

**THE LEGAL CHALLENGES IN THE ENFORCEMENT OF FUNDAMENTAL
RIGHTS IN NIGERIA - AN APPRAISAL**

BY

Grace Oghenetega MATTHEW

MAT. NO: LAW1507828

**FACULTY OF LAW
UNIVERSITY OF BENIN
BENIN CITY**

**A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, UNIVERSITY OF
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OF BACHELOR OF LAWS (L.L.B.) DEGREE**

JULY 2021

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CERTIFICATION

I, **Grace Oghenetega MATTHEW** with Matriculation Number **LAW1507828**, hereby certify that apart from the reference made to other persons works which have been duly acknowledged, the entire work is the product of my personal research and that this project has neither in whole or in part been presented for another degree elsewhere

Grace Oghenetega MATTHEW

Date

APPROVAL

We certify that this project was completed by **Grace Oghenetega MATTHEW** with Matriculation Number **LAW1507828**, in partial fulfillment of the requirements for the award of the Bachelor of Laws Degree (L.L.B.).

Mrs. Juliet Aimienrovbiye
(Project Supervisor)

Date

Dr. D.T. Achi.
(Project Co- Ordinator)

Date

PROF. V.O. Aigbokhaevbo
(Dean, Faculty of Law)

Date

DEDICATION

I dedicate this research work to God Almighty who has seen me through my LL.B degree programme. He proved to me that he never leave those who put their trust in him.

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Sections 330 to 350 of the Criminal Code have provisions safeguarding the right to life. It bars offences endangering life or health

Criminal Code Cap P3 L.F.N 2004; Section 220 to 231 of the Penal Code equally makes provisions for the safeguard of the right to life

Article 3, Universal Declaration of Human Right 1948

Article 6(1), International Covenant on Civil and Political Right 1966

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Section 4, Police Act [Nigeria], Cap P19 LFN 2004

Article 3, United Nations Code of Conduct for Law Enforcement Officers

Section 33(1) of the Constitution of Nigeria Cap C23 LFN, 2004

TABLE OF ABBREVIATIONS

NWLR	New Weekly Law Report
CFRN	Constitution of Federal Republic of Nigeria
LFN	Law of the Federal Republic of Nigeria
SC	Supreme Court
AC	Appeal Cases
NLR	Nigeria Law Report
UDHR	Universal Declaration of Human Right
EHRH	European Court of Human Right Research
LPELR	Law Pavilion Electronic Law Report
NCLR	Nigerian Constitutional Law Report
FWLR	Federal Weekly Law Report
OHCHR	Office of the United Nations High Commissioner for Human Right
NHRC	National Human Rights Commission
ASLR	Aberdeen Student Law Review
JUSUN	Judiciary Staff Union of Nigeria

ABSTRACT

The Constitutional and Political development of Nigeria from Independence till date has been intertwined with the quest for the promotion and protection of Fundamental Rights in various constitutions. There has been a sustained struggle for the protection of human rights of individuals, groups and communities in Nigeria.

Fundamental Rights are those aspects of human rights which have been recognized and entrenched in the Constitution. Fundamental Rights are provided for in Chapter IV of the Constitution of Nigeria, 1999 (as amended). They are also recognized and entrenched in other legal instruments, such as the African Charter on Human and People's Right to which Nigeria is a signatory to. These Fundamental rights are not privileges in the sense that they could be withdrawn at the whims and caprices of the government of the day. They are rights which the Executive and Legislature are enjoined to respect and the Judiciary to protect. However, there are instances of violation of these rights. Furthermore, where there are breaches of these rights, the appropriate means to facilitate the enforcement of the victim's Fundamental Right is important. It is against this background that the Fundamental Rights (Enforcement Procedure) Rules, signed in November 11, 2009 by the then Chief Justice Idris Legbokutigi, was enacted.

While these formalistic approaches can easily be mentioned, the same cannot be said of the actual implementation of mechanisms designed to facilitate the realization of basic Fundamental Rights. This is because there is a gulf between pronouncements of respect for Human Rights and their actual implementation. The explanation for this appears to be that there still exists, a number of substantive and procedural obstacles or impediments that not only inhibit the actual implementation of such measures, but preclude the masses in general from having access to Justice in Nigeria.

The question is then, what are these impediments and how can they be surmounted to guarantee access to justice for the vast majority of Nigerians? Are there in-built legal mechanisms that can be deployed to ensure the attainment of Justice in the country? Using doctrinal and analytical methods of research, this work examines these questions and propose new course in the quest for the promotion and protection of human rights in Nigeria.

STATEMENT OF RESEARCH PROBLEM

The enforcement of Fundamental Human Rights is the solid rock of any civilized society, and Nigeria isn't an exception. The peaceful co-existence of a country is largely dependent on the ability of its citizens to enforce their rights when it is violated. However, the enforcement of Fundamental Rights in Nigeria is bewildered by certain challenges. Some of these challenges includes; ignorance and poverty on the part of majority of the citizenry, jurisdiction of courts, attitudes of government functionaries, the refusal of government and its agencies, especially security agents to obey court orders and judgment. All of these pose a hindrance repeatedly to the enforcement of Fundamental Human Rights in Nigeria.

AIM AND OBJECTIVES

The aim of this study is to evaluate the laws in Nigeria for on the protection of Fundamental Human Rights, how well Nigeria has fared regarding the protection of these rights and the way forward with regards to Human Rights Protection. The specific objectives on the other hand are to:

1. Discuss the nature of Fundamental Human Rights.
2. Examine the state of Fundamental Human Rights enforcement in Nigeria.
3. Analyze the mechanisms for enforcement of Fundamental Human Rights in the country.
4. Examine the problems of enforcement of Fundamental Human Rights in the country.

5. Discuss the prospects and possible solutions to the challenges of enforcement of Fundamental Rights in Nigeria.

SCOPE OF THE STUDY

The topic of this study is “The Legal challenges of the enforcement of Fundamental Human Rights in Nigeria”. Thus, the study will be limited to Nigeria. However, where needed, reference would be made to other jurisdictions. Also, some of the relevant Human Right Convention, Protocols, and Treaties, to which Nigeria is a signatory to will be cited for reference purpose.

METHODOLOGY

The study will adopt both analytical and historical approaches. It will be analytical in that there will be an exploration of what the existing law is as it relates to enforcement of Fundamental Rights in Nigeria. It will be historical in that the evolution of Fundamental Human Rights will be traced in this study, so as to know the reason behind the evolution of these rights.

The study will make use of Primary and Secondary sources. Primary sources here, refers to Administrative decisions and rulings, Constitution, Judicial Reports, Administrative Rules and Regulations, Fundamental Rights Enforcement Rules, etc. Secondary sources here, refers to Journals, Academic books, Online based materials, Law dictionaries, Articles, Newspaper, etc.

EXPECTED FINDINGS

The study reveals that:

1. Human Rights are different from Fundamental Rights.
2. There are many challenges that are hindering the enforcement of Fundamental Human Rights in Nigeria, some of which includes; Illiteracy, Poverty, Disrespect to court orders by government and its agencies, amongst others.

This study came to a conclusion that until these obstacles to the effective enforcement as discovered in this study are addressed, the pursuit of a Nigerian society free from Human Rights abuse will continue to be an illusion to be pursued, but never attained.

CONTRIBUTION TO KNOWLEDGE

This study exposed the extent to Fundamental Right abuses in Nigerian Democratic governance. It equally highlighted the effects of Fundamental Right Abuses in Nigeria and made recommendations on how to prevent or deal with its recurring occurrences in the future.

CHAPTER ONE

THE CONCEPT OF FUNDAMENTAL RIGHTS

1.0. INTRODUCTION

The entrenchment of Fundamental Rights from Independence till date, has been one consistent feature of the Nigerian Constitution. It is basic knowledge that Human Rights have become a worldwide subject over the years. The fact that Human Rights have gained exceptional attention, prominence and significance in our world of pluralism, diversity and interdependence stems from their very nature. The very idea of “Justice” and “Equality” necessarily presupposes the thesis that independent of any positive law, there exists certain natural rights which are directly gifted to man by God, our creator. They have been there from the existence of mankind.

Indeed, the essence of human rights was underscored in the second paragraph of the declaration of Independence of the origin of the American Constitution, where it was stated in the following terms:

“It is a self-evident principle that the creator has endowed man with certain inalienable rights- life, liberty and the pursuit of happiness”¹

Human Rights square measure rights that all human beings have by virtue of their humanity, such as Rights to Life, Dignity of human person, Personal Liberty, Fair Hearing and Freedom of thought, Conscience and Religion. Two of the key values that lie at the core of the idea of human rights are **Human dignity and Equality**. Human rights can be understood as defining those basic standards which are necessary for a life of dignity; and their universality is derived from the fact that in this respect, at least, all humans are equal. We should not, and cannot, discriminate between them. These two beliefs, or values, are really all that is required to subscribe to the idea of human rights, and these beliefs are hardly controversial. That is why

¹ Extract from the 11th Hon Justice Idigbe Memorial lecture delivered by the Hon Justice P.O Aderemi, JSC (RTD) CON at the Faculty of Law Auditorium, University of Benin, 12 May, 2010.

human rights receive support from every culture in the world, every civilised government and every major religion. It is recognised almost universally that state power cannot be unlimited or arbitrary; it needs to be limited at least to the extent that all individuals within its jurisdiction can live with certain minimum requirements for human dignity.

To demonstrate the necessary 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”². It is for the preceding reason that nearly all nations of the globe, including the Federal Republic of Nigeria, have signed to the foremost, International Human Rights Instruments, like the **Universal Declaration of Human Rights, 1948**; the **International Convention Economic, Social and Cultural Rights, 1966**; and other regional human rights instruments. However, it should be remembered- as noticeably noticed 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”. The sensible implication of this can be that International Human Rights promotion, protection and enforcement transcend mere formal subscription, to their ideas, mere domestication.

Against this background, we will begin this chapter by defining extensively, the subject of this research work; Fundamental rights. Also judicial interpretations will be adopted from case laws for a better understanding on the meaning of “Right”.

The study of Fundamental rights, with our focal study being the Nigerian jurisdiction will not be complete without tracing the history of Rights in Nigeria. This chapter will therefore trace the evolution of Fundamental rights in Nigeria, through the various political eras, till its entrenchment in the extant Constitution; the 1999 Constitution. Furthermore, Human and

² Dada J.A 2013. Human Rights Protection in Nigeria: the Past, the Present and Goals for Role Actors for the Future [Online]. 14(2), p.1 <Accessed 25 September, 2020>

Fundamental Rights will be distinguished in this chapter, highlighting the salient differences that exists between the two concepts and their difference in the Constitution of Nigeria³.

1.1 THE MEANING OF FUNDAMENTAL RIGHTS

The word “Right” is derived from the latin word “*Rectus*” which means, that to which a person has just, valid claim. Right in this dimension is regarded as just or correct, truth, fairness, justice, just or legal claim⁴. These rights may be categorized into Legal rights, which refers to the freedom of acting or abstaining from acting on a specific matter, or the power of compelling a specific person to do or refrain from doing a particular thing. The **Black’s Law Dictionary** defines Right as:

“that which is proper under the law, morality or ethics, something that is due to a person by just claim, legal guarantee or legal principle”⁵

In *Afolayan v. Ogunride & Ors*⁶, the court perceived a “right” as an interest recognised and protected by the law. Subsequently, in *Uwaifo v. A.G Bendel State*,⁷ the Supreme Court of Nigeria held that a legal right is any advantage or benefit conferred upon a person by a rule of law.

Fundamental Rights in the simplest terms, are rights which have been selected from a plethora of human rights and entrenched in the Constitution. They are rights specially provided for to improve human dignity and liberty in every modern state⁸. The importance of the nature of fundamental rights was couched in a very illuminating language by Hon. Justice Kayode OSO, CON in *Chief (Mrs) Olufumilayo Ramson-Kuti and Ors v. Attorney General of the Federation*.⁹

He opined thus:

³ 1999 Cap C23 LFN, 2004

⁴ Ezejiofor, 1964.

⁵ Black’s law Dictionary, 8th Edition p.1347

⁶ [1990] 1 NWLR (pt 127) 369 at 391

⁷ (1982) 7 SC 124 at 127

⁸ Uzoukwu v. Ezeonu 11 [1991] 6 NWLR (pt 200) pg 708

⁹ (1985) 6 SC 245 at 276-277 or 5 NWLR (part 10) at 211; 229

“What is the nature of fundamental right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution since Independence, starting with the Independent Constitution, that is, the Nigerian (Constitution) Order in Council 1960, up to the present Constitution, that is, the Constitution of Nigeria, 1979 (the latter does not in fact apply to this case. It is the 1963 Constitution that applies to have these rights enshrined in the Constitution so that the rights could ‘be immutable’ to the extent of the ‘non-immutability’ of the Constitution itself”).

In Nigeria, Fundamental Rights are expressly provided for in **Chapter IV of the Constitution¹⁰** and the **African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act**.

1.2 EVOLUTION OF FUNDAMENTAL RIGHTS IN NIGERIA

Human Rights attained a crescendo during the age of enlightenment, when philosophers and jurists all over Europe in diverse treaties expounded various themes and principles aimed at delimiting the powers of the state and advancing the frontiers of individual rights¹¹. In the 19th Century, human rights became a central concern over the issue of slavery, a norm which was justified both in ancient and modern times as a natural condition.¹² The huge losses of lives and gross abuse of human rights that took place during the First and Second world wars were a driving force behind the development of Modern Human Rights instruments. Human community invented coherent body of guiding principles to regulate the relationship of man and the state. The **Universal Declaration of Human Rights¹³** became the result of efforts of human community in 1948. These basic compositions of rights have since guarded the

¹⁰ Sections 33-46 of the CFRN Cap C23 LFN, 2004

¹¹ Akin I.O- The role of lawyers in the observance of Human Rights- Unilag Readings in Law p. 161

¹² F. Michael (2002). Human Rights: an interdisciplinary approach. Wiley- Blackwell. PP. 15-17

¹³ Adopted 10th December, 1948 UNGA Res 217 A(III) (UDHR) art 5

domestic Constitutions of several member countries of the United Nations, which Nigeria is a member.

The development of Fundamental Human Rights in Nigeria can be appreciated at three historical epoch- Pre-colonial, Colonial and Post-colonial.

Pre-colonial era was one neither culturally nor politically homogeneous, yet, it had its own notion of human rights, informed largely by the material condition of the time.¹⁴ Human Rights and Fundamental freedoms were recognised in the traditional Nigerian societies. The idea of rights was not however conceived in the modern notion. Such values as Right to Family kin and clan membership, Freedom of thought, Speech, Beliefs and Association, Right to enjoy private property and Right to participate in governance in the affairs of the society, were jealously guarded. In areas where Sharia legal system was firmly entrenched, especially in the Northern part of the country, human rights and fundamental freedoms were specifically protected and guaranteed in accordance with the tenants of Islam which hold Justice and Equity in high esteem.¹⁵ Unfortunately, the colonial era was one of the diminished, if not extinguished, human rights promotion and protection. This is because colonial domination inheres with gross injustice and inhumanity and is, therefore, the very antithesis of Human Rights.¹⁶

The Constitutions operational in Nigeria prior to Independence, were designed to achieve specific political objectives of the colonialists without any formal or conscious attempt by the colonial government to safeguard human rights in its entirety. Although, pre-independence Constitutions did not specifically guarantee human rights promotion and protection, it is significant to note that successive pre-independence constitutional conferences dating back to 1953 recognised and advocated the need for the inclusion of certain fundamental rights in the

¹⁴ O. Gye-Wado "the Rule of Admissibility under the African Charter on Human and Peoples' Rights (1991) 3 RADIC, PP, 742-743; Eze, Human Rights in Africa (Lagos: Nigerian Law Publications Ltd; 1988)

¹⁵ National Action plan for the protection of Human Rights in Nigeria, 2006 at page 3

¹⁶ *ibid*

future Constitutions.¹⁷ This was informed by many reasons, one of which was the fear of the minority expressed at various constitutional conferences prior to the advent of Independence. This led to a favourable recommendation by the Willink Commission that fundamental rights should be included in the 1957 Constitution.

The entrenchment of Fundamental Human Rights in Nigeria in the modern sense could however be traced to the 1960 Independence Constitution. The inclusion of a Bill of Right in the Independence Constitution, 1960 was not only important but remarkable because it was a departure from the position adopted by Britain, Nigeria's colonial master, which at the time did not have a bill of right as such. It is significant to point out that since the introduction of the Bill of Right in the Independence Constitution in 1960. Subsequent Constitutions, starting with the Republican Constitution of 1963 to the 1979 Constitution, have incorporated these rights also in their provisions. The 1979 and the 1999 Constitutions went further by providing Fundamental Objectives and Directive Principles of State Policy in Chapter II and also recognised Economic, Social and Cultural Rights.

In the Post-colonial Era, Nigeria has been a party to so many International Human Rights Treaties and Conventions including, International Convention on Civil and Political Rights 1966, Convention on the Rights of the Child 1991, International Convention on Economic, Social, and Cultural Rights 1976, International Convention on the Suppression and Punishment of the Crime of Apartheid, Slavery Convention of 1926 (as amended), International Convention on the Elimination of All forms of Racial Discrimination 1965, Convention on the Elimination of All Forms of Discrimination Against Women 1976, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 2003, Convention on the Rights of Persons with Disabilities 2008, the African Charter

¹⁷ International Journal of Humanities and Social Science vol. 2. No. 12 [special issue- June 12]

on Human and Peoples' Rights 1981, which became part of Nigerian Law on the 17th of March, 1983 by virtue of African Charter on Human and Peoples' (Application and Enforcement) Act¹⁸. Nigeria has also ratified the United Nations Educational, Scientific and Cultural Organization, Convention against discrimination in Education, among others.

From the foregoing, it becomes evident that Human Rights have always commanded a pride of place in the Nigerian Constitutions.

1.3 HUMAN AND FUNDAMENTAL RIGHTS DISTINGUISHED

Since Chapter IV of the Constitution¹⁹ provides specifically for "*Fundamental Rights*", Nigerian Courts have found it expedient to draw a line of distinction between "Human Rights" and "Fundamental Rights". Thus, in *Uzokwu & Ors v. Ezeonu II & Ors*,²⁰ the Court of Appeal (per Nasir P.C.A) said:

"Due to the development of Constitutional Law in this field, distinct difference has emerged between "Fundamental Rights" and "Human Rights". It may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civil society must accept as belonging to each person as a human being. These were termed "Human Rights". When the United Nations made its declaration, it was in respect of "Human Rights" as it was envisaged that certain Rights belongs to all human beings, irrespective of race, citizenship, religion and so on. This has now formed part of International Law. Fundamental Rights remains in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country; that is the Constitution".

From the dictum above, it is glaring that there exists a difference between "Human Rights" and "Fundamental Rights".

¹⁸ Cap 10 LFN, 2004

¹⁹ Sections 33-46 of the Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

²⁰ [1991] 6 NWLR (part 200) 708 at 761

It is submitted that the term “Human Rights” have the same connotation with the phrase, “The Rights of Man”. This view was reinforced by the analysis of the term “human right” by the erudite Hon. Justice P. Nnaemeka-Agu, JSC²¹ (as he then was) when he said that the term “human right” is a compendious and all-embracing expression which includes: political, civil (private and public) as well as fundamental rights. Human Rights in one form or the other are as old as man in society and have always been there, independently of and before the state. The above statement of the learned Jurist is capable of at least two interpretations. First, Fundamental rights are part and parcel of Human rights. Secondly, Human rights or The Rights of Man, are not bestowed by the state upon her citizens, rather, they belong and are attached to man because of his humanity, thus they are inalienable.

Furthermore, human rights have been recognised to be those rights that are very essential to the realization of human aspirations; without which life is meaningless, and may be regarded as nasty, brutish and short. Categories of Human Rights are: Civil and Political Rights, Economic, Social and Cultural Rights, and Environmental Rights. Interestingly, these rights have been recognised by Chapter II of the Constitution of Nigeria. However, the chapter is couched in the form of *Fundamental Objective and Directive Principles of State Policy*²² and therefore are not enforceable in accordance with the provisions of Section 6(6)(c) of the Constitution. Going by this, human rights are not enforceable except they are contained in Chapter IV of the Constitution. In contrast, all Fundamental Rights are enforceable by virtue of Section 46(1) of the Constitution. This section gives aggrieved persons the *locus standi* to maintain an action against any person that infringes or is about to infringe their Fundamental rights.

On the other hand, Fundamental Rights are those aspects of human rights which have been selected from the plethora of human rights and entrenched by the Constitution. They are not

²¹ Constitutional and Human Rights proceedings, continuing Legal Associate (Nigeria) “CLEA9N” lecture note 49, delivered on March 1, 1991.

²² Sections 18-24 of the Constitution of the Federal Republic of Nigeria, Cap C23 LFN 2004

only guaranteed in fact, by the constitution but they are also protected by the Constitution.²³ In Nigeria, these Fundamental rights are found in Chapter IV of the Constitution and the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act.

It must be noted that while all Fundamental Rights are enforceable according to the provisions of the Constitution of Nigeria, not all Human Rights are enforceable, and although Nigeria is a signatory to various International Human Right Treaties and Conventions, they cannot be enforceable until they have been domesticated. A classic example is the African Charter on Human and Peoples' Right, which has been ratified and therefore enforceable in Nigeria.

1.4 CONCLUSION

In this Chapter, the general concept of Human Right, which gave birth to the subject of this research work, Fundamental right, was introduced. The meaning of Fundamental Rights was also defined, using academic and judicial interpretations from decided cases. Furthermore, the evolution of Fundamental rights in Nigeria was traced from the Pre-colonial, Colonial, and Post-Colonial eras till its entrenchment in the 1999 Constitution. Lastly, the concept of Human Rights and Fundamental rights were distinguished in this chapter.

²³ Sections 33-46 of the Constitution of the Federal Republic of Nigeria, Cap C23, LFN 2004

CHAPTER TWO
THE CONSTITUTIONAL FRAMEWORK ON FUNDAMENTAL RIGHTS IN
NIGERIA

2.0 INTRODUCTION

It has been established in our previous chapter that Fundamental Rights are provided for in Chapter IV of the Nigerian Constitution¹. These Fundamental Rights are enforceable, which means that a person can bring an action in court where they are infringed or where there is perceived fear of infringement. For a person to be liable for the infringement of the rights of others, the said right must be recognized and defined by the law in force. In *Aoko v. Fagbemi*², it was held that there was no law which the applicant has violated, hence the conviction was contrary to the provisions of Section 21(10) of the Constitution of Nigeria (Order-in-Council), 1960. The implication of this judgement is that a person cannot infringe rights that do not exist. In this Chapter, the sections of the Constitution that makes provisions for Fundamental Rights will be discussed extensively. Furthermore, the Fundamental right provisions of the Constitution of Nigeria would have been nothing more than mere provisions, if there was no provision for their enforcement entrenched in the Constitution, as well as the procedure for the enforcement of the said rights. To this end, this Chapter would be discussing the provision of the Constitution for the enforcement of Fundamental rights, as well as the constitutional procedure for the enforcement of Fundamental rights in Nigeria.

2.1 CONSTITUTIONAL PROVISIONS ON FUNDAMENTAL RIGHTS

The Constitutional provisions for Fundamental Rights are contained in Sections 33-46 of the 1999 Constitution of Nigeria and they are as follows:

Right to Life, Right to Dignity of Human person, Right to Personal liberty, Right to Fair Hearing, Right to Private and Family life, Right to Freedom of thought, expression and the

¹ Sections 33-34 of the Constitution of the Federal Republic of Nigeria, Cap C23 LFN, 2004

² (1960) 1 All NLR 400

press, Right to peaceful assembly and association, Right to Freedom of movement, Right to freedom from discrimination, Right to acquire and own property anywhere in Nigeria, Compulsory acquisition of property, Restrictions on and derogation from fundamental rights, Special jurisdiction of High court and Legal aid.

i. RIGHT TO LIFE

Section 33 of the Constitution³ provides:

“(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...”

The right to Life is an inviolable right and is not to be deprived unless after the due process of law and in the execution of the sentence of a court of law for a criminal offence for which the person has been found guilty anywhere in Nigeria or in circumstances provided for in subsection (2) of the section. Due to the constitutional provision stated above, section 221 provides death sentence for the offence of culpable homicide⁴.

The Supreme Court of Nigeria in *Kalu v. The State*⁵, stated that the right to life in Nigerian law is not absolute but qualified⁶. Life is sacrosanct and deliberate killing is frowned at in all societies round the world. The implication of this provision is that everyone is entitled to respect for his or her life and safety. Police officers or soldiers therefore, may not resort to

³ Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

⁴ Penal code Law, LFN 1963

⁵ (1996) 24 SC

⁶ 1998 13 NWLR (pg 583)

deadly force like firing live ammunition at people unless their own lives or the lives of others are in immediate danger, and less extreme measures are not available to avert the danger.

In *Aliu Bello and Ors v. A.G. of Oyo State*⁷, the case arose as a result of the unlawful execution of Nasiru Bello. The deceased had been convicted of armed robbery by the High Court of Oyo State and sentenced to death. He filed an appeal against this conviction but while his appeal was still pending before the Court of Appeal, the A.G. of the State recommended his execution and this was duly carried out. An action for damages was brought by his dependents. The trial court declared the execution illegal and this was confirmed by the Court of Appeal and later by the Supreme Court which also held that the premature execution constituted an infringement of the deceased fundamental right to life. Bello JSC (as he then was) stated that, it is clear from the constitutional and statutory provision that where a convict is sentenced to death in respect of which the power of pardon is exercisable by the President or Military Governor of Northern states has appealed against his conviction, the death sentence should not be carried out until the appeal has been determined.

The right to life imposes on individuals and the State, the obligation not to deprive another intentionally of his right to life except within the permissible circumstances by law. In *Olanrewaju Oni v. The State*,⁸ the appellant administered acid chemical on his daughter which resulted in severe burns of the mouth and the lungs which eventually led to the girl's death. He was charged and tried for the murder of his daughter. The court found him guilty and sentenced him to death.

The right to life is so sacrosanct that it has received a stamp of global recognition as it is protected under both domestic and international laws. Laws on the protection of the right to life

⁷ (1986) 5 NWLR (pg 45) 828; (1986) 12 SC

⁸ (2008) (WHRC) Vol 1 p.1

in Nigeria other than the Constitution includes: The Criminal Code⁹, Penal Code¹⁰, Universal Declaration of Human Right 1948¹¹, International Covenant on Civil and Political Right 1966¹², The African Charter on Human and Peoples' Rights 1981¹³, Convention on the Rights of the Child 1989¹⁴, African Charter on the Rights and Welfare of the Child¹⁵.

ii. RIGHT TO DIGNITY OF HUMAN PERSON

Section 34 of the Constitution¹⁶ provides:

“(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;

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

By the provision of this section, every individual is entitled to the Right of dignity of human persons and no person shall be subjected to torture, that is, the act of causing somebody severe pain for the purpose of punishing them or making them say or do something. It could be physical, or mental, any form of inhuman or degrading treatment, servitude, forced or compulsory labour. In *Ireland v. United Kingdom*¹⁷, the court expressly provided that, torture means deliberate inhuman treatment and causing severe and cruel suffering. It has been argued

⁹ Cap C38 LFN 2004; Sections 330 to 350 of the Criminal Code have provisions safeguarding the right to life. It bars offences endangering life or health

¹⁰ Cap P3 L.F.N 2004; Section 220 to 231 of the Penal Code equally makes provisions for the safeguard of the right to life

¹¹ Article 3, Universal Declaration of Human Right 1948

¹² Article 6(1), International Covenant on Civil and Political Right 1966

¹³ Article 4, African Charter on Human and Peoples' Rights 1981

¹⁴ Article 6, Convention on the Rights of the Child 1989

¹⁵ Article 5 of the African Charter on the Rights and Welfare of the Child

¹⁶ Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

¹⁷ (1978) 2 EHRR, 25

by Chinwo¹⁸, that CFRN 1999 prohibits what the Eight Amendment of the United States Constitution described as cruel and unusual punishment, when the meaning of human rights came to the fore and in the view of the United States Supreme Court¹⁹ in *Prop v Dulles*²⁰, adopted by Kayode Eso, JSC when he said:

“Inhuman treatment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society”.

Recently, in *Dasuki v. Director General State security & Ors*²¹, Dasuki who was arrested and detained for financial related offences he was alleged to have committed during the administration of President Goodluck Ebele Jonathan where he was the national Security adviser to the then President. On several judicial pronouncement, Dasuki was granted bail and consequent order for his release pending the determination of case before the court. This present administration showed a neglect and disregard for the rule of law and rights as Dasuki was deprived freedom. The failure of the government to release the former National Security Adviser was what the court amounted to a violation of his rights to dignity.

Furthermore, withholding of food, water, medical treatment, extradition or deportation and mental torture has been categorized as inhuman treatment. In adjudging whether a particular punishment is inhuman or not, subjective consideration needs to be given to various factors including the physical and mental suffering, as well as the applicant sex, age, health. In *Mogaji & Ors v. Board of Custom*²², some market women were maltreated by the officials of customs and exercise who were aided by the police officers and soldiers with the use of guns, the firing of same when the said customs officials raided their shops, sized and detained their goods suspected to be prohibited, the court held as follows:

¹⁸ C A J Chinwo, *Principles and Practice of Constitutional Law in Nigeria* (vol II, Port Harcourt: Davis Printing & Packaging Co. Ltd. 2007) 169.

¹⁹ J Akande. ‘A Search for Decency and Human Dignity’, being paper delivered at the Annual Conference of the Nigerian Bar Association in August 2004

²⁰ 356 US 86.

²¹ (2019) LPELR-48113 CA

²² (1982) 3 NCLR 552 at 562

“Law would make an order for a declaration that the action by customs men aided by police officers and soldiers with the use of guns, the firing of the same, the use of horse whip and less gas for the apprehension, seizure, and detention of goods suspected to be prohibited and removal of their goods without the investigation violates the rights of the plaintiffs under the constitution of the Federal Republic of Nigeria, not to be subjected to any inhuman or degrading treatment”.

Going by the above Constitutional provisions, as well as the decided cases, there is a clear indication that that the right to dignity of the human person applies to both men and women, and to all tribes and religions across Nigeria.

iii. RIGHT TO PERSONAL LIBERTY

Section 35 of the Constitution²³ provides:

- “(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
- (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...”

The Nigerian Constitution entitles every Nigerian citizen to his/her personal liberty. Personal liberty here, implies the right to freedom from wrongful or false imprisonment, arrest or any physical restraint whether in any common prison, or even in an open street, without legal justification, except in lawful execution of the order of a court or for some other reasons permitted by Law. Lord Denning stated that liberty is the freedom of every law-abiding citizen to think what he will, to say what he will on his lawful occasions without hindrance from any other person. This right however, is not without a limit.

²³ Constitution of the Federal Republic of Nigeria, Cap C23 LFN, 2004

The Supreme Court in *Dokubo Asari v. Federal Republic of Nigeria*²⁴, captured the extent to which the right to personal liberty can be limited. The Supreme Court stated that where National security is threatened or there is the likelihood of being threatened then the rights of individual of those responsible takes second place. The individual right can be suspended until the National security well taken care of. In addition to that, Per Muhammad JSC said that right to personal liberty is not absolute. This is because liberty can only be restrained to prevent him from committing further offenses. The constitutional provision has shown that cases concerning right to personal liberty is not absolute, therefore, it has some limitations. This is because in certain situations, an individual may be deprived of his or her liberty in the execution of the offense in which he was found guilty or upon reasonable suspicion of his having committed a criminal offense. This is to prevent him or her from further committing an offence or for the protection of public morality.

iv. RIGHT TO FAIR HEARING

Section 36 of the Constitution²⁵ provides:

“(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.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section

²⁴ (2008) 2 SC, 450

²⁵ Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

(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:

(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...”

The right of Fair hearing guarantees that in the determination of an individual’s civil rights and obligation, a person shall be entitled to a tribunal established by law and duly established in such a manner as to protect its independence and impartiality.

Although, the 1999 Constitution does not define the term, “fair hearing,” the courts of law have put forward some judicial definitions to it. For instance, in *Ezechukwu v. Onwuka*²⁶, the Court of Appeal pointed out that:

“Fair hearing is a hearing which is fair to all parties to the suit, whether the plaintiff, defendant, the prosecutor, or the defence. It is a doctrine of substance and the question is not whether injustice has been done because of lack of fair hearing, rather... whether a party entitled to be heard has been given an opportunity of being heard...Fair hearing entails doing during the course of a trial all that will make an impartial observer to believe that the trial has been balanced... to both sides.... “

Fair hearing is synonymous with fair trial²⁷ and implies reasonable and fair-minded impartiality.

An observer who watches the proceedings should be able to conclude that the court has undoubtedly been fair to all the parties concerned. In giving its opinion on the relationship between fair hearing and fair trial, the Supreme Court in *Mohammed v. Kano Native Authority*²⁸ noted that although it has been proposed that a fair hearing did not amount to a fair

²⁶ 3 [2005] All FWLR (Pt. 280) 1514 at pp. 1542

²⁷ A fair trial implies a trial by an impartial and disinterested court or tribunal in a regular procedure, especially, a criminal trial which the accused person’s constitutional and legal rights are respected. See Black’s Law Dictionary, Eighth Edition, p. 634.

²⁸ [1968] 1 All NLR 424.

trial, that the court was of the firm view that “fair hearing must involve a fair trial, and a fair trial of a case consists of the whole hearing”.

According to the Supreme Court of Nigeria in *Olugbenga Daniel v. Federal Republic of Nigeria*²⁹, there are certain basic criteria and attributes to gauge whether a trial or hearing is fair or not. The basic characteristics or otherwise basic criteria of fair hearing include, inter alia:

- i. that the court or tribunal shall hear both sides not only in the case, but also in all material issues in the case, before reaching a decision which may be prejudicial to any party in the case;
- ii. that the court or tribunal shall give equal treatment, opportunity, and consideration to all concerned;
- iii. that the proceedings shall be held in public and all concerned shall have access to and be informed of such a place of public hearing;³⁰ and
- iv. that having regard to all the circumstances, in every material decision in the case, justice must not only be done but manifestly and undoubtedly be seen to have been done.³¹

According to Karibi-Whyte, JSC in *LPDC v. Fawehinmi*³², in the circumstances of this country, fair hearing is an entrenched provision of the Constitution which cannot be displaced by legislation, however unambiguously worded. Therefore, the right of a person to fair hearing is so fundamental to the concept of justice that the right can neither be waived nor taken away, whether expressly or by implication. A denial of fair hearing by Law or by a partial hearing is an act of injustice

²⁹ (2014) 8 NWLR PT 1410 p. 570 @ 576

³⁰ Section 36(4), Constitution of the Federal republic of Nigeria, 1999

³¹ *Kotoye v. Central Bank of Nigeria* [2001] FWLR (Pt. 49) 1667 at p.1600

³² (1985) 2 NWLR PT 7 p. 300

Consequently, in *The State v. Olu Onagoruwa*³³, Nnaemeka-Agu, JSC said that a man can never have a verdict entered against him on a matter relating to his Civil Rights or obligations before a Court or Tribunal without being given an opportunity of being heard. The Rule is in fact, one of the essential cornerstones of our judicial process³⁴. Karibi-Whyte, JSC in this same case held that '... a denial of the right to be heard is a breach of Constitutional Right, natural justice and Rules of Court. It is an elementary and fundamental principle of the administration of justice in Nigeria that no decision can be regarded as valid, unless the Trial Judge or Court has heard both sides of the conflict'³⁵

The principle of fair hearing as provided for in the 1999 Constitution is often illustrated by the “twin pillar of justice”³⁶ expressed in the Latin maxims: *nemo judex in causa sua*³⁷ and *audi alterem partem*³⁸. These principles expressed in these Latin maxims are an intrinsic and inalienable part of the fair hearing provision guaranteed by section 36(1) of the 1999 Constitution, the fact being that the rule of fair hearing is not a technical doctrine. It is one of substance as it overrides all contrary provisions in any law of the land, be it substantive or adjectival. It was held in *Omoniyi v. Alabi*³⁹ that the consequence of a successful argument that the appellant's right to fair hearing was breached is that the decision complained of would be declared a nullity and set aside.

v. RIGHT TO PRIVATE AND FAMILY LIFE

Section 37 of the Constitution⁴⁰ provides:

³³ (1992) 2 NWLR PT 221 p. 33

³⁴ *Op cit* @ p. 58

³⁵ (1992) 2 NWLR PT 221 p. 33 @ 56

³⁶ Hon. Justice Nnaemeka-Agu (1988) “Impact of Natural Justice on our Law.” 13 *The Advocate*, at p. 21

³⁷ This means that a person shall not be a judge in his own cause. See *Gani Fawehinmi v. Legal Practitioners Disciplinary Committee* [1985] 2 NWLR (Pt.7) 300 at 308.

³⁸ That is, no man shall be condemned unheard or without having an opportunity of being heard. See *P.R. P. v. Independent National Electoral Commission* [2004] All FWLR (Pt. 209).

³⁹ (2015) 6 NWLR PT 1456 p. 572 @ 578 (per Kekere – Ekun, JSC)

⁴⁰ Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

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

This provision guarantees the right of every individual to private and family life. Therefore, the privacy of a person’s home, correspondence, telephone, conversations, telegraphic and other forms of communication must not be invaded without lawful justification and according to the law. Although the Constitution does not go in detail to explain how it is protected and if there are any exceptions and there unfortunately has not been much judicial review on this right, however, from reading this provision it is obvious that are three major elements, which includes;

1. Privacy of the individual. This will protect the individual against unlawful invasive procedures, such as blood testing, drug testing, etc.
2. Privacy of the home, which would include protection from unlawful entry or harassment of an individual’s home
3. Privacy of Correspondence, Conversations and Communications. This protects the privacy of an individual’s mail, telephone conversations, emails and other forms of communication.⁴¹

vi. RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Section 37 of the Constitution⁴² provides:

“(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

⁴¹ LawPadi: 11 Rights Every Nigerian Should Know About < <https://lawpadi.com/11-rights-every-nigerian-should-know-about>> accessed 14 July, 2021

⁴² Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

private) to manifest and propagate his religion or belief in worship, teaching, practice and observance...”

This Section guarantees the right of freedom of thought, conscience and religion. A person is therefore free to believe or change his religion alone, or in community with others, and in private or public manifest and propagate his religion or worship, teach and practice his religion. The Constitution also prevents forced indoctrination in any place of education, however, it does not entitle a person to form, take part in the activity or be a member of a secret society.

The extent of the right to freedom of thought, conscience and religion provided for by the Constitution was up for discussion by the court in *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*⁴³. The Apex Court was called upon to pronounce on the constitutionality of the patient’s refusal to undergo blood transfusion on the ground that being a member of Jehovah’s Witness, it was against his religion. The court affirming the right of the patient to religion in this regard held that:

“The right to freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one’s life, fashioned on what one believes in, and a right not to be prevented, without lawful justification,...The sum total of the rights to privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary. The law’s role is to ensure the fullness of liberty when there is no danger to public interest”.

Furthermore, where the patient’s decision will put others at risk, for instance minors in cases where a father is making such on behalf of the child, the court hold must hold otherwise. In *Esanunor v. Faweya*⁴⁴, the Court of Appeal held that though an individual has the right to choose the course of his or her own life, the appellant has no right to choose whether her son

⁴³ 6 [2001] FWLR [pt.44] 542

⁴⁴ [2008] 12 NWLR [Pt.1102] 794 at 810

should die or live on account of her own religious belief. The Court therefore held that Commissioner of Police was right to apply for an order of court to enable blood to be transfused on to a child whose parents refused consent to blood transfusion due to their religious belief.

In *Anigboro v Sea Trucks [Nig.] Ltd*⁴⁵, the practice in Nigeria where parents disown or disinherit their children because they professed a religion other than that of the parents was subject of comment by the Learned Akpabio JCA. The learned Justice of the Appeal said that such practice amounts to a violation of the fundamental human rights of such children as guaranteed by the Constitution in sections 35[1] and 37 of the 1999 Constitution which provides for the right to freedom of thought, conscience and religion and the right to peaceful assembly and association respectfully. Similarly, in *Agbai v. Okogbue*⁴⁶, the court stated that compelling anyone to join an association which is contrary to his religious belief is a breach of the right to freedom of thought, conscience and religion which is entrenched in the Constitution. It must be noted that the right to freedom of thought, conscience and religion is not absolute. It can be limited by laws which are reasonably necessary in a democratic society for the preservation of public order. Subsequently, in *Onyinyka M. Enoch v. Mary U. Okobi*⁴⁷ the claimant sued by her next friend being just 13 years of age for an order to enforce her fundamental rights to religion and freedom from discrimination. She gained admission to the Federal Girl's College, Onitsha but she was refused registration until she cut her hair as the school rules and regulation demands. She refused to comply with this regulation on the ground that she belonged to a religious sect which teaches that women should wear their hair in its natural growth without cutting or shaving it. The trial court considered whether compelling her to cut her hair short violates her right to freedom of religion and answered this in the negative.

⁴⁵ [1995] 6 NWLR [Pt.399] 35

⁴⁶ [1991] 7 NWLR [Pt.204] 391

⁴⁷ [1994] 4 ANSLR 338

According to the court, requiring the applicant to cut her hair does not constitute religious instruction and thus, it could not “be held as inculcating in the affected students a religious observance relating to a religion other than their own, or as amounting to an act requiring them to receive a religious instruction, or take part in or attend a religious ceremony or observance, or a religion not approved by their parents or guardians”. The court held further that the regulation was reasonable and accords with proper and basic discipline in a model education. It is respectively argued that the court erred in this decision for the reason that one’s hair such as one’s dressing could be considered to have religious connotation and symbolism. This manifestation of religious symbolism is showcased in the wearing of the “*hijab*” as an Islamic symbol.

The limit of these freedoms in all cases is applied where they violate the right of others or where they put the welfare of society or public health in jeopardy.

vii. RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS

Section 39 of the Constitution⁴⁸ provides:

“(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,

⁴⁸ Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

establish or operate a television or wireless broadcasting station for, any purpose whatsoever...”

The purport of this Section is that every Nigerian is entitled to freedom to hold opinions and to receive and impart ideas and information without intrusion, and is entitled to own, establish and operate any medium for the dispersal of information, ideas and opinions. This right however, is subject to certain exceptions.

In *Queen v. The Amalgamated Press of (Nigeria) Ltd & Fatogun*⁴⁹, the defendants were arraigned before the High court of Lagos on information charging them on two counts with the offenses of publishing a seditious publication contrary to section 51(i)(c) and publishing false news likely to cause fear and alarm contrary to section 59(i) of the criminal code Act. At the end of the trial, counsel for the defendants in his address submitted to the court that in view of the provisions relating to the entrenchment of fundamental human rights in the Constitution of the federation, the two sections of the criminal code under which the defendant was charged have become null and void as they are ultra vires the Constitution. The Supreme Court held that, the Constitution of the Federation relating to fundamental human rights guaranteed nothing but ordered freedom and it cannot be used as a license to spread false news likely to cause fear and alarm to the public, therefore, these sections of the Criminal Code has not been invalidated by that constitutional provision.

Again, it is stated that a fundamental principle of Nigerian law that everyone is free to say or to write what he likes, but one’s right of expression ends where the right of one’s neighbour or that of the public begins. The Nigerian Constitution therefore authorizes the state to impose absolute restriction on the individual’s freedom of expression in the interest of public safety, defence, health and morals. Indeed, the Supreme Court buttressed this point in *Din v. African*

⁴⁹ (1961) 3 A.N.L.R 199

*Newspapers of Nig Ltd*⁵⁰. In the case, the court declared that under the Constitution, it was clear that liberty of thought and freedom of expression were paramount. It noted that the freedom guaranteed under section 39 of the Constitution includes the freedom to hold an opinion and pass information without interference; and that this freedom presupposes free flow of opinion and ideas essential to sustain the collective life of the citizenry. However, the court stressed that the right provided under section 39 is not an open-ended or absolute right, the right is qualified, and therefore subject to some restrictions by the provisions of section 45 of the Constitution, which empowers the legislature in a democratic society to make laws for the purposes of preserving the interest of defence, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of other persons. With this, the Nigerian legislation limited the rights to freedom of expression and press on anything to do with same-sex sexual relationship, as such, anyone reporting neutral information related to same-sex issues could be accused of promoting publicity of such act.

viii. RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION

Section 40 of the Constitution⁵¹ provides:

“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.”

⁵⁰ (1990) LPELR-947 (SC)

⁵¹ Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

Every person by this section, is entitled to assemble freely and associate with other persons and form or belong to any other political party, trade union or any other association for the protection of his interest, provided the provisions does not derogate from the powers conferred by the constitution. A person may, therefore, form or belong to any political party, trade union or any other association of political, social or economic in pursuance of lawful interests⁵².

The right however, is not granted to any person to assemble for un-peaceful or other unlawful purposes, the police are empowered to stop or disperse on un-peaceful gathering or unlawful gathering. The constitutional provision, therefore, does not extend to the registration of the gay clubs, societies and organizations, their sustenance, processions, and meetings; this is because the word “every person” in Section 40 did not contemplate gender-neutrality to accord the right of freedom to assembly and association to the gay community.

ix. RIGHT TO FREEDOM OF MOVEMENT

Section 41 of the Constitution⁵³ provides:

“(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”.

Every citizen of Nigeria by the provision of this section, is entitled to move freely throughout Nigeria and to reside in any part thereof. Likewise, no citizen shall be expelled from Nigeria or refused entry or exit. Sub-section (2) of this section gives exceptions however, to this fundamental right.

⁵² The Beam: Journal of Arts & Science, Vol. 11, (DEC. 2017) ISSN: FUNDAMENTAL HUMAN RIGHTS: A LIMITATION < <https://docplayer.net/amp/142686138-The-beam-journal-of-arts-science-vol-11-dec-2017-issn-fundamental-human-rights-a-limitation.html> > accessed 20 October, 2020.

⁵³ Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

The right to move freely within Nigeria, as a content of the right to freedom of movement, includes movement intra-State, inter-State and relates to all corners, nooks and crannies of Nigeria⁵⁴.

Earlier in 2014, there were reports that following some security scare, that climaxed in the alleged detection of an Improvised Explosive Device (IED) in a church in Owerri. The State Government resolved to register and issue Identity Cards to ‘non-indigenes’ from Northern States⁵⁵. The policy was said to have been tagged “Know Your Neighbour”. The uproar generated by the alleged plan eventually died down without an official confirmation. However before the issue fizzled out, the Senate had stepped in and passed a resolution cautioning the Imo State government and urging it to drop the registration policy. Be that as it may, any policy which requires Nigerian citizens to register with any State and obtain ‘permits’ authorizing them to reside in any part of Nigeria would be an affront to Section 41(1) CFRN 1999 which protects a citizen’s inalienable right to reside in any part of Nigeria. Any law authorizing such would be void unless it passes the test in Section 45(1) CFRN.

Judicial decisions which upheld the right of every Nigerian to choose his residence in any part of Nigeria include the case of *Attorney-General & Commissioner for Justice, Kebbi State v Jokolo & Ors*⁵⁶, where the Court of Appeal held that right of freedom of movement was violated by an order banishing deposed Emir of Gwandu, to Lafia and then to Obi in Nasarawa State. In *Shugaba v. Minister of Internal Affairs*⁵⁷, the applicant, a member of the defunct Great Nigeria People’s Party and the majority leader of the Borno State House of Assembly, was deported from Nigeria on 24th January, 1980 to Chad. His passport was seized. It was alleged that he was not a Nigerian. Interpreting a similar provision as Section 41(1) in the Constitution

⁵⁴ Oyelowo Oyewo, Constitutional Law in Nigeria, 2nd Edition

⁵⁵ Registration of Northerners: Senate Opposes Imo Govt’s Alleged Plan. Channels TV <<https://www.channelstv.com/tag/government-to-issue-identity-cards-to-northerners>> accessed on 14 JULY, 2021

⁵⁶ (2013) LPELR-22349(CA)

⁵⁷ (1981) 1 NCLR 25

of the Federal Republic of Nigeria 1979, it was held that the Shugaba Abdurahman Darman Deportation Order 1980 was inconsistent with the Constitution, ultra vires and void.

A Nigerian living abroad must not be barred from returning to Nigeria. The right cannot be restricted, for any reason, not even on grounds of public health. For example, an Immigration Officer has power to refuse non-citizens entry into Nigeria in certain conditions including medical reasons under Section 19(6) Immigration Act 2015. However, a Nigerian citizen cannot be refused entry into Nigeria even if it is medically inadvisable to do so

In *Attorney-General & Commissioner of Justice, Kebbi State v. Jokolo & Ors*⁵⁸ the Court of Appeal held that the banishment of Al-Mustapha Jokolo, the 19th Emir of Gwandu after he was dethroned was a violation of the right guaranteed under Section 41(1) CFRN 1999. Subsequently, on 9th March, 2020, the Emir of Kano, Sanusi Lamido Sanusi (Muhammadu Sanusi II) was deposed by the governor of Kano State, Abdullahi Ganduje. Sanusi was banished from Kano State and forcibly taken to Loco in Nasarawa State from where he was eventually settled at Awe, also in Nasarawa State. He got an interim relief from a Federal High Court sitting in Abuja following an application for enforcement of his fundamental right to freedom of movement among others. He then relocated to Lagos State, his preferred abode⁵⁹. It is submitted therefore, that any Chiefs Law in Nigeria which provides for restriction on the right to freedom of movement of a deposed traditional ruler by banishing, exiling or “deporting” him to any place within or outside the State which is not his choice of residence, is an unjustifiable infraction of the provision of Section 41(1) CFRN 1999.

On the limitation on the right to leave Nigeria, the Court of Appeal held in *Kalu v Federal Republic of Nigeria & Ors*⁶⁰ per Eko JCA, thus: “Section 41 (2)(a) of the Constitution says that the right to freedom of movement may be deprived under a law that is reasonably justifiable in

⁵⁸ (2013) LPELR-22349(CA)

⁵⁹<https://www.thisdaylive.com/index.php/2020/03/14/sanusi-lands-in-lagos-as-abuja-court-frees-him-fromdetention/>. Accessed on 14 July, 2021

⁶⁰ (2012) LPELR-9287(CA) @ p. 45

a democratic society that imposes restrictions on the "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".

Section 41(2)(b) CFRN 1999 provides for another limitation on the right to freedom of movement in Nigeria. This can be regarded as a limitation on the right not to be expelled from Nigeria. This is known as extradition of suspects or fugitive offenders to another country for trial or punishment. Extradition is therefore one of the constitutionally permitted limitations to the right of a citizen not to be expelled from Nigeria against his wish. The Act vests jurisdiction on Magistrate Courts. In *Orhiunu v. Federal Republic of Nigeria*⁶¹ the Court of Appeal held that the Federal High Court has jurisdiction over extradition subject to modifications of the 1966 Act by virtue of section 315 CFRN 1999.

x. **RIGHT TO FREEDOM FROM DISCRIMINATION**

Section 42 of the Constitution⁶² provides:

“(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, religious 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

⁶¹ (2005) 1 NWLR (Part 906) 39

⁶² Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

other communities, ethnic groups, places of origin, sex, religious or political opinions...”

The purport of this section is that no citizen of Nigeria is to be subjected to any form of discrimination based solely on the fact that he or she is a member of a particular ethnic group, place of origin, sex, etc. In the Nigerian situation however, this right is violated more often than not, especially against women and the girl child. Instances of female molestation, rape, traditional discriminatory practices against widows and women generally, etc are all in contravention of the right provided for in this section.

Also, by this section, no citizen is to be accorded any special privilege that is not accorded to every other citizen of Nigeria of different communities, sex, religion, etc. The only exception is with respect to the appointment of any person to any office of the state or armed/police force or a corporate body, established by any Law in force in Nigeria. In *Anzaku v. Governor Nasarawa state*⁶³, the courts of appeal held that the rule of law under the Constitution take care situations and it recognized that certain differences in treatment of persons do occur⁶⁴.

xi. RIGHT TO ACQUIRE AND OWN IMMOVABLE PROPERTY ANYWHERE IN NIGERIA

Section 43 of the Constitution⁶⁵ provides:

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

Every citizen of Nigeria has the right to acquire and own property anywhere in Nigeria, whether movable or immovable. The exceptions to this right are in cases of compulsory acquisition by the government in certain stated circumstances and upon prompt payment of

⁶³ (1990) 6 N.W.L.R 708

⁶⁴ Professor B. O. Nwabueze however, is of the opinion that fairness and justice demand that people who are similarly circumstanced should be treated equally by the state

⁶⁵ Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

compensation. Also, where valid laws dealing with tax, penalties for forfeiture, enemy property, temporary possession for environmental reasons, etc are the case.

xii. COMPULSORY ACQUISITION OF PROPERTY

Section 44 of the Constitution⁶⁶ provides:

“(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 –

(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...”

The Nigerian Constitution provides that the government shall not compulsorily acquire the movable and or immovable property of any person for public purposes in any part of Nigeria, except in the manner and the purposes prescribed by law. However, any law that empowers that state to acquire private property for public purposes must also provide for payment of compensation as prescribed by law.

Sub section (3) of this section vests all properties, minerals, mineral oils and natural gas in any part of Nigeria upon the government of the federation, to be managed in a manner as prescribed by the National Assembly. To this end, no person, community or state can claim ownership of any mineral or mineral resources discovered in the area or state because it would be a violation

⁶⁶ Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

of this provision. For instance, oil which is explored in the Southern part of Nigeria, although gotten from there, cannot be claimed as property of any of the states or community where it is explored. Conversely, Coal, which is another example of a Mineral resource found in states like Enugu, Benue, Kogi cannot be claimed as property of the states mentioned but the federal government by virtue of this section. The National Assembly through Acts, control how these resources are to be managed.

xiii. RESTRICTION AND DEROGATION FROM FUNDAMENTAL RIGHTS

Section 45 of the Constitution⁶⁷ provides:

“(1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedom or other persons...”

This Section of the Constitution provides for restriction and derogation. Restriction has been seen in the light of limitations, and limitations are qualifications or exceptions to those rights, and they operate at all times while derogation is an occasion when the rule of law is allowed to be ignored, that is suspension of rights. It provides for restrictions on Federal government and grounds where it can take away, derogate or limit the exercise of fundamental right in the interest of the state, by making laws which are reasonably justifiable in a democratic society. It applies to virtually all the rights, though some specific sections contain their imitations.

xiv. SPECIAL JURISDICTION OF HIGH COURT AND LEGAL AID

Section 46 of the Constitution⁶⁸ provides:

⁶⁷ Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004

⁶⁸ Constitution of the Federal Republic of Nigeria Cap C23 LFN 2004

“(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.

(3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section.

(4) The National Assembly –

(a) may confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section; and

(b) shall make provisions-

(i) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and

(ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.”

This section stipulates the appropriate court that should entertain Fundamental rights infringement cases. This section also empowers the Chief Justice of Nigeria to make rules with respect to the practice and procedure for the enforcement of fundamental rights.

Also, going by this section, the National assembly through the Legal Aid Act, 2011 provides for the establishment of a legal aid and access to justice fund. Through the fund, financial assistance is made available to the Legal Aid Council on behalf of indigent citizens for the prosecution of claims in accordance with the Constitution. The Act empowers the Legal Aid Council with the responsibility for the operation of a scheme for the grant of legal aid and access to justice in certain matters or proceedings to persons with inadequate resources.

Since the formation of the Legal Aid Council, the lofty objective of the Council remains rendering legal assistance to indigent persons in need of legal aid across the country, and the council have fared well in carrying out the said objective. However, in working towards the realization of these objectives, the Council has faced a number of prevalent problems.

The Council is only permitted to give legal assistance to a narrow extent. This is clearly provided in the Second Schedule of the Legal Aid Act where the areas in which the Council can render legal services include civil claims in respect of accident and civil claims to cover breach of Fundamental Rights guaranteed under Chapter IV of the Constitution.⁶⁹

Another challenge faced by the Legal Aid Council is inadequate funding. The Council relies largely on fund from the Federal Government which may not be adequate in running the affairs of the Council in relation to the actualization of its statutory objectives⁷⁰.

The Council is also faced with the problem of inadequate facilities to carry out its services, and in the absence of adequate facilities, there cannot be proper service delivery. The problem of

⁶⁹ B. Abegunde and T.J Omidoyin- Legal Aid System in Nigeria and the Right to Equal Access to Justice [Online] pg 16-18 <accessed 16 July, 2021>

⁷⁰ *ibid*

inadequate personnel in the Legal Aid Council is also another challenge faced by the agency⁷¹. The volume of cases that needs legal aid outnumbers the number of lawyers in the Legal Aid Council. Little or no participation by prominent and more experienced legal practitioners in the legal aid system is also another challenge. This is partly due to unattractive remuneration or the bureaucracy involved or total lack of interest in pro bono service⁷².

The difficulty in reaching those in actual need of legal aid is another major problem of the Legal Aid scheme. The Legal Aid Council lacks nearness to the people. Most of their offices are located at the Federal or State capitals, and their services and addresses are hardly advertised. This obviously leads to unawareness on the part of the people of the existence of the Council and services. The Council relies mainly on application from persons seeking aid, references from courts, police and prisons.⁷³

2.2 CONSTITUTION PROVISIONS FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS

The Fundamental Rights provisions of the Constitution⁷⁴ and African Charter⁷⁵ would have been meaningless if there was no provision for their enforcement. As a result of this, Section 46 of the Constitution⁷⁶ makes provision for the enforcement of Fundamental Rights thus:

“Any person who alleges that any of the provision of this chapter has been, is being, or is likely to be contravened in any state in relation to him may apply to a High court in that state for redress”

This Section makes it justiciable for a person to enforce his fundamental rights. It gives such a person the right to approach the court for redress in the form of compensation, apology, etc for the injuries he suffered. It must be noted that the person does not have to wait until his rights

⁷¹ *ibid*

⁷² *ibid*

⁷³ *ibid*

⁷⁴ Sections 33-46 of the Constitution of Federal Republic of Nigeria Cap C23 LFN 2004

⁷⁵ African Chapter on Human and Peoples' Rights

⁷⁶ *Ibid*

are being contravened; he has the power to seek redress where the said rights are been contravened and where there is likelihood that the rights will be contravened.

The Constitution in its effort to ensure that the court's jurisdiction to enforce fundamental rights is not in doubt provides in Section 46(2) of the Constitution⁷⁷ thus:

“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 the provisions 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 enforcement within that state of any right to which the person who makes the application may be entitled under this chapter”

Thus, subsection (2) is to the effect that High Courts are empowered to entertain any suit that relates to the enforcement of Fundamental right of an applicant, including granting such relief to which the person who makes the application may be entitled under the Fundamental right provision of the Constitution, unlike during the Military regime whereby the jurisdiction of the courts were ousted from entertaining suits pertaining to fundamental rights⁷⁸.

Section 46(3) of the Constitution reposes in the Chief Justice of Nigeria, the power to make rules with respect to the practice and procedure for the enforcement of fundamental rights in Nigeria. In line with the constitutional provisions, Hon Justice Idris Legbo Kutigi CJN (as he then was), made the Fundamental Rights (Enforcement Procedure) Rules, 2009 on November 11, 2009. The commencement date of these rules was December, 2009. In addition to this, Paragraph 3(f) of the preamble provides:

“The court shall in a manner calculated to advance Nigerian democracy, good governance and human rights and culture, pursue the speedy and efficient enforcement and realization of human rights”

⁷⁷ CFRN Cap C23 LFN, 2004

⁷⁸ *Agwunna v. Attorney-General of the Federation & Others* (1995) 5 NWLR (part 396) at 418.

These are the Constitutional provisions put in place and provided, for the enforcement of Fundamental rights in Nigeria.

2.3 ENFORCEMENT PROCEDURE OF FUNDAMENTAL RIGHTS IN NIGERIA

In Nigeria, the process and enforcement of Fundamental rights may be classified as Conventional and Unconventional, or Orthodox and Unorthodox ways. The orthodox ways are the procedures provided by law⁷⁹. They are regularly adopted in seeking relief against an alleged infringement of right. These include invocation of judicial powers and the recourse to police enforcement.

Judicial power refers to the power of a court to decide and pronounce a judgement and carry it into effect between persons and parties who bring a case before it⁸⁰. It is the right to determine actual controversies arising between diverse litigants, duly instituted in courts of proper jurisdiction. As earlier established, the constitution gives a person the right to bring an action before a law court where his right is being infringed by virtue of Section 46 of the Constitution⁸¹. Subsequently, it empowers the high court to try matters relating to fundamental rights infringement. Furthermore, the Fundamental Rights (Enforcement) Procedure Rules, 2009 stipulates the procedures to go about in instituting an action for fundamental right infringement before the high court.

Recourse can also be made to the police in instance of infringement of a person's fundamental right. The police force is empowered to preserve law and order, as well as protect lives and property⁸² and the due enforcement of all laws and regulations which they are empowered to protect and also to uphold the human rights of all persons⁸³. Subsequently, the Police Act

⁷⁹ Nigerian Social Insurance Trust Management Board v. Adebisi [1999] 15 NWLR (part 633) pg 16. See also, Articles 3-23 of the African Charter on Human and Peoples' Rights.

⁸⁰ Legal Information Institute <[https://www.law.cornell.edu/constitution-conan/article-3/section-1/judicial power](https://www.law.cornell.edu/constitution-conan/article-3/section-1/judicial%20power)> accessed 13 October, 2020

⁸¹ Ibid

⁸² Section 4, Police Act [Nigeria], Cap P19 LFN 2004

⁸³ Article 3, United Nations Code of Conduct for Law Enforcement Officers

empowers the police to make arrest and to investigate a crime, without interference. Bearing this in mind, recourse to police enforcement is another effective orthodox lawful means of enforcement of fundamental right.

Another classification of the process of enforcement of fundamental rights in Nigeria is the Unorthodox or Unconventional means. Mediation can be classified as an unorthodox means.

Mediation is a process by which an impartial person, a mediator facilitates the communication between parties to a dispute to promote reconciliation, settlement and understanding⁸⁴. It is a private, voluntary and informal process of dispute resolution, where a neutral party assists the disputing parties to reach a mutually accepted agreement. The key feature of mediation is that it allows parties to decide the outcome of their disputes. This is why the outcome is called agreement, and not an award as in arbitration, or a judgement as in litigation.

The characteristics of mediation invariably commend it to the settlement of certain fundamental right disputes. It should be noted that fundamental rights are personal rights. The person entitled to benefit from such rights may decide to litigate it, compromise it, or abandon it. Mediation stands as good option in certain situations when dealing with the infringement of the fundamental right of an individual. It can be utilized in settling family and private land disputes, and it is an easier and faster approach to the resolution of a dispute, including one bothering on fundamental right.

2.4 CONCLUSION

In this chapter, the fundamental rights provided for under Chapter IV (Sections 33-46) of the Constitution of the Federal Republic of Nigeria have been extensively discussed; highlighting the provisions, the extent to their protection under the Nigerian law, as well as their limitations. Judicial judgements bothering on these fundamental rights provisions were also discussed to prove the extent of compliance or otherwise, with the fundamental rights provisions of the

⁸⁴ FindLaw Attorney Writers< <https://corporate.findlaw.com/litigation-disputes/rules-for-mediation.html>> accessed 13 October, 2020

Constitution of Nigeria. Furthermore, this Chapter went further to explain the purport of Section 46 of the constitution, which provides for the enforcement of fundamental rights. Subsequently, the two enforcement procedure, which were classified as Conventional and Unconventional, or Orthodox and Unorthodox were discussed. These procedures are available options to an aggrieved person in seeking relief against an alleged infringement of right.

CHAPTER THREE
FUNDAMENTAL RIGHT ABUSES AND ENFORCEMENT CHALLENGES IN
NIGERIA

3.0 INTRODUCTION

The Constitution guarantees several rights inalienable to human beings, which have earlier been discussed. For instance, the right to life is the assertion of its sanctity except taken in pursuance of lawful process¹. Similarly, Article 7 of the International Convention on Civil and Political Rights, 1966 provides that “No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”

Also, Article 5 of the African Charter on Human and Peoples’ Rights provides that “every individual shall have the rights to respect of the dignity inherent in a human being and to the recognition of his status”.

In spite of the various laws that make copious provisions for human rights, there have been a number of recorded cases of human rights violations in Nigeria till this very day.

This chapter enumerates extensively, the extent of these human rights abuses. It further discusses the factors responsible for the recurring legal problems in the enforcement of fundamental rights in Nigeria. Furthermore, the adverse effects of fundamental rights violations on the citizens and the country in general is discussed in this chapter.

3.1 HUMAN RIGHTS VIOLATIONS IN NIGERIA

Human rights include the right to life, dignity of the human individual, personal liberty, fair hearing, and freedom of speech, conscience, and faith, which all human beings have by virtue of their humanity.² They create a basic code of conduct for the international community. They

¹ Section 33(1) of the Constitution of Nigeria Cap C23 LFN, 2004

² I Onwuazombe, ‘Human Rights Abuse and Violations in Nigeria: A Case Study of the Oil-Producing Communities in the Niger Delta Region’, vol 22

are natural, logical, inviolable, and unchangeable, and their loss would be a grave injustice to one's sense of justice.³

The right to life, the right to dignity of the human person, the right to personal liberty, the right to a fair hearing, the right to private and family life, the right to freedom of thought, conscience, and religion, the right to freedom of movement, the right to be free from discrimination, and the right to vote are all protected by Chapter IV of the Constitution of the Federal Republic of Nigeria, which was adopted in 1999.

Human abuse is described as a violation of the basic rights of people by treating them wrongly, according to Merriam-Webster Dictionary. It has been described as the act of using something in a way that it should not be used, according to the Longman Dictionary of Contemporary English⁴. A denial of human rights is a violation of human rights. It also entails depriving a person of his basic human rights, as well as treating him in an inhuman, unjust, and violent manner, or treating him as less human.⁵ Human rights abuses in Nigeria have recently kept people down and devalued the country's beloved principles.⁶

Nigerian human rights violations and abuses span the broad spectrum of rights. Abuse can take several different forms and can be either direct or indirect. Nigerians are routinely exposed to state security agents and oil companies abusing and violating their rights. Owing to the multitude of issues plaguing judicial systems, perpetrators of human rights abuses are rarely, if ever, kept accountable or brought to justice. Furthermore, since civil remedies in law are

<https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1207&context=annlsurvey> accessed 10 May 2021.

³ *ibid.*

⁴ Third Edition

⁵ Adetoro Rasheed Adenrele and ---Omiyefa Muraina Olugbenga, 'CHALLENGES OF HUMAN RIGHTS ABUSES IN NIGERIAN DEMOCRATIC GOVERNANCE-WHICH WAY FORWARD?' (2014) <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1207&context=annlsurvey> accessed 11 May 2021.

⁶ *ibid.*

seldom enforced, there appears to be a lack of trust and faith in the courts, as well as general apathy towards the judicial process among Nigerians.

To lay further understanding to this segment of this research work, it is pertinent that the noted human rights abuses and violation in Nigeria be categorized so as to lay a critical analysis of same. Therefore, the violations of human rights in Nigeria are categorized as follows:

3.1.1 Abuses by armed groups

It is reported that in the north-east, both *Boko Haram* and Nigerian security forces committed serious crimes, including war crimes and possible crimes against humanity.⁷ Boko Haram has killed hundreds of people and kidnapped hundreds of women and children. Government forces launched indiscriminate assaults on villages and detained thousands of people in deplorable conditions. About 1,500 people were killed in bandit attacks and intercommunal violence in the north-western and north-central regions.⁸ Excessive use of force, resulting in unlawful killings, torture, and other forms of ill-treatment were commonplace everywhere.⁹

It is reported that Boko Haram continued to commit gross human rights violations in the north-east, including civilian killings and kidnappings, which led to war crimes and possibly crimes against humanity. Over 420 civilians were killed in 45 attacks, the majority of which occurred in Borno state, but also in Adamawa and Yobe.¹⁰ Boko Haram, on the other hand, managed to recruit child soldiers.

The outstanding human right violations by the armed group Boko Haram has continued to remain unmitigated. For instance, Boko Haram members beheaded Reverend Lawan Andimi in

⁷ ‘Everything You Need to Know about Human Rights in Nigeria| Amnesty International | Amnesty International’ <<https://www.amnesty.org/en/countries/africa/nigeria/report-nigeria/>> accessed 10 May 2021.

⁸ *ibid.*

⁹ *ibid.*

¹⁰ *ibid.*

Adamawa state on January 20, 2020, 18 days after kidnapping him in Michika, Adamawa state. Daciya Dalep, a 22-year-old student, was executed by a child soldier in the same month.¹¹

Amnesty International reports that in June 2020, the Islamic State West Africa Province (ISWAP), a Boko Haram offshoot, threatened to attack aid workers, humanitarian facilities, and everyone else it thought had “assisted” the military.¹²

ISWAP released five aid workers – two women and three men – who had been abducted outside Maiduguri a month earlier on January 15, following talks with the authorities. The same party abducted five aid workers in June and executed them on the Monguno-Maiduguri road in Borno state on July 22.¹³

Another instance of a lack of protection is the early morning massacre at St. Philip Catholic Church in Ozubulu, Anambra State, on Sunday, August 6, 2018.¹⁴ The Bishop of the Diocese, Okekeé Hilary Odili, issued a statement saying that 22 people survived the attack and 13 died. On the above date, gunmen entered the church and opened fire on the parishioners, according to one of the survivors.¹⁵ The governor of Anambra State and the police claimed that the fatal shooting was carried out by two South African businessmen from the same area, while IPOB claimed that the crime was carried out by herdsmen.¹⁶

3.1.2 Abuses by Security Forces:

Many accused of having links to criminal activities are arbitrarily arrested and detained. Detainees are not usually allowed to see their families or attorneys, and they were not taken before the courts. It has been reported Children who fled Boko Haram-controlled areas were also apprehended and held in military detention centres such as Maiduguri's Giwa barracks and

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*

¹⁴ OHCHR, ‘Report On The Human Rights Situation In Nigeria Submitted To The Office Of The UN Human Rights Council In Geneva During The 31st Session Of The UPR Working Group’ 1 <<http://ohcr.org/EN/Countries/ENACARegion/Pages/UARports.aspx>>.

¹⁵ *ibid.*

¹⁶ *ibid.*

Niger's Kainji military base.¹⁷ In June, the government of Borno released 602 Boko Haram suspects for resettlement.¹⁸

Furthermore, it is crucial to understand that incidents of police misconduct and misuse of authority are seldom investigated, and the perpetrators are rarely brought to justice. When prosecutions do take place, they often fall short of international standards, and officers accused of extrajudicial killings are often sent on training or relocated to other countries rather than facing charges.¹⁹ Brutality and incivility, disproportionate use of force, extrajudicial killings, torture, arbitrary arrest and detention, enforced disappearance, and extortion have all been implicated in systematic human rights violations by security forces, particularly the police and the military.²⁰ Human rights abuses have recently been levelled against the Nigerian Army in their efforts to quell the agitations of the Indigenous People of Biafra (IPOB), and these allegations have yet to be investigated; similarly, the Nigeria Police Force has recently faced public outcry over atrocities committed by some of its departments and the failure of the police hierarchy to investigate and hold them accountable.²¹

Consequently, in the capture, arrest, and even extrajudicial execution of criminal suspects, law enforcement officers are said to act with impunity. Police officers are seldom held responsible for the use of unnecessary or lethal force or the deaths of people in custody.

It is reported that security service personnel in Nigeria routinely beat, assault, and torture demonstrators, criminal suspects, detainees, and convicted prisoners at will, mistreat civilians to extort money, and regularly beat, abuse, and torture demonstrators, criminal suspects, detainees, and convicted prisoners.²² Terror and mayhem have been unleashed in the oil-

¹⁷ 'Everything You Need to Know about Human Rights in Nigeria| Amnesty International | Amnesty International' (n 5).

¹⁸ *ibid.*

¹⁹ Onwuazombe (n 1).

²⁰ OHCHR (n 12).

²¹ *ibid.*

²² Onwuazombe (n 1).

producing communities by the military, police, and joint task forces. They converted the area into a national killing field and a comedy of errors. Unlawful and arbitrary arrests, detention, false imprisonment, intimidation, and torture of residents and their leaders for protesting pollution or seeking compensation for damaged property are all too common in the region.²³

It has been reported that there has been a high incidence of killings of defenceless civilians by the police and other security forces in the south-south region. Since most killings in the zone go un-investigated and the perpetrators go unpunished, law enforcement officers have increased their level of immunity.²⁴

Following the arrest of Nnamdi Kanu by the state security services in October 2015, mass protests erupted in Port Harcourt, Rivers state, and other states in the south-south region, all of which have significant Ibo populations.²⁵ Some protesting IPOB members were killed in the D/Line and Ikoku areas of Port Harcourt, Rivers State.

It has been claimed that politicians and other powerful people in Anambra and other parts of Nigeria are using the police to victimize their opponents or resolve solely civil or communal disputes.²⁶ It has been reported that Operation Python Dance which was a military drill that took place in Nigeria's five Eastern States, sparked widespread concern because it is the police, not the army, who are responsible for maintaining security in the region. Excessive force was used against the Indigenous People of Biafra IPOB who were protesting peacefully during the time under investigation, which began on November 27, 2016. Ten people were killed in Aba, Abia State, following a protest against the army's invasion of their leader's (Nnamdi Kanu) home.²⁷

²³ *ibid.*

²⁴ OHCHR (n 12).

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ *ibid.*

More recently, in May 26, 2020, two police officers fired shots from their pin down point along Berger by third Mainland bridge and the stray bullet hit one Musa Yakubu, who was injured while a stray bullet from police officials hit a 17 year old Tina at Berger- Iyana- Oworo bus stop. She was rushed to the hospital but died two days later on May 28, 2020²⁸. Also on Tuesday 21, 2020, a lecturer at the University of Benin, Dr Okotie was killed after a commercial driver, allegedly trying to avoid police extortion, rammed into her. The commercial driver was running away from the police officers who had earlier flagged his vehicle down, demanding bribe, which led to a physical struggle of the steering wheel, between one of the officers and driver of the vehicle and in the process, the bus ram into Dr Okotie, who was standing on the walkway just by the side of the vehicle, killing her on the spot²⁹.

Instances of violation of human rights by government/security personnel can never be complete without reference to the most recent and indeed the painful Lekki toll gate massacre of peaceful protesters by the Nigerian army and police on the 20th of October, 2020³⁰.

3.1.3 Extrajudicial Killings

The act of unlawfully taking someone's life, refusing or violating a person's right to life without recourse to the legal system, is known as extrajudicial killing/murder.³¹ In general, the sanctity and sacredness of human life have almost lost their true sense in Nigeria today. Thousands of people have been stripped of their basic and inalienable right to life in oil-producing countries, beyond the scope of the supreme law of the land and other relevant international instruments.³²

Amnesty International (AI) released an article in 2009 called Killings at Will: Extra-judicial Executions and Other Unlawful Killings by the Police in Nigeria, which detailed 39 cases of

²⁸ Oditia Sunday, The Guardian Newspaper, 30 May 2020

²⁹ Damilola Ismail, The Guardian, 30 May, 2020.

³⁰ Amnesty International, Nigeria: The Lekki Toll Gate Massacre- new investigative timeline, 1 <<https://www.amnesty.org/en/latest/news/2020/10/nigeria-the-lekki-toll-gate-massacre-new-investigative-timeline/>> accessed May, 20221.

³¹ Onwuazombe (n 1).

³² *ibid.*

security force killings and enforced disappearances based on interviews and study conducted between July 2007 and July 2009.

According to this report, “the national police conducted hundreds of extrajudicial executions, other unlawful killings and enforced disappearances each year. The police usually claim that the victims were armed robbers killed in an exchange of gun fire or that the suspects were trying to escape.” Hundreds of thousands of civilians have been killed extra-judicially by security agents in Nigeria under similar circumstances.³³ The systematic use of torture and other ill treatment by SARS³⁴ officers for police investigation is an absolute disregard for human right laws and standards. During Nigeria’s corona virus lockdown period, the Nigeria’s National Human Rights Commission (NHRC), a government agency said it had found “8 separate incidents of extra-judicial killings, leading to 18 deaths”. The same commission (NHRC) denounced that the victims of police brutality outnumbered those killed nu Covid-19 on its territory as the Nigerian police were suspected to having carried out extra-judicial killings between March 30th and April 13th, 2020³⁵

3.1.4 Insecurity and Unjust Arrest

Kidnapping and disappearance, which have been on the rise in Nigeria, are examples of the human rights abuse. The situation is bad in Abia State, where there have been reports of regular occurrences of domestic terrorism (brutal abduction) in the Niger Delta between 2006 and 2009, as well as Edo varsity lecturers lamenting daily affairs kidnapping of their colleagues.³⁶ This heinous physical violation of human rights is now widespread in Nigeria.³⁷

³³ Amnesty Int’l, Killings at Will: Extrajudicial Executions and Other Unlawful Killings by the Police in Nigeria, AI Index AFR 44/038/2009 (Dec. 9, 2009), <https://www.amnesty.org/en/documents/AFR44/038/2009/en/>.

³⁴ Special Anti- Robbery Squad. A unit under the Nigerian Police force created in late 1992 to deal with crimes associated with robbery, motor theft, kidnapping, cattle rustling and firearms.

³⁵ Police Brutality is more Lethal than Covid-19, <https://www.telesurenglish.net/news/nigeria-police-brutality-is-more-lethal-than-covid19-20200417-0001.html> accessed 21 May, 2021.

³⁶ Rasheed Adenrele and Muraina Olugbenga (n 3).

³⁷ *ibid.*

More recently, in April 12 2021, the Ogun State chapter of the National Association of Nurses and Midwives and the National Medical Association declared a strike action. This was not tied to the non-payment of salaries and allowances, but the rampant cases of kidnappings in Ogun State, of which the medical associations' members have been falling victims.

On April 20 2021, 23 staff members and students of Greenfield University, a higher institution in Kaduna State, were kidnapped. The school management and parents of the affected students raised the sum of N15 million to appease the kidnappers and secure the release of their children. Violations of the right to free speech are also on the rise. Bloggers and journalists are increasingly being harassed. The Inspector-General of Police (IGP) ordered the arrest of two journalists (the Elombah brothers) in January 2018, allegedly for stories he considered humiliating.³⁸ Mr. Tony Ezimako, the Abuja Bureau Chief of the Independent Newspaper, was arrested and detained by the State Security Service (SSS) in March 2018.³⁹ He was detained for seven days and asked to provide sources for a story he had written for the medium. In the last 30 months, over 20 bloggers have been arrested and detained.⁴⁰

Up to this day, more and more young men and women, including children are sent to detention centres for unlawful arrests, usually without formal charges or just being suspected as a member of *book haram* or related to them. This is done by the military on a usual basis and even denying them access to lawyers and family members once they reach the detention facility. In relation to this, on Sept 24 2020, a mass trial was conducted in various detention facilities in secret. This resulted in the sentencing of 460 plus suspects to serve different prison terms. The worse part about this is that almost 90% of the detainees were not even proven to be members of *book haram* nor proven to have taken part in any of their destructive activities.⁴¹

³⁸ OHCHR (n 12).

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ Amnesty.org

Recall also, that unlawful arrests were made by the police and other security personnel against peaceful protesters during the End SARS protest, which was a contravention to the right to a peaceful protest in a democratic state.⁴²

3.1.8 Gender Based Violence against women and girls:

Despite the fact that all Niger Delta states have enacted legislation banning the practice of FGM (Female Genital Mutilation), it is disheartening to note that the laws are not enforced, and offenders are seldom prosecuted.⁴³

At every stage, violence against women is endemic and tolerated. Many victims of sexual harassment are unable to report it because of the stigma and silence surrounding it.⁴⁴ In 2014, Amnesty International reported on the cases of rape and sexual violence against women and girls by security forces in Nigeria, and found that women detained for criminal offences, relatives of criminal suspects and sex workers who could not pay bribes were often targeted for rape and other violations by police officers⁴⁵. Forced marriage for underage girls, especially in the northern part of Nigeria, marriage by abduction, female genital mutilation, forced abortion, trafficking of young girls, and harmful widowhood practices are all on the rise.⁴⁶ The existing laws on sexual harassment, which are supposed to safeguard the rights of women and children, aid impunity because perpetrators are not punished and the burden of evidence falls disproportionately on women, resulting in a rise in recorded cases of domestic and gender-based violence.⁴⁷ The practice of demanding sexual favors in exchange for employment or

⁴² *ibid*

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ Amnesty International, “Welcome to Hell Fire: Torture and other ill-treatment in Nigeria”, September 2014, AFR44/011/2014, pg 31.

⁴⁶ *ibid.*

⁴⁷ *ibid.*

university grades remained common. Women suffer harassment for social and religious reasons in some regions⁴⁸

The law criminalizes rape, but it remained widespread. According to the *2018 Nigeria Demographic and Health Survey*, approximately 31 percent of women between ages 15 and 49 had experienced some form of physical violence and 9 percent had experienced sexual violence.⁴⁹

Despite the federal law and the constitutional provisions, the cultural practice of secluding women and pubescent girls from unrelated men, continued in parts of the north. “Confinement,” which occurred predominantly in the Northeast, remained the most common rite of deprivation for widows. Confined widows were subject to social restrictions for as long as one year and usually shaved their heads and dressed in black as part of a culturally mandated mourning period. In other areas communities viewed a widow as a part of her husband’s property to be “inherited” by his family. In some traditional southern communities, widows fell under suspicion when their husbands died. To prove their innocence, they were forced to drink the water used to clean their deceased husbands’ bodies.⁵⁰

3.1.9 Child Abuse and Labour

Despite the Child Rights Law, there is a significant compliance problem. The high prevalence of child sexual exploitation and maltreatment outweigh the number of convictions in the states. The lack of prosecution for such acts in Nigeria is not only disheartening, but it also has negative consequences for Nigerian society.

Girls and children are at the core of the insurgency's impact in the northeast. Suicide bombers increasingly include women and young girls. Within the IDP camps, they face sexual exploitation, drug trafficking, and prostitution, as well as the challenges of insufficient health and sanitary facilities, food, and adequate protection, as illustrated by the government of Borno

⁴⁸ 2020 Country Reports on Human Rights Practices: Nigeria, Bureau of Democracy, Human Rights, and Labour <<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/nigeria/>> accessed 15 July, 2021

⁴⁹ *ibid*

⁵⁰ *ibid*

State in northeast Nigeria.⁵¹ Furthermore, according to sources, the findings of several investigation committees set up to look into claims of sexual harassment by some camp residents and state security officials have yet to be made public, depriving the victims of their right to pursue justice.⁵²

3.1.10 Other Violations:

Activities in the Niger Delta have proven to have severe violations on Human rights of the indigenes of the community. Crude oil contains several harmful toxins, and any oil spill poses a serious threat to human life and survival. In light of the foregoing, the Federal Government of Nigeria has failed to fulfill one of its primary obligations and responsibilities by permitting or condoning acts or commissions of Multinational Corporations (MNCs) in the Niger Delta that increase or have the potential to increase infant mortality, malnutrition, gastroenteritis or dysentery epidemics, and reduce life expectancy in the region.⁵³ The government promotes and aids violations of the right to life of residents of oil-producing communities by its silence and complicity.⁵⁴

Oil spills of any size pollute the atmosphere, which is essential for human life and survival, and are therefore hazardous to human health. Gas flaring, likewise, causes health problems that have resulted in the deaths of many people in oil-producing communities. It has been linked to decreased crop yields and plant growth, as well as the disturbance of wild life in the region.⁵⁵ It also pollutes the environment, injecting particulates and other pollutants believed to cause cancer and other terminal diseases into the atmosphere, and has been found to violate people's right to life through judicial pronouncements, as outlined in the following event.⁵⁶

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ Onwuazombe (n 1).

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ *ibid.*

For instance, In *Gbemre v. Shell Petroleum Development Corp. of Nigeria Ltd.*⁵⁷, Jonah Gbemre sued Shell Petroleum Development Company Nigeria Ltd., the Nigerian National Petroleum Corporation (NNPC), and the Attorney General of the Federation under the Fundamental Rights Enforcement Rules in the 1999 Nigerian Constitution on behalf of himself and the Iwhereken Community in Delta State, in the Niger Delta region. The Plaintiff claimed as follows:

1. Shell's oil exploration and production operations, which resulted in constant gas flaring, had infringed on their rights to life and integrity as guaranteed by Sections 33(1) and 34(1) of the Constitution, as well as articles 4, 16, and 24 of the African Charter.
2. The company's constant gas flaring had poisoned and polluted the atmosphere, putting the population at risk of premature deaths, respiratory diseases, asthma, and cancer. Pollution had harmed their crop production, putting their food security at risk. They also believed that many natives had died and that many more were suffering from various illnesses as a result of the pollution.

The Plaintiffs' Counsel argued that the provisions of the Associated Gas Re-Injection Act (Continued Flaring of Gas Regulations 1984) and the Associated Gas Re-Injection (Amendment) Decree no 7 of 1985 that enable gas flaring to continue are incompatible with the right to life (which includes the right to a healthy environment) guaranteed by the Constitution. The defendants argued that certain articles of the ACHPR do not establish enforceable rights under the Nigerian Fundamental Rights Enforcement Procedure, among other things.

The court agreed with plaintiffs' counsel on the continuation of gas flaring, holding, among other things, that constitutionally protected rights include the right to a clean, poison-free,

⁵⁷ *Gbemre v. Shell Petroleum Dev. Corp. of Nigeria Ltd & Ors*, Suit No. FHC/B/CS/53/05 (Fed. High Ct. Nigeria, Benin Jud. Div. Nov. 14, 2005) (Nigeria); see also Olufemi O. Amao, *Corporate Social Responsibility, Multinational Corporation and the Law in Nigeria: Controlling Multinationals in Host States*, 52 J. AFR. L. 89–113 (2008)

pollution-free environment, and that Shell's actions in continuing to flare gas in the plaintiffs' community violated their right to life.

It is pertinent to note that even though the Nigerian Constitution does not appear to include a justifiable right to a safe, poison-free, pollution-free, and healthy environment, the court used a combination of constitutional provisions and African Charter provisions (especially article 24) to recognize and enforce a fundamental right to a clean, poison-free, pollution-free, and healthy environment.⁵⁸

3.2 LEGAL PROBLEMS IN THE ENFORCEMENT OF FUNDAMENTAL RIGHTS IN NIGERIA

There exists a number of obstacles that actively conspire against Fundamental rights enforcement in Nigeria. While some of these obstacles are substantive in nature, others are procedural and yet, have their roots in the present political system in the country. This work examines extensively some of these major factors to see how they have continued to inhibit the enforcement of Fundamental rights in Nigeria. For the purpose of clarity, these recurring obstacles that this work examines have been classified into various factors. These factors are as follows:

1. Constitutional Factors
2. Judicial Factors
3. Extra-legal/ Social Factors

3.2.1 Constitutional Factors

A factor contributing to the violation of human rights terms from the vague provisions of some sections of the Constitution of the Federal Republic of Nigeria 1999 (as amended). It is notable that some sections of the Act are not express enough in the provision of the fundamental right nor specific enough in its protection of same. For instance, Section 36 (paragraph 1) of the

⁵⁸ Onwuazombe (n 1).

1999 Constitution states that a person is entitled to a fair hearing within a "**reasonable time**" by a court or other tribunal established by law and constituted in such a way as to ensure its independence and impeachment in the determination of his civil rights and obligations, including any question or determination by or against any government or authority. In a similar way, Section 36 (paragraph 4) of the Constitution states that anyone charged with a criminal offense is entitled to a fair trial by a court or tribunal within a "**reasonable time.**"

Unfortunately, the definition of the phrase "within a reasonable period" as used in these subsections is not specified in the Constitution. In *Gozie Okeke v. The State*⁵⁹, the Supreme Court had cause to define this term. Justice Ogundare ruled in his decision that:

“The word “reasonable” in its ordinary meaning means moderate, tolerable or not excessive. What is reasonable in relation to the question whether an accused has a fair trial within a reasonable time depends on the circumstances of each particular case, including the place or country where the trial took place, the resources and infrastructures available to the appropriate organs in the country. It is, therefore, misleading to use the standard or the situation of things in one or a particular country to determine the question whether trials of criminal cases in another country involves an unreasonable delay ... A demand for a speedy trial, which has no regard to the conditions and circumstances in this country, will be unrealistic and be worse than unreasonable delay in trial itself”.

Furthermore, it is ironic that some of the constitutional clauses intended to safeguard human rights inadvertently trigger delays in the judicial process. In this context, some provisions of the 1999 Constitution must be mentioned. “Every person charged with a criminal offense shall be entitled to be given sufficient time and facilities for the preparation of his defence,” according to Section 36(6b) of the 1999 Constitution.⁶⁰

3.2.2 Judicial Factors

⁵⁹ (2000) 10 NWLR (Pt. 675) 423

⁶⁰ ‘Access to Justice and Human Rights Protection in Nigeria - Sur - International Journal on Human Rights’ <<https://sur.conectas.org/en/access-justice-human-rights-protection-nigeria/>> accessed 14 May, 2021.

Nigeria's 1999 Constitution not only guarantees access to the courts, but also lays out the mechanism for enforcing the guaranteed rights. Section 46(1) of the 1999 Constitution establishes an adjudicatory procedure for ensuring the protection of fundamental rights, allowing “any person” who claims actual or imminent violation of the guaranteed rights to “apply to a High Court for redress.” The Fundamental Rights (Enforcement Process) Rules, 2009, made by the Chief Justice of Nigeria pursuant to the authority conferred on him by section 46(3) of the 1999 Constitution, set out the procedure for filing and deciding such cases.⁶¹

However, despite the provisions towards the enforcement and protection against human rights violation in Nigeria, there are certain obstacles plaguing the judiciary hereby causing or encouraging human rights violation in Nigeria. They are hereby examined as follows:

1. **Delay in the Administration of Justice:** It is a basic statement to say that the administration of justice in Nigeria is inordinately slow. What is difficult to comprehend, however, is how Nigerians have managed to cope with this problem for decades without providing a long-term solution. Ordinary cases of wrongful termination of jobs, as well as cases involving the protection of constitutional rights, often last three to five years or longer.⁶²

Lawyers writing letters of adjournment of cases, judges and magistrates' inability to issue decisions on time, failure of the police or jail authorities to bring accused persons in court for trial, the rule that if a magistrate or judge is moved and a new one takes over a case, it must be started from the beginning, and so on could all contribute to the delay.⁶³

⁶¹ DR Jacob and Abiodun Dada, ‘Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal’ <www.iiste.org> accessed 14 May, 2021.

⁶² ‘Access to Justice and Human Rights Protection in Nigeria - Sur - International Journal on Human Rights’ (n 47).

⁶³ *ibid.*

As a result, people would naturally be hesitant to take steps to uphold their fundamental rights under such circumstances. Without a doubt, such delays not only erode public trust in the judicial process, but also jeopardize the courts' very nature.

Despite the fact that speedy trial is guaranteed by Section 36 (paragraph 1) of the 1999 Constitution, which states that a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law in the determination of his civil rights and obligations, including any question or determination by or against any government or authority. Furthermore, Section 36 (paragraph 4) of the Constitution states that anyone charged with a criminal offense is entitled to a fair trial by a court or tribunal within a reasonable period.⁶⁴

Furthermore, the horrible quality of the criminal justice system, as well as a lack of resources, logistics, and expertise, are all contributing factors to the sluggish implementation among the relevant agencies.⁶⁵

2. **Cost of Litigation:** The cost of litigation and the cost of retaining the services of a legal practitioner is a factor encouraging the ineffective enforcement of Fundamental rights in Nigeria.
3. **Lack of Diligent Prosecution of Violators:** This dimension also leads to the exacerbation of Human Rights abuses when police officers are not brought to court or, even though they are, the case is not investigated to its conclusion⁶⁶. The severity of these security officers' violations is often exaggerated. When such cases are investigated to their conclusion, the authorities often defy the court's orders with unprecedented impunity.⁶⁷

⁶⁴ *ibid.*

⁶⁵ OHCHR (n 12).

⁶⁶ Felix Daniel Nzarga, 'An Analysis of Human Rights Violation by the Nigerian Security Services' (2014) 30 *Journal of Law, Policy and Globalization* <<https://core.ac.uk/download/pdf/234650005.pdf>> accessed 11 May, 2021.

⁶⁷ *ibid.*

4. **Undue Reliance on Technical Rules:** Law is an inherently technical topic, and the various rules and procedures in place reflect this technicality. To be able to reach the courts, a litigant must retain the services of a legal professional who will take the necessary steps on his behalf. The litigant, no matter how well educated, is generally unable to comprehend the complex processes and laws that apply to his situation.⁶⁸ For an illiterate Nigerian, the condition is unquestionably worse, and when one considers that the vast majority of Nigerians are illiterate, the true picture emerges.⁶⁹

3.2.3 Extra-legal/ Social Factors

1. **Illiteracy/Lack of Adequate Training:** The majority of Nigerians are illiterate, and as a result, are ignorant of "their constitutional rights as enshrined in the Constitution." As a result, they have no idea when those rights are infringed upon or abused, let alone how to pursue redress: on this note, there are issues ranging from a lack of proper orientation to inadequate preparation on the part of security officers.⁷⁰ Furthermore, with the type of training typically offered to the military, such training will never put them in a good position nor does it prepare them to handle civil crises, resulting in Human Rights violations and high casualties if they are involved.⁷¹
2. **Poverty:** Poverty is another factor that contributes to the prevalence of human rights abuses in our society. Because of the high level of poverty, many people whose rights have been violated are hesitant to seek redress when the cost of legal representation is considered.⁷² Some people also keep quiet to avoid being stigmatized, particularly when there is a violation involved.

⁶⁸ 'Access to Justice and Human Rights Protection in Nigeria - Sur - International Journal on Human Rights' (n 47).

⁶⁹ *ibid.*

⁷⁰ Daniel Nzarga (n 53).

⁷¹ *ibid.*

⁷² *ibid.*

3. **Ethnic/Religious Sentiments:** When the perpetrator belongs to the same religious or ethnic group as the superior officers handling the case, justice is frequently delayed. This bias towards kinsmen and fellow ethnic member in the Nigerian society is prevalent and has affected all sectors, of which the enforcement mechanism for the protection of fundamental rights is no exemption.⁷³
4. **Concerned Authorities' Position:** Most of the time, the government lacks the political will to take human rights problems seriously. The National Human Rights Commission, which is responsible for the defence and promotion of citizens' rights, has not done enough, largely because the body is handicapped, possibly as a result of the National Human Rights Act's non-gazette since 2010.⁷⁴ As a result, the commission's lawyers are unable to pursue cases of human rights abuses, especially those committed by security officers, because such cases could put their lives in jeopardy.⁷⁵

It should be further noted that Human Rights defenders face abuse, threats, ill-treatment, smear campaigns, arbitrary arrest, surveillance, and even death for simply standing up for what is right. Their right to self-defence is refused, and they are continuously challenged as they exercise their freedoms of speech, association, and peaceful assembly.⁷⁶

5. When an officer commits an offence that violates human rights and is brought before his superior, the offending officer is shielded or, if any action is taken at all, the officer involved in the breach is only dismissed and not charged to serve as a deterrent to others.

3.3 EFFECTS OF FUNDAMENTAL RIGHT ABUSES

It is difficult to distinguish between the effects of direct physical and psychological abuses when considering the consequences of gross human rights violations on people's lives. This

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ OHCHR (n 12).

makes it impossible to draw causal connections or conclude that breaches are the product of a specific adversity.⁷⁷ Human rights abuses, on the other hand, were undeniably the most important factor in many cases. Hence, towards the objective of this research work, it is pertinent to examine the effects of abuses or violation of the fundamental rights, so as to evidence the severity of such actions.

3.3.1 The Psychological Implications of Fundamental Rights Violations

Human rights violators used a variety of repressive techniques, with both physical and psychological repercussions. These manifested themselves in the assassination, kidnapping, cruel treatment, and torture of activists, families, and communities. Detention-related psychological harm was not simply a by-product of state-sanctioned torture. It is sometimes done on purpose in order to deter more aggressive opposition. Torture may trigger a variety of psychological, behavioral, and medical issues, including post-traumatic stress disorder (PTSD), which manifests itself as re-enactment of the traumatic event, persistent avoidance stimuli associated with the event, and persistent symptoms of elevated arousal not present prior to the traumatic event.⁷⁸

Torture and human rights abuses do not, however, often result in post-traumatic stress disorder. Depression, anxiety disorders, and psychotic symptoms are among the other issues. The consequences are multifaceted and intertwined, affecting every aspect of the victim's life. Sleep disturbances, persistent irritability, physical illness, and a disruption of interpersonal relationships, occupational, family, and social functioning may all result from trauma exposure.⁷⁹

3.3.2 Other Effects of Fundamental Right Violation in Nigeria

⁷⁷ 'Chapter 4: Consequences of Gross Violations of Human Rights - The O'Malley Archives' <<https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv02167/04lv02264/05lv02335/06lv02357/07lv02398/08lv02402.htm>> accessed 14 May, 2021.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

Fundamental rights violations in Nigeria often contribute to poverty, which is exacerbated by widespread misuse of public funds. As a result of the high rate of unemployment, young people have turned to crimes like armed robbery, internet scams, and kidnapping to survive.⁸⁰

Second, violations of fundamental rights obstruct national growth. Third, it breeds a high rate of instability because chaos has allowed for a lack of defence of lives and property, as seen in the Niger Delta region's conflicts and various ethno-religious abuse.⁸¹

Fundamental rights violations have resulted in illegal imprisonment and lawlessness, as well as flagrant violations of the rule of law. Such violations often make people unpatriotic, as most Nigerians are not proud to call their country their fatherland.⁸² Consequently, this leads to the rationale behind many Nigerians' attempt toward leaving the country in search of safety and stability elsewhere.

Furthermore, it is notable that the violation of human rights gives birth to an opportunistic and state-dependent private sector in Nigeria, which results in higher inflation and economic stagnation.

3.4 CONCLUSION

In this Chapter, the Nigerian situation with regards fundamental rights violations in various aspects was largely examined. The various instances and the extent of the abuses in today Nigeria was analysed. Also, the legal problems, which were categorized into Constitutional factors, Judicial factors and Extra-legal factors, inhibiting the proper enforcement of fundamental rights in Nigeria were discussed. Furthermore, the effects of these fundamental rights violations as it affects the individual Nigerian, groups, as well as the economy and country at large was also discussed in this chapter.

⁸⁰ Rasheed Adenrele and Muraina Olugbenga (n 3).

⁸¹ *ibid.*

⁸² *ibid.*

CHAPTER FOUR

JUDICIAL APPROACH TO FUNDAMENTAL RIGHTS ENFORCEMENT IN NIGERIA

4.0 INTRODUCTION

The Fundamental Rights Enforcement Procedure Rules (hereinafter referred to as the "FREP Rules") were first adopted in 1979, despite the fact that human rights had been a part of successive Nigerian Constitutions since independence in 1960. The 1979 FREP rules were designed to increase the pace and dynamism of the implementation of fundamental rights in Nigeria. The 1979 FREP Rules however, were fraught with difficulties and bottlenecks.¹ The most significant was the provision of leave as a precondition for human rights compliance. Obtaining leave necessitated the submission of several preliminary applications, which often overlapped with the main or substantive application for the protection of fundamental rights.² This condition was deemed too onerous and expensive by many practitioners and litigants. Consequently, after twenty years of using the 1979 FREP rules, their shortcomings prompted the adoption of the FREP Rules 2009.

The Fundamental Rights (Enforcement Procedure) Rules, 2009 have given a boost to efforts to combat human rights violations that are common in the African region, especially in Nigeria. To this end, it is pertinent that the FREP Rules, 2009 be discussed in detail in this research work. Also, in this chapter, focus will be made on the extent of the enforcement of fundamental rights in Nigeria by the Nigerian courts, with reference to decided cases bothering on violations of fundamental rights.

¹ *ibid.*

² *ibid.*

4.1 FUNDAMENTAL RIGHTS (ENFORCEMENTS) PROCEDURE RULES 2009

The Fundamental Rights (Enforcement Procedure) Rules 2009, promulgated by the Chief Justice of the Federation pursuant to Section 46(3) of the 1999 Constitution of the Federal Republic of Nigeria, direct the current procedure for the commencement of an action for the enforcement of Fundamental Human Rights in Courts in Nigeria.

The FREP Rules 2009 seek to strengthen and prioritize human rights compliance in order to advance democracy.³ The principle of prioritizing human rights is the ideology that underpins the Rules' implementation.⁴ Government can only communicate with its people through issues of human rights.⁵ Compared to its predecessor, technicalities were reduced, which is one of the specific changes in the 2009 FREP Rules.

On the special nature and object of the fundamental rights (enforcement Procedure) Rules, the Court of Appeal in *Usman v. C.O.P*⁶, held that fundamental right (enforcement Procedure) Rules are in a special class of their own and different from any other ordinary cases. The object of the enforcement of fundamental rights is to provide a simple and effective process for the enforcement and to avoid the cumbersome procedure of technicalities that may make the enforcement difficult.

According to paragraph 3(e) of the preamble to the FREP Rules 2009, courts must promote and welcome public interest litigation in the field of human rights, and no human rights case may be ignored or dismissed for lack of locus standi.

Furthermore, since the FREP Rules 2009 were enacted in accordance with Section 46 (3) of the 1999 Constitution; they are considered to be in compliance with the Constitutional provisions. They have the same power and potency as the Constitution's provisions, and therefore have a higher place in Nigeria's legal hierarchy than most laws. Any discrepancy between the FREP

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

⁶ (2020) 10 NWLR (Pt. 1732) 262

Rules and any other legislation will be resolved in favour of the former to the degree of the inconsistency.

In *Abia State University, Uturu v. Chima Anyaibe*⁷, the Court of Appeal held as follows: “Section 42(3) of the Constitution also empowered the Chief Justice of Nigeria to make Rules with respect to the practice and procedure to be allowed in cases concerning Section 42(1) and the Rules were accordingly enacted pursuant thereto. They form part of the Constitution. In *Akanbi & Ors. v. Alao & Anor*⁸, the Supreme Court was considering the Court of Appeal Rules which were made under powers conferred on the Honourable President of the Court of Appeal by Section 227 of the 1979 Constitution. The Supreme Court held that:

".....the legal effect is that once it is shown that the Rules are made under powers conferred by the Constitution, they would have the same force of law as the Constitution itself."

The new Rules have also broadened the range of human rights values and ideas upon which the court can draw to support its decisions. Judges will now accept municipal, regional, and international Bills of Rights that have been cited to them, brought to their notice, or are known to the court. This allows a judge to use a specific tool even though it was not cited by counsel.

The above is succinctly stated in paragraph 3 (b) of the FREP Rules 2009, which reads 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 Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions”.

⁷ (1996) 3 NWLR (Pt. 439) 646; at page 660, paragraph A to C

⁸ (1989) 3 NWLR (Pt. 108) 118

4.1.1 Definition and Commencement of Fundamental Right Action under the FREP

Rules 2009

A 'Fundamental Right' is defined in Order 1 Rule 2 of the FREP Rules 2009 to include not only any of the rights enumerated in Chapter IV of the Constitution, but also any of the rights enumerated in the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.

Furthermore, Order 2 Rule I of the FREP Rules 2009 states that any person who alleges that any of the fundamental rights guaranteed by the constitution or the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act to which he is entitled has been, is being, or is likely to be infringed, can apply to the court in the state where the infringement occurred. Hence, it is evidently apparent that the FREP Rules 2009 also extended an applicant's rights and freedoms by expressly providing a violation of fundamental rights provided in the African Charter as a justification for instituting a human rights suit.

However, to qualify as a claim under the Fundamental Rights (Enforcement Procedure) Rules, it must be clear that the primary relief sought is for the enforcement or securing of a fundamental right, rather than to remedy a grievance unrelated to the primary relief.⁹ In support, the Supreme Court has held in *Ezeanochie v. Igwe*¹⁰ that to commence an action under the Fundamental Rights (Enforcement Procedure) Rules, the principal relief must be for the enforcement or securing the enforcement of a fundamental right. In effect, where the fundamental right of the applicant is the basis of the claim, redress may be sought for enforcement of such right through the Fundamental Rights (Enforcement Procedure) Rules.

⁹ See *Ezeanochie v. Igwe* (2020) 7 NWLR (Pt. 1724) 430 particularly at page 462

¹⁰ (2020) 7 NWLR (Pt. 1724) 430

The aforesaid has been supported in a good number of judicial decisions. For instance, in the case of *Eronini v. Eronini*¹¹, on the nature of claim under the FREP Rules, the Court stated the following:

“It is trite that when an application is brought under the Fundamental Right (Enforcement Procedure) Rules 1979, a condition precedent to the exercise of the court’s jurisdiction is that the enforcement of fundamental right or the securing of the enforcement thereof should, be the main claim and not an accessory claim. Enforcement of fundamental right or securing the enforcement thereof should form the applicant’s claim as presented be the principal claim or fundamental claim and **where the main or principal claim is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the court cannot be properly exercised and will be incompetent**”.¹²

Hence, it is pertinent to realize that the FREP rules 2009, cannot apply in circumstances where the Claim for fundamental right enforcement is not the primary claim. Such suit cannot be brought under the FREP Rules 2009.

It is notable that the FREP Rules 2009 relating to the commencement of action have aided in the improvement of accessibility to justice. In particular, Order II Rule 2 of the FREP Rules, 2009 states that an application for the protection of a fundamental right can be made by any originating procedure agreed by the court, which shall lie without leave of court, subject to the provisions of the Rules.

In agreement with the above, the Supreme Court in *F.R.N v. Ifegwu*¹³ stated as follows:

“It is not in doubt that declaratory and other reliefs can be sought and obtained to enforce and protect fundamental rights by filing action in a High Court: see *Director, S.S.S. v. Agbakoba*¹⁴. The manner in which the

¹¹ (2013) 14 NWLR (Pt. 1373) 32

¹² *Eronini v. Eronini* (2013) 14 NWLR (Pt. 1373) 32 at page 55, paragraph D - F

¹³ (2003) 15 NWLR (Pt. 842) 113

¹⁴ (1999) 3 NWLR (Pt.595) 314

court is approached for the enforcement of a fundamental right is hardly objectionable once it is clear that the originating court process seeks redress for the infringement of the right so guaranteed under the Constitution. The court process could come by the Fundamental Rights (Enforcement Procedure) Rules or by originating summons or indeed by writ of summons: see *Saude v. Abdullahi*¹⁵. That seems to underline the concerns in regard to redressing a contravention of a fundamental right by liberalising the type of originating process without the person affected being inhibited by the form of action he adopts. It is enough if his complaint is understood and deserves to be entertained.”¹⁶

The simplification of the originating process is intended to promote the filing of human rights cases by aggrieved persons themselves, with or without the assistance of an attorney, as the purpose of the FREP Rules 2009 involves broadening access to court in fundamental human rights cases. In other words, an individual who begins an action for the protection of his or her human rights using a defective originating process should not be dismissed on the technical grounds of noncompliance with the originating process' requirements.¹⁷

Regardless of the above, the statute is clear that actions for the protection of fundamental rights cannot be pursued together. They are personally enforceable and as such applicants cannot jointly sue. The applicants for the protection of their constitutional rights in *Udo v. Robson & Ors*¹⁸ were the 1st, 2nd, and 3rd Respondents, and their story clearly demonstrated that the infringement of their rights supposedly occurred in one position at the same time and in the same situation. The act complained of in this case, is the arrest and imprisonment without bail and without an arraignment in court for any known offense. According to the Court, in the interests of fairness and convenience, the Court should authorize the parties to file their case

¹⁵ (1989) 4 NWLR (Pt. 116) 387

¹⁶ Ibid at page 179

¹⁷ Duru (n 1).

¹⁸ (2018) LPELR-45183(CA)

for the protection of their fundamental rights together. However, since this clause is not included in the rules, the Court is having trouble enforcing it.

In Udo's case, the Court of Appeal based its decision on the case of *Kporharor & Anor v. Yedi & Ors*¹⁹, in which the Court of Appeal, depending on the wordings of Section 46(1) of the 1999 Constitution, ruled that the word "any" denotes singular and does not admit pluralities of any kind. As a result, it was decided that fundamental rights are human rights, not collective rights, and that any application to enforce a right under the Fundamental Rights (Enforcement Procedure) Rules filed by more than one person is incompetent and likely to be dismissed.

Furthermore, in *Rtftcin v. Ikwechegh*²⁰, it was also decided that if an individual believes that his Fundamental Rights or Human Rights have been violated, he can take personal action for the alleged infraction, as each right varies in substance and degree from the complaint of the other.

Although a joint claim is not possible, the same cannot be said for the consolidation of multiple acts. The Court has the authority under Order VII of the Fundamental Rights (Enforcement Procedure) Rules to combine multiple applications and decide them jointly and/or severally in consolidated suits where the applications relate to the violation of a specific fundamental right in respect of the same subject matter and on the same grounds, notwithstanding the fact that they may be pending against different people.²¹

It is worth noting that consolidation can only happen on the applicant's request, not the respondent's.²² This allows several Claimants who have been affected by the same violation to be heard in the same case. It does not, per se, cure what could be described as a multiplicity of suits on ostensibly the same subject matter, but it does increase administrative performance,

¹⁹ (2017) LPELR-42418(CA)

²⁰ (2000) 13 NWLR part 683

²¹ 'Challenges In Enforcement Of Fundamental Rights In Nigeria - Government, Public Sector - Nigeria' <<https://www.mondaq.com/nigeria/human-rights/986460/challenges-in-enforcement-of-fundamental-rights-in-nigeria>> accessed 20 May, 2021.

²² *ibid.*

case management, and adjudication pace by allowing for a single judge to hear all of them.²³ It also avoids situations where courts of coordinate jurisdictions make contradictory decisions, taking into account the unusual circumstances that certain fundamental conduct originated from the same collection of transactions and circumstances: this in no way contradicts the obligation for courts to investigate the peculiarities of each case on its facts.²⁴

4.1.2 Assess to Justice for all Classes of Litigants

The FREP Rules of 2009 require the court to seek improved access to justice for all types of litigants, especially the disadvantaged, illiterate, uninformed, vulnerable, imprisoned, and unrepresented. In this regard, the court shall proactively seek enhanced access to justice for all groups of litigants, especially the weak, the illiterate, the uninformed, the insecure, the imprisoned, and the unrepresented, as stated in Clause 3(d) of the preamble to the FREP Rules 2009. Of course, this is one of the overarching goals enshrined in the FREP Rules 2009 preamble.

The FREP Rules 2009 expressly promote and welcome public interest litigation in the human rights sector in order to achieve this goal. Clause 3(e) of the Preamble to the Rules provides for this. No human rights case can be dismissed or dismissed for lack of locus standi, according to the same clause in the rules. Human rights activists, supporters, and associations, as well as non-governmental organizations (NGOs), may file a human rights application on behalf of any prospective applicant.²⁵

In addition, the FREP Rules, 2009 provide an extended list of parties that can file a human rights lawsuit. They include:

- (i) individuals acting in their own best interests,
- (ii) individuals acting on behalf of others,

²³ *ibid.*

²⁴ *ibid.*

²⁵ Duru (n 1).

- (iii) individuals acting as representatives of, or in the best interests of, a community or class of people,
- (iv) individuals acting in the public interest, and
- (v) associations acting in the best interests of their members or other individuals or groups.

The elimination of locus standi challenges to human rights applications is a positive step toward making public interest litigation a mechanism for public engagement and remediation.

It should also be noted that ‘Public Interest’ is defined under Order 1 Rule 2 of the FREP Rules 2009 as including “the interest of the Nigerian society or any segment of it in promoting human rights and advancing human rights law.”

In addition, under Clause 3(f) of the Preamble to the 2009 FREP Rules, the court shall seek the speedy and effective protection and realization of human rights in a manner calculated to advance Nigerian democracy, good governance, human rights, and culture. Similarly, Clause 3(g) of the FREP Rules, 2009 states that in deserving circumstances, human rights suits will be given priority. The focus on expeditious trial in the FREP Rules 2009 is intended to improve access to justice. Corporations have the legal right to sue and be sued in their own name. This right to sue does not preclude a claim based on fundamental rights.²⁶ In a case involving the enforcement of fundamental rights in Nigeria, a corporation is a proper party. A Corporation, like a natural individual, can bring an action to enforce a fundamental right using any originating mechanism recognized by the court.²⁷ The application shall lie without leave of the court, subject to the Rules. The originating process must be accompanied by a statement that includes the applicant's name and description, as well as the relief requested and the reasons for the relief; an affidavit detailing the evidence supporting the application, as well as a written address.

²⁶ ‘Challenges In Enforcement Of Fundamental Rights In Nigeria - Government, Public Sector - Nigeria’ (n 20).

²⁷ *ibid.*

4.1.3 Limitation of Time not Applicable to Fundamental Right Action:

An application for the protection of a fundamental right is not covered by any limitation statute, according to Order III Rule 1 of the 2009 Rules. An attempt to ensure the enforcement of fundamental rights cannot be law prohibited, thus ensuring the applicant's right to bring an action before the High Court. In other words, regardless of when the infringement occurred, an applicant's right to file an application for the protection of constitutional rights can be exercised at any time. The application for the protection of civil rights shall not be overcome by any statute of limitation, much like time does not count against the State in the prosecution of other criminal acts.²⁸

4.1.4 Expeditious Hearing of Cases

Order IV Rule 1 states that an application must be scheduled for hearing within seven days of the date it is filed. The aim of setting a hearing date within seven days is to stress the importance of hearing and deciding fundamental rights cases as soon as possible. Again, Order IV Rule 3 of the FREP Rules 2009 provides for an expedited hearing of an applicant's application if the court determines that the applicant will suffer undue hardship before the application is served, particularly when the applicant's life or liberty is at stake. However, the ex parte application must include ample justifications for why a delay in hearing the application will result in extraordinary hardship. Furthermore, the Preamble's paragraph 3 (g) specifies that in deserving circumstances, human rights suits would be given priority. When the applicant's or someone else's liberty is in jeopardy, the situation must be handled as an emergency. The FREP Rules 2009 are clearly intended to improve the pace at which fundamental rights cases are heard, as shown by the preceding provisions.²⁹

²⁸ Duru (n 1).

²⁹ *ibid.*

4.2 NIGERIAN COURTS AND THE ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS

As stated previously, Section 46 (1) of the 1999 constitution gives the High Court authority to hear lawsuits from people who claim that any of the constitution's chapter iv clauses "has been, is being, or is likely to be contravened in any state in relation to him." The Fundamental Rights (Enforcement Procedure) Rules of 2009, promulgated by the Honorable Chief Justice of the Federation, set out the procedure for taking such action. Hence, it is pertinent that this paper hereby examines the present realities in the enforcement of same in the Nigeria Courts so as to ascertain the effectiveness and inadequacies.

In pursuit of the aforesaid, in *Enukeme v. Mazi*³⁰, the Court of Appeal held that Considerations of matters based on violations of fundamental rights must be addressed solely by the Fundamental Rights (Enforcement Procedure) Rules, 2009, which were enforced to remedy certain alleged wrongs and hardships. However, it must be considered that the sense of these laws is unfathomable to the average person. The implication is that in order to obtain damages for a violation of his human rights, the litigant must hire a lawyer.³¹ Only a few people in a vastly impoverished country like ours can afford such luxuries. As a result of these hiccups, numerous acts of civil rights violation are not brought to the attention of the courts.³² Hence, litigants who institute fundamental right actions with defective court process or an error in the procedure to which the FREP Rules 2009 did not cover; usually get their suits struck out as a result.

Delay in the Administration of justice in the Nigerian Courts negates the appropriate and effective enforcement of fundamental rights. It should be noted that fundamental right actions

³⁰ (2015) 17 NWLR (Pt. 1488) 411

³¹ Anthony O Nwafor, 'Enforcing Fundamental Rights in Nigerian Courts-Processes and Challenges' (2009) 3 African Journal of Legal Studies 1.

³² *ibid.*

or suits deserves delicate care. In agreement with this, the Court of Appeal in *Loveday v. Comptroller, Fed. Prisons, Aba*³³ held that the Fundamental Right (Enforcement Procedure) Rules govern a unique form of proceeding. Unlike the everyday cases that pass through our courts, they are in a class of their own. They must be treated with care and should not be managed in any manner. This is because the aim of fundamental rights enforcement is to provide a clear and efficient mechanism for enforcing fundamental rights in order to avoid the time-consuming system and technicalities involved in enforcing them under common law rules or other legislative provisions. Towards this end, adjournments by litigants should be controlled and allowed in strictly exceptional circumstance. More so in circumstances in which the violation complained of is continuous and requires urgent redress. However, the present realities negate this thought. Litigants in a bid to solve an error or make a perfection on their case either seek adjournments or apply to the court for amendments of their processes slowing down the judicial system and further negating the speedy adjudication of fundamental rights suits.

It is important to also note that such delay in the enforcement of fundamental rights by the Courts can stem from extra-judicial circumstances. To best understand this, an instance must be given.

On April 6, 2021, the Judiciary Staff Union of Nigeria (JUSUN) launched a nationwide strike to press its demand that the judiciary arm of government, both at the federal and state levels, be permitted to exercise its constitutional right to financial autonomy, as stipulated in Sections 81(3) and 121(3) of the Constitution of the Federal Republic of Nigeria 1999. (as amended).³⁴

It is reported that the lingering strike action by judiciary workers occasioned a shutdown of

³³ (2013) 18 NWLR (Pt. 1386) 379

³⁴ ‘JUSUN Strike: Nigerian Judiciary’s Financial Autonomy Not Negotiable - Lawyers’ <<https://www.sunnewsonline.com/jusun-strike-nigerian-judiciarys-financial-autonomy-not-negotiable-lawyers/>> accessed 21 May, 2021.

courts across the country, and the strike had lingered for over two months³⁵. Due to the strike action, court hearings and judicial proceedings were evidently crippled. Ordinary Nigerians had been stripped of their liberty without a hearing or the ability to apply for bail as a result of the strike.³⁶ It also rendered other fundamental rights regulation (matrimonial, family, taxes, and so on) impossible, effectively shutting down all legal infrastructure in Nigeria.³⁷ Vulnerable members of society who pursue justice in the face of injustice and violations of their rights do not have access to a court of law to seek redress.³⁸

In such instance, it is paramount to understand that in a bid to seek and ensure a right due to members of the Nigerian Judiciary under the Constitution, the means to which members of the public could seek to enforce their fundamental rights were negatively affected and hence encumbered.

Furthermore, jurisdiction may be questioned as to the appropriate court to which a person is to institute a Fundamental Right Suit. To this end, the Court of Appeal in *Agbaso v. Iwunze*³⁹ held that Section 46 of the 1999 Constitution has provided a special jurisdiction to the Federal High court and the High courts of the States concurrently to hear and determine matters and claims brought under the fundamental rights. Thus, a claim for the enforcement of fundamental rights under Chapter 4 of the 1999 Constitution may be brought in the High court of the State or in the Federal High court, as both have concurrent jurisdiction in matters of enforcement of a person's fundamental rights, no matter the party involved. Thus, there is no basis whatsoever for a State High Court to decline jurisdiction in fundamental rights enforcement matters simply

³⁵ 'NBA Urges Lawyers to Remain Calm as JUSUN Strike Clocks One Month'

<<https://www.premiumtimesng.com/news/top-news/459734-nba-urges-lawyers-to-remain-calm-as-jusun-strike-clocks-one-month.html>> accessed 21 May, 2021.

³⁶ 'Lawyers, Litigants Groan as JUSUN Strike Drags on – NAN Survey | The Guardian Nigeria News - Nigeria and World NewsNigeria — The Guardian Nigeria News – Nigeria and World News'

<<https://guardian.ng/news/lawyers-litigants-groan-as-jusun-strike-drags-on-nan-survey/>> accessed 21 May, 2021.

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ (2015) 11 NWLR (Pt. 1471) 527

because the Commissioner of Police, as agency of the Federal Government, is a party. This aims to present multiple avenues to which an aggrieved litigant can seek redress.

Therefore, if a person's fundamental right is violated, is about to be violated, or is about to be violated, that person may file a complaint with the Judicial Division of the Federal High Court in the State, the High Court of the State, or the High Court of the Federal Capital Territory in which the violation occurred, is occurring, or is about to occur under section 46(1).⁴⁰ This is true regardless of whether the right in question falls under the statutory authority of the Federation, a State, or the Federal Capital Territory.⁴¹

Nonetheless, the Supreme Court has qualified and more specifically specified in a few cases that the Federal High Court's exercise of this jurisdiction is limited to cases where the threatened or violated fundamental right falls within the enumerated matters over which that court has jurisdiction.⁴² As a result, the Federal High Court cannot impose constitutional rights arising from matters outside its jurisdiction.⁴³ Similarly, even if brought pursuant to section 46(2) of the Constitution, a State's High Court lacks jurisdiction to hear matters of fundamental rights if the alleged violation of such rights arose from a transaction or subject matter that falls under the exclusive jurisdiction of the Federal High Court, as established by Section 251 of the Constitution.⁴⁴

The Supreme Court held in *Inegbedion v. Selo-Ojemen & Anor*⁴⁵ that paragraphs (p), (q), and (r) of Section 251 (1) of the 1999 Constitution give the Federal High Court exclusive jurisdiction over all civil causes and matters in which the Federal Government or any of its agencies is a party. The clause to Section 251 (1) of the 1999 Constitution has no bearing on the Federal

⁴⁰ 'Challenges In Enforcement Of Fundamental Rights In Nigeria - Government, Public Sector - Nigeria' (n 20).

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ (2013) LPELR - 19769 (SC)

High Court's exclusive jurisdiction conferred by Section 251 (1) (p), (q), and (r) (r). As a result, the proviso isn't applicable.

The above may levy some level of confusion upon litigants as to the appropriate court to institute an action in a practical aspect. Hence, it is advisable that where the violation arises from the items listed in Section 251 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which contains the matters to which the Federal High Court has exclusive jurisdiction; the Federal High Court remains the appropriate Court to institute a fundamental rights action. In other circumstances, the institution of the fundamental right action in the State High Court suffices.

In further support of the above, some scholars are of the opinion that in the State High Court, an action for the protection of fundamental rights cannot be brought against the federal government or any of its agencies.⁴⁶ Identifying the person that may be sued is now a critical factor, as it will influence the court in which the action will be filed.⁴⁷

However, the problem with this provision is that Federal High Courts are sparsely distributed across the States in Nigeria. Several states are without Federal High Courts, so litigants would have to travel long distances at great expense to file cases in the nearest Federal High Court that covers their area.⁴⁸ Even in cases where an action may be brought in the State High Court, the majority of State High Courts are located in cities.⁴⁹ Only a handful of the country's 774 local government headquarters have a High Court, and most are located in villages, forcing litigants to bear the financial burden of not only their solicitors' transportation and legal fees, but also their own transportation to the nearest court to enforce their rights⁵⁰. As a result, multiple cases of breach of rights never make it to the courts. One of the main goals of the

⁴⁶ Nwafor (n 30).

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ *ibid.*

Fundamental Rights Procedure Rules, however, is to speed up the resolution of fundamental rights cases.

Hence, what good is a quick resolution of a lawsuit if adverse economic conditions deter potential litigants from seeking damages for violation of their rights? Despite the fact that legal assistance is a statutory duty of the government, it is rarely offered and only in criminal cases.

In most, if not all, cases, redress for violations of human rights takes the form of civil wrongs.

As a solution, the need to expand the jurisdiction of courts on fundamental rights cases to Magistrate Courts, which are closer to the grassroots, is a corollary of the courts' inaccessibility.⁵¹ Magistrate Courts, though lower in the judicial hierarchy than High Courts, operate in nearly every local government in Nigeria and are presided over by lawyers. Some cases are also prosecuted in these courts by legal practitioners. It's difficult to justify denying these courts authority to hear cases involving constitutional rights.

Furthermore, it must be noted that in Fundamental Rights suits, the Court entertaining such is imposed with a duty. In stating this duty, it is pertinent that reference must be made to the decision of the Court in *G.T.B. Plc v. Adedamola*⁵². In that case, the Court of Appeal held that when a court is faced with an application brought under the Fundamental Right (Enforcement Procedure) Rules, it is important that the court examines the reliefs requested by the claimant, the basis for seeking the reliefs, and the evidence contained in the declaration accompanying the application and relying on for the relief sought. In reiteration of what has been previously stated, the Court further held that when the facts reveal a violation of the applicant's fundamental right as the key ground of the lawsuit, it is clear that such rights should be enforced under the Fundamental Rights (Enforcement Procedure) Rules. However, if the primary or main argument is not for the protection or securing of a constitutional right, the

⁵¹ *ibid.*

⁵² (2019) 5 NWLR (Pt. 1664) 30

court's jurisdiction cannot be adequately invoked or exercised because the court would be incompetent to do so.

In other words, the Court at the instance of every fundamental right suit, the Court has a duty to determine the reliefs sought for by the Claimant, and the rationale behind such relief. This is to determine if what lies before the Court is a prima facie case of an alleged violation of a fundamental right. The emphasis on such stems from the rationale that if the primary complaint is not a violation of a fundamental right or a relief for redress or protection of same, then the Court must take its hands off the suit as it possess no jurisdiction on the matter as regards the enforcement of a fundamental right.

4.3 CONCLUSION

The Fundamental Rights (Enforcement) Procedure Rules, 2009 as earlier mentioned, directs the procedure currently for the commencement of an action for fundamental rights in Nigerian courts. This chapter discussed exhaustively, on the nature and scope of the FREP Rules, as well as judicial decisions bothering on the determination or adherence of FREP Rules. Furthermore, this chapter gave a review of the attitude of the Nigerian courts in reality, with regards the determination of Fundamental Rights suits brought before it, and how well the courts have fared in upholding fundamental human rights for the purpose of dispensing justice to the citizens of Nigeria.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.0 SUMMARY

This research work made an attempt in analysing the challenges that plague the enforcement of fundamental rights in Nigeria. Towards this objective, the work found it pertinent to establish that Fundamental Rights are those aspects of human rights, which have been selected from plethora of human rights and entrenched by the Constitution. These rights are guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). However, despite the aforesaid, there are a number of human right abuses and violation in Nigeria occasioned by Terrorist groups and militant forces, security personnel, other citizens of Nigeria, and personnel of Government agencies or parastatal.

Consequently, to provide a means of efficiently seeking remedy or redress from the courts in Nigeria for violations of the fundamental rights, the Fundamental Rights (Enforcement Procedure) (FREP) Rules 2009 was established. The FREP Rules allows for any person whose Right listed in the CFRN 1999 (as amended) or the African Charter to institute a suit for any redress to a violation of the Fundamental Rights, however, the primary claim in the suit must be to seek redress or prevent a violation of a Fundamental Right. Furthermore, the FREP rules provides that the following can institute an action under the FREP rules

- (vi) individuals acting in their own best interests,
- (vii) individuals acting on behalf of others,
- (viii) individuals acting as representatives of, or in the best interests of, a community or class of people,
- (ix) individuals acting in the public interest, and
- (x) associations acting in the best interests of their members or other individuals or groups.

The rules impose the court with a duty to pursue the prompt and efficient defence and realization of human rights in a manner calculated to advance Nigerian democracy, good governance, human rights, and culture, according to Clause 3(f) of the Preamble to the 2009 FREP Rules. Human rights suits will be granted priority in deserving cases, according to Clause 3(g) of the FREP Rules, 2009.

However, despite the mechanisms put in place to protect against the violation of these rights, it is apparent that there are multiple factors inhibiting the efficient enforcement of these fundamental rights in Nigeria. These factors include but are not limited to the unreasonable delay in the administration of justice in Nigeria, the cost for litigation as against the over looming poverty in Nigeria, over reliance on technicalities, illiteracy of Nigerians in their rights and the means to protect same, and religious and ethnic sentiments.

Hence, in order to ensure that these inhibiting factors are effectively resolved, the paper proposes that since fundamental rights cannot be completely achieved in a country where socio-economic rights are merely wishes to be fulfilled later, a Bill of Rights must practically provide, among other things, a right to work and a minimum wage, and housing, health, and education. It is also recommended that concerted efforts be made to remove the restrictions and barriers mentioned on Legal Aid Council in order to ensure that fundamental rights are properly enforced in Nigeria.

Furthermore, because Magistrate Courts are closer to and more accessible to litigants, particularly in rural regions, magistrate courts should have authority over the enforcement of basic rights.

Education is the secret to breaking free from a cycle of ignorance and bad life prospects. Education for girls should be prioritized just as much as it is for children who live on the streets. A wide sector response is required to enshrine human rights protection, particularly in the context of domestic and gender-based violence.

It should be noted that it has been stated that Human rights can be meaningfully realized if rights are understood liberally and creatively. Consequently, Courts must be willing to award exemplary damages to remedy human rights abuses. On this note, all levels of government should establish a dedicated consolidated fund from which awards can be satisfied.

Lastly, it must be understood that the government should provide a system for enforcing anti-torture and anti-police brutality laws. Increased campaigns and sensitization on citizen's rights must be given by the government to all relevant security agencies. The Nigerian government should ensure that the police and the judiciary in carrying out their duties in terms of security and protection towards the fundamental rights of all its citizens.

5.1 RECOMMENDATIONS

In light of the previously established challenges or factors hindering the enforcement of fundamental rights in Nigeria and the observations so noted. It is essential that to understand the capacity for further development and prospects of the enforcement of fundamental rights in Nigeria, recommendations be proffered. Consequently, the following are recommended:

1. Recommendations regarding the Challenges Pose by the Poverty Factor in Nigeria:

The unresolved problem of poverty in Nigeria has remained an obstacle to human rights protection in Nigeria, according to the findings of this paper's discussion. Poor Nigerians' top priority is to avoid malnutrition for themselves and their families, not to invest in protracted and expensive legal battles.¹ It is important to recognize that fundamental rights cannot be completely achieved in a country where socio-economic rights are merely wishes to be fulfilled later. It is argued that a Bill of Rights must provide, among other things, a right to work and a minimum wage, a right to housing, health, and education if it is to make

¹ Igwe Onyebuchi Igwe, Matthew Enya Nwocha and Amaramiro A Steve, 'Enforcement of Fundamental Rights in Nigeria and the Unsolved Issue of Poverty among the Citizens: An Appraisal' (2019) 10 Beijing Law Review <<https://heinonline.org/HOL/Page?handle=hein.journals/beijlar10&id=1&div=3&collection=journals>> accessed 24 May, 2021.

sense; and it is the very least we can hope for in order to achieve a world that respects basic human rights.²

On the basis of the above, this research work strongly advises that socio-economic rights in Nigeria be made justifiable such that fundamental rights regulation becomes concrete rather than rhetoric.³

Since Section 6(c) of the Constitution prohibits any court from hearing questions arising from Chapter III of the Nigerian Constitution, which provides for socio-economic rights, it cannot be enforced in any court. This is abnormal, and the Constitution should be amended to correct it. It's also critical that pro bono legal assistance in human rights cases be included in the annual qualifications for lawyers to use their stamp and seal for legal practice.⁴

One way to assist vulnerable people in enforcing their rights is to provide free legal assistance to indigent litigants. The expense of starting a court case in cases involving human rights violations should be kept to a minimum so that everybody can participate. The high cost of filing human rights applications is one of the main reasons why poor people have difficulty enforcing their rights, and this can be addressed by lowering legal costs. Awareness is a critical weapon that should be used by NGOs and anyone involved in campaigns to enforce fundamental rights. To improve the observance of human rights in Nigeria, social consciousness and awareness should be raised.

2. Recommendations as Regards Legal Aid for Enforcement of Fundamental Rights: The National Assembly is required by section 46(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to enact legislation to provide financial assistance to any indigent person whose constitutional rights have been violated in order for him or her to retain the services of a legal practitioner. In Nigeria, however, no such legislation has been

² *ibid.*

³ *ibid.*

⁴ *ibid.*

enacted, and there is no successful legal aid program.⁵ The current legal aid program is ineffective and limited in reach.⁶ Initially, the Legal Aid Act only included legal aid in capital cases and serious criminal cases.⁷

Despite this, the Legal Aid Council is required by statute to offer legal assistance to indigent people. The Legal Aid Act's concept of "indigent" is unrealistic in that it excludes many Nigerians who are really unable to afford legal services because they are below the poverty line.⁸ The Legal Aid Act, it is argued, falls short of fulfilling the purpose of section 46(4) of the Constitution.⁹ Furthermore, the Council is massively underfunded and lacks the required manpower complement to meet the Act's and Constitution's demands.

It is recommended that concerted efforts be made to remove the restrictions and barriers mentioned above in order to ensure that fundamental rights are properly enforced in Nigeria. Furthermore, a culture of constitutionality and respect for the rule of law is needed.

3. The Magistrate Courts should have jurisdiction over the enforcement of fundamental rights because they are closer and more available to litigants, particularly in rural areas. After all, much like the High Court, these courts are presided over by properly trained lawyers.

The Federal High Court's divisions are sparsely scattered throughout Nigeria's states, as previously stated. Due to the lack of Federal High Court divisions in many states, litigants will have to travel long distances and pay a high fee to file cases in the nearest Federal High Court that covers their area. Except in situations where a State High Court action is possible, the majority of State High Courts are situated in cities. Only a few of the nation's 774 local

⁵ Elijah Adewale Taiwo, 'Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A Need for a More Liberal Provision' (2009) 9 African Human Rights Law Journal <<https://heinonline.org/HOL/Page?handle=hein.journals/afrhurlj9&id=556&div=32&collection=journals>> accessed 24 May, 2021.

⁶ *ibid.*

⁷ *ibid.*

⁸ *ibid.*

⁹ *ibid.*

government headquarters have a High Court, and the majority are in villages, requiring litigants to bear the financial burden of transportation and legal fees for themselves and their lawyers.

The right to appeal rulings from the Magistrate Court to the High Court compensates for the disparity in judicial officers' years of experience.

4. Recommendations to Gender Based Violation: The occurrence of human right abuses against women can be averted by enlisting the help of a critical mass of women who have excelled in various fields to mentor young people in the region. Education is the secret to breaking free from a cycle of ignorance and bad life prospects. Education for girls should be prioritized just as much as it is for children who live on the streets as Almajiris on a regular basis. Although education for boys and girls has nearly equalized in other parts of the world, the north continues to lag behind.

It must be ensured that law enforcement officers are properly trained in how to respond to gender-based complaints. A wide sector response is required to enshrine human rights protection, particularly in the context of domestic and gender-based violence.

The Lagos State Domestic and Sexual Violence Response Team (DSVRT) should be scaled up and implemented by states that have sexual and gender-based violence prevention legislation.¹⁰ Furthermore, women are routinely subjected to violence and abuses, with the majority of victims having little or no recourse to justice. As a result, there should intensified efforts to eliminate negative cultural norms that obstruct complete respect for women's human rights, with the aim of advancing gender equality and women's empowerment.

5. Recommendations as Regards Extra-Judicial Killings: Extrajudicial killings should be prosecuted by the government. All relevant security agencies should be made aware of citizen rights through government-led campaigns. To prevent stigmatization, the

¹⁰ OHCHR, 'REPORT ON THE HUMAN RIGHTS SITUATION IN NIGERIA SUBMITTED TO THE OFFICE OF THE UN HUMAN RIGHTS COUNCIL IN GENEVA DURING THE 31ST SESSION OF THE UPR WORKING GROUP' 1 <<http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARreports.aspx>>.

government should train security forces on how to deal with and protect victims of abuse. To equalize the violation, a specific penalty should be specified. The government should work more closely with the media to report on issues of abuse and human rights abuses. All people should be educated and made aware of the problem of human rights by the government. Hence the following should be done:

- i. Take the appropriate steps to put an end to extrajudicial killings, including conducting thorough investigations into all recorded incidents and bringing all alleged perpetrators to justice.
 - ii. Continue to establish and enforce initiatives aimed at reducing security forces' human rights abuses, especially extrajudicial killings, illegal detention, and torture, as well as improving the effectiveness of mechanisms to combat impunity.
 - iii. Investigate all allegations of extrajudicial killings in an open and impartial manner, and commit to bringing members of the security forces who are found to be involved in such abuses to justice.
6. By taking a generous and purposeful interpretative approach, courts will show unmistakable judicial activity. The goals of human rights can be meaningfully realized if the rights are understood liberally and creatively, avoiding the austerity of tabulated legalism.¹¹ This is the only way to protect judicial authority from the tyranny of remedy limitations. Courts must be willing to award exemplary damages to remedy proven cases of human rights abuses, especially by the government or any of its agencies.¹² As such, judicial awards must be followed as soon as possible. To make payment of monetary awards against the government and its agencies easier, it is proposed that all levels of government establish a dedicated consolidated fund from which such awards can be

¹¹ DR Jacob and Abiodun Dada, 'Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal' <www.iiste.org> accessed 14 May, 2021.

¹² *ibid.*

satisfied. Furthermore, the current requirement that the Attorney General's approval be sought before execution against the State may be carried out must be repealed, as it inhibits the effectiveness of judicial remedies.

7. To promote the expeditious adjudication of human rights cases, a low-cost, informal, and less burdensome procedure should be planned and developed. The current condition, in which the filing fee is too high and lengthy rules govern case hearings, is not only unhealthy but also has the potential to limit access to the courts. On the topic of the high cost of filing, it has been proposed that, rather than imposing high costs on litigants for the filing of actions, nominal costs should be paid, with the proceeds of effective litigation subject to taxation.
8. For the abolition of torture and police brutality, the government should adopt tighter legislative frameworks. The government should provide a system for enforcing anti-torture and anti-police brutality laws. Increased campaigns and sensitization on citizen's rights must be given by the government to all relevant security agencies, as well as an express mechanism to handle issues of extrajudicial killings with strict penalties for the perpetrators. Strengthening capacity by providing instruction to both security agents and human rights officers on how to deal with issues of violence in a more private manner, allowing victims to speak out and report incidents of harassment without fear of being stigmatized.

The Nigerian government should assist the police and the judiciary in carrying out their duties in terms of security; to ensure that people engage in security matters, community policing should be strengthened, such involvement, however, must be free of victimization; to reduce the number of rights abuses, increased human rights education for security agents and members of the public is needed. It is critical to map security agencies' transparency and monitoring processes in order to recognize areas of deficiency that need immediate attention.¹³

¹³ OHCHR (n 10).

9. Non-governmental organizations should look for ways to work with (sub) regional organizations and the United Nations to advocate for and promote good human rights policies, as well as to monitor progress.¹⁴ They need to avoid counterproductive turf wars with other NGOs and instead align their efforts. Furthermore, foreign NGOs and domestic NGOs must collaborate and support one another. NGOs must concentrate more on informing the public about the importance of respecting and protecting rights; they must also emphasize peace and human rights education both within and outside of schools and universities.¹⁵

5. CONCLUSION

Human rights are not the same as civil or fundamental rights, as the preceding discussions of this research paper demonstrate. The elements of human rights that are statutorily guaranteed are known as fundamental rights. When a person can easily obtain relief in a court for a violation, such rights are essential. However, there are many barriers to overcome in finding such relief, ranging from procedural rules to economic factors.¹⁶

The process for enforcing fundamental rights, as outlined in the Fundamental Rights (Enforcement Procedure) Rules, is far from straightforward. Many lawyers still don't know how to apply these Rules. The laws are definitely beyond the understanding of laymen, who are often the victims of violations of fundamental rights.

This work has attempted to establish that the Nigerian Constitution has endorsed the above by specifying the revered provisions under Chapter 4 and prohibiting variation unless expressly approved by the Constitution. The incorporation of the African Charter of Human Rights into domestic law, as well as changes to the FREP Rules in 2009, testify to this determination. The

¹⁴ 'Human Rights and Societies in Transition' <<https://collections.unu.edu/eserv/UNU:2440/pdf9280810928.pdf>> accessed 15 May, 2021.

¹⁵ *ibid.*

¹⁶ Anthony O Nwafor, 'Enforcing Fundamental Rights in Nigerian Courts-Processes and Challenges' (2009) 3 African Journal of Legal Studies 1.

new Fundamental Rights Enforcement Procedure Rules, 2009 are progressive, brave, and inspiring in many ways, as shown by the foregoing. Without a doubt, the new rules reflect a bold and commendable effort in our country to take human rights seriously. The drafters of the 2009 FREP Rules made a commendable effort to remove many of the roadblocks to access to justice for victims of fundamental right violations, but, as previously mentioned, litigants still face novel technical obstacles in seeking to enforce their fundamental rights in the Courts.

However, mere laws or paper are insufficient to guarantee full security of Fundamental rights. The key players: The Judiciary, the Executive, and the citizenry must all be kept accountable and responsible for upholding the Constitution's protections. The judiciary, through the bar, the bench, and advocacy organizations, plays a critical role in the ongoing fight to protect and enforce inalienable human rights.

Importantly, from a programmatic standpoint, judicial solutions in human rights litigation in Nigeria cannot objectively be said to meet the aforementioned requirements since they are hampered by a number of impediments that undermine and compromise their effectiveness. To meet these obstacles, the reform agenda outlined in this paper must be followed and enforced diligently, zealously, and consistently. While constitutional and structural changes are necessary to ensure the efficacy of judicial remedies, the court's critical position must not be overlooked. It is hereby advocated that Judges must show evident bravery, discipline, dedication, and endurance when performing their adjudicatory task.

Furthermore, having given a concise overview of the Fundamental Rights (Enforceable Procedure) Rules, 2009 in this research work, it is perhaps appropriate to end by expressing the sincere hope that the courts will continue to give liberal interpretation in matters of enforcement of Fundamental Human Rights that come before the Courts, resulting in a Nigerian society free of aggressive Human Rights abuse.

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