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any persons authorised by him in that behalf shall be entitled to obtain copies of the judgement in the case within seven days of the conclusion of the case.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed

(9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

(10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

(11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

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

38. (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

(4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

39. (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.

(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -

(a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or

(b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

40. Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

41. (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom.

(2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society-

(a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

(b) providing for the removal of any person from Nigeria to any other country to:-

(i) be tried outside Nigeria for any criminal offence, or

(ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

42. (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.

43. Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

44. (1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things -

(a) requires the prompt payment of compensation therefore and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

(2) Nothing in subsection (1) of this section shall be construed as affecting any general law.

(a) for the imposition or enforcement of any tax, rate or duty;

(b) for the imposition of penalties or forfeiture for breach of any law, whether under civil process or after conviction for an offence;

(c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts.

(d) relating to the vesting and administration of property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporate bodies in the course of being wound-up;

(e) relating to the execution of judgements or orders of court;

(f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;

(g) relating to enemy property;

(h) relating to trusts and trustees;

(i) relating to limitation of actions;

(j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;

(k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;

(l) providing for the carrying out of work on land for the purpose of soil-conservation; or

(m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.

(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly”.

It is worth reiterating that these fundamental rights are enforceable in a high court. hence any infringement of same can only be challenged before a High Court which

has the exclusive original jurisdiction to adjudicate on such matters. This is aptly provided for in Section 46 of the Nigerian Constitution³⁸ which provides, inter alia, as follows:

46. (1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

(2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under this Chapter.

These fundamental rights are there referred to as justiciable rights.

2.2.2 NON-JUSTICIABLE RIGHTS

These are the rights that are not enforceable in a court of law in Nigeria. They are categorized and referred to as the economic, social and cultural rights. Drawing from their unenforceability, the 1999 Constitution refers to them as Fundamental Objectives and Directive Principles of State Policy³⁹ as provided for in chapter II thereof. chapter II was devised to fulfill the promises made

³⁸ Op. cit

³⁹ The term was first used in our laws in the 1979 Constitution. Justice Mamman Nasir described fundamental objectives as identifying 'the ultimate objectives of the Nation' and the directive principles as laying down the

in the Preamble to the Constitution, inter alia. 'to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of freedom, equality and justice and for the purpose of consolidating the unity of our people.'

The Preamble and provisions of chapter II reflect the high ideals of a liberal democratic polity and thus serves as guidelines to action or major policy goals⁴⁰. The rationale for the inclusion of chapter II in 1999, lies in the fact that governments in developing countries have tended to be pre-occupied with power and its material prerequisites with scant regard for political ideals as to how society can be organised and ruled to the best advantage of all. This is particularly true of Nigeria because of its heterogeneity, the increasing gap between the rich and the poor, and the growing cleavage between the social groupings⁴¹.

The first section of chapter II recognises the duty and responsibility of all organs of government, and 'all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this chapter of this Constitution'. Section 224 of the Constitution⁴² provides that the programmes and objectives of a political party shall conform with the provisions of Chapter II. Additionally, item 60 of the Exclusive Legislative List gives the National Assembly power to make laws with respect to the establishment and regulation of authorities to promote and enforce the observance of the fundamental objectives and directive principles contained in chapter II. However, section 6(6)(c) of the same Constitution forbids the

'policies which are expected to be pursued in the efforts of the nation to realise the national ideals [Archbishop Okogie V. The Attorney-General of Lagos State (1981) 2 NCLR 350]

⁴⁰ O. Agbakoba and U. Emelonye, Test of Progressive Realisation of Economic, Social and Cultural Rights in Nigeria :1990-1999 Budget Analysis (2001) *HURILAWS*, 1-2.

⁴¹ Akande, *Introduction to the Constitution of Nigeria*, (2000) 52

⁴² Constitution op. cit

courts from entertaining claims arising under or as a result of chapter II which makes the entire chapter II unenforceable, hence, non-justiciable.

The said chapter II is reproduced hereunder for ease of reference:

Chapter II

Fundamental Objectives and Directive Principles of State Policy

13. It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.

14. (1) The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice.

(2) It is hereby, accordingly, declared that:

(a) sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority;

(b) the security and welfare of the people shall be the primary purpose of government: and

(c) the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.

(3) The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the

federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few State or from a few ethnic or other sectional groups in that Government or in any of its agencies.

(4) The composition of the Government of a State, a local government council, or any of the agencies of such Government or council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the Federation.

15. (1) The motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress.

(2) Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

(3) For the purpose of promoting national integration, it shall be the duty of the State to:

(a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation.

(b) secure full residence rights for every citizen in all parts of the Federation.

(c) encourage inter-marriage among persons from different places of origin, or of different religious, ethnic or linguistic association or ties; and

(d) promote or encourage the formation of associations that cut across ethnic, linguistic, religious and/or other sectional barriers.

(4) The State shall foster a feeling of belonging and of involvement among the various people of the Federation, to the end that loyalty to the nation shall override sectional loyalties.

(5) The State shall abolish all corrupt practices and abuse of power.

16. (1) The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution.

(a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;

(b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;

(c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;

(d) without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

(2) The State shall direct its policy towards ensuring:

(a) the promotion of a planned and balanced economic development:

(b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;

(c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and

(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

(3) A body shall be set up by an Act of the National Assembly which shall have power;

(a) to review, from time to time, the ownership and control of business enterprises operating in Nigeria and make recommendations to the President on same; and

(b) to administer any law for the regulation of the ownership and control of such enterprises.

(4) For the purposes of subsection (1) of this section -

(a) the reference to the "major sectors of the economy" shall be construed as a reference to such economic activities as may, from time to time, be declared by a resolution of each House of the National Assembly to be managed and operated exclusively by the Government of the Federation, and until a resolution to the contrary is made by the National Assembly, economic activities being operated exclusively by the Government of the Federation on the date immediately preceding the day when this section comes into force, whether directly or through the agencies of a statutory or other corporation or company, shall be deemed to be major sectors of the economy;

(b) "economic activities" includes activities directly concerned with the production, distribution and exchange of wealth or of goods and services; and

(c) "participate" includes the rendering of services and supplying of goods.

17. (1) The State social order is founded on ideals of Freedom, Equality and Justice.

(2) In furtherance of the social order-

(a) every citizen shall have equality of rights, obligations and opportunities before the law;

(b) the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced;

(c) governmental actions shall be humane;

(d) exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented; and

(e) the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.

(3) The State shall direct its policy towards ensuring that-

(a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;

(b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;

(c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;

(d) there are adequate medical and health facilities for all persons:

(e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever;

(f) children, young persons and the age are protected against any exploitation whatsoever, and against moral and material neglect;

(g) provision is made for public assistance in deserving cases or other conditions of need; and

(h) the evolution and promotion of family life is encouraged.

18. (1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.

(2) Government shall promote science and technology

(3) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide

(a) free, compulsory and universal primary education;

(b) free secondary education;

(c) free university education; and

(d) free adult literacy programme.

19. The foreign policy objectives shall be -

(a) promotion and protection of the national interest;

(b) promotion of African integration and support for African unity;

(c) promotion of international co-operation for the consolidation of universal peace and mutual respect among all nations and elimination of discrimination in all its manifestations;

(d) respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication; and

(e) promotion of a just world economic order.

20. The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.

21. The State shall -

(a) protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter; and

(b) encourage development of technological and scientific studies which enhance cultural values.

22. The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the people.

23. The national ethics shall be Discipline, Integrity, Dignity of Labour, Social, Justice, Religious Tolerance, Self-reliance and Patriotism.

24. It shall be the duty of every citizen to -

(a) abide by this Constitution, respect its ideals and its institutions, the National Flag, the National Anthem, the National Pledge, and legitimate authorities;

(b) help to enhance the power, prestige and good name of Nigeria, defend Nigeria and render such national service as may be required;

(c) respect the dignity of other citizens and the rights and legitimate interests of others and live in unity and harmony and in the spirit of common brotherhood;

(d) make positive and useful contribution to the advancement, progress and well-being of the community where he resides;

(e) render assistance to appropriate and lawful agencies in the maintenance of law and order; and

(f) declare his income honestly to appropriate and lawful agencies and pay his tax promptly.”

2.3 CONSTITUTIONAL DEVELOPMENT OF HUMAN RIGHTS IN NIGERIA

Successive constitutions of Nigeria since independence in 1960 have continued to include provisions on human rights protections. This commitment to human rights has been attributed to the historical emergence of the Nigerian nation. One of the British legacies in the Commonwealth is the libertarian tradition of the common law and its system of justice as embodied in the Magna Carta of 1215 and the Bill of Rights of 1689. Civil liberties were guaranteed by the British colonial government except to the extent necessary to prevent rebellion against colonial government. This was expressed in the various constitutional conferences held in the march towards Nigerian independence in order to allay the minority tribes' fears of domination by the majority tribes.⁴³

The Willink's Commission, constituted in 1957 to harmonize the divergent views, rejected the idea of creating more regions in Nigeria. Instead, it recommended the inclusion of a long list of human rights provisions in the emergent Nigerian constitution, which it believed would be of great value in preventing deterioration in the standards of freedom and encroachment by government on individual rights⁴⁴. In other words, the existing freedom, handed down by the colonial government, would be sustained by the emerging nation state by embodying the basic human rights in the constitution.

These recommendations were accepted at the 1958 constitution conference and subsequently enacted as chapter iii of the Independence Constitution of 1960 and the Republican Constitution of 1963. The 1963 provisions are entitled 'Fundamental Rights' and contain 15 sections. The

⁴³ A. Nwafor, *Enforcing Fundamental Rights in Nigerian Courts, Processes and Challenges*, [2009] (4) *African Journal of Legal Studies*, 3

⁴⁴ B. O. Nwabueze, *Constitutionalism in the Emergent States* (C. Hurst & Co., 1973) 72

subsequent 1979 constitution introduced a new dimension to the constitutional recognition of human rights by providing 'fundamental objectives and directive principles of state policy' (chapter ii) in addition to 'fundamental rights' (chapter iv). The 1989 constitution followed this trend, and as did the 1999 constitution, which forms the focus of this research. The fundamental objectives and directive principles of state policy are provided in chapter ii of the 1999 constitution and contained in sections 13 to 23.

In spite of the above provisions with respect to the fundamental objectives, the successive governments have highly misplaced priorities and persevered in pursuing projects with little or no impact on the peoples immediate needs under the guise of economic reformation with promises of future benefits. The essence of relief that these provisions are thought to have provided is also obliterated by the constitution itself, which unequivocally provides in section 6(6)(c) that the judicial powers vested in the courts, shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in chapter ii of the constitution. This provision has been interpreted as meaning that the provisions of chapter ii are non-justiciable as they constitute mere ideals towards which the states are expected to aim⁴⁵. The regrettable import of this provision can be discerned from the lucid lamentation of a renowned Nigerian judge, Akinola Aguda:

I feel much concerned to think that the directive principles are to be regarded as a mere ideal, a utopia, the arrival of which the citizen can only pray and hope for, but in respect of which he can hope for no assistance whatsoever from the courts.

⁴⁵ Okogie & Ors V A. G. Lagos State (1981) NCLR 218.

If this were so then wherein lies the expectations and the hopes of a bright future for the teeming millions of our people who manage merely to survive at near starvation level⁴⁶ .

This point shall not be unduly stretched beyond limits of this research work. It suffices to observe, however, that a democratic government, as an elected government, ought to function within the confines of the law given by the electorate, that is, the constitution. To ensure compliance, therefore, the electorates should have the power and be in the position to question any acts which are not in compliance with the goals set out by the constitution.

⁴⁶ D. M. Jemibewon, *The Military, Law and Society: Reflections of a General*, (Spectrum Books Ltd, 1998) 109

CHAPTER THREE

PROTECTION AND REALISATION OF HUMAN RIGHTS IN NIGERIA

3.1 THE LEGAL FRAMEWORK

Human Rights that are enforceable in law are those rights which are recognized by law as Fundamental Rights as distinguished from mere aspirations or individuals ideas of rights⁴⁷. These Fundamental Rights are now embodied in Chapter IV of the Nigerian Constitution of 1999 from *Section 33 to 46*, and the African Charter on Human and People Rights, which was ratified and re-enacted as a Municipal Law by the National Assembly on the 17th March, 1983. The Charter became part of Nigerian Law by virtue of the African Charter on Human and Peoples Rights (Application and Enforcement) Act.⁴⁸ Although human rights had been part and parcel of the successive Nigerian Constitutions since Independence in 1960, the Fundamental Rights Enforcement Procedure Rules (hereinafter referred to as 'FREP Rules') were first introduced in 1979. Hitherto, the principal means for enforcing human rights were the prerogative writs of Habeas Corpus, Certiorari, Mandamus and Prohibition. These were often found cumbersome, somewhat technical and lacking in the flexibility necessary for the proactive pursuit of human rights claims. The introduction of the 1979 FREP rules was aimed at bringing greater speed and dynamism to the enforcement of Fundamental rights in Nigeria.

However, after operating the 1979 FREP rules for twenty years, their inadequacies prompted the introduction of the 2009 Rules. More specifically, the operation of the 1979 FREP Rules was fraught with many difficulties and bottlenecks. The principal one was the mandatory requirement

⁴⁷ O. W. C. Duru, An Overview of the Fundamental Rights Enforcement Procedure Rules, 2009 (2012) SSRN <<http://ssrn.com/author=18742780>> accessed 25 February, 2017.

⁴⁸ Cap 10 Laws of Federation 1990.

of leave as a precondition for the enforcement of human rights. The process of obtaining leave involved the filing of several documents at the preliminary stage which often overlapped with the main or substantive application for the enforcement of fundamental rights. Many practitioners and litigants found this requirement too cumbersome and costly.

Contemporarily, however, efforts to tackle Human Rights abuses which are prevalent in the African region, especially in Nigeria received a boost recently with the introduction of the new Fundamental Rights (Enforcement Procedure) Rules, 2009. This research work hereby undertakes an overview of the current 2009 FREP Rules.

3.2 THE PROCEDURE FOR THE PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA

The current procedural rule for the commencement of an action for the enforcement of Fundamental Human Rights is guided by the Fundamental Rights (Enforcement Procedure) Rules 2009 made pursuant to *Section 46(3)* of the 1999 Constitution⁴⁹ by the then Chief Justice of the Federation.

⁴⁹ Constitution of the Federal Republic of Nigeria, 1999 (as amended)

3.2.1 OVERVIEW OF THE FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE RULES 2009

The current fundamental rights enforcement procedure rules, which were signed on 11th November, 2009 by a past Chief Justice of Nigeria, (CJN) Justice Idris Legbo Kutigi, came into force with immediate effect.

The 2009 FREP Rules are aimed at advancing democracy by deepening and prioritizing human rights enforcement. The 2009 FREP Rules were made to energise the democratic system of government after its first ten years. The philosophy behind the promulgation of the Rules is the concept of the prioritization of human rights. It is only through issues of human right that government can connect to her citizens.

The specific improvements in the 2009 FREP Rules include the fact that technicalities were minimized.⁵⁰ Substantial justice rather than technicalities is what counts. For instance, by *paragraph 3(e)* of the preamble to the rule, the courts are obliged to encourage and welcome

⁵⁰ Before the 2009 Rules, the procedure for the enforcement of Fundamental Rights in the High Courts required bringing up the action within a specified period of time from the occurrence of the breach of such rights, but under the 2009 Rules, specifically, Order III Rule 1 thereof, the limitation of the period of time has been done away with. Additionally, the new Rules unlike the previous one allow Lawyers or Litigants to file their brief, even if the Applicant is detained. In other words, it is not necessary that the Applicant must be physically present before the Commissioner for Oaths to swear to his statement or the Affidavit. Under the new rule such application can be made on behalf of an Applicant whose rights have been infringed upon and who is seeking a redress of same. This has brought some relief to Lawyers and Litigants as well. Again, before the coming into force of the 2009 Fundamental Right (Enforcement Procedure) Rules on the 1st day of December 2009, the procedure for the Enforcement of Fundamental Human Rights in the High Court required the obtaining of leave of Court by filing a Motion Exparte supported by an Affidavit, the statement of material facts and verifying Affidavit within twelve months of the occurrence of the event complaint against. When leave is granted a Motion on Notice is filed in the same manner as the Motion Exparte and served on the Respondents. The party served must have at least eight days to respond before the hearing which must be within fourteen days of the granting of the leave. However, with the new Procedure Rules which was signed on the 11th day of November, 2009 by a past Chief Justice of Nigeria, Justice Idris Legbo Kutigi, new innovations have been brought into the rules that will make the procedure easier for Lawyer and Litigants. Particularly, Order II of the current 2009 FREP Rules

public interest litigation in the Human Rights field and no Human Rights case may be dismissed or struck out for want of *locus standi*.⁵¹

Furthermore, since the 2009 FREP Rules were made pursuant to *Section 46 (3)* of the 1999 Constitution, they are deemed to be at par with the provisions of the Constitution. They possess the same force and potency as the provisions of the Constitution. They are thus of a higher status than other laws in the hierarchy of laws in this country. Indeed, the 2009 Fundamental Rights (Enforcement Procedure) Rules require that application pertaining to the Fundamental Right be taken expeditiously.

Furthermore, the 2009 FREP Rules have enlarged the sources of human rights principles and ideas from which the court can draw in order to enrich its judgments. Judges may now acknowledge municipal, regional and international Bills of right cited to them, brought to their attention or of which the court is aware. This permits a judge to utilize a particular instrument even where counsel did not cite it. (Such bills include: (i) The African Charter on Human and Peoples' Rights and other instruments (including protocols) in the African regional human rights system, (ii) The Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system such as: (a) International Covenant on Civil and Political Rights; (b) International Covenant on Economic, Social and Cultural Rights; (c) United Nations Convention against Torture; (d) United Nations Convention on the Rights of the Child; (e) Convention for the Elimination of all forms of Discrimination against Women

⁵¹ Other persons that can institute human right cases are: Human Rights activists, advocates or groups as well as any non- government organization who may institute Human Rights application on behalf of any potential applicant. Thus, by the new rules the era of inhibition on issue of locus standi is gone considering that the applicant no longer needs the leave of the court to apply for a redress for the violation of his Fundamental Rights. The cases of *Anzaku v. Gov. Nassarawa State* (2005) 5 NWLR (Pt. 919) 448; *Chukuma v. COP* (2005) 8 NWLR (Pt. 927) 278 and *Igwe v. Ezeanochie* (2010) 7 NWLR (Pt. 1192) 61; *Onah v. Okenwa* (2010) 7 NWLR (Pt. 1194) 512 are good examples of a group or class of persons, Associations and individual's enforcement of Fundamental Rights as envisaged in paragraph 3(e)(i),(ii),(iv) and (v) of the Preamble to the Fundamental Rights Enforcement Procedure Rules 2009

e.t.c). above is aptly captured in *Paragraph 3(b)* of the Preamble to the FREP Rules which provides that for the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions.

It is germane to note, at this point, that except in custodial cases (that is to say, cases where the liberty of a citizen is in issue) which should be treated as an emergency, the court have discretion in prioritizing human rights cases. Thus, while this overriding objective is generally laudable or commendable in relation to its enhancement of accessibility to justice: it leaves much to be expected when it provides that 'human rights suits shall be given priority in deserving cases.' and any other law, the former will prevail to the extent of such inconsistency.⁵²

The new Rules have also enlarged the sources of human rights principles and ideas from which the court can draw in order to enrich its judgments. Judges may now acknowledge municipal, regional and international Bills of right cited to them, brought to their attention or of which the court is aware. This permits a judge to utilize a particular instrument even where counsel did not cite it.⁵³ The above is aptly captured in *Paragraph 3 (b)* of the Preamble to the FREP Rules which states as follows—

For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the

⁵² *Abia State University, Uturu v. Chima Anyaibe* (1996) 1 NWLR (Pt 439) at 660-661

⁵³ This approach is consistent with the practice in some other African countries.

Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions.⁵⁴

3.2.1.1 MAJOR IMPROVEMENTS IN THE FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE RULES 2009

Additionally, the 2009 FREP Rules have introduced significant improvements on the 1979 Rules. The major improvements are outlined below:

3.2.1.1.1. ENHANCEMENT OF THE APPLICANT'S RIGHTS AND FREEDOMS

Firstly, *Order I Rule 2* of the 2009 FREP Rules defines a 'Fundamental Right' to mean, not only, any of the rights provided for in Chapter IV of the Constitution; but also, any of the rights stipulated in the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act. By the same token, *Order II Rule I* of the 2009 FREP Rules, stipulates to the effect that any person who alleges that any of the fundamental Rights provided for in the constitution or African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being or is likely to be infringed, may apply to the court in the state where the infringement occurs or is likely to occur for redress.

Thus, by specifically including breach of fundamental rights provided in the African Charter as basis for instituting a human rights suit, the 2009 FREP Rules, has expanded an applicant's

⁵⁴ Such bills include: (i) The African Charter on Human and Peoples' Rights and other instruments (including protocols) in the African regional human rights system, (ii) The Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system such as: (a) International Covenant on Civil and Political Rights; (b) International Covenant on Economic, Social and Cultural Rights; (c) United Nations Convention against Torture; (d) United Nations Convention on the Rights of the Child; (e) Convention for the Elimination of all forms of Discrimination against Women e.t.c

rights and freedoms. Not only that, the foregoing provisions has also brought the rules in tune with the decision of the Supreme Court in *Ogugu v. State*⁵⁵ where the Supreme Court held that the provisions of the African Charter on Human and Peoples Rights is enforceable in the same manner as those of Chapter IV of the 1999 Constitution by application made under *section 42 of the 1979 Constitution*. According to Bello JSC in the case, 'the enforcement of its provisions which like all other laws fall within the judicial powers of the courts as provided by the constitution and all other laws relating thereto....'.

Again, the learned CJN observed that 'the human and peoples rights of the African Charter are enforceable by the several high courts depending on the circumstances of each case and in accordance with the rules, practice and procedure of each court'.⁵⁶

Therefore, an applicant's right is not limited to those provided for in Chapter IV of the Constitution; but extends to the socio-economic rights in the African Charter which he is entitled.

3.2.1.1.2. ENHANCEMENT OF ACCESS TO JUSTICE FOR ALL CLASSES OF LITIGANTS

The FREP Rules, 2009 imposes a duty on the court to pursue enhanced access to justice for all classes of litigants, especially, the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the unrepresented. In this regard, *Clause 3(d)* of the FREP Rules, 2009 provides to the effect that the court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and

⁵⁵ 7 (1994) 9 NWLR (Pt. 366) 1.

⁵⁶ *Ibid*, at 27.

the unrepresented. This, of course, is one of the overriding objectives enshrined in the preamble to the 2009 FREP Rules.

For the purpose of realizing this objective, the FREP Rules, 2009 specifically encourage and welcome public interest litigation in the human rights field. This is provided for in *Clause 3(e)* of the Preamble to the Rules. Also, by virtue of the same provision in the rules, no human rights case may be dismissed or struck out for want of *locus standi*. Indeed, human rights activists and advocates or groups as well as non-governmental organizations (NGOs) may institute human rights application on behalf of any potential applicant.

Furthermore, the FREP Rules, 2009 contain an expanded list of categories of parties that may institute human rights suit. They include;

- i. anyone acting in his own interest,
- ii. anyone acting on behalf of another person,
- iii. anyone acting as a member of, or in the interest of a group or class of persons.
- iv. anyone acting in the public interest,⁵⁷ and;
- v. Associations acting in the interest of its members or other individuals or groups.

The abolition of objections to human rights application on ground of *locus standi* is welcome and would help to make public interest litigation a mechanism for popular participation and remediation. The implication of this will be enhanced accessibility to justice for all classes of litigants.

⁵⁷ 'Public Interest' is defined under Order 1 Rule 2 of the 2009 FREP Rules as including "the interest of the Nigerian society or any segment of it in promoting human rights and advancing human rights law."

Again, under *Clause 3(f)* of the Preamble to the 2009 FREP Rules, the court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture pursue the speedy and efficient enforcement and realization of human rights. By the same token, *Clause 3(g)* of the FREP Rules, 2009 stipulates that human rights suits shall be given priority in deserving cases.⁵⁸

Another aspect of the 2009 FREP Rules that has helped in the enhancement of accessibility to justice is that relating to commencement of action. Specifically, *Order II Rule 2* of the FREP Rules, 2009 states that an application for the enforcement of fundamental rights may be made by any originating process accepted by the court which shall, subject to the provisions of these Rules, lie without leave of court.

There is no doubt that this provision is geared towards enhancing accessibility to justice for all classes of litigants in that it not only abolishes the requirement for leave which had hitherto hampered justice in human rights cases; but also, simplifies the form of commencement of human rights applications by its allowance of any originating process accepted by the court.⁵⁹

Lastly, under *Order III Rule 1* of the FREP Rules, 2009, an application for the enforcement of fundamental rights shall not be affected by any limitation statute whatsoever. This provision has added to the plethora of provisions in the 2009 FREP Rules which enhances access to justice. In fact, the 2009 FREP Rules' emphasis on expeditious trial generally, is with a view to enhancing accessibility to justice.

⁵⁸ It is germane to note, at this point, that except in custodial cases (that is to say, cases where the liberty of a citizen is in issue) which should be treated as an emergency, the court have discretion in prioritizing human rights cases. Thus, while this overriding objective is generally laudable or commendable in relation to its enhancement of accessibility to justice; it leaves much to be expected when it provides that 'human rights suits shall be given priority in deserving cases.'

⁵⁹ This is also consistent with the case of *Ogugu v. State supra*.

3.2.1.1.3. COMMENCEMENT OF ACTION UNDER THE 2009 FREP RULES HAS DONE AWAY WITH THE TECHNICALITIES ASSOCIATED WITH THE 1979 FREP RULES

Under *Order II Rule 2* of the 2009 FREP Rules- An application for the enforcement of a fundamental right may be made by any originating process accepted by the court which shall lie without leave of court. Thus, the requirement for leave has been abolished.⁶⁰ In *Tofi v. UBA*⁶¹, the court held that an applicant is at liberty to use any vehicle that is most convenient to reach the courts when commencing an action. The known originating processes for commencing cases in our courts are writ of summons, application, petition, motion and summons. It seems that any of these may now be used to commence an action for the enforcement of fundamental human rights. The previous practice of commencing human rights enforcement with an application is no longer mandatory.

In view of the underlying philosophy of the 2009 FREP Rules which is to simplify access to the courts for the enforcement of fundamental rights, it is suggested that 'any originating process accepted by the court' leaves the mode of commencement absolutely to the discretion of the court. Thus any originating process which clearly informs the court, even if not adequately of the nature of the case of the applicant or aggrieved party, the respondent, the violations complained of and the remedies sought even if not couched in the usual technical format should not be rejected.

⁶⁰ As distinct from Section 2(1) of the 1979 FREP Rules which provides that a person whose right is infringed or is likely to be infringed should apply to the Court for redress. Such application must be with leave of Court and must be made ex parte to the appropriate Court supported with a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought.

⁶¹ 6 (1987) 3 NWLR (Pt. 62) 707

Since the intendment of the 2009 FREP Rules includes the broadening of access to court in fundamental human rights cases, the simplification of the originating process is intended to facilitate the filing of human rights cases by the aggrieved persons themselves with or without the services of a lawyer. In other words, an applicant who uses a faulty originating process to commence an action for the enforcement of his or her human rights should not be thrown out on the technical ground of noncompliance with the requirements of an originating process.

3.2.1.1.4. LIMITATION OF TIME FOR COMMENCING AN ACTION UNDER THE 1979 RULES IS NO LONGER APPLICABLE UNDER THE 2009 FREP RULES

Order III Rule 1 of the 2009 Rules provides thus—“an application for the enforcement of fundamental right shall not be affected by any limitation statute whatsoever.” An application to secure the enforcement of fundamental rights cannot become statute barred so as to extinguish the right of an applicant to institute an action in the High Court. In other words, the right of an applicant to file an application for the enforcement of fundamental rights can be exercised at anytime, regardless of when the violation occurred. Just as time does not run against the State in the prosecution of most criminal offences the application for the enforcement of fundamental rights shall not be defeated by any statute of limitation whatsoever⁶².

⁶² This is different from the 1979 rules which make specific provisions for a time limit for applying for leave. As such Order 1 rule 3 of the 1979 rules provides that leave shall be made within 12 months from the date of the happening of the event, matter, or act complained of. Furthermore, when leave has been granted, the motion or summons must be entered for hearing within 14 days after such leave has been granted. Order 11, Rule 1(2) of the 1979 FREP Rules. It should be noted that these time limits no longer apply.

3.2.1.1.5. THE 2009 FREP RULES MANDATED THE EXPEDITIOUS HEARING OF CASES
Order IV Rule 1 provides that an application shall be fixed for hearing within 7 days from the day the application was filed. The essence of fixing the application for hearing within 7 days is to emphasize the urgency that is attached to the hearing and determination of fundamental rights cases⁶³. Again, *Order IV Rule 3* of the 2009 FREP Rules make provision for the expeditious hearing of an applicant's application if the court is satisfied that undue hardship may be caused to the applicant before the service of the application especially when the life/liberty of the applicant is involved. However the application *ex parte* shall state sufficient grounds why delay in hearing the application would cause exceptional hardship⁶⁴.

Furthermore, Paragraph 3 (g) of the Preamble states that "human rights suits shall be given priority in deserving cases. Where there is any question as to the liberty of the applicant or any person, the case shall be treated as an emergency. From the forgoing provisions, it is clear that the 2009 FREP Rules are deliberately designed to enhance the acceleration of the hearing of fundamental rights cases⁶⁵.

⁶³ Perhaps the impetus for this provision can be found in the case of the Commissioner of Police v. Alhaji Mojeed Agbaje, (1969) 1 NMLR 176, where the Western State Court of Appeal commended the learned Judge who heard the matter at the lower court for the speedy manner in which the application for the writ of habeas corpus filed by the respondent was handled. Ademola JCA observed as follows; "in this connection, we note with great satisfaction and approval, the expeditious and swift manner in which the matter was dealt with by the learned judge, Aguda J. Within six days he had heard and determined the matter. This is as it should be, for the Law says so. An application for Habeas Corpus should always be dealt with expeditiously by the Courts."

⁶⁴ Order IV Rule 4 thereof

⁶⁵ F. Falana, *Fundamental Rights Enforcement in Nigeria* (Legal Text Pub., 2010) at 182-187.

3.2.1.1.6. THE 2009 FREP RULES HAVE MADE SIGNIFICANT IMPROVEMENTS ON SERVICE OF COURT PROCESSES

Order V Rule 2 provides that the service of the originating process shall be effected on all parties directly; however service effected on a respondent's agent shall amount to personal service.

Furthermore the rules make ample provision as to what constitutes substituted service where personal service cannot be conveniently effected. These include—

- (i) by delivery of the document to an adult person at the usual or last known place of abode or business of the party to be served;
- (ii) by delivery of the document to some person being an agent of the party to be served;
- (iii) by delivery of the document to any senior officer of any government agency that has an office either in the Federal Capital Territory or elsewhere;
- (iv) by advertisement in the Federal Government Official Gazette or in some newspapers circulating within jurisdiction;
- (v) by notice put up in the principal court house⁶⁶.

The aim of these provisions is to address the challenges faced by applicants with regards to service of processes. The 2009 Rules also made flexible the service of processes. In Order V Rule 9 provides for the service of applications upon persons who ought to be served in the opinion of the Court and it may adjourn so that applicant may effect such service⁶⁷.

⁶⁶ Order V Rule 7 thereof.

⁶⁷ The 1979 Rules make no provisions as to these.

3.2.1.1.7. NOTICE OF PRELIMINARY OBJECTION TO BE HEARD ALONGSIDE SUBSTANTIVE APPLICATION UNDER THE 2009 FREP RULES UNLIKE THE 1979 FREP RULES

Order VIII of the 2009 Rules makes provision for an applicant filing a preliminary objection to challenge the jurisdiction of the court if he chooses. Rule 4 states that the preliminary objection shall be heard alongside the substantive application on the date of hearing. This is also to ensure speedy hearing. This is consistent with the accepted practice in the appellate courts where parties now argue preliminary objections in their brief of arguments⁶⁸. This is a further improvement on the 1979 FREP Rules.

3.2.1.1.8. UNLIKE THE 1979 FREP RULES, THE 2009 FREP RULES PROVIDE GUIDANCE TO FACILITATE THE HEARING OF FUNDAMENTAL RIGHTS APPLICATIONS

Order XII of the 2009 Rules makes provision for the procedure to be adopted in hearing human rights applications. *Rule 1* provides that hearing shall be on the parties' written addresses. *Rule 2* provides that oral argument of not more than 20 minutes is allowed to buttress a party's case provided such matters came to the knowledge of the party after he had filed his written address. *Rule 3* states that when all the parties' written addresses have been filed and come up for adoption and either of the parties is absent, the Court shall either on its own motion or upon oral application by the counsel for the party present, order that the addresses be deemed adopted if the Court is satisfied that all the parties had notice of the date for adoption and a party shall be deemed to have notice of the date for adoption if on the previous date last given, the party or his

⁶⁸ This was the decision in the following cases: *Yusuff v. Union Bank of Nigeria Limited* (1996) 6 NWLR (Pt. 457) 632 & *Agbaka v. Amadi* (1998) 11 NWLR (Pt. 572) 16

counsel was present in Court. Rule 4 specifies the contents of written addresses. There were no such provisions under the 1979 FREP Rules.

3.2.1.1.9. THE 2009 FREP RULES HAVE BROADENED THE CONCEPT OF *LOCUS STANDI*

Under the 2009 FREP Rules, there is a deliberate movement away from the restrictive rule of *locus standi*. Indeed, *Order XIII* of the 2009 Rules broadens the issue of *locus standi*. Rule 1 provides for the right of an individual to be heard whether or not the party has any interest in the matter. Furthermore, Paragraph 3(e) of the Preamble of the 2009 FREP Rules elaborates this liberal approach to *locus standi*. It provides thus:

The court shall encourage and welcome public interest litigation in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates or groups as well as any Nongovernmental Organizations may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:

- (i) anyone acting in his own interest;
- (ii) anyone acting on behalf of another person;
- (iii) anyone acting as a member of, or in the interest of a group or class of persons;
- (iv) anyone acting in the public interest, and
- (v) association acting in the interest of its members or other individuals or groups.

The issue of *locus standi* was one of the greatest impediments to the actualization of the enforcement of Fundamental Rights under the 1979 Rules. The 2009 Rules has broadened the category of persons who can validly institute Fundamental Rights Enforcement Actions. Similarly, the issue of public interest litigation with respect to *locus standi* has been extended under the 2009 FREP rules.

It is clear from the foregoing that the current Fundamental Rights Enforcement Procedure Rules, 2009 is innovative, bold and encouraging in many respects. The new rules without doubt represent a bold and commendable attempt at taking human rights seriously in our country. This is hardly surprising given the fact that the former Chief Justice of the Federation of Nigeria – Honourable Justice Idris Legbo Kutigi involved human rights lawyers, academics and civil society organizations at every stage of the drafting of the rules. It is the first FREP Rules with a preamble which advances human rights enforcement, both qualitatively and quantitatively.

Conceding that a number of provisions are challengeable, nevertheless, one cannot dismiss it as one of those unreasoned innovations. The challenge is to encourage lawyers, human rights activists and advocates as well as the bench to appreciate its fundamental objectives and be committed to them.

CHAPTER FOUR

IMPEDIMENTS TO THE PROTECTION AND REALISATION OF HUMAN RIGHTS IN NIGERIA

4.1 STATUTORY IMPEDIMENTS TO THE PROTECTION AND REALISATION OF HUMAN RIGHTS IN NIGERIA

Many statutory provisions on human rights in Nigeria, rather than energize and galvanize human rights goals, obviously limit and undermine them. For instance, there are numerous derogation clauses which are not only too wide but ill-defined and nebulous. This constitutes a formidable weakness which can gravely undermine human rights promotion, protection, enforcement and realisation. These statutory provisions are discussed below.

4.1.1. THE NIGERIAN CONSTITUTION AND HUMAN RIGHTS TREATIES

Section 12 of the Constitution of Nigeria⁶⁹ concerns treaties and their implementation. Since international human rights instruments are, essentially, multi-lateral treaties, a careful examination of the provisions of section 12 becomes not only relevant but imperative. The section provides that:⁷⁰

- (i) No treaty between the Federation and any other country shall have force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.
- (ii) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

Therefore, what is the implication of the foregoing, in the light of the well known principle of international law of treaties that, a state cannot be bound by any agreement to which it has not

⁶⁹ CFRN, 1999 supra

⁷⁰ Ibid, ss i & ii

given its consent—either by signing, ratification, accession or any other means of declaration of intent to be bound, (except, where such agreements are mere declarations of existing norms of customary international law)?⁷¹ Besides, most treaties are not self-executing and as such, parties to them are usually enjoined to institute municipal measures to guarantee the application of such treaties within their domestic systems.⁷² The implication of the provisions of section 12 of the 1999 Constitution is simply that human rights treaties entered into by Nigeria will not become binding until the same have been passed into law by the National Assembly.

In *General Sani Abacha v. Gain Fawehinmi*,⁷³ where, among other things, the enforcement or applicability of the international treaties in Nigeria was in issue, the Supreme Court held that, by section 12(1) of the 1979 Constitution (the *ipissima verbis* of section 12(1) of the 1999 Constitution), “an international treaty entered into by the government of Nigeria does not become *ipso facto* binding until enacted into law by the National Assembly and before its enactment, an international treaty has no force of law as to make its provisions actionable in Nigerian law courts.”⁷⁴ Further, the court unanimously held that “unincorporated treaties cannot change any aspect of Nigerian law even though Nigeria is a party to those treaties” but that they may “however indirectly affect the rightful expectation by the citizen that governmental acts affecting them would observe the terms of the unincorporated treaties.”⁷⁵

⁷¹ See J. O. Dada, 'Human Rights Protection in Nigeria' [2012] (18) 1 (6) *Annual Survey of International & Comparative Law*, 72 <<http://digitalcommons.law.ggu.edu/annlsurvey/vol18/iss1/6>> accessed 6 March, 2017

⁷² For more information on human rights treaties within states' legal and political systems, see H. J. Steiner and others, *International Human Rights In Context: Law, Politics, Morals* (1st edn, CU Publication, London, 1996) 725-729.

⁷³ *Abacha v. Fawehinmi*, [2000] 6 NWLR 228

⁷⁴ The reenactment of international treaties into domestic law is what is referred to as the concept of domestication or transformation of treaties.

⁷⁵ *Ibid.*

Therefore, the practical significance of the provisions of section 12 of the 1999 Constitution in the context of human rights promotion and protection, is that international human rights treaties are not *ipso facto* applicable and enforceable in Nigeria unless they are domesticated as in the case of the African Charter on Human and Peoples' Rights.⁷⁶

Accordingly, the effectiveness of ratified human rights treaties is predicated on their being domesticated. This is so because the provision of the constitution is supreme. The Supreme Court unequivocally made the foregoing point as follows:

Constitution is the supreme law of the land; it is the grundnorm. Its supremacy has never been called to question in ordinary circumstance. Thus, any treaty enacted into law in Nigeria by virtue of section 12(1) of the 1979 Constitution (now section 12(1) 1999 Constitution) is circumscribed in its operational scope and extent as may be prescribed by the legislature.⁷⁷

4.1.2. THE PROBLEM OF PRIMACY BETWEEN INTERNATIONAL HUMAN RIGHTS NORMS AND DOMESTIC LEGISLATION

International agreements—particularly those relating to human rights— employ two approaches, namely the '*treaty*' method and the '*non-treaty*' method. Whereas the treaty method creates legally binding obligations on state parties, the non-treaty method establishes non-legal

⁷⁶ The African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986. Nigeria signed (1982), ratified (1983), and domesticated the African Charter as Cap 10, LFN, 1990 or Cap A9, LFN, 2004

⁷⁷ Abacha *Supra*, at 258

commitments to guide signatory states.⁷⁸ Nigeria's international obligations, primarily those concerning human rights, are treaty-based.

For instance, the National Assembly in March, 1983 incorporated completely (*holus bolus*) the text of the African Charter on Human and Peoples' Rights, into the corpus of domestic legislation. The wholesale incorporation of the Charter raises certain fundamental issues which appertain to any domesticated human rights treaty. For instance, the 1999 Constitution draws a distinction between justiciable and non-justiciable human rights.⁷⁹ The Charter, on the other hand, makes no distinction between economic, social, and cultural rights, on the one hand and civil and political rights on the other. One important question which arises therefore is the implication of the wholesale domestication.

Again, in the event of conflict between the Nigerian Constitution, Nigerian statutes, and the Charter, as incorporated, which one prevails? This last question raises the issue of primacy between international human rights norms and domestic legislation.

On the relationship between international human rights instruments and domestic law—which includes the Constitution—two principal schools of thought have emerged, viz monism and dualism. In addition to these dominant theories, a lesser theory that has also been propounded is the harmonisation theory⁸⁰.

Monism asserts that international law and municipal law form part of a universal legal order serving the needs of the human community one way or another. By this theory, any international

⁷⁸ F. W. Reinke, 'Treaty and Non-Treaty Human Rights Agreements: A Case Study of Freedom of Movement in East Germany', [1986] 24 *Colum. J. Transnat'l L.* 647-648.

⁷⁹ While the provisions of chapter iv dealing with Civil and Political Rights are justiciable, those of Chapter II, encapsulating social, economic and cultural rights are made non-justiciable.

⁸⁰ D.J. Harris, *Cases and Materials on International Law* (5th ed. London Publishers, 1998) 67

treaty, including those concerned with human rights, ratified or assented to by a state is directly enforceable within the municipal system.

On the other hand, dualism holds that international law and municipal law are two distinct legal orders.⁸¹ Thus, each may isolate the other, and as such, ratified treaties are not enforceable until the parliament enacts a law to incorporate them into the municipal law.

The harmonization theory holds that man is the focus of both areas as man lives in both jurisdictions. Harmonization theorists contend that both systems are concordant bodies of doctrine, autonomous but harmonious in their aim of achieving the basic good and therefore reject the presumed conflict between international law and national law.

In Nigeria, the dualist or indirect system applies by virtue of the provision of section 12 of the 1999 Constitution. It is for this reason that the Supreme Court unequivocally held that no treaty applies unless it is ratified. Further, the court held that the Constitution, by virtue of its supremacy, has primacy over international law in the event of conflict between the two.⁸² In the words of the court, any treaty enacted into law in Nigeria by virtue of section 12(1) of the 1999 Constitution, is circumscribed in its operational scope and extent as may be prescribed by the legislature.⁸³

As relating to the conflict between international law and other national law, the Supreme Court unfortunately did not make an unequivocal pronouncement. However, the court noted that "in incorporating African Charter, this country (Nigeria) provided that the treaty shall rank at *par*

⁸¹ *Ibid*

⁸² Abacha, 6 NWLR at 255

⁸³ *Ibid.* at 258

with other ordinary municipal laws.”⁸⁴ On the other hand, Mr. Justice Mohammed (JSC) held that:

The African Charter on Human and Peoples’ Rights (Notification and Enforcement Act, Cap 10 Laws of the Federation of Nigeria, 1990) is a statute with international flavor. Therefore, if there is a conflict between it and another statute, its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation. Thus it possesses a greater vigor and strength than any other domestic statute’.⁸⁵

The view that international instruments, including human rights instruments, should take precedence over domestic legislation, it is submitted is a better and preferred view. The subscription of Nigeria to those norms by ratification of the treaties means that the Nigerian governments and their judicial agencies are not legally permitted to derogate from those norms. Accordingly, international human rights norms should be interpreted and enforced in such a manner as to confer primacy on international human rights instruments over domestic legislation.

4.1.3. RESERVATION CLAUSES IN HUMAN RIGHTS INSTRUMENTS

A careful and painstaking content analysis of the various international human rights instruments reveals that there are many ill-defined instances of permissible derogations inherent in them. In other words, many of the human rights guaranteed in international human rights instruments are not sacrosanct or granted in absolute terms. Rather, the various instruments create instances

⁸⁴ *Ibid.* at 255. Justice Achike, in his dissent, found that “a close study of that Act [Cap 10] does not demonstrate, directly or indirectly, that it had been ‘elevated to a higher pedestal’ in relation to other municipal legislation.” *Id.* at 316-317.

⁸⁵ *Ibid.* at 251

where it is legitimate and legally sustainable for the rights to be violated. Although virtually all the rights granted by the Universal Declaration of Human Rights, 1948 are not qualified.⁸⁶ the same thing cannot be said of the two Covenants⁸⁷ which elaborated on the provisions of the Declaration. For instance, Article 4 of the International Covenant on Civil and Political Rights recognizes and provides for permissible derogations in the following terms:

In time of public emergency which threatens the life of the nation, and the existence of which is officially proclaimed, the state parties ... may take measures derogating from their obligations under the present covenant...⁸⁸

Similarly, Article 4 of the International Covenant on Economic, Social and Cultural Right allows restrictions and limitations on the rights it guarantees. The Article provides that:

The states parties to the present covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

The African Charter also contains derogation clauses. For instance, Article 6 provides *inter alia* that “no one may be deprived of his freedom except for reasons and conditions previously laid down by law...” while Article 11, in limiting the right to assemble freely, permits “necessary restrictions provided for by law.”⁸⁹

⁸⁶ Articles 9 and 12, however, seem to contemplate permissible derogation by the use of the expression “arbitrary.” Also, Article 29(2) recognizes permissible limitations in the enjoyment and exercise of the rights guaranteed in the Declaration

⁸⁷ That is, the Covenant on Civil and Political Rights (1966) and the Covenant on Economic, Social and Cultural Rights (1966). Both covenants were adopted on December 16, 1966.

⁸⁸ Article 4(2) of the International Covenant on Civil and Political Rights prohibits derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18

The practical and legal implication of these derogation clauses is simply that a state is permitted to limit, restrict, abridge, or suspend the enjoyment of these rights. While it may be inappropriate to contend that all the rights should be given in absolute terms, it is a matter of grave concern that the instances of permissible derogation are not well-defined and as such, susceptible and amenable to abuse. For instance, no definition is offered by the Convention on Civil and Political Rights of what constitutes a “public emergency.”

Apart from the problem of definition, how do we react to derogations during a state-induced public emergency? It is respectfully submitted that the wide and ill-defined permissible derogations from the enjoyment of the rights guaranteed by some international human rights instruments is a veritable tool to avoidable curtailment of the protection and promotion of human rights at the domestic level; contextually in Nigeria.

4.1.4. CONSTITUTIONAL DEROGATIONS

A formidable impediment to optimal enjoyment, protection, and promotion of human rights in Nigeria is also located in the various constitutional limitations and qualifications imposed on these rights. Section 45(1) of the 1999 Constitution, like its predecessor the 1979 Constitution⁹⁰, provides a veritable foundation upon which any law invalidating fundamental rights may be justified. The section provides, *inter-alia* that:

‘Nothing in sections 37, 38, 39, 40 and 41 of [this] constitution shall invalidate any law that is reasonably justifiable in a democratic society

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

⁸⁹ Articles 12, 13 and 14 of the African Charter, *supra* note 20

⁹⁰ CFRN, 1979.

*(b) for the purpose of protecting the rights and freedom of other persons.*⁹¹

By the foregoing provision, the right to private and family life, freedom of thought, conscience and religion, freedom of expression and the press, right to peaceful assembly and association and right to freedom of movement may be circumscribed or limited. Also, other human rights constitutionally guaranteed are not sacrosanct or absolute but are expressly and specifically limited.

Admittedly, there may be no absolute right without qualifications, but the constitutional provisions limiting the rights guaranteed⁹² are somewhat imprecise, indeed nebulous, and as such, constitute a real drawback in the effort to promote human rights. For instance, what law is “reasonably justifiable in a democratic society” does not enjoy any definition and neither is it capable of any precise articulation.⁹³ This undoubtedly poses a very grave danger to optimal realisation of human rights. In the case of *DPP v. Chike Obi*⁹⁴ which was followed in *Queen v. Amalgamated Press*,⁹⁵ the Court held that the sedition law, though it evidently gravely circumscribed the constitutionally guaranteed right of freedom of speech, was ‘reasonably justified in a democratic society.’

To demonstrate the amplitude and plenitude of the dangers posed by these nebulous constitutional derogations, reference may be made to the provision of section 33(1) of the 1999

⁹¹ Section 45(1), CFRN, 1999.

⁹² *Ibid*, Ss. 33-36 .

⁹³ Many courts have grappled with this problem. *See, e.g.*, *Olavoyin v. Attorney Gen. of N.Region*, [1961] 1 N.L.R 269 (Nigeria); *Williams v. Majekodunmi*, [1962] 1 N.L.R 413; *Adegbenro v. Attorney Gen. of the Fed'n & Ors.*, [1962] 1 N.L.R. 431.

⁹⁴ [1961] 1 N.L.R. 186.

⁹⁵ [1961] 1 N.L.R. 199.

Constitution which guarantees the right to life. The section permits derogation from this right. in execution of a sentence of a court with respect to a criminal offense, and goes on to provide that:

a person shall not be regarded as having been deprived of his life...if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary -

(a) for the defense of any person from unlawful violence or for the defense of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purpose of suppressing a riot, insurrection or mutiny.⁹⁶

With the characteristic overzealousness of Nigerian security agents— especially the police. many of whom are ill-trained and ill-motivated— this provision is often abused.⁹⁷

This derogation explains the worrisome cases of extra-judicial killings which have been witnessed in Nigeria⁹⁸, and is particularly disturbing because of its wide amplitude. For instance, death resulting from the use of force is permitted in order to effect lawful arrest or to prevent escape from lawful custody, irrespective of the nature or gravity of the offense for which the

⁹⁶ Section 33(2), CFRN, 1999.

⁹⁷ e.g., U.N. Human Rights Council various reports, in U.N. Human Rights Council. Report of the Human Rights Council on its Ninth Session, U.N. Doc. A/HRC/9/1-A/HRC/9/27 (Feb.9. 2008). The reports were discussed in Adejuwon Soyinka. *On Death Row*, TELL MAGAZINE(Nigeria). Apr. 20, 2009. at 22.

⁹⁸ Examples of extra-judicial killings include the deaths of Dele Udoh, the Nigerian athlete who was brutally murdered at a road block, Colonel Rindam, Nwogu Okere and more recently, Mohammed Yusuf—the leader of the Islamic sect Boko Haram—and the six Igbo traders, known as “Apo six.” For more information on these extra-judicial killings, see *Editorial Comment*, THE PUNCH, Aug. 13, 2009, at 14; see also SUNDAY TRIBUNE, May 19, 1991, at 1; NEWSWATCH, Aug. 24, 2009, at 10-18.

arrest is to be made or for which the person was incarcerated. With this type of provision, the police can be said to have been unwittingly licensed to kill.⁹⁹

4.1.5. LOCUS STANDI

Human rights promotion and protection in Nigeria is too often hamstrung by the doctrine of *locus standi*. *Locus standi* means “legal standing” or the capacity—based on sufficient interest in a subject-matter—to institute legal proceedings in the pursuit of a certain cause.¹⁰⁰ The courts have always insisted that unless a person has the *locus standi*, he is a meddling interloper and as such, a suit at his instance will be incompetent and unmaintainable.¹⁰¹

Locus Standi is inextricably interwoven with the issue of jurisdiction. Accordingly, where there is want of *locus standi*, the court will have no jurisdiction to entertain the matter.¹⁰² In *Attorney General of Kaduna State v. Hassan*,¹⁰³ Oputa J.S.C. succinctly articulated the *raison d’être* for this doctrine as follows:

“The legal concept of standing or locus is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest.”¹⁰⁴

Consequently, in human rights litigations the issue of *locus standi* or sufficient interest is not only relevant but paramount. Thus, for a person to sustainably activate the judicial process to

⁹⁹ In 2007, authorities claimed that more than eight thousand people had been killed since 2000 in gun duels with the police. These killings have attracted the condemnation of human rights

¹⁰⁰ *Abraham Adesanya v. The President of the Fed. Republic of Nigeria*, [1981] 2 N.C.L.R. 358 ; *Adenuga v. Odemeru*, [2003] F.W.L.R. (pt 158) 1258; *Attorney General, Kaduna State v. Hassan*, [1985] 2 N.W.L.R. (pt 8) 483; *Akilu v. Fawehinmi*, (No. 2) [1989] 2 N.W.L.R. (pt 102) 122.

¹⁰¹ *Odeneye v. Efunuga*, [1990] 7 N.W.L.R. (pt 164) 618; *Abraham Adesanya v. The President of the Fed. Republic of Nigeria*, [1981] 2 N.C.L.R. 358

¹⁰² *Akinbinu vs Oseni*, [1992] 1 NWLR 97

¹⁰³ 2 N.W.L.R. (pt 8) 483.

¹⁰⁴ *Ibid.* at 524-525.

redress an infraction of human rights, he must show that he is an interested person—one whose right has been, is being, or is in imminent danger of being violated or invaded. Where a public injury or public wrong or infraction of a fundamental right affecting an indeterminate number of people is involved, to be competent to sue, a plaintiff must show that he has suffered more, or is likely to suffer more, than the multitude of individuals who have been collectively wronged.

Thus, although there is now a commendable relaxation of the rigid, restrictive and constrictive interpretation of the doctrine of *locus standi*, the doctrine remains a formidable albatross in human rights litigation in Nigeria.

Aside the above, there exist other factors that militate against human rights in Nigeria. These factors include social, cultural, political and economic factors. Some of these factors are examined below:

4.2 OTHER IMPEDIMENTS TO THE PROTECTION AND REALISATION OF HUMAN RIGHTS IN NIGERIA

The strengthening of a good human right system is a needed tool for enhanced general development of the nation. Constitutional and statutory provisions are the starting points. The following socio-cultural factors should be looked at in view of the impact they have on human rights system in Nigeria. These factors are further separated into clusters of factors namely Leadership factors, People Oriented Factors, Cultural Factors and a blend of Leadership and Cultural Factors.

4.2.1. LEADERSHIP FACTORS

4.2.1.1. CORRUPTION –

Corruption has been a major problem confronting human rights protection and realisation in Nigeria. Very often officers who are expected to use their positions to promote human rights often collect bribe and turn their backs on terrible human rights violations meted on the masses. Corruption as a factor that creates a vicious circle where human rights awareness is constantly paired with and undermined by harsh realities of poor economic and political performance. Corruption is both the cause and the consequence of political turbulence, human rights abuses and under-development. Corruption is a challenge to everyone, and therefore effort must be made to address this problem. Human Rights Report (2012)¹⁰⁵ also noted;

The Nigerian police have also been involved in frequent human rights violations, including extrajudicial killings, torture, arbitrary arrests, and extortion-related abuses. Despite the dismantling of many “road blocks” by the inspector general of police, corruption in the police force remains a serious problem. The police routinely solicit bribes from victims to investigate crimes and from suspects to drop investigations. Senior police officials embezzle or mismanage police funds, often demanding monetary “returns” that their subordinates extort from the public.

4.2.1.2 POOR LEADERSHIP –

Leadership here is not only referring to the apex government but all leadership down the ladder to the grassroots. Ward leaders to the grassroots level do not initiate strong mechanism aimed at

¹⁰⁵ Human Rights Watch (2012) World Report 2012, <<http://www.hrw.org/world-report/2012/country-chapters/nigeria?>> 2 accessed 6 March, 2017

bringing the central government closer to the grassroots. They do little or nothing to ensure a two-way flow of information for good governance.

4.2.1.3. INSINCERITY OF LAW ENFORCEMENT AGENTS –

David¹⁰⁶ notes that the high insecurity rate in Nigeria is because the law enforcement agencies are corrupt. They do not have much interest in protecting lives and properties of the poor masses. Sometimes, Security Officers betray the trust citizens have in them by turning around to collect bribe and aiding accused persons to go free either because he is rich or because he is influential.

4.2.1.4 RATIONING/HOARDING OF NEEDED INFORMATION –

Adequate information on human rights issues are often not circulated to the general public. This can be seen as a strategy of the government or Legal Officers or their Agents in order curtail litigation or unrest and also provide good avenues for milking money out of the ignorant citizens in the name of helping them to seek redress or justice. Civil societies need to always involve the people they are advocating for. The people should be mobilized and properly sensitized. A recent Human Rights Report (2012)¹⁰⁷ noted that the undisciplined Nigeria Police Force was implicated in frequent human rights violations, including extrajudicial killings, torture, arbitrary arrests, and extortion-related abuses. The police routinely solicit bribes from victims to investigate crimes and from suspects to drop investigations. Embezzlement of police funds is rife among senior police officials who also often demand monetary —returns from money extorted from the public by their subordinates.

¹⁰⁶ K. David, *Human Right Abuse*, [2014], Hubpages, 12. <<http://davidkaluge.hubpages.com/hub/human-right-abuse>> accessed 4 February, 2017.

¹⁰⁷ Human Rights Watch (2012) World Report Supra

4.2.1.5 LACK OF ADVOCACY –

This is closely tied to the availability of informed and committed leadership. Leaders, especially at the grassroots level are not often committed to sponsoring advocacies that will inform the people adequately or seek the provision of structures that will promote the respect for human rights of all. There is need for civil society to disseminate information and lobby to push through pro-people policies that will enable everyone know what is happening around them.

4.2.2. PEOPLE ORIENTED FACTORS

4.2.2.1 FEAR –

Some Nigerians are quite afraid of being noted as a human right activist or a diehard individual who can fight for his right. Some of them have this funny belief that if you fight too much for your right assassins will be sent after you or your family to silence you. As a result of this, they choose to keep quiet about any infringement on their rights or the rights others. A classical example is during long strike action that sometimes get some people arrested or injured.

4.2.2.2 IGNORANCE –

This represents a powerful challenge to human rights promotion, protection and realisation. Ignorance does not only have to do with the illiterate class but also with the illiterate class who are not aware of the provision of human rights. It is about the strongest challenge facing adequate promotion of human rights in Nigeria. The ignorant do not always only talk for themselves but will encourage and support infringement of other's rights with the belief that

what is happening is the right thing to do. David¹⁰⁸ in his paper explained that most Nigerian citizens do not know their rights, cannot say when their rights are abused and do not know how to fight for their rights. Another revealing publication on the ignorance of Christians on the extent of persecution and how to seek redress is Gryboski's treatise¹⁰⁹. Ignorance is a serious problem factor militating against an adequate human right system in Nigeria.

4.2.2.3. ILLITERACY –

About 50% of African continent is believed to be illiterate. Illiterate populations do not often shown interest in knowing their rights or how to seek redress. They choose to succumb to infringement on their rights than to follow an enlighten person who offers to show them the way to seek their rights. United Nations state that only 27 per cent of children in Nigeria, of official secondary school age, are enrolled in secondary school¹¹⁰. In a Vanguard publication in September 2013, Chief Nyesom Wike, revealed that Nigeria's adult illiterates have increased from 25 million in 1997 to 35 million in 2013¹¹¹.

¹⁰⁸ K. David, *Human Right Abuse*, (Hubpages, 2014), 15 supra

¹⁰⁹ M. Gryboski, Human Rights Activist: Many Christians 'Ignorant' of Extent of Persecution [2013] *The Christian Post*, 3, <<http://www.christianpost.com/news/human-rights-activist-many-christians-ignorant-of-extent-of-persecution-87917/>> accessed 6 March, 2017

¹¹⁰ Stepping Stones Nigeria Education and Literacy, [2012], <<http://www.steppingstonesnigeria.org/education.html>> accessed 6 March, 2017

¹¹¹ L. Akinboade, 35m Nigerian adults are illiterates — Minister, Vanguard Newspaper, [2013] <<http://www.vanguardngr.com/2013/09/35m-nigerian-adults-are-illiterates-minister/>> accessed 6 March, 2017

4.2.2.4. POVERTY –

A Human Rights Watch Report 2014¹¹² revealed that poverty is one of the core problems facing development in Nigeria. It permeates different facets of life including human rights issues. This happens in different ways :

- The poor are not interested in bothering themselves about issues that will not put food in their plates within 24 hours;
- the poor can easily collect bribe (usually some annoying token like few cups of rice or bread) and gladly allow their rights to be infringed upon or deny them;
- the poor may be living in very remote areas that have not been accessed by Human Rights activist; and
- various Human Rights enlightenment campaign given through the Media do not get to the poor because many of them do not have lights or cannot afford any means of media.

4.2.2.5 NONCHALANT ATTITUDE OF SOME NIGERIANS –

Many Nigerians dismiss the talk of Human rights as a waste of time explaining that selfish politicians will never bother about protecting the human rights of vulnerable masses. Some people in this group will calmly tell you —I have more important things to do with my time than to be pursuing human rights. Some very rich people fall into this category. Some of them strongly believe that since they are already at the peak of their profession human right talk is not very relevant to them and even when any need arises they have the way withal to get what they want.

¹¹² Human Rights Watch (2014) World Report, <<http://www.hrw.org/world-report/2014/country-chapters/nigeria?>> 2 accessed 6 March, 2017.

4.2.3 CULTURAL FACTORS

4.2.3.1. THE PASSION TO PROTECT FAMILY NAME AND IMAGE –

There are families who would prefer to be quiet about certain human rights violations because they have the belief that seeking redress will expose the family to unnecessary enmity and disgrace.

4.2.3.2. BINDING TRADITION –

Okome¹¹³ in his study revealed that a lot of women still suffer under the tradition of Female Genital mutilation. Most women find themselves tied to this tradition even against their will. In the same way other human right issues that may challenge an age old practice will not be easily accepted by certain communities. Some traditions see women as domestic helpers at home and not social or political leaders in public.

4.2.3.3. RELIGIOUS DOCTRINE –

Some religious doctrines militate against human rights system especially when it appears to conflict with their set beliefs. For instance a religious belief that states that women are to be at home doing domestic chores will frown at and reject any attempt to give women the opportunity to be educated or to hold leadership position. They also consider some human rights issues to be vain and irrelevant to fight for because God is there to take care of them and judge for them. This therefore encourages the members to turn away from human rights issues and to also refuse to

¹¹³ M. O. Okome, "Domestic, Regional, and International Protection of Nigerian Women against Discrimination: Constraints and Possibilities" [2011] 6 (3) *African Studies Quarterly* <<http://web.africa.ufl.edu/asq/v6/v6i3a2.htm>> accessed 6 March, 2017

raise any alarm against any human rights abuse or violations in their locality. In some cases like the Boko haram sect, they strongly believe that certain human rights violations they are involved in are good service to God.

4.2.4. A BLEND OF LEADERSHIP AND PEOPLE ORIENTED FACTORS

4.2.4.1. UNBALANCED/HASTY MEDIA COVERAGE –

Media reports of human rights violations sometimes are carefully packaged to favour or protect the government stand. On the other hand certain media reports are too hasty thereby exposing planned actions prematurely¹¹⁴. It is also a notable fact that certain human rights violations in remote rural areas are often not reported or are reported late based on information from a hear-say informant and not an eye witness.

4.2.4.2. LACK OF BASIC SOCIAL AMENITIES –

These basic social amenities include steady supply of light, water and needed social institutions like Schools and Social Orientation Centre. Without light and social orientation agencies, the populace is not adequately informed. They are therefore not aware of what they should do or probably do not even know what rights they have.

4.2.4.3. LACK OF ADVOCACY –

This is closely tied to the availability of informed and committed leadership. Leaders, especially at the grassroots level are not often committed to sponsoring advocacies that will inform the people adequately or seek the provision of structures that will promote the respect for human

¹¹⁴ Doubleglist Mass Media – the Coverage of Human Rights Issues in Nigeria, [2013]
<<http://www.doubleglist.com/mass-media-coverage-human-rights-issues-nigeria/>> accessed 6 March. 2017.

rights of all. There is need for civil society to disseminate information and lobby to push through pro-people policies that will enable everyone know what is happening around them.

These factors are also not static at one position. This is because at a certain point in time or a certain location a combination of leadership factors may be the problem while at a certain point it may be a combination of cultural factors or even all the factors. The important issue however is that these factors all exist and are weighing down on the human right system. This diagram clearly demonstrates the choking effect these factors have on the human right system in Nigeria.

CHAPTER FIVE

CONCLUSION

5.1 SUMMARY OF FINDINGS

There is undoubtedly, increased global awareness on the concept of human rights. As a result, many countries of the world have entrenched human rights provisions in their laws including the procedures for enforcement, protection and realization of same. Regrettably, the enjoyment of human rights in Nigeria—as in many nations across the globe—has been hamstrung by multifarious and multidimensional impediments. This is why atrocious violations of human rights still exist in Nigeria today. Many of the hindrances to human rights protection in Nigeria have been sustained, and remain unabated, partly because of a lack of genuine and practical commitment on the part of the government to ensure meaningful enjoyment of these rights.

This study has examined the various statutory impediments to the protection and realization of these rights i.e the statutory drawbacks, clogs or snags militating against the enjoyment of human rights in Nigeria.

In the course of the work, the researcher started with the examining the concept of human rights, its categories as well as the historical development of human rights in Nigeria.

The researcher also examines the legal framework for the protection and realisation of human rights in Nigeria which essentially analyses the body of laws that provide for the enforcement of human rights that are enforceable under Nigerian Laws.

The researcher goes further to examine the various statutory impediments to the protection and realisation of human rights in Nigeria, which is, essentially, an analysis of the various statutory provisions that basically constitute drawbacks to the protection, realisation, enforcement and

enjoyment of human rights in Nigeria. The researcher also examined other factors, though not statutory, that militate against the protection, realisation, enjoyment and enforcement of human rights in Nigeria.

From the analysis of this work, the underlisted findings are clearly noted/observed:

- a. there is a unanimous agreement amongst authors that human rights are those rights that are inherent in human beings by virtue of being human.
- b. there is an increasing global awareness on the concept of human rights.
- c. human rights have been codified as part of our laws especially under the 1979 Constitution, and subsequently, the 1999 Constitution as well as other statutes.
- d. human rights are broadly categorised into justiciable and non-justiciable rights in Nigeria.
- e. the various human rights provisions in our laws come with several derogations which leaves one to wonder whether the framers and drafters of these laws intended that they be enjoyed without any encumbrance.
- f. the statutes provide derogations or reservation clauses which presupposes that human rights are not absolute after all. Some of these derogations include the reservations in the various international human rights treaties ratified by Nigeria, the provision for domestication of all treaties before same can be enforced in Nigeria, the various reservation clauses with regards to human rights provisions in the constitution, etc
- g. derogations constitute impediments to the protection, enforcement and realisation of human rights in Nigeria.
- h. there exist other factors that impede the protection, promotion, enforcement and realization of human rights in Nigeria. These factors can broadly be categorized as social, political and economic factors.

5.2 OBSERVATIONS

From the study, the following observations are pertinent;

- a. there exist an increased awareness on the concept of human rights, globally and in Nigeria.
- b. in spite of the various provisions on human rights, cases of violations of human rights still abound.
- c. the various human rights instruments consist of derogation clauses which presupposes that human rights are not absolute; they have reservations.
- d. these statutory reservations and derogations constitute impediments to the protection, realization, enforcement and enjoyment of human rights in Nigeria.

5.3 RECOMMENDATIONS

It is the state, with its various institutions, which is primarily responsible for guaranteeing the implementation and enforcement of human rights. This mandate is explicitly stated in the Charter of the United Nations as follows:

‘All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of ‘universal’ respect for, and observance of human rights and fundamental freedom’.¹¹⁵

¹¹⁵ U.N. Charter art. 56. In addition, other international human rights instruments specifically define States’ undertakings for the promotion and realisation of human rights. For instance, the Vienna Declaration and Programme of Action provides that the protection and realisation of human rights is the first responsibility of governments. World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, preamble, 1, U.N. Doc A/CONF.157/24, (July 12, 1993)

Consequently, to overcome the multitudinous challenges stated above, it is imperative that necessary constitutional and institutional reforms be undertaken in addition to the need for government to demonstrate pragmatic political will to promote and protect human rights. The following recommendations, if faithfully implemented, will ensure better protection and realization of human rights in Nigeria:

5.3.1. EXCLUSION OF HUMAN RIGHTS INSTRUMENTS FROM THE AMBIT OF SECTION 12 OF THE CONSTITUTION.

Human rights instruments should be excluded from the provisions of section 12 of the 1999 Constitution¹¹⁶ requiring the National Assembly to enact treaties to which Nigeria is a party into law before they become binding and enforceable in Nigeria. This means that any international human rights instrument to which Nigeria is a party will automatically become applicable and enforceable in Nigeria without the necessity of the same being enacted into law by the National Assembly. This way, Nigeria will be bound by all human rights instruments it ratifies on the basis of *pacta sunt servanda*.

5.3.2. ABRIDGEMENT OF LIMITATION PROVISIONS:

The ambit of permissible constitutional derogations must be severely limited. Accordingly, the various sections of the Constitution¹¹⁷ which provide wide and sometimes nebulous limitations on some of the rights must be amended. The danger posed by these derogation clauses informs their condemnation by Honorable Justice Bhagwati. In his words:

¹¹⁶ CFRN, 1999

¹¹⁷ Ibid, Ss. 33 & 45

We must therefore take care to ensure that in no situation, however grave it may appear, shall we allow basic human rights to be derogated from, because once there is a derogation for an apparently justifiable cause, there is always a tendency in the wielders of powers in order to perpetuate their power, to continue derogation of human rights in the name of security of the state. Effective respect for human rights must place two kinds of restrictions on the forces of derogation. It must limit the circumstances and specify the procedures under which derogation may be legitimately invoked and it must also identify and reserve certain core human rights such as the right to life or the right to personal liberty, or freedom *ex post facto* from criminal laws which are the most vital from a political science perspective, as absolutely non-derogable¹¹⁸.

I consider it irresistible to commend this insightful pronouncement to the Nigerian State.

5.3.3. STRENGTHENING OF THE EXTRA-JUDICIAL BODIES:

Extra-judicial bodies for human rights enforcement must be strengthened to promote their efficiency and efficacy in human rights promotion and protection. Judicial enforcement of human rights is characteristically protracted and expensive. This is why over-reliance and dependence on the judiciary must be de-emphasized and discouraged in favor of these extra-judicial bodies which are less cumbersome, less technical and inexpensive. Accordingly, the human rights agencies should enjoy reasonable independence to free them from executive interference.

¹¹⁸ Bhagwati, *supra* at xxi.

In addition, the agencies especially, the National Human Rights Commission, and the Public Complaints Commission must be strengthened and adequately funded. The constituent instruments of the Commissions should be amended to grant them financial autonomy so that they can discharge their noble statutory mandate. Apart from ensuring the financial autonomy of the Commissions, government should be charged with the responsibility of providing technical and infrastructural support and solidarity for their work and those of other human rights organizations.

5.3.4. DEDICATED OBEDIENCE TO COURT ORDERS:

The executive branch has the onerous, important, and compelling duty to ensure prompt compliance with the orders of the courts. Human rights should no longer be a matter of rhetoric. Rather, the government must constantly and deliberately seek to advance the cause of human rights through human rights-friendly legislation, policies, and actions. It is fitting and commendable that the Federal Government of Nigeria, in response to the recommendation of the Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in Vienna Australia in 1993,¹¹⁹ has drawn up a comprehensive National Action Plan for the promotion and protection of Human Rights in Nigeria¹²⁰.

In furtherance of the mandate of the Vienna Declaration, the Nigerian National Action Plan has carefully identified and drawn up an integrated and systematic national strategy to help realize the advancement of human rights in Nigeria. This noble and laudable effort will be meaningless

¹¹⁹ Vienna Declaration and Programme of Action, *supra* 103.

¹²⁰ The National Action Plan (NAP) for the Promotion and Protection of Human Rights in Nigeria was presented at the United Nations at Geneva, Switzerland in July, 2009, available at <http://www.dhnet.org.br/dados/pp/nacionais/pndh_nigeria_2_2009_2013.pdf>34. accessed 6 March, 2017.

and remain dead letters if the government fails to honestly and committedly pursue the program of action articulated therein.

In discharging this commitment, the Government must always ensure that persons of proven integrity with spotless moral character are those appointed to the bench and bodies consecrated for human rights promotion and protection.

5.3.5. SUSTAINMENT OF DEMOCRACY:

Human rights can no longer be meaningfully discussed outside a democratic environment. Indeed, it is axiomatic that the more democratic a state is, the less violation of human rights the citizens of that state experience. The current democratic environment, with all its imperfections, is undoubtedly more clement for the protection and development of human rights than military rule, which is characteristically associated with autocracy and totalitarianism. As the Vienna Declaration succinctly states, "democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing."¹²¹

Accordingly, the current culture of violence and impunity must be halted. Those in public offices, especially in the legislative and executive branch, must be more transparent in the way the affairs of government are conducted just as they owe a duty to abide by the mandate of section 15(5) of the 1999 Constitution (as amended) to "abolish all corrupt practices and abuse of power." Further, to sustain our current democracy, the political class must remember the injunction of section 13 of the 1999 Constitution that "it is the duty and responsibility of all organs of government, and all the authorities and persons exercising legislative, executive and

¹²¹ Vienna Declaration and Programme of Action, *supra* 8.

judicial powers to conform to, observe and apply the provisions of the fundamental objectives and directives of state policy.” This is an unmistakable agenda for good governance.

It is in keeping faith with this agenda that democracy will be sustained, and concomitantly, human rights will be better protected in Nigeria.

5.4. CONTRIBUTION TO KNOWLEDGE

This study constitutes an academic contribution to the literature on International law. International Human Rights Law and Human Rights Law in Nigeria, especially in the area of the factors (statutory) that militate against the promotion, protection, enforcement and realization of human rights in Nigeria. It will be a reference material for the society, legislature, judges, lawyers, scholars, students and researchers seeking a better understanding of the concept of human rights especially in the face of the prevalence of violations of human rights in spite of the statutory provisions guaranteeing human rights in Nigeria.

The study made valuable contributions in filling the gap in knowledge on whether our laws should be re-examined to curb the existing violations of human in Nigeria which stem from the statutory derogations to human rights or the statutory reservations with respect to the various human rights provision in Nigerian statutes.

The study will also serve as a reference material for the International Community and Practitioners’ of International Human Rights Law and municipal Human Rights Law when attempts are made to amend the existing human rights instruments, at both the international and municipal levels.

5.5 SUGGESTED AREAS FOR FURTHER RESEARCH

There is an increase in incidences of human rights violations in Nigeria in spite of the increased awareness on the concept of human rights as well as the multiple provisions on human rights as contained in our statutes. Some of these violations stem from the derogations or reservation clauses or provisions which are also replete in our human rights statutes.

The continuous violations of human rights largely engendered by the derogation clauses contained in our statute books suggest there is a seeming lacuna in our laws. If these gaps and loopholes are left unchecked, there exists the possibility of further human rights violations.

This study, having made a valuable contribution in filling the gap in knowledge on the statutory impediments, drawbacks and factors that militate against the protection, realization, promotion and enforcement of human rights in Nigeria, provides useful insights to future research on the topic.

Future researchers can also further assess;

- a. the social, political, economic and religious factors that militate against the protection, realization, promotion, enforcement and enjoyment of human rights in Nigeria.
- b. failure of government in the protection of human rights.
- c. how the judicial process militates against human rights protection.
- d. Law enforcement and human rights, etc.

5.6 CONCLUSION

Without any doubt, concern for human rights is universal, and this is why the concept of human rights has gained remarkable appeal and significance in our world of pluralism, diversity, and interdependence. Regrettably, the enjoyment of human rights in Nigeria—as in many nations across the globe—has been hamstrung by statutory impediments, among others. This is why atrocious violations of human rights still exist in Nigeria today.

Many of the statutory hindrances to human rights protection in Nigeria have been sustained and remain unabated, partly because of a lack of genuine and practical commitment on the part of the government to ensure meaningful enjoyment of these rights. Successive Nigerian governments, like many governments, have not been able to address the apparent lacuna in our human rights laws which create a fertile ground for violation of the human rights the same laws seek to protect.

Since human rights are most effectively protected at the national level, it is therefore imperative for each national government to take all legislative, judicial, and administrative measures in order to prevent, prohibit, and eradicate all human rights violations. It should not merely be fashionable to accept and adopt international human rights instruments. Rather, practical commitment ought and should be demonstrated at all times towards the realization of their noble objectives, including streamlining our statutes.

Accordingly, it is hereby advocated that meaningful steps be taken to adopt the proposals for reform stated in this article among others. Specifically, the ambit of permissible derogation must be well defined and severely limited. Further, the dualist model on the applicability of international human rights treaties should be abolished as it constitutes a significant drawback to human rights protection in Nigeria.

Finally, the courts must at all times adopt a generous interpretation of human rights provisions—and avoid what has been called the austerity of tabulated legalism—suitable to give individuals the full measure of the fundamental rights and freedom.

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