

CHAPTER 1

GENERAL INTRODUCTION TO THE STUDY

1.1 Introduction

Fundamental human rights are the bedrock of any democratic society, ensuring the protection of individual liberties against state and non-state actors. In Nigeria, these rights are enshrined in Chapter IV of the Constitution¹, yet their enforcement remains fraught with challenges. Despite a robust legal framework, including international human rights instruments to which Nigeria is a party, several institutional, societal, judicial, and political barriers hinder the effective realization of these rights.²

This study critically examines these barriers, focusing on the legal frameworks and judicial attitudes shaping human rights enforcement in Nigeria. The role of the judiciary, particularly the tension between judicial activism and judicial restraint, is pivotal in this discourse. Case law from Nigeria and comparative jurisdictions like the United Kingdom provides valuable insights into how courts have navigated human rights enforcement.

By analyzing these issues, this research aims to contribute to the discourse on strengthening Nigeria's human rights regime, ensuring that legal and judicial mechanisms serve as effective tools for protecting citizens' rights rather than reinforcing systemic obstacles.³

¹ Constitution of the Federal Republic of Nigeria 1999 (as amended).

² Nwabueze BO, *Judicialism in Commonwealth Africa* (C. Hurst & Co 1977).

³ Adebayo S, 'Corruption in Law Enforcement and its Impact on Human Rights in Nigeria' (2018) 9(4) *Nigerian Law Journal* 215.

1.2 Definition of Terms

1.2.1 Fundamental Human Rights: These refer to rights inherent to all individuals, recognized under the Nigerian Constitution⁴ and international human rights treaties. Examples include the right to life, dignity, personal liberty, and freedom from discrimination.⁵

1.2.2 Legal Frameworks: The body of laws, including constitutional provisions, statutes, and international treaties, that govern human rights enforcement in Nigeria.⁶

1.2.3 Judicial Attitudes: The approach, philosophy, and interpretations adopted by courts in human rights adjudication, including tendencies toward activism or restraint.⁷

1.2.4 Enforcement: The process of ensuring compliance with human rights laws through legal and institutional mechanisms, including court judgments and administrative policies.⁸

1.2.5. Judicial Activism: A judicial approach that promotes the proactive interpretation and application of human rights laws to address injustices.⁹

⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), Chapter IV.

⁵ Nwabueze BO, *The Presidential Constitution of Nigeria* (C. Hurst & Co 1982).

⁶ Olawuyi DO, *Fundamental Rights and the Nigerian Constitution: Challenges and Prospects* (Princeton Publishers 2019).

⁷ Ayoade T, 'Judicial Deference and Human Rights in Nigeria: A Historical Perspective' (2017) 5(2) *African Journal of Legal Studies* 88.

⁸ Nwobike JC, 'The Fundamental Rights (Enforcement Procedure) Rules: A Critical Analysis' (2005) 3(1) *Nigerian Journal of Human Rights Law* 45.

⁹ Bhagwati PN, 'Judicial Activism and Public Interest Litigation' (1985) 23 *Columbia Journal of Transnational Law* 561.

1.2.6 Judicial Restraint: A conservative approach where courts limit their intervention in human rights matters, deferring to the legislature and executive.

1.3 Background to the Study

Nigeria's legal system recognizes fundamental human rights as sacrosanct. However, the practical enforcement of these rights has remained problematic due to systemic challenges. Historically, the struggle for human rights in Nigeria has been shaped by colonial legacies, military rule, and democratic transitions. The judiciary has played a significant role in this evolution, sometimes standing as a bulwark against state oppression, while at other times failing to provide adequate redress due to institutional constraints.

In the case of *Fawehinmi v. Abacha*¹⁰, the Supreme Court had to navigate the tension between state security and personal liberties, reflecting the broader struggle between executive power and human rights enforcement. Similarly, in the landmark case of *A v. Secretary of State for the Home Department*¹¹, the House of Lords (now the UK Supreme Court), demonstrated how courts can uphold human rights even in national security matters. The court in that case examined the legality of indefinite detention without trial of Foreign Nationals suspected of Terrorism under the Anti-Terrorism, Crime and Security Act.¹²

¹⁰ (2000) 6 NWLR (Pt. 660) 228,

¹¹ [2004] UKHL 56

¹² Anti-Terrorism, Crime and Security Act 2001, Part 4.

However, despite the fact that Nigeria is a signatory to international Human Rights instruments such as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, the enforcement of human rights in Nigeria is often obstructed by weak governance, societal resistance, judicial inefficiency, and political instability. These barriers not only undermine access to justice but also weaken public confidence in the legal system.

1.4 Statement of the Problem

The enforcement of fundamental human rights in Nigeria faces significant hurdles despite a seemingly robust legal framework. Judicial mechanisms meant to protect rights are often hampered by institutional inefficiencies, and undue executive influence. Many citizens, particularly the marginalized, find it difficult to access justice due to financial constraints, legal technicalities, and prolonged court processes.

The reluctance of courts to engage in judicial activism further exacerbates these challenges. In cases like *A.G. Lagos State v. A.G. Federation*¹³, the Supreme Court demonstrated an assertive stance in protecting constitutional principles, yet in other instances, courts have shown excessive deference to executive authority, undermining human rights protection. For instance, in the case of *Ladoja v. INEC*¹⁴, Rasheed Ladoja, the Governor of Oyo State, was purportedly impeached by a faction of the State House of Assembly that did not constitute the required two-thirds majority,

¹³ (2003) 12 NWLR (Pt. 833) 1

¹⁴ (2007) 12 NWLR (Pt. 1047) 119

in violation of constitutional procedures. The executive influence over the impeachment process was evident. While the Court of Appeal initially upheld the impeachment (effectively endorsing the actions of the Assembly and the executive machinery behind it), the Supreme Court later reversed this, holding that the impeachment was null and void for failing to comply with constitutional safeguards.

However, the delay in restoring Ladoja to office and the initial judicial passivity illustrated how judicial reluctance to promptly check executive overreach can undermine constitutional right in this case, the right to fair hearing and due process under Section 36 of the 1999 Constitution. The initial judicial deference allowed the executive to benefit from an unlawful act, weakening public confidence in the judiciary's role as a protector of constitutional order.

This study seeks to address these issues by critically analyzing the barriers to human rights enforcement in Nigeria and evaluating the role of the judiciary in surmounting these challenges.

1.5 Aim and Objectives of the Study

The primary aim of this study is to critically analyze the barriers to the enforcement of fundamental human rights in Nigeria, with a particular focus on legal frameworks and judicial attitudes. The study seeks to:

1. Examine the institutional, societal, judicial, and political challenges to human rights enforcement in Nigeria.

2. Evaluate the role of the judiciary in enforcing fundamental human rights, including the impact of judicial activism and restraint.

3. To critically examine and compare the legal frameworks and judicial approaches to the enforcement of fundamental human rights in selected common law jurisdictions, with a view to identifying best practices that can enhance the effectiveness of human rights enforcement in Nigeria.

4. Assess the influence of international human rights norms on domestic jurisprudence.

5. Identify practical solutions for strengthening human rights enforcement in Nigeria, with a focus on legal reforms and judicial efficiency.

1.6. Scope and Limitation of the Study

This study focuses on the enforcement of fundamental human rights in Nigeria, critically examining the legal frameworks and judicial attitudes that shape their implementation. It explores the challenges posed by institutional inefficiencies, societal norms, judicial constraints, and political instability. The research also draws comparative insights from the United Kingdom and other common law jurisdictions to highlight best practices and potential solutions for Nigeria.

While the study seeks to provide a comprehensive analysis, it is limited in certain respects. First, the research is primarily legal in nature and does not engage in empirical data collection beyond

case law and legal texts. Additionally, while international human rights norms are considered, the emphasis remains on Nigerian domestic law and jurisprudence. The study also acknowledges that the enforcement of human rights extends beyond the judiciary to include law enforcement agencies, governmental institutions, and civil society, but its primary focus is the legal and judicial framework.

1.7 Significance of the Study

This research is significant for several reasons. First, it contributes to the existing body of knowledge on human rights enforcement in Nigeria by providing a critical analysis of the legal frameworks and judicial attitudes that influence the realization of these rights. Considering the Nigeria's history of human rights violations and judicial inconsistencies, this study sheds light on systemic weaknesses and suggests reforms to enhance judicial efficiency and human rights protection.

Second, the study serves as a valuable resource for legal practitioners, policymakers, and human rights advocates. By identifying key barriers to enforcement, it provides a roadmap for legal reforms, institutional strengthening, and judicial capacity-building. Furthermore, the study highlights the role of judicial activism in human rights protection, encouraging courts to adopt a more progressive stance in rights adjudication.

Finally, this research has practical implications for victims of human rights abuses and their legal representatives. By analyzing landmark cases and international best practices, it offers strategic

insights into effective litigation approaches, ensuring that the legal system becomes a more viable avenue for justice.

1.8 Research Approach/Methodology

This study adopts a doctrinal research methodology, focusing on primary and secondary legal sources. The primary sources include constitutional provisions, statutes, judicial decisions, and international human rights instruments applicable to Nigeria. Landmark Nigerian and English case law are examined to illustrate judicial attitudes toward human rights enforcement.

Secondary sources such as academic articles, textbooks, and reports from human rights organizations are also utilized to provide scholarly perspectives on the challenges and potential reforms in human rights enforcement. A comparative approach is employed, drawing lessons from the United Kingdom and other common law jurisdictions to highlight best practices that may be adapted to the Nigerian legal system.

Additionally, a critical analysis of judicial trends is undertaken to assess the extent to which Nigerian courts have either facilitated or hindered human rights enforcement. The study also considers the role of non-judicial mechanisms, such as the National Human Rights Commission (NHRC) and other relevant institutions, in addressing human rights violations.

1.9 Literature Review

The enforcement of fundamental human rights has been extensively discussed in legal scholarship, yet significant gaps remain in understanding the specific barriers within the Nigerian context. This section reviews key literature on human rights enforcement, judicial attitudes, and comparative perspectives.

Recent scholarship has also begun to interrogate the effectiveness of the judiciary as a vehicle for transformative constitutionalism in Nigeria. Odinkalu argues that while the Nigerian judiciary has occasionally demonstrated independence, such as in *Fawehinmi v. Abacha*, these moments are sporadic and often followed by periods of regression due to political interference, self-censorship, or intimidation.¹⁵ This reinforces the concern that without institutional reforms, courts may remain hesitant to challenge state power in a sustained manner.

Additionally, Odinkalu and Ayua have noted the mismatch between legal norms and lived realities, pointing out that rights-based litigation often fails to produce substantive change for vulnerable groups due to poor enforcement, lack of legal aid, and bureaucratic resistance.¹⁶ Their work underscores the need to view enforcement not only through the lens of judicial interpretation but also through the accessibility and responsiveness of state institutions.

¹⁵ C.A. Odinkalu, "Judicial Independence in Africa" (2004) 18(1) *Journal of African Law* 10.

¹⁶ C.A. Odinkalu & I.A. Ayua, *Perspectives on Human Rights and the Rule of Law in Nigeria* (Lagos: Human Rights Law Service, 2005).

Further literature also engages with the role of civil society and public interest litigation as alternative avenues for enforcing fundamental rights. Gani Fawehinmi's legacy in challenging executive impunity through strategic litigation is frequently cited as a model for rights-based advocacy. Scholars like Ojukwu argue that sustained civil society pressure is critical to strengthening the culture of accountability in Nigeria, especially in the face of a sometimes-timid judiciary.¹⁷

Moreover, regional jurisprudence from African supranational courts is emerging as a useful comparative tool. The African Court on Human and Peoples' Rights has issued significant rulings in cases like *Lohe Issa Konate v. Burkina Faso*,¹⁸ reinforcing the principle that human rights must not be sacrificed for vague state interests. However, as Ebeku notes, Nigerian courts rarely cite or apply African regional human rights jurisprudence, thereby limiting the potential impact of these decisions on domestic enforcement practices.¹⁹

There is also growing discourse on intersectionality and human rights enforcement, particularly with regard to women, children, and minority groups. Scholars such as Ezeilo and Odunsi have examined how discriminatory cultural practices and patriarchal legal interpretations often neutralise the progressive aspirations of human rights instruments.²⁰ These insights are vital in understanding the structural and socio-cultural barriers that judicial enforcement alone may not overcome.

¹⁷ E. Ojukwu, "Public Interest Litigation as a Tool for the Advancement of Human Rights in Nigeria" in J. Dada (ed), *Contemporary Issues in Nigerian Law: Essays in Honour of Justice Adekeye* (Ibadan: Spectrum Books, 2013) 225.

¹⁸ (2014) AFCHPR 0039

¹⁹ K.S.A. Ebeku, "The African Charter on Human and Peoples' Rights and the National Implementation Gap in Nigeria" (2004) 4(2) *African Human Rights Law Journal* 192.

²⁰ J.N. Ezeilo & T. Odunsi, "Gender, Customary Law and the Administration of Justice in Nigeria" (2016) 2(1) *Nigerian Journal of Human Rights Practice* 33.

Finally, comparative legal literature increasingly calls attention to the need for constitutional and procedural reform. Scholars like Viljoen argue that the FREPR 2009, while a significant improvement over the previous rules, still suffers from limitations in scope, awareness, and application.²¹ Proposals for reform include expanding standing, institutionalising human rights courts, and integrating international obligations more seamlessly into domestic law through legislative action.

This thesis contributes to the growing body of scholarship by critically evaluating how legal, institutional, and attitudinal barriers interact to frustrate effective human rights enforcement in Nigeria. It also seeks to explore how lessons from both domestic and comparative jurisdictions can inform a more responsive and rights-respecting legal framework.

Several scholars have examined the constitutional and statutory provisions governing human rights enforcement in Nigeria. Olawuyi²² argues that while Chapter IV of the 1999 Constitution provides a robust framework for human rights protection, enforcement mechanisms remain weak due to institutional inefficiencies and judicial conservatism. Similarly, Nwobike²³ highlights the limitations of the Fundamental Rights (Enforcement Procedure) Rules (FREPR) in ensuring timely and effective remedies for rights violations.

²¹ F. Viljoen, *International Human Rights Law in Africa* (Oxford: Oxford University Press, 2012) 251.

²² Olawuyi DO, *Fundamental Rights and the Nigerian Constitution: Challenges and Prospects* (Princeton Publishers 2019).

²³ Nwobike JC, 'The Fundamental Rights (Enforcement Procedure) Rules: A Critical Analysis' (2005) 3(1) *Nigerian Journal of Human Rights Law* 45.

Comparative studies, such as those by Klug²⁴ on the UK Human Rights Act 1998, demonstrate how legislative reforms can enhance human rights enforcement by empowering courts to hold public authorities accountable. This study builds on these analyses by evaluating whether similar reforms are necessary in Nigeria.

The role of the judiciary in human rights enforcement is a recurring theme in legal scholarship. Ayoade²⁵ contends that Nigerian courts have historically exhibited excessive deference to executive authority, undermining their capacity to safeguard fundamental rights. Cases like *Lakanmi v. A.G. Western Nigeria*²⁶ illustrate instances where the judiciary has resisted executive overreach, but such interventions have been inconsistent.

In contrast, Okonkwo²⁷ argues that judicial activism is essential for effective human rights protection, citing cases like *Ubani v. Director SSS*²⁸, where the judiciary took a bold stance against arbitrary detention. A comparative analysis with UK case law, such as *R (Factortame Ltd) v. Secretary of State for Transport*²⁹, shows how courts can assert their role in upholding fundamental rights.

²⁴ Klug F, *Values for a Godless Age: The Story of the United Kingdom's New Bill of Rights* (Penguin Books 2000).

²⁵ Ayoade T, 'Judicial Deference and Human Rights in Nigeria: A Historical Perspective' (2017) 5(2) *African Journal of Legal Studies* 88.

²⁶ (1971) 1 UILR 201

²⁷ Okonkwo CU, 'The Role of Judicial Activism in Protecting Fundamental Rights in Nigeria' (2020) 12(3) *University of Lagos Law Review* 112.

²⁸ (1999) 11 NWLR (Pt. 625) 129

²⁹ (1990] 2 AC 85

The challenges of enforcing human rights in Nigeria extend beyond the judiciary to institutional and political factors. Adebayo³⁰ identifies corruption within law enforcement agencies as a significant impediment, arguing that impunity for rights violations weakens public trust in the justice system. This is supported by reports from Amnesty International³¹ which document cases of extrajudicial killings, police brutality, and unlawful detentions without effective judicial intervention.

Furthermore, Eze³² explores the impact of political instability and insurgency on human rights enforcement. The study highlights the role of counter-terrorism laws in justifying human rights restrictions, citing cases like *Dokubo-Asari v. FRN*³³ where national security concerns were prioritized over individual liberties.

The influence of international human rights treaties on Nigerian case law is another critical area of study. Umozurike³⁴ argues that while Nigeria has ratified key international instruments, their domestic applicability remains limited due to the dualist nature of the legal system. In *Abacha v. Fawehinmi*³⁵, the Supreme Court ruled that international treaties require domestication before they can be enforceable in Nigeria, limiting their direct impact on human rights litigation.

³⁰ Adebayo S, 'Corruption in Law Enforcement and its Impact on Human Rights in Nigeria' (2018) 9(4) Nigerian Law Journal 215.

³¹ Amnesty International, Nigeria: A Human Rights Report on Police Brutality and Extrajudicial Killings (Amnesty International 2022) <www.amnesty.org.ng> accessed 10 February 2025.

³² Eze CC, 'The Impact of Political Instability on Human Rights Enforcement in Nigeria' (2016) 7(1) African Human Rights Law Journal 33

³³ (2007) 12 NWLR (Pt. 1048) 320,

³⁴ Umozurike UO, *The African Charter on Human and Peoples' Rights: A Commentary* (Martinus Nijhoff 2014).

³⁵ (2000) 6 NWLR (Pt. 660) 228

Conversely, comparative studies on the UK Human Rights Act 1998 illustrate how domestic incorporation of international norms has strengthened human rights protection. This study builds on such literature by examining whether Nigeria's legal system can adopt similar mechanisms to enhance human rights enforcement.

Conclusion

This literature review establishes the foundation for this study by highlighting key debates on human rights enforcement in Nigeria. While existing research provides valuable insights into legal frameworks, judicial attitudes, and institutional challenges, this study seeks to bridge the gap by offering a critical analysis of how these factors collectively impact human rights enforcement. By examining case law, statutory provisions, and international best practices, this research aims to contribute to ongoing efforts to strengthen human rights protection in Nigeria.

CHAPTER 2:

LEGAL FRAMEWORK FOR HUMAN RIGHTS IN NIGERIA

2.0 Introduction

The legal framework for the protection and enforcement of fundamental human rights in Nigeria is rooted in a combination of domestic constitutional provisions, statutory enactments, judicial precedents, and international legal instruments. These sources collectively define the scope, content, and mechanisms for the realization of human rights within the Nigerian legal system. At the heart of this framework lies the 1999 Constitution of the Federal Republic of Nigeria (as amended), particularly Chapter IV, which entrenches a catalogue of rights generally recognized as civil and political in nature.

The constitutional entrenchment of these rights reflects Nigeria's commitment to democratic governance and the rule of law. However, beyond the constitutional provisions, Nigeria's obligations under international treaties such as the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR) also form part of its legal architecture for human rights protection. These legal instruments not only complement domestic laws but also impose binding obligations on the Nigerian state to respect, protect, and fulfil human rights.³⁶

In addition to these primary sources, Nigerian courts play a central role in interpreting and enforcing fundamental rights. Through judicial activism and reliance on both domestic and foreign jurisprudence, the judiciary has developed a body of case law that shapes the contours of human

³⁶ A. Oba, 'The Human Rights Provisions of the Nigerian Constitution and the African Charter on Human and Peoples' Rights: A Comparative Analysis' (2004) 4(1) African Human Rights Law Journal 86.

rights enforcement. Nonetheless, the effectiveness of this legal framework is often undermined by challenges related to judicial attitude, legislative gaps, institutional weaknesses, and socio-political realities.

This chapter critically examines the various components of the legal framework governing human rights in Nigeria. It considers the constitutional basis, the influence of international instruments, and the judicial mechanisms available for enforcement, setting the stage for a deeper exploration of the systemic barriers that hinder the full realization of these rights.

2.1 Constitutional Provisions for Fundamental Rights

Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended) forms the cornerstone of the legal protection of fundamental rights in the country. It guarantees a range of civil and political rights, including: Right to life³⁷, Right to dignity of the human person³⁸, Right to personal liberty³⁹, Right to fair hearing⁴⁰, Right to private and family life⁴¹, Right to freedom of thought, conscience and religion⁴², Right to freedom of expression and the press⁴³, Right to peaceful assembly and association⁴⁴, Right to freedom of movement⁴⁵, Right to freedom from discrimination⁴⁶, and the Right to acquire and own immovable property⁴⁷. These rights are

³⁷ 1999 Constitution (As Amended) s. 33

³⁸ Ibid S. 34

³⁹ S. 35

⁴⁰ S. 36

⁴¹ S. 37

⁴² S. 38

⁴³ S. 39

⁴⁴ S. 40

⁴⁵ S. 41

⁴⁶ S. 42

⁴⁷ S. 43

justiciable, meaning they can be enforced in a court of law. The Constitution also provides that any law or executive action that is inconsistent with these rights is void to the extent of its inconsistency⁴⁸

Furthermore, the Constitution of the Federal Republic of Nigeria 1999 (as amended) is the supreme legal instrument in the country and serves as the foundational source of fundamental human rights. Chapter IV of the Constitution, titled Fundamental Rights, outlines a range of civil and political rights guaranteed to every person within the territory of Nigeria. These provisions are justiciable and enforceable against both state and non-state actors. The Constitution not only affirms these rights but also provides mechanisms for their enforcement. Section 46(1) empowers any person who alleges that any of the provisions of Chapter IV has been, is being or is likely to be contravened in relation to him to apply to a High Court for redress. This reflects a recognition of the importance of direct access to judicial remedies in the event of a rights violation.

The courts have interpreted these constitutional provisions broadly, especially in cases involving the protection of human dignity and access to justice. In *Fawehinmi v Abacha*,⁴⁹ the Court of Appeal recognised that the African Charter on Human and Peoples' Rights, being incorporated into Nigerian law, is enforceable alongside constitutional provisions and enhances the protection of human rights in the country.

Nevertheless, the constitutional framework is not without criticism. Some commentators argue that the rights under Chapter IV are mostly civil and political in nature, excluding socio-economic

⁴⁸ 1999 Constitution (As Amended) S. 1(3)

⁴⁹ [2000] 6 NWLR (Pt. 660) 228 (CA).

rights such as the right to health, education, and housing, which are relegated to the non-justiciable provisions of Chapter II. This constitutional design reflects a limited conception of rights and has implications for holistic human development.⁵⁰

2.2 The African Charter on Human and People’s Rights (Enforcement & Ratification) Act⁵¹

The African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act (commonly referred to as the African Charter Act) is a key piece of legislation that plays a critical role in the enforcement of fundamental human rights in Nigeria. The Act gives domestic legal effect to the African Charter on Human and Peoples' Rights (ACHPR), which was adopted by the Organization of African Unity (OAU) in 1981 and came into force in 1986. Nigeria ratified the Charter in 1983, and the African Charter Act was enacted in 1983 to domesticate it. The Charter is a binding instrument that outlines the rights and freedoms of individuals and peoples in Africa, and its enforcement in Nigeria is crucial for the protection of human rights.

2.2.1 Key Provisions of the African Charter Act

1. Incorporation of the African Charter into Nigerian Law: The African Charter Act incorporates the provisions of the African Charter into Nigerian law, making it part of Nigeria's domestic legal framework. Section 1 of the Act declares that the African Charter has the force of law in Nigeria. This means that rights enshrined in the ACHPR, such as

⁵⁰ A. Oba, ‘The Human Rights Provisions of the Nigerian Constitution and the African Charter on Human and Peoples’ Rights: A Comparative Analysis’ (2004) 4(1) African Human Rights Law Journal 86

⁵¹ 1983, Cap. 10, Laws of the Federation of Nigeria, 1990.

the right to life, dignity, liberty, freedom of expression, and the right to participate in government, are justiciable in Nigerian courts.

2. **Supremacy of the African Charter over Other Laws:** Section 1(3) of the Act states that in the event of a conflict between the provisions of the African Charter and any other law, the provisions of the African Charter shall prevail. This supremacy reinforces the commitment of the Nigerian state to uphold the rights of individuals as provided in the ACHPR, even when they conflict with other laws or statutes, ensuring that the Charter's human rights protections are prioritized in legal proceedings.
3. **Enforcement of Rights:** The African Charter Act allows Nigerian citizens to directly enforce their rights under the ACHPR in Nigerian courts. The Act provides a legal avenue for individuals to seek redress for human rights violations, which is consistent with Section 46 of the Nigerian Constitution that enables citizens to apply for the enforcement of their fundamental rights. The courts can issue orders and directions to remedy human rights violations, just as they would under the Fundamental Rights (Enforcement Procedure) Rules, 2009.
4. **Incorporation of the Rights of Peoples:** The African Charter goes beyond individual human rights by recognizing the rights of peoples. These include the right to self-determination, the right to freely dispose of natural resources, and the right to peace and security. The African Charter Act reflects this, empowering Nigerian courts to consider not only

individual rights but also the broader rights of communities or peoples within Nigeria, which is a significant expansion of human rights jurisprudence.

5. **Justiciability of Economic, Social, and Cultural Rights:** Unlike some international human rights instruments, the African Charter recognizes and protects economic, social, and cultural rights, such as the right to work, education, health, and an adequate standard of living. The African Charter Act ensures that these rights are justiciable in Nigerian courts. This is particularly important for vulnerable groups who rely on the enforcement of social and economic rights to secure their well-being.
6. **Promotion of the Right to Development:** One of the unique features of the African Charter is the emphasis on the right to development, which includes the right of peoples to participate in and benefit from the development process. This right is critical in addressing issues of poverty, discrimination, and economic inequality. Through the African Charter Act, Nigeria recognizes the right to development and can be held accountable for failing to facilitate this right, promoting economic, social, and cultural justice.

On whether the African Charter on Human and Peoples' Right is enforceable in Nigeria, the Supreme Court in *Abacha & Ors v. Fawehinmi*⁵², held as follows:

"I need to stress, in the first place, that the African Charter on Human and Peoples' Rights was duly adopted by Nigeria in 1983 by the enactment of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act. 1983, Cap. 10, Laws of the Federation of Nigeria, 1990. As a result, the rights and obligation therein covered under the said Charter became fully and legally enforceable in Nigeria as any other municipal or domestic law of the

⁵² (2000) LPELR-14(SC)

land." Per ANTHONY IKECHUKWU IGUH, JSC (Pp 53 - 53 Paras B
- D)

It must be noted that the position of the law is that the African Charter is enforceable in Nigerian Courts so long as it is not inconsistent with the provisions of the Nigeria constitution. That is, where a provision of the African Charter is not in line with the provision of the constitution, such a provision shall be rendered null and void based on section 1(3) of the constitution- the supremacy clause. However, where other legislation purports to override the provision of the African Charter, such laws will be rendered null by the court, except they are laws which are in conformity with the constitution. However, it is my humble submission that the African Charter on Human and People's Rights ought to compliment the provision of the Constitution and should not have been made subordinate to the Constitution.

2.3. Fundamental Rights (Enforcement Procedure) Rules, 2009

Section 46 of the 1999 Constitution empowers any person who alleges that any of the provisions of Chapter IV has been, is being, or is likely to be contravened in relation to him to apply to a High Court for redress. This section provides a standing for not only the aggrieved person but also third parties to initiate actions on behalf of victims.

To facilitate this process, the Fundamental Rights (Enforcement Procedure) Rules, 2009 were made by the Chief Justice of Nigeria under Section 46(3) of the Constitution. These Rules replaced the 1979 Rules and introduced innovations aimed at removing technical barriers to enforcement.

Key Provisions are as follows:

2.3.1 A liberalized locus standi provision⁵³

One of the most transformative features of the Fundamental Rights (Enforcement Procedure) Rules, 2009 is the liberalization of locus standi that is, the legal capacity to initiate a court action. Under the previous regime, strict common law principles of locus standi applied, often requiring a direct and personal injury before an individual could bring an action. This narrow approach served as a barrier to justice, particularly in cases involving systemic violations, marginalized groups, or public interest issues.

However, the 2009 Rules, particularly Preamble 3(e) and 3(f), have expanded standing to include not only individuals whose rights have been directly violated, but also any person or organization acting in the public interest. Specifically, the Rules provide that:

“The Court shall encourage and welcome public interest litigation in the human rights field and no human rights case may be dismissed or struck out for want of locus standi.”⁵⁴

“An applicant may include any of the following: anyone acting in his own interest; anyone acting on behalf of another person; anyone acting as a member of, or in the interest of, a group or class of persons; anyone acting in the public interest; and associations acting in the interest of its members or other individuals or groups.”⁵⁵

⁵³ Fundamental Rights (Enforcement Procedure) Rules, 2009, Order II Rule 1

⁵⁴ Preamble 3(e)

⁵⁵ Preamble 3(f)

These provisions effectively abolish the restrictive rules of standing and reflect an intentional shift toward rights-centered justice. The rationale is to ensure that fundamental rights are protected even where the victim is unable or unwilling to approach the courts—due to fear, marginalization, or lack of access. Nigerian courts have increasingly embraced this expansive interpretation. In cases such as *Odafe v. Attorney-General of the Federation*⁵⁶ the court upheld the standing of NGOs to bring actions on behalf of detainees whose rights were being violated, thereby affirming the spirit of the new Rules.

It is humbly submitted that this liberal approach aligns with international human rights standards and comparative jurisprudence, especially from jurisdictions like India and South Africa, where public interest litigation and relaxed standing rules have played a critical role in advancing social justice.

2.3.2 A focus on substantial justice over procedural technicalities⁵⁷

The Fundamental Rights (Enforcement Procedure) Rules, 2009 signify a deliberate and progressive shift in the adjudication of human rights cases in Nigeria. A critical provision in this regard is Paragraph 3 of the Preamble, which emphasizes the primacy of substantial justice over procedural technicalities. This marks a departure from the often rigid and technical approach that previously characterized the enforcement of fundamental rights.

Paragraph 3 of the Preamble states:⁵⁸

⁵⁶ 2004) AHRLR 205 (NgHC 2004),

⁵⁷ Fundamental Rights (Enforcement Procedure) Rules, 2009, Preamble, Paragraph 3

⁵⁸ Ibid

“The overriding objectives of these Rules are as follows:

- (a) The Constitution, especially Chapter IV thereof, as well as the African Charter, shall be expansively and purposively interpreted and applied with a view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by them.
- (b) 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 and shall apply them as law...
- (d) The Court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, and the vulnerable...
- (e) The Court shall encourage and welcome public interest litigation...
- (g) Human rights suits shall be heard with dispatch... and in a manner that ensures substantial justice.”

The clear intention of these provisions is to prioritize the protection and realization of fundamental rights over strict adherence to form or technical rules that may hinder justice. This aligns with the principle that rules of procedure are handmaids of justice, not its master.

In practice, Nigerian courts have invoked this provision to refuse dismissing cases on procedural grounds when such dismissal would defeat the essence of the applicant’s claim. In *Fawehinmi v. Akilu*⁵⁹ the Supreme Court emphasized that procedural rules should not be used as instruments to deny access to justice. The 2009 Rules build upon this philosophy, reinforcing the need for courts to adopt a rights-centered and purposive approach in fundamental rights litigation.

⁵⁹ (1987) 4 NWLR (Pt. 67) 797,

In conclusion, Paragraph 3 of the Preamble to the 2009 Rules serves as a judicial directive to promote substantial justice, especially in cases involving the protection of fundamental rights. It enjoins courts to interpret and apply the Rules in a flexible, proactive, and purposive manner, ensuring that justice is done not just in form, but in substance.

2.3.4. Fundamental Right Must Be the Principal Claim Under the Enforcement Procedure Rules

It is trite that for an application brought under the Fundamental Rights (Enforcement Procedure) Rules to be competent, the enforcement of a fundamental right must be the main or principal claim, not a secondary or ancillary issue. In *Federal Minister of Internal Affairs v. Shugaba Darman*⁶⁰ the Court emphasized that where the alleged breach of a fundamental right is merely incidental to the real dispute such as a contract or employment matter, the application will not fall within the scope of the Rules. Thus, the primary focus of the claim must be on the violation or protection of rights enshrined in Chapter IV of the Constitution for the court to assume jurisdiction under the Rules.

Similarly, in *Nwanze v. Nrc*⁶¹ the Supreme Court held as follows:

When an application is brought under the Fundamental Rights (Enforcement Procedure) Rules, 1979, a condition precedent to the exercise of the Court's jurisdiction is that the enforcement of fundamental right or securing of the enforcement thereof should be the main or principal claim and not an accessory claim, The Federal

⁶⁰ [1982] 3 NCLR 915,

⁶¹ (2022) LPELR-59631(SC)

Minister of Internal Affairs and Ors. v Shugaba Abdulrahman Darman [1982] 3 NCLR 915." Per CHIMA CENTUS NWEZE, JSC (Pp 19 - 20 Paras F - B)

I humbly agree with the above position, as it provides clarity and ensures that only genuine human rights concerns are adjudicated under this special procedure. It prevents the Rules from being abused or applied to situations where human rights violations are secondary or peripheral to the primary legal issue, thereby maintaining the integrity of the legal framework for fundamental rights enforcement. This approach enhances access to justice and protects the essence of fundamental rights litigation, which should always remain a priority in our legal system

2.3.5. The Issue of Multiple Applicants in Fundamental rights application

On Whether an application can be filed by more than one person to enforce a right under the Fundamental Rights (Enforcement Procedure) Rules, in *Otal Exploration & Production (Nig) Ltd v. Okwu & Ors*⁶² the Apex Court held as follows:

It follows therefore that the phrase "any person" used in Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Order II Rule 1 of the Fundamental Rights (Enforcement Procedure Rules) 2009 cannot, and should not, be given a constricted, narrow and limiting interpretation that it refers to only one person. It should be given the wider interpretation to include more than one person or individual. This approach to the interpretation of the phrase "any person" used in Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Order II Rule 1 of the Fundamental Rights (Enforcement Procedure Rules) 2009 accords with the overriding objectives of the Fundamental Rights (Enforcement Procedure Rules) 2009 as provided in its preamble. The Preamble to the Rules enjoins the Court to constantly and conscientiously seek to

⁶² (2024) LPELR-62623(SC)

give effect to the overriding objectives of the Rules at every stage of human rights action, especially whenever it exercises any power given it by the Rules or any other law and whenever it applies or interprets any rule. And the first overriding objective says that Constitution as well as the African Charter shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedom contained in them and affording the protection intended by them. (underlining for emphasis) These statements enjoin the Courts not to allow a conservative approach to interpretation of the Constitution and of the Rules and peripheral technical rules to defeat and/or impede a person seeking the enforcement of his fundamental rights -

It must be noted that in practical terms, this inclusive interpretation would allow, for example, public interest litigations, class actions, or claims brought by non-governmental organizations (NGOs) on behalf of vulnerable groups. It would enhance the accessibility of the judicial system, enabling more people to seek redress collectively, particularly in cases where violations of rights affect large groups or communities.

It is humbly submitted that a broader interpretation of the phrase "any person" is necessary to ensure that the justice system serves the public interest, promoting the effective protection of fundamental rights. Such an approach ensures that technicalities or narrow interpretations do not hinder individuals or groups from seeking justice, thereby fostering a more inclusive and rights-based legal system in Nigeria.

2.3.6 Limitation of Action and Fundamental Rights Actions

Order 3 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 provides that an application for the enforcement of fundamental rights shall not be affected by any limitation

statute. This provision ensures that a person seeking to enforce their fundamental rights can do so irrespective of the lapse of time or any statute of limitations that might ordinarily bar claims in other areas of law. It reflects the critical importance of protecting fundamental human rights, acknowledging that violations of these rights may occur at any time and that victims should not be denied access to justice merely because the event occurred in the distant past.

This rule promotes access to justice, particularly for those whose rights have been violated but who may not have had the opportunity or resources to seek redress promptly. In this sense, it acknowledges that human rights violations are often complex and can occur in circumstances where victims may be unaware of the violation or too intimidated to take immediate action. By exempting these applications from limitation statutes, the Fundamental Rights (Enforcement Procedure) Rules serve to uphold the rights and dignity of individuals, ensuring that violations are addressed without being constrained by procedural time limits. This legal framework underscores the imperative of enforcing fundamental rights over procedural technicalities.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the supreme legal instrument in the country and serves as the foundational source of fundamental human rights. Chapter IV of the Constitution, titled Fundamental Rights, outlines a range of civil and political rights guaranteed to every person within the territory of Nigeria. These rights include the right to life (section 33), the right to dignity of the human person (section 34), the right to personal liberty (section 35), the right to fair hearing (section 36), the right to private and family life (section 37), and the right to freedom of thought, conscience and religion (section 38), among others.

These provisions are justiciable and enforceable against both state and non-state actors. The Constitution not only affirms these rights but also provides mechanisms for their enforcement. Section 46(1) empowers any person who alleges that any of the provisions of Chapter IV has been, is being or is likely to be contravened in relation to him to apply to a High Court for redress. This reflects a recognition of the importance of direct access to judicial remedies in the event of a rights violation.

The courts have interpreted these constitutional provisions broadly, especially in cases involving the protection of human dignity and access to justice. In *Fawehinmi v Abacha*,⁶³ the Court of Appeal recognized that the African Charter on Human and Peoples' Rights, being incorporated into Nigerian law, is enforceable alongside constitutional provisions and enhances the protection of human rights in the country.

Nevertheless, the constitutional framework is not without criticism. Some commentators argue that the rights under Chapter IV are mostly civil and political in nature, excluding socio-economic rights such as the right to health, education, and housing, which are relegated to the non-justiciable provisions of Chapter II. This constitutional design reflects a limited conception of rights and has implications for holistic human development.⁶⁴

⁶³ [2000] 6 NWLR (Pt. 660) 228 (CA).

⁶⁴ A. Oba, 'The Human Rights Provisions of the Nigerian Constitution and the African Charter on Human and Peoples' Rights: A Comparative Analysis' (2004) 4(1) African Human Rights Law Journal 86

2.4 National Laws and Institutions Protecting Human Rights

Beyond the Constitution, Nigeria has enacted various statutes and established institutions aimed at protecting and promoting human rights. These include both general legal instruments and specific legislative enactments addressing different categories of rights and vulnerable groups.

One notable legislation is the Fundamental Rights (Enforcement Procedure) Rules 2009, which was issued by the Chief Justice of Nigeria pursuant to section 46(3) of the Constitution. These Rules were designed to simplify the process of enforcing fundamental rights and to encourage public interest litigation. The Rules, among other innovations, abolished the requirement for leave of court before commencing a fundamental rights action and allowed NGOs to bring actions on behalf of victims.⁶⁵

Other national laws that support human rights enforcement include the Child's Rights Act 2003, the Violence Against Persons (Prohibition) Act 2015, and the Administration of Criminal Justice Act 2015. These laws aim to protect children, combat gender-based violence, and ensure fair criminal processes, respectively. Although not all of these laws have been domesticated in every state, they represent important legislative steps towards improving the human rights landscape in Nigeria.

⁶⁵ B. Odinkalu, 'The Impact of the Fundamental Rights (Enforcement Procedure) Rules 2009 on Human Rights Litigation in Nigeria' (2010) 10(2) Nigerian Bar Journal 170.

Institutionally, the National Human Rights Commission (NHRC), established by the National Human Rights Commission Act (as amended in 2010), plays a central role in monitoring, promoting, and enforcing human rights. The Commission is empowered to investigate complaints, issue reports, and recommend prosecution where necessary. It also undertakes public enlightenment and advises the government on human rights issues. However, concerns have been raised about the independence and effectiveness of the NHRC, especially regarding its enforcement powers and funding constraints.⁶⁶

In addition to the NHRC, other institutions such as the Public Complaints Commission, Legal Aid Council, and civil society organisations contribute to the protection of rights, although their impact is often limited by institutional weaknesses, corruption, and political interference.

2.5 International Human Rights Instruments Ratified by Nigeria

Nigeria is a party to numerous international and regional human rights treaties, many of which are binding under international law and influence the domestic human rights regime. Key among these instruments is the African Charter on Human and Peoples' Rights (ACHPR), which was domesticated into Nigerian law through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004. This incorporation gives the Charter the same force as national law, thereby enabling Nigerian courts to apply its provisions directly.

⁶⁶ T. Ojienda and S. Muma, *Constitutionalism and Democratic Governance in Africa* (Pretoria University Law Press 2008) 132.

Other major instruments ratified by Nigeria include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). These treaties oblige Nigeria to adopt legislative, judicial, and administrative measures for their implementation.

However, by virtue of section 12(1) of the 1999 Constitution, a treaty does not automatically become enforceable in Nigeria unless it is enacted into law by the National Assembly. Consequently, while Nigeria has ratified many instruments, their domestic enforceability depends on the extent of incorporation into local legislation. This constitutional requirement has been critiqued as a barrier to the immediate application of international human rights norms.⁶⁷

Despite these limitations, Nigerian courts have occasionally relied on ratified but undomesticated treaties as persuasive authorities, particularly where they align with constitutional rights, as seen in *Abacha v Fawehinmi*.⁶⁸

2.6 Comparison with African Human Rights Laws

The African regional human rights system, particularly the African Charter on Human and Peoples' Rights, offers a broader and more holistic conception of human rights than Nigeria's constitutional framework. While Chapter IV of the Nigerian Constitution primarily guarantees

⁶⁷ E. Azinge, 'The Domestication of International Treaties in Nigeria' (2009) 33 *Journal of International Law* 67.

⁶⁸ [2000] 6 NWLR (Pt. 660) 228 (SC).

civil and political rights, the African Charter encompasses civil, political, economic, social, and cultural rights, as well as the novel concept of people's rights and duties.

For instance, Articles 16 and 17 of the Charter provide for the rights to health and education respectively rights which are relegated to the non-justiciable Chapter II of the Nigerian Constitution. Unlike the Nigerian Constitution, which treats socio-economic rights as aspirational, the African Charter treats them as legally binding.

Furthermore, the Charter promotes collective rights and places a unique emphasis on duties, such as the duty to respect others and contribute to the moral well-being of the community.⁶⁹ This contrasts with the individualistic approach of the Nigerian Constitution.

Additionally, the African Court on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights serve as regional mechanisms for redress and oversight. Although Nigeria has ratified the Protocol establishing the African Court, it has not yet deposited the declaration under Article 34(6) allowing individuals and NGOs direct access to the Court, thereby limiting the practical utility of the Court to Nigerian citizens.⁷⁰

Thus, while both systems aim to protect human rights, the African human rights framework appears more expansive and inclusive in scope than the Nigerian constitutional regime, particularly in recognizing socio-economic rights as enforceable obligations.

⁶⁹ Articles 27–29

⁷⁰ F. Viljoen, *International Human Rights Law in Africa* (Oxford University Press 2012) 421.

2.7 Mechanisms for the Enforcement of Fundamental Rights

2.7.1 Jurisdiction of Courts

The High Court of a State or the Federal High Court (depending on the subject matter) has original jurisdiction to hear and determine applications for the enforcement of fundamental rights under Section 46(1) of the 1999 Constitution. The Court of Appeal and Supreme Court entertain appeals arising therefrom. In *Ezeakolam V. Igp & Ors*⁷¹, the Court of Appeal held as follows:

Now by Section 46 (1) and (2) of the Constitution of the Federation: 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 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 enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this chapter. Given the foregoing provisions whilst the appellant as it were, has the right to lay complaint regarding any contravention or likely contravention of his rights under Chapter 4 of the Constitution of the Federal Republic of Nigeria as amended, the High Court has the original jurisdiction to hear and determine the complaint and make the necessary orders etc. Being that the application as laid before the trial Court is declaratory in nature, such an application is not granted just for the asking. This is to say that it is not dependent on the absence or presence of counter affidavit. The Court has the discretionary powers to either grant or refuse the application depending

⁷¹ (2022) LPELR-59073(CA)

on the facts placed before the Court." Per CORDELIA IFEOMA
JOMBO-OFO, JCA (Pp 45 - 46 Paras B - C)

It is humbly suggested that considering The workload of High Courts, it will be in the interest of justice to advocate the creation of a specialized Human Rights Court would be an effective way to address several challenges that hinder the efficient and timely enforcement of fundamental rights in Nigeria. Currently, human rights cases are often heard alongside other cases in the High Courts, which may not always have the expertise or capacity to handle complex and sensitive human rights issues effectively. This can lead to delays, inconsistency in judgments, and potential judicial oversight.

2.7.2. National Industrial Ciurt.

It must be added that presently, the National industrial Court now has jurisdiction to entertain Fundamental rights action. This is because, the Constitution⁷² confers exclusive jurisdiction on the National Industrial Court (NIC) in matters where any provision of Chapter 4 of the Constitution relating to fundamental rights is connected to the determination of an industrial dispute. This means that if a fundamental rights issue is raised within the context of labor relations or employment, the NIC is the designated court to adjudicate such matters. This provision highlights the specialized role of the NIC in handling industrial disputes, ensuring the effective resolution of labor-related human rights issues.

⁷² Section 254C(1)(d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

2.8. Procedure for enforcement of Fundamental Rights Cases

Fundamental rights cases are initiated by an originating application, supported by an affidavit, a statement of facts, and written address, as provided under the Fundamental Rights (Enforcement Procedure) Rules, 2009. The Rules emphasize speedy hearing and allow public interest litigation and applications by NGOs. In *Mohammed v. Wada*⁷³ The Court of Appeal held as follows:

"The mode of commencement of an action pursuant to the Fundamental Rights (Enforcement Procedure) Rules, 2009, is by an originating process accepted by the Court which shall, subject to the provisions of the Rules, lie without leave of Court. Order II Rule 2 provides thus; "An application for the enforcement of the fundamental right may be made by any originating process accepted by the Court which shall, subject to the provision of these rules, lie without leave of Court." It is evident from the provision of Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, that the mode of commencement of an action is mainly regulated by the rules of the particular Court where the suit is sought to be commenced.

The procedural framework established under the Fundamental Rights (Enforcement Procedure) Rules, 2009 reflects a commendable shift toward a more accessible and justice-oriented approach to human rights litigation in Nigeria. By permitting the commencement of actions through any originating process accepted by the court and dispensing with the requirement of leave, the Rules seek to eliminate procedural bottlenecks that have historically impeded the enforcement of fundamental rights. The decision in *Mohammed v. Wada* reinforces this liberal interpretation and underscores the judiciary's role in promoting substantive justice over technical formalism. Nonetheless, the effective realization of this objective depends on consistent judicial commitment

⁷³ (2021) LPELR-56265(CA)

to the spirit of the Rules, as well as continuous efforts to address institutional and systemic barriers to rights enforcement.

2.9 Judicial Attitudes Towards Fundamental Rights Enforcement in Nigeria

The judiciary plays a pivotal role in the enforcement and interpretation of fundamental rights in Nigeria. Judicial attitudes reflected in the reasoning, activism, or restraint shown by courts significantly shape the accessibility, effectiveness, and scope of fundamental rights enforcement. Over time, these attitudes have oscillated between conservatism rooted in procedural formalism and progressive approaches that prioritize substantive justice.

2.9.1. From Formalism to Rights-Oriented Interpretation

Prior to the Fundamental Rights (Enforcement Procedure) Rules, 2009, Nigerian courts often adopted a technical and formalistic approach, striking out applications on grounds of defective procedure, improper parties, or issues of jurisdiction. Cases such as *Bamgboye v. University of Ilorin*⁷⁴ illustrate how procedural errors could defeat otherwise meritorious human rights claims.

However, the 2009 Rules, especially through the Preamble and provisions like Order II Rule 2, have redefined the judicial approach. Courts are now mandated to adopt a liberal, purposive interpretation aimed at advancing rights rather than curtailing them. In *Odafe v. Attorney-General*

⁷⁴ (1999) 10 NWLR (Pt. 622) 290

of the Federation ⁷⁵the High Court gave a purposive interpretation of the right to dignity and declared the prolonged detention of HIV-positive inmates without medical care unconstitutional.

2.9.2. Increasing Judicial Activism

There has been a discernible shift toward judicial activism in recent years, where courts proactively interpret and expand the scope of fundamental rights. In *Uzoukwu v. Ezeonu II* ⁷⁶ the Court of Appeal adopted a wide and inclusive interpretation of what constitutes fundamental rights, emphasizing that such rights include not only those found in Chapter IV of the Constitution but also in other human rights instruments, such as the African Charter on Human and Peoples' Rights.

This trend was also seen in *Attorney-General of Lagos State v. Attorney-General of the Federation*⁷⁷ where the Supreme Court upheld the autonomy of states to legislate on issues affecting fundamental rights, thereby reinforcing the federal character of rights enforcement.

Despite this progress, elements of judicial conservatism and inconsistency remain. Some courts continue to dismiss fundamental rights actions on technical grounds, failing to fully apply the liberalizing spirit of the 2009 Rules. For instance, issues relating to locus standi, joinder of parties, or misjoinder of claims are still sometimes determinative, even when the Rules clearly direct courts to overlook such defects in favour of substantial justice.

⁷⁵ (2004) AHRLR 205 (NgHC 2004),

⁷⁶(1991) 6 NWLR (Pt. 200) 708,

⁷⁷ (2003) 12 NWLR (Pt. 833) 1.

2.10 Summary

This chapter has examined the legal framework for the protection of fundamental human rights in Nigeria. It identified the 1999 Constitution (as amended) as the primary source of these rights and highlighted the role of statutes, institutions, and judicial interpretations in shaping their enforcement. While Nigeria has ratified several important international human rights treaties, the effectiveness of these instruments is limited by constitutional requirements for domestic incorporation.

The comparison with African human rights laws reveals that the regional framework, particularly through the African Charter, offers a broader spectrum of rights including enforceable socio-economic and group rights which Nigeria's Constitution treats as non-justiciable. These insights underscore the need for a more integrated and enforceable approach to human rights protection in Nigeria, both at the domestic and international levels.

CHAPTER 3:

CHALLENGES TO HUMAN RIGHTS ENFORCEMENT

3.0 Introduction

Despite the constitutional guarantees and legal frameworks for the protection of fundamental human rights in Nigeria, the actual enforcement of these rights remains profoundly problematic. While legal instruments both domestic and international outline comprehensive rights and enforcement mechanisms,⁷⁸ their effectiveness is often undermined by practical realities on the ground. A multiplicity of interrelated challenges continues to obstruct the full realization of these rights, thereby casting doubt on the efficacy of Nigeria's human rights regime.

These challenges stem from various sectors of national life. Institutional issues such as endemic corruption, poor governance,⁷⁹ and inadequate funding⁸⁰ for enforcement agencies have weakened the structural integrity required to safeguard rights. Societal attitudes, deeply entrenched cultural practices, and religious norms often perpetuate discrimination and resistance to human rights ideals, particularly those relating to gender equality and minority protections.⁸¹ The judiciary, while constitutionally empowered to enforce rights,⁸² struggles with barriers such as limited access to legal services, delays in the judicial process, and inconsistent jurisprudence. Furthermore,

⁷⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), Ch. IV; African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004; Universal Declaration of Human Rights (UDHR), 1948; International Covenant on Civil and Political Rights (ICCPR), 1966.

⁷⁹ Transparency International, Corruption Perceptions Index 2022: Nigeria Country Profile, available at <https://www.transparency.org/en/countries/nigeria> accessed 14 May 2025

⁸⁰ National Human Rights Commission (NHRC), Report on Human Rights Violations in Nigeria (2020).

⁸¹ C. Odinkalu, "Why More Nigerians Have Not Gone to Court to Enforce Their Rights" (1999) 6(1) Human Rights Law Journal 14; E. Azinge & A. Owasanoye (eds), Law and Development in Nigeria: 50 Years of Legal Development (NIALS, 2010).

⁸² *Ogugu v. State* (1994) 9 NWLR (Pt. 366) 1; *Ishola v. Ajiboye* (1994) 6 NWLR (Pt. 352) 506.

political instability, insurgency, and the conduct of law enforcement agencies have all contributed to an atmosphere where human rights violations occur with minimal accountability.⁸³

This chapter critically examines the major obstacles impeding the effective enforcement of fundamental human rights in Nigeria. It categorizes these barriers under institutional, societal, judicial, and political headings to provide a nuanced understanding of their impact. By identifying and analyzing these challenges, this chapter seeks to illuminate the systemic deficiencies that must be addressed to ensure that the legal protection of rights translates into actual enjoyment by the Nigerian populace.

3.1 Institutional Challenges: Weak Governance and Systemic Deficiencies

One of the most significant institutional obstacles to the enforcement of fundamental human rights is a weak governance structure. Weak governance is reflected in the chronic underfunding of key human rights institutions such as the National Human Rights Commission (NHRC), Legal Aid Council, and the Public Complaints Commission. These bodies are often hampered by insufficient resources, lack of autonomy, and political interference. The NHRC, for instance, while statutorily empowered to investigate rights violations and recommend sanctions, lacks prosecutorial powers and is dependent on the executive for funding, thereby compromising its independence.

The enforcement of fundamental human rights in Nigeria is greatly hindered by institutional weaknesses. Despite constitutional and statutory provisions that guarantee these rights,

⁸³ A.O. Oba, *Judicial Remedies in Nigerian Law* (Spectrum Books 2004); A. Oyebode, "The Legal Framework of Human Rights Protection in Nigeria: A Critical Review" (2001) 1 *NIALS Journal on Human Rights* 36.

enforcement is frequently undermined by poor administrative practices, inadequate infrastructure, and weak oversight mechanisms. These factors collectively foster a culture of impunity and reduce the effectiveness of legal remedies intended to protect citizens' rights.

Additionally, ineffective administrative structures and lack of political will contribute to a culture of impunity. Human rights abuses by state agents, including arbitrary detention, extrajudicial killings, and torture, often go unpunished due to institutional reluctance to hold perpetrators accountable. The failure to implement judicial decisions and recommendations from oversight bodies further reflects governance deficiencies⁸⁴.

Overall, weak governance creates a hostile environment for the enforcement of rights. It allows violators to act with impunity and renders legal safeguards ineffective in practice, thereby diminishing the protection afforded by constitutional and international human rights norms.

3.1.1 Inadequate Funding and Resource Constraints

Many of Nigeria's human rights institutions suffer from gross underfunding, limiting their ability to fulfill their mandates. The National Human Rights Commission (NHRC), despite its autonomy as guaranteed by the NHRC (Amendment) Act 2010, relies heavily on executive funding. This compromises its operational independence and weakens its responsiveness to violations.

⁸⁴ E. Azinge, 'Strengthening the Institutional Framework for Human Rights Enforcement in Nigeria' (2011) 25 Nigerian Juridical Review 109.

The Legal Aid Council of Nigeria also operates with limited financial and human resources, which affects the scope and quality of legal services offered to indigent persons. In *Legal Aid Council v. Attorney General of the Federation*, the court affirmed the importance of state-supported legal aid in ensuring equal access to justice.⁸⁵ However, inadequate staffing and poorly equipped offices undermine this constitutional obligation.

Courts across the country suffer from outdated infrastructure, lack of modern record-keeping tools, and delayed filing systems. These deficiencies contribute significantly to the protracted nature of litigation in human rights cases.

3.1.2 Executive Interference and Weak Oversight

Institutional independence is critical for effective rights enforcement. However, appointments to key oversight bodies are often influenced by political considerations, undermining public confidence in their impartiality. In *Gani Fawehinmi v. President, FRN & Ors*⁸⁶ the Supreme Court emphasized the necessity of autonomy for institutions tasked with rights protection.⁸⁷

The Public Complaints Commission, though established under the Public Complaints Commission Act,⁸⁸ has struggled with visibility, credibility, and enforcement capacity. Its recommendations are largely non-binding and frequently ignored by the agencies involved.

⁸⁵ *Legal Aid Council v. A.G. Federation* (2006) Unreported, discussed in J. A. Yakubu, *Constitutional Law in Nigeria*, 2nd edn (Democrat Publications, 2013) 257.

⁸⁶ (2008) 23 WRN 65,

⁸⁷ *Gani Fawehinmi v. President, FRN & Ors* (2008) 23 WRN 65, at 92; see also T. O. Elias, *The Nigerian Legal System* (London: Routledge, 2010) 116.

⁸⁸ Cap. P37 LFN 2004

3.1.3 Non-implementation of Judicial Decisions

The failure to implement court judgments poses a serious threat to the rule of law. In *Odafe & Ors v. Attorney General of the Federation*⁸⁹ the Federal High Court ordered appropriate medical care for HIV/AIDS detainees. The lack of subsequent enforcement by authorities reflects the systemic disregard for judicial authority. Similarly, in *Monday Ubani v. Attorney General of the Federation*,⁹⁰ the Federal High Court nullified the tenure extension of the Inspector-General of Police, but the executive failed to comply, thereby undermining the efficacy of the judgment.⁹¹

3.1.4 Institutional Inefficiency and Jurisdictional Overlaps

Rights enforcement agencies suffer from overlapping mandates, unclear inter-agency protocols, and lack of cooperation. For example, complaints of police brutality may simultaneously be reviewed by the NHRC and the Police Service Commission, often without any coordination or enforcement follow-up. This institutional overlap breeds inefficiency and duplication of efforts.

The #EndSARS judicial panels established across various states in 2020 demonstrated this dysfunction. Although many panels submitted extensive reports and recommendations, only a

⁸⁹ (2004) AHRLR 205 (NgHC 2004),

⁹⁰ Unreported with suit no: (2020) FHC/ABJ/CS/13/2020

⁹¹ *Monday Ubani v. Attorney General of the Federation* (2020) FHC/ABJ/CS/13/2020; reported in 'Court Voids IGP Tenure Extension' Premium Times (Abuja, 15 March 2020) <https://www.premiumtimesng.com/news/top-news/382112-court-voids-igp-tenure-extension.html> accessed 14 May 2025.

handful were implemented.⁹² The absence of legal compulsion to act on these reports highlights the structural weaknesses in the oversight architecture.

3.1.5 Absence of a Centralized Rights Tribunal

Nigeria lacks a dedicated human rights court with exclusive jurisdiction over rights violations. While Section 46(1) of the 1999 Constitution permits actions for enforcement of fundamental rights to be instituted at the Federal or State High Courts, the absence of specialisation often results in inconsistent and unpredictable outcomes.⁹³ In *Uzoukwu v. Ezeonu II*,⁹⁴ the Court of Appeal affirmed the enforceability of fundamental rights in both state and federal courts.⁹⁵ However, without a specialised forum, judges may lack the training or experience to adjudicate complex rights matters, resulting in inadequate remedies or procedural dismissals.

3.2 Societal Attitudes and Cultural Factors

Societal attitudes in Nigeria remain a major impediment to the effective enforcement of fundamental human rights. Deeply rooted patriarchal norms, religious orthodoxy, and communal loyalties often supersede constitutional ideals, especially in rural and semi-urban communities. For instance, women's rights to inheritance, education, and political participation are frequently undermined by customary practices that favour male dominance and restrict female autonomy. In

⁹² Amnesty International, Nigeria: A Year After #EndSARS Protests, Victims Still Await Justice (20 October 2021) <https://www.amnesty.org/en/latest/news/2021/10/nigeria-a-year-after-endsars-protests-victims-still-await-justice/> accessed 14 May 2025.

⁹³ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 46(1).

⁹⁴ (1991) 6 NWLR (Pt. 200) 708

⁹⁵ *Uzoukwu v. Ezeonu II* (1991) 6 NWLR (Pt. 200) 708, 761-763.

Ukeje v. Ukeje,⁹⁶ the Supreme Court invalidated the Igbo customary practice that excluded female children from inheritance, declaring it unconstitutional. However, despite such rulings, compliance remains minimal due to entrenched beliefs. Similarly, discrimination against persons with disabilities, sexual minorities, and religious minorities persists not because of legal gaps, but because of societal intolerance, stigma, and ignorance. These cultural barriers significantly weaken human rights enforcement as victims are either discouraged from seeking justice or are actively ostracized for doing so.

Furthermore, societal pressure often deters victims and witnesses from cooperating with law enforcement or pursuing legal redress, particularly in cases involving gender-based violence or inter-religious conflicts. Social stigma associated with reporting rape or domestic abuse often leads to underreporting, silence, and withdrawal of complaints. In *Eze v. State*⁹⁷, the Court of Appeal emphasized the need for courts to protect vulnerable victims, especially in culturally sensitive cases, noting that societal indifference can perpetuate cycles of abuse if not judicially addressed.⁹⁸

The marginalization of vulnerable groups is further exacerbated by religious doctrines that reinforce inequality. For example, certain interpretations of Islamic and Christian teachings are used to justify child marriage, female subjugation, and resistance to reproductive rights. These interpretations, while not codified in law, influence societal behaviour and create resistance to the implementation of rights-protective laws such as the Violence Against Persons (Prohibition) Act 2015 and the Child Rights Act 2003. Despite their progressive content, these laws have not been

⁹⁶ (2014) 11 NWLR (Pt. 1418) 384.

⁹⁷ (2020) LPELR-53002(CA)

⁹⁸ *Eze v. State* (2020) LPELR-53002(CA), 27–28; available at: <https://www.lawnigeria.com> accessed 15 May 2025.

uniformly domesticated or enforced across all Nigerian states, especially in the northern region where religious conservatism shapes legislative agendas.⁹⁹

Public enlightenment and civic education remain grossly inadequate in most parts of the country. A significant proportion of the population, particularly in rural areas, is unaware of their constitutional rights. This ignorance enables traditional leaders and religious authorities to wield disproportionate influence, sometimes in direct contravention of human rights norms. In *Attorney General of Kebbi State v. HRH Alhaji Mustapha Jokolo*,¹⁰⁰ the court addressed the tension between traditional authority and constitutional guarantees, stressing that customary practices must yield to the supremacy of the Constitution.¹⁰¹

Another dimension of societal challenge is the communalism that often suppresses individual rights in favour of collective identity. This is particularly evident in land disputes, political participation, and inter-ethnic tensions where communal decisions override individual liberties. Victims of intra-communal conflicts are frequently denied justice because pursuing legal action is seen as betrayal of communal unity or ancestral customs. As observed in *Okogie v. A.G. Lagos State*,¹⁰² while the Nigerian Constitution guarantees freedom of thought and expression, its practical application is often compromised by dominant cultural ideologies.¹⁰³

⁹⁹ Violence Against Persons (Prohibition) Act 2015; Child Rights Act 2003; see also E. A. Igbinedion, 'Domestication of Child Rights Act in Nigeria: Progress and Challenges' (2017) 4(1) *Journal of Human Rights Law and Practice* 45 <https://journals.uniben.edu.ng> accessed 15 May 2025.

¹⁰⁰ (2013) LPELR-22349(CA)

¹⁰¹ *Attorney General of Kebbi State v. HRH Alhaji Mustapha Jokolo* (2013) LPELR-22349(CA), 19–20; available at: <https://www.lawpavilion.com> accessed 15 May 2025.

¹⁰² (1981) 2 NCLR 337

¹⁰³ *Okogie v. A.G. Lagos State* (1981) 2 NCLR 337, 351–353; see also B. Owasanoye, 'Cultural Relativism and Human Rights in Nigeria' in I. E. Sagay (ed), *Nigerian Law and Culture* (Lagos: NIALS, 2009) 98.

The entrenched patriarchal structure of Nigerian society also influences judicial outcomes. While many judges have demonstrated commendable impartiality and adherence to constitutional mandates, others have been influenced by prevailing cultural sentiments, especially in family law and matrimonial causes. This has resulted in inconsistent jurisprudence on women's rights and child custody issues. Such inconsistencies highlight the need for judicial training on human rights-sensitive adjudication and the cultural transformation of legal institutions.

Ultimately, the effectiveness of legal reforms and judicial interventions depends heavily on societal acceptance. Without deliberate efforts to engage cultural, traditional, and religious institutions in human rights education and sensitization, the enforcement of rights will remain sporadic and ineffective, particularly at the grassroots level.

3.3 Judicial Challenges: Access to Justice and Court Backlogs

Although the judiciary is constitutionally mandated to be the last hope of the common man, its effectiveness is undermined by limited access to justice and systemic delays. Financial constraints, long distances to court, illiteracy, and the high cost of legal services exclude a significant portion of the population, especially in rural areas. Furthermore, delays caused by procedural bottlenecks, insufficient judicial personnel, and poor case management result in protracted litigation that diminishes public confidence in the judiciary. According to the National Judicial Council (NJC),¹⁰⁴ thousands of cases remain pending across Nigeria's courts, many of which relate to fundamental

¹⁰⁴ National Judicial Council (NJC), Annual Report on the State of the Judiciary in Nigeria (Latest edition).

rights enforcement. In *Ogugu v. State*,¹⁰⁵ the Supreme Court affirmed that access to justice is intrinsic to the enjoyment of constitutional rights. However, in practice, access remains a privilege rather than a right for many Nigerians.

Another critical obstacle within the judicial landscape is the lack of specialized human rights courts or fast-track procedures for rights-based litigation. Most fundamental rights cases are treated as regular civil suits, subjected to the same procedural rigours and adjournments, which often span several years. This procedural entanglement not only discourages potential litigants but also frustrates efforts at timely redress for human rights violations. In *Uzoukwu v. Ezeonu II*,¹⁰⁶ the Court of Appeal emphasized that fundamental rights matters require special treatment and a liberal approach to interpretation and adjudication.¹⁰⁷ Despite this judicial pronouncement, institutional inertia continues to hamper the prioritization of such cases.

Moreover, issues of forum shopping and jurisdictional disputes create additional layers of complexity, often resulting in dismissal of human rights applications on technical grounds. The multiplicity of courts with overlapping jurisdictions Federal High Courts, State High Courts, and the National Industrial Court has led to confusion and inconsistency in decisions, particularly where claims straddle both fundamental rights and labour-related issues. In *Oluwole v. Lagos State University*,¹⁰⁸ the court struggled with determining the appropriate forum for the enforcement of

¹⁰⁵ (1994) 9 NWLR (Pt. 366) 1.

¹⁰⁶ (1991) 6 NWLR (Pt. 200) 708

¹⁰⁷ *Uzoukwu v. Ezeonu II* (1991) 6 NWLR (Pt. 200) 708, 745; available at: <https://www.lawnigeria.com> accessed 15 May 2025.

¹⁰⁸ (2015) 59 NLLR (Pt. 207) 60

rights arising within the employment context, a dilemma that underscores the need for clearer jurisdictional guidelines.¹⁰⁹

Further compounding the problem is the prevalence of judicial conservatism and reluctance to embrace purposive and expansive interpretations of the Constitution. Some judges adopt overly technical approaches that place form above substance, often to the detriment of rights claimants. In *Jim-Jaja v. C.O.P., Rivers State*,¹¹⁰ the Supreme Court reiterated that fundamental rights are not privileges to be doled out but entitlements that demand robust judicial protection.¹¹¹ Yet, in many trial courts, judicial activism remains the exception rather than the norm.

Inadequate legal aid provision also severely limits access to justice, especially for indigent litigants. Although the Legal Aid Act¹¹² mandates the Legal Aid Council to provide free legal representation, the agency suffers from inadequate staffing, limited presence in rural areas, and chronic underfunding. This leaves many Nigerians without access to professional legal services, particularly in cases of unlawful detention, police brutality, or forced evictions. While non-governmental organizations (NGOs) attempt to fill this gap, their reach and capacity remain limited.

Another challenge is the inconsistent enforcement of judicial decisions. Even when courts pronounce in favour of human rights claimants, implementation is often delayed or ignored,

¹⁰⁹ *Oluwole v. Lagos State University* (2015) 59 NLLR (Pt. 207) 60, 85–86; see also O. A. Bamgbose, 'Jurisdictional Challenges in Fundamental Rights Enforcement in Nigeria' (2021) 5(2) Nigerian Bar Journal 33 <https://nigerianbar.org.ng> accessed 15 May 2025.

¹¹⁰ (2013) 6 NWLR (Pt. 1350) 225

¹¹¹ *Jim-Jaja v. C.O.P., Rivers State* (2013) 6 NWLR (Pt. 1350) 225, 247–248; available at: <https://www.lawpavilion.com> accessed 15 May 2025.

¹¹² Cap L9, LFN 2004

especially when the judgment is against government agencies or security operatives. This undermines the credibility of the judiciary and the entire enforcement architecture. For instance, in *Fawehinmi v. IGP*,¹¹³ the Supreme Court affirmed the enforceability of international human rights instruments domesticated in Nigeria, yet subsequent lower courts have occasionally hesitated to apply such instruments effectively, particularly when confronted with executive opposition.¹¹⁴

The judiciary's internal administrative challenges such as limited use of technology, inadequate court infrastructure, and manual case management also contribute to backlogs and delays. The absence of digital filing systems, particularly in lower courts, leads to file misplacement, duplication of proceedings, and inefficiencies that frustrate litigants and legal practitioners alike.

Collectively, these judicial challenges stifle the prompt and effective adjudication of rights claims, thereby weakening public faith in the justice system. Without comprehensive reform ranging from procedural simplification, increased funding, to sustained judicial training Nigeria's courts will continue to fall short of their constitutional duty to serve as bulwarks of liberty.

¹¹³ (2002) 7 NWLR (Pt. 767) 606

¹¹⁴ *Fawehinmi v. Inspector General of Police* (2002) 7 NWLR (Pt. 767) 606, 678; see also I. E. Sagay, 'The Enforcement of Human Rights in Nigeria: Problems and Prospects' in A. A. Adekeye (ed), *Essays on Nigerian Law* (Lagos: University of Lagos Press, 2012) 116.

3.4 Political and Security Challenges: Impact of Insurgency and Law Enforcement Agencies

Nigeria's human rights enforcement framework has also been severely tested by persistent security challenges and the conduct of security forces. The Boko Haram insurgency, banditry, and communal clashes have led to widespread displacement, extrajudicial killings, and arbitrary detentions. In many cases, security responses have resulted in further abuses. Human Rights Watch and Amnesty International have documented incidents where military operations in the North-East involved torture, illegal detention, and the destruction of civilian property.¹¹⁵ Moreover, the Special Anti-Robbery Squad (SARS) protests in 2020, which led to the EndSARS movement, highlighted the extent of police brutality and the impunity often enjoyed by law enforcement officers.¹¹⁶ Despite constitutional provisions under Chapter IV and international obligations, such as the International Covenant on Civil and Political Rights (ICCPR),¹¹⁷ enforcement is often selective and politically motivated. In *Ishola v. Ajiboye*,¹¹⁸ the Supreme Court reiterated the inviolability of fundamental rights, yet law enforcement agencies frequently violate these rights under the guise of national security or operational discretion.¹¹⁹

Beyond the insurgency in the North-East, various regions of Nigeria have witnessed militarized policing, including the deployment of armed forces for internal security operations often in violation of the constitutional separation between military and civil functions. In *All Progressive*

¹¹⁵ Amnesty International, Nigeria: Stars on Their Shoulders. Blood on Their Hands: War Crimes Committed by the Nigerian Military (Amnesty International Report, June 2015); Human Rights Watch, Nigeria: Events of 2020, available at <https://www.hrw.org/world-report/2021/country-chapters/nigeria> accessed 14 May 2025.

¹¹⁶ Ibid

¹¹⁷ International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, entered into force 23 March 1976.

¹¹⁸ (1994) 6 NWLR (Pt. 352) 506.

¹¹⁹ Amnesty International, Nigeria: Country Report 2022; Human Rights Watch, World Report: Nigeria Events of 2021, available at <https://www.hrw.org/world-report/2022/country-chapters/nigeria> accessed 14 May 2025

Congress v. Peoples Democratic Party,¹²⁰ the Court of Appeal condemned the deployment of military personnel during elections, affirming that civil security agencies not the armed forces are constitutionally empowered to manage internal civil matters.¹²¹ Yet, this principle is regularly undermined by executive actions, particularly during elections and protests, where security forces are deployed in ways that intimidate or suppress dissent.

The absence of legislative oversight and the weak disciplinary regimes within the police and armed forces have exacerbated the problem. Reports by the National Human Rights Commission (NHRC) and civil society organizations routinely document instances of torture, forced disappearances, and unlawful killings, particularly in the context of counter-insurgency and riot control. The EndSARS Judicial Panels of Inquiry established in several states after the 2020 protests revealed systemic violations by officers of the Nigeria Police Force.¹²² However, the implementation of panel recommendations has been inconsistent, and there is little indication that institutional reforms have been effectively implemented.

Another critical concern is the politicization of security institutions. Law enforcement agencies have occasionally been used to target political opponents or suppress media and civic activism. In *Director of SSS v. Agbakoba*¹²³ the Court of Appeal held that national security cannot be invoked arbitrarily to deny fundamental rights, especially freedom of movement and expression.³

¹²⁰ (2015) 15 NWLR (Pt. 1481) 1

¹²¹ All Progressive Congress v. Peoples Democratic Party (2015) 15 NWLR (Pt. 1481) 1; available at: <https://www.lawnigeria.com> accessed 15 May 2025.

¹²² National Human Rights Commission, 'Report of the Independent Investigative Panel on Allegations of Human Rights Violations by the defunct SARS and other Units of the Nigerian Police Force (2022)' <https://www.nigeriarights.gov.ng> accessed 15 May 2025.

¹²³ (1999) 3 NWLR (Pt. 595) 314,

Nevertheless, enforcement agencies often cite national interest to justify violations, rarely facing consequences.

Internally displaced persons (IDPs), resulting from conflicts in Borno, Yobe, Benue, Plateau, and Kaduna States, continue to face deplorable living conditions and restricted access to justice. Many IDPs have no access to legal aid or state institutions capable of addressing grievances, further entrenching impunity. The African Commission on Human and Peoples' Rights, in its communications on Nigeria, has repeatedly emphasized the obligation of states to provide effective remedies for victims of both state and non-state actors.¹²⁴ Yet, Nigeria's response remains inadequate, particularly in holding military personnel accountable under civil law.

Moreover, the lack of synergy between security policies and human rights standards has resulted in an enforcement culture marked by repression rather than protection. For example, the Terrorism (Prevention) Act¹²⁵ grants sweeping powers to security agencies with limited safeguards for rights enforcement.¹²⁶ This has led to the detention of individuals without trial and closed-door proceedings contrary to the principles of fair hearing under Section 36 of the Constitution.¹²⁷

The cumulative effect of these security-related challenges is the institutionalization of fear, a reluctance to challenge violations, and a devaluation of human rights protections. Until the rule of

¹²⁴ African Commission on Human and Peoples' Rights, 'Concluding Observations and Recommendations on the 6th Periodic Report of the Federal Republic of Nigeria (2019)' <https://www.achpr.au.int> accessed 15 May 2025.

¹²⁵ 2011 (as amended)

¹²⁶ Terrorism (Prevention) (Amendment) Act 2013, Cap T10, LFN 2010; see also A. Yusuf, 'Terrorism Law and Human Rights in Nigeria: A Critical Appraisal' (2020) 14(3) Ahmadu Bello University Law Journal 112 <https://www.abu.edu.ng> accessed 15 May 2025.

¹²⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36.

law is firmly embedded within Nigeria's security governance framework, fundamental rights will remain theoretical ideals rather than lived realities.

3.5 Summary

In sum, the enforcement of fundamental human rights in Nigeria faces multi-faceted challenges rooted in societal values, judicial inefficiencies, and a volatile political and security landscape. While legal provisions exist to safeguard rights, real-world enforcement remains elusive. Overcoming these challenges requires not only institutional reform but also a cultural shift towards embracing human rights as non-negotiable standards of dignity, equality, and justice.

CHAPTER 4:

COMPARATIVE APPROACH TO THE ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS IN COMMON LAW JURISDICTIONS

4.0 Introduction

In the pursuit of justice and the protection of fundamental human rights, no legal system exists in isolation. While Nigeria's constitutional and legal frameworks provide for the protection of fundamental rights, their enforcement has remained fraught with institutional, societal, and political obstacles. In this context, a comparative approach becomes not only useful but essential. By examining how other common law jurisdictions navigate the challenges of human rights enforcement, Nigeria can glean practical insights and normative inspiration for improving its own system.

The rationale for adopting a comparative perspective lies in the global nature of human rights and the shared historical and legal foundations of common law countries. Comparative analysis facilitates the cross-fertilization of ideas, allowing countries to benchmark legal doctrines, institutional structures, and judicial attitudes against international best practices.¹²⁸ It also exposes deficiencies within domestic systems by showcasing effective models elsewhere, thereby offering concrete proposals for reform. Given the global and universal character of human rights, this form of legal borrowing is both legitimate and strategic.¹²⁹

¹²⁸ R. Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press, 2014).

¹²⁹ A. Ojo, "Comparative Constitutionalism and Human Rights: Lessons for Nigeria" (2003) 2 *NIALS Journal of Comparative Law* 47

Nigeria's legal system, deeply rooted in English common law due to its colonial history, shares significant jurisprudential and procedural similarities with other former British colonies such as India and South Africa.¹³⁰ This common law heritage provides a fertile ground for comparative analysis, especially in areas like constitutional interpretation, judicial activism, and remedies for rights violations. These countries have grappled with similar socio-political challenges such as multiculturalism, economic disparity, and post-colonial governance and have evolved robust human rights jurisprudence in response.

The United Kingdom represents the source of Nigeria's inherited legal system and offers a well-developed model of constitutional conventions, judicial independence, and human rights enforcement under the Human Rights Act 1998.¹³¹ While it lacks a single written constitution, the UK's incorporation of the European Convention on Human Rights (ECHR) into domestic law has significantly strengthened the judiciary's role in protecting rights.

South Africa, on the other hand, provides an instructive model of transformative constitutionalism. The Constitution of the Republic of South Africa, 1996, is one of the most progressive in the world, explicitly affirming the justiciability and enforceability of socio-economic rights.¹³² Its Constitutional Court has adopted a robust and proactive approach to human rights, setting a global precedent for legal accountability and institutional reform.¹³³

¹³⁰ T.O. Elias, *The Nigerian Legal System* (Routledge, 1963) 21–23.

¹³¹ Human Rights Act 1998 (UK), c. 42; European Convention on Human Rights (ECHR), adopted 4 November 1950, entered into force 3 September 1953.

¹³² Constitution of the Republic of South Africa, 1996, s 7–39.

¹³³ *Government of the Republic of South Africa v. Grootboom* 2001 (1) SA 46 (CC); *Minister of Health v. Treatment Action Campaign* (No 2) 2002 (5) SA 721 (CC).

India offers yet another compelling comparative perspective. As a fellow post-colonial democracy with a written constitution and a vibrant judiciary, India's Supreme Court has pioneered public interest litigation (PIL) as a tool for expanding access to justice and enforcing fundamental rights.

¹³⁴Through creative interpretation of Articles 14, 19, and 21 of the Indian Constitution, Indian courts have dramatically expanded the scope of human rights and developed mechanisms for holding public authorities accountable.

By exploring these jurisdictions each unique yet linked through common law heritage this chapter seeks to identify legal and institutional innovations that Nigeria can adapt to enhance the enforcement of fundamental rights. The comparative lens does not imply uncritical transplantation of foreign models but encourages contextual adaptation rooted in local realities.

4.1 United Kingdom

4.1.1 Legal and Constitutional Framework

The United Kingdom (UK) operates under an unwritten constitution grounded in statutes, judicial decisions, and constitutional conventions. Traditionally, the UK lacked a codified bill of rights, relying instead on the principle of parliamentary sovereignty and the common law to uphold individual liberties. However, a significant transformation occurred with the enactment of the

¹³⁴ Maneka Gandhi v. Union of India (1978) AIR 597 (SC); Olga Tellis v. Bombay Municipal Corporation (1985) AIR 180 (SC).

Human Rights Act,¹³⁵ which incorporated the European Convention on Human Rights (ECHR) into domestic law and fundamentally altered the landscape of rights protection in the UK.¹³⁶

The HRA, which came into force in October 2000, enables individuals to seek redress in UK courts for violations of Convention rights without having to first exhaust remedies at the European Court of Human Rights in Strasbourg. This marks a departure from the dualist tradition that previously treated international treaties as non-justiciable unless enacted by Parliament. Under the Act, courts are required to interpret legislation, “so far as it is possible to do so,” in a manner compatible with the ECHR.¹³⁷

Notably, the UK legal system retains the doctrine of parliamentary supremacy, meaning Parliament can legislate contrary to Convention rights if it chooses to do so expressly. The judiciary, while empowered to interpret legislation in light of human rights, cannot invalidate Acts of Parliament. Instead, courts may issue declarations of incompatibility where legislation is found to contravene the ECHR.¹³⁸ This mechanism maintains the balance of power between Parliament and the judiciary, reinforcing the UK's commitment to democratic accountability while upholding human rights principles.

¹³⁵ 1998 (HRA)

¹³⁶ Human Rights Act 1998 (UK), c. 42; European Convention on Human Rights (ECHR), adopted 4 November 1950, entered into force 3 September 1953.

¹³⁷ HRA 1998, s 3(1).

¹³⁸ HRA 1998, s 4(2). See also R Clayton and H Tomlinson, *The Law of Human Rights*, vol 1 (2nd edn, Oxford University Press 2009) 89–93.

4.1.2 Enforcement Mechanisms and Case Law

The HRA establishes several mechanisms for enforcing human rights within the UK legal system. Central to these is Section 3,¹³⁹ which obligates courts to interpret legislation, "so far as it is possible," in a way that is consistent with the ECHR¹⁴⁰ rights. This interpretive obligation has enabled the judiciary to adopt creative constructions of statutes to avoid incompatibility with the Convention.¹⁴¹

However, where interpretation is not feasible, courts may issue a declaration of incompatibility under Section 4.¹⁴² This does not invalidate the offending law but serves as a formal notice to Parliament, which may then amend the legislation through a fast-track remedial process under Section 10 of the Act.¹⁴³ While non-binding, such declarations carry significant political and moral weight, and in most cases, Parliament has responded by amending the offending provisions.¹⁴⁴

The evolution of UK human rights jurisprudence has been significantly shaped by landmark cases. In *A v. Secretary of State for the Home Department*,¹⁴⁵ the House of Lords declared that the indefinite detention of foreign terror suspects without trial under the Anti-terrorism, Crime and Security Act 2001 was incompatible with Articles 5 and 14 of the ECHR (right to liberty and non-

¹³⁹ Human Rights Act, 1998

¹⁴⁰ European Convention on Human Rights

¹⁴¹ *Ghaidan v. Godin-Mendoza* [2004] UKHL 30; [2004] 2 AC 557.

¹⁴² Human Rights Act, 1998

¹⁴³ *Ibid*

¹⁴⁴ HRA 1998, s 10; J Jowell, D Oliver, and C O'Connell, *The Changing Constitution* (9th edn, Oxford University Press 2019) 327–330.

¹⁴⁵ [2004] UKHL 56; [2005] 2 AC 68

discrimination). The ruling underscored the judiciary's commitment to upholding individual rights even in the context of national security.

Another foundational case is *R v. Secretary of State for Transport, ex parte Factortame Ltd. (No. 2)*,¹⁴⁶ which, although predating the HRA, remains critical to understanding the interplay between domestic law and supranational norms. In this case, the House of Lords suspended an Act of Parliament that conflicted with European Community law, illustrating the judiciary's evolving role in limiting parliamentary authority in favour of higher legal obligations.

These cases demonstrate the UK's gradual shift toward a more rights-conscious legal culture, where courts actively engage in the protection of human rights while respecting the constitutional boundaries of parliamentary sovereignty. The Human Rights Act has thus provided a framework through which individuals can seek remedies, and courts can hold public authorities accountable for rights violations.

4.1.3 Judicial Attitude and Institutional Practices

A defining feature of the United Kingdom's human rights enforcement regime is its judicial independence, both in theory and practice. The Constitutional Reform Act 2005 enhanced this independence by establishing the Supreme Court of the United Kingdom and ensuring a clearer

¹⁴⁶ [1991] 1 AC 603.

separation of powers between the judiciary and the executive.¹⁴⁷ This independence enables judges to adjudicate human rights claims without fear of political reprisal, an essential safeguard in the protection of fundamental freedoms.

The UK judiciary has also demonstrated a progressive and dynamic approach in applying proportionality as a tool for balancing competing rights. In contrast to the traditional *Wednesbury* unreasonableness standard of review, which offered limited scrutiny, proportionality enables a more nuanced analysis of whether a limitation on rights is justified in a democratic society.¹⁴⁸ This approach was affirmed in *Bank Mellat v. HM Treasury (No. 2)*,¹⁴⁹ where the Supreme Court applied a structured proportionality test to assess the lawfulness of sanctions imposed on an Iranian bank.

Furthermore, the courts have consistently shown a willingness to engage deeply with Convention jurisprudence, drawing from decisions of the European Court of Human Rights (ECtHR). However, in *R (Ullah) v. Special Adjudicator*, Lord Bingham cautioned that while domestic courts should usually follow ECtHR decisions, they are not bound to do so when doing so would be inconsistent with UK constitutional principles.¹⁵⁰ This careful engagement reflects a balance between respect for international human rights standards and the preservation of domestic legal autonomy.

¹⁴⁷ Constitutional Reform Act 2005 (UK), c. 4; see also M Elliott and R Thomas, *Public Law* (4th edn, Oxford University Press 2020) 115–118.

¹⁴⁸ *R (Daly) v. Secretary of State for the Home Department* [2001] UKHL 26; [2001] 2 AC 532.

¹⁴⁹ [2013] UKSC 39; [2014] AC 700.

¹⁵⁰ *R (Ullah) v. Special Adjudicator* [2004] UKHL 26; [2004] 2 AC 323.

Institutionally, UK courts benefit from well-developed administrative frameworks, such as legal aid provisions and judicial training on human rights law, which enhance their capacity to adjudicate rights-based claims effectively. These systemic features contribute to the UK's reputation as a jurisdiction with a mature and responsive human rights enforcement mechanism.

4.1.4 Implications for Nigeria

The UK's experience offers several lessons and implications for Nigeria's human rights enforcement landscape. First, it demonstrates the potential benefits of domestic incorporation of international human rights norms. Just as the UK incorporated the ECHR through the Human Rights Act 1998, Nigeria could adopt a similar approach by giving direct effect to treaties such as the African Charter on Human and Peoples' Rights, beyond the existing African Charter (Ratification and Enforcement) Act, which courts have inconsistently applied.¹⁵¹

Second, the UK model suggests the need for legislative reforms that empower courts with broader remedial tools. The ability to issue declarations of incompatibility, coupled with a fast-track parliamentary response, promotes a dialogue between the judiciary and the legislature without undermining democratic governance. Nigeria's courts, constrained by rigid procedural laws and limited interpretive authority under the Fundamental Rights (Enforcement Procedure) Rules 2009, could benefit from similar innovations.¹⁵²

¹⁵¹ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria 2004; *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt. 660) 228.

¹⁵² Fundamental Rights (Enforcement Procedure) Rules 2009; see also A Oloyede, "Fundamental Rights Enforcement in Nigeria: Current Challenges and Future Prospects" (2019) 3(1) Nigerian Law Journal 45, 60.

Moreover, adopting a structured proportionality test in rights adjudication could move Nigeria beyond the often abstract "reasonable restriction" standard, allowing for more concrete assessments of rights limitations. This would also align Nigeria more closely with international best practices and promote greater judicial accountability in rights enforcement.

Finally, the UK's emphasis on judicial independence and institutional capacity-building underscores the importance of insulating the Nigerian judiciary from executive interference and ensuring adequate funding, training, and administrative support. These steps are vital for transforming constitutional rights from aspirational declarations into enforceable entitlements.

4.2 South Africa

4.2.1 Legal and Constitutional Framework

South Africa's constitutional architecture is globally renowned for its strong human rights orientation. The Constitution of the Republic of South Africa, 1996, is the supreme law of the land and is lauded for its progressive Bill of Rights, which is binding on all arms of government and applicable to both public and private actors in certain contexts. The Bill of Rights encompasses both civil-political and socio-economic rights, including the rights to housing, health care, food, water, and education, marking a clear departure from traditional liberal constitutions that focus primarily on negative rights.¹⁵³

¹⁵³ Constitution of the Republic of South Africa, 1996, s 7–39; see also I Currie and J De Waal, *The Bill of Rights Handbook* (6th edn, Juta 2013) 23–25.

One of the most remarkable aspects of South Africa's legal framework is the justiciability of socio-economic rights, a concept that many jurisdictions including Nigeria, have historically regarded as non-justiciable. Section 7(2) of the Constitution imposes a duty on the state to "respect, protect, promote and fulfil" the rights in the Bill of Rights, while Section 38 permits any individual or group to approach the courts for the enforcement of these rights.¹⁵⁴ This expansive approach has enabled courts to play an active role in realizing substantive justice, particularly for historically marginalized populations.

4.2.2 Enforcement Mechanisms and Case Law

Enforcement of fundamental rights in South Africa is driven primarily by the Constitutional Court, which enjoys exclusive jurisdiction in constitutional matters. The court has been instrumental in shaping the scope and content of socio-economic rights through a series of landmark rulings.

In *Government of the Republic of South Africa v. Grootboom*,¹⁵⁵ the Constitutional Court held that the state's housing program failed to meet the requirement of reasonableness as it did not make provision for those in desperate need of shelter. The Court acknowledged that while the right to housing is subject to available resources, the state is obligated to develop a comprehensive and inclusive plan that meets short-, medium-, and long-term needs.

¹⁵⁴ Constitution of the Republic of South Africa, 1996, s 7(2), s 38.

¹⁵⁵ 2001 (1) SA 46 (CC); (2000) ZACC 19.

Similarly, in *Minister of Health v. Treatment Action Campaign (TAC)*, the Court held that the government's restriction of access to Nevirapine, an antiretroviral drug for preventing mother-to-child transmission of HIV, was unconstitutional. The court compelled the state to make the drug available in public hospitals, affirming the principle that government policies affecting socio-economic rights must be reasonable and inclusive.¹⁵⁶ These decisions exemplify South Africa's commitment to ensuring that the enforcement of rights goes beyond declaratory relief to achieving actual social change.

4.2.3 Judicial Attitude and Transformative Constitutionalism

South African courts have embraced the principle of transformative constitutionalism, which envisions the law as a tool for correcting historical injustices and achieving substantive equality. This approach has redefined the judiciary's role from that of a neutral arbiter to an agent of social transformation.

A key feature of this judicial philosophy is the use of structural interdicts and supervisory orders, which require the state not only to rectify unconstitutional conduct but to periodically report back to the court on compliance. For instance, in *TAC (No. 2)*, the Constitutional Court retained supervisory jurisdiction to monitor the implementation of its order, thereby ensuring continued accountability.¹⁵⁷

¹⁵⁶ *Minister of Health v. Treatment Action Campaign* (2002) 5 SA 721 (CC); (2002) ZACC 15.

¹⁵⁷ *Treatment Action Campaign (No. 2)* (n 4); see also S Liebenberg, *Socio-Economic Rights: Adjudication under a Transformative Constitution* (Juta 2010) 385–392.

Moreover, courts have shown considerable remedial creativity, moving beyond mere nullification of laws to crafting context-specific solutions that reflect the lived realities of litigants. This innovation demonstrates a deep institutional commitment to the practical realization of rights, even in complex socio-economic contexts.

4.2.4 Implications for Nigeria

South Africa's model provides valuable insights for strengthening the enforcement of human rights in Nigeria, particularly the socio-economic rights enshrined in Chapter II of the 1999 Constitution, which are currently non-justiciable under Section 6(6)(c). The South African experience proves that justiciability of socio-economic rights is not only feasible but essential for realising human dignity in a democratic society.

Nigeria could consider constitutional amendments or judicial interpretation that elevate certain socio-economic rights to enforceable standards, drawing from Section 13 of the Constitution which mandates organs of government to conform to the ideals set out in Chapter II. In *SERAP v. Federal Republic of Nigeria*,¹⁵⁸ the ECOWAS Court of Justice upheld Nigeria's obligation to provide basic education, signalling the potential for broader enforcement of these rights even within existing frameworks.

Additionally, judicial oversight mechanisms, such as supervisory orders and structural remedies, could improve compliance with court judgments in Nigeria, where executive disregard for court

¹⁵⁸ (2010) ECW/CCJ/APP/0808; (2010) ECW/CCJ/JUD/07/10.

orders remains a persistent problem. Adopting these practices would enhance the credibility of the judiciary and foster a culture of accountability in public administration.

Ultimately, South Africa's experience shows that a robust, independent judiciary, coupled with a transformative constitutional ethos, can significantly enhance the enforcement of fundamental rights, a lesson Nigeria must internalise to fulfil its constitutional promises.

4.3 India

4.3.1 Legal and Constitutional Framework

India's constitutional framework presents a unique blend of enforceable civil-political rights and aspirational socio-economic principles. Part III of the Constitution of India, 1950 contains the Fundamental Rights, which are justiciable and enforceable against the state. These rights include the right to equality, freedom of speech, personal liberty, protection from arbitrary arrest, and the right to constitutional remedies.¹⁵⁹

In contrast, Part IV outlines the Directive Principles of State Policy (DPSP), which though non-justiciable, serve as guiding principles for governance and public policy. Over time, Indian courts have blurred the lines between Parts III and IV by interpreting fundamental rights in light of directive principles, thereby giving the latter quasi-enforceable status in some instances.¹⁶⁰

¹⁵⁹ Constitution of India 1950, Part III, arts 12–35.

¹⁶⁰ Unni Krishnan J.P. v. State of Andhra Pradesh (1993) AIR SC 2178; M P Jain, *Indian Constitutional Law* (7th edn, LexisNexis 2014) 1432–1445.

One of India's most transformative contributions to human rights enforcement has been the development of Public Interest Litigation (PIL). Traditionally, access to courts was limited by rigid standing rules. However, in the late 1970s and early 1980s, the Indian judiciary relaxed locus standi requirements, allowing third parties to initiate litigation on behalf of disadvantaged groups. This opened the doors of the courts to millions of voiceless citizens and redefined judicial engagement with human rights issues.¹⁶¹

4.3.2 Enforcement Mechanisms and Case Law

Indian courts have demonstrated a progressive and interventionist approach in the enforcement of fundamental rights. The Supreme Court of India, as the apex court, has employed its wide jurisdiction under Article 32 to enforce rights in an expansive and often transformative manner.

In *Maneka Gandhi v. Union of India*, the Supreme Court broadened the scope of the right to life and personal liberty under Article 21. The Court held that any law interfering with personal liberty must be just, fair, and reasonable, effectively overruling the narrow interpretation previously adopted in *A.K. Gopalan v. State of Madras*.¹⁶²

In *Olga Tellis v. Bombay Municipal Corporation*,¹⁶³ the Court held that the right to livelihood is an integral component of the right to life, and thus slum dwellers could not be evicted without due

¹⁶¹ S Muralidhar, 'Public Interest Litigation: A Voice for the Voiceless' (2004) 4(2) SCC J 22

¹⁶² *Maneka Gandhi v. Union of India* (1978) AIR SC 597.

¹⁶³ (1985) AIR SC 180.

process. The Court emphasized that socio-economic rights, though located in Part IV, must inform the interpretation of Part III.

In *A.K. Gopalan*, an earlier case, the Court had taken a formalist view by treating rights as mutually exclusive compartments. However, its doctrinal significance was later diminished by the more liberal jurisprudence of *Maneka Gandhi* and subsequent cases. These landmark decisions reflect the Indian judiciary's willingness to evolve its interpretive strategies and expand the horizon of human rights protections, even in the face of formal constitutional constraints.

4.3.3 Judicial Activism and Procedural Flexibility

One of the defining features of India's human rights jurisprudence is judicial activism, particularly in socio-economic and environmental matters. Indian judges have embraced purposive interpretation, ensuring that constitutional provisions are construed in a manner that gives full effect to their underlying values.

The courts have adopted creative remedies, such as continuous mandamus and appointment of commissioners to oversee implementation of judgments. For example, in *Vishaka v. State of Rajasthan*, the Supreme Court issued binding guidelines to address sexual harassment in the absence of legislation, thereby legislating from the bench in defence of human dignity.¹⁶⁴

¹⁶⁴ *A.K. Gopalan v. State of Madras* (1950) AIR SC 27.

Additionally, the Court has expanded the meaning of “life” and “liberty” under Article 21 to include a wide array of rights, such as education, health care, shelter, and a clean environment. This expansive approach has allowed the judiciary to bring essential socio-economic rights within the ambit of enforceable legal entitlements.¹⁶⁵

The Court’s procedural flexibility is also evident in its acceptance of letters and newspaper reports as PILs, removal of court fees for public interest claimants, and appointment of amicus curiae and expert committees to assist in complex matters. This has made the Indian legal system more inclusive and responsive to the needs of the marginalized.

4.3.4 Implications for Nigeria

India’s jurisprudence provides significant lessons for the Nigerian legal system, particularly in the areas of access to justice, interpretive methodology, and judicial remedies. One key takeaway is the reform of locus standi rules. Unlike Nigeria, where standing remains narrowly construed, India’s experience with PIL shows that broadening access to courts can play a vital role in human rights enforcement.

Furthermore, the Indian courts’ purposive and integrated approach to constitutional interpretation stands in contrast to Nigeria’s often rigid and literalist style. Nigerian courts can enhance their interpretive methods by reading Chapter IV of the Constitution in harmony with the values

¹⁶⁵ Vishaka v. State of Rajasthan (1997) AIR SC 3011.

expressed in Chapter II, particularly in cases involving the right to dignity, education, housing, and health.

Lastly, the judicial creativity demonstrated by Indian courts—especially in remedy design—can be emulated to overcome enforcement challenges in Nigeria. Supervisory orders, structural injunctions, and interim guidelines can be used to ensure compliance with constitutional rights even in the absence of enabling legislation.

In sum, India offers a model of dynamic and inclusive constitutionalism that Nigeria can adapt to local realities. Judicial courage, interpretive innovation, and procedural flexibility are the tools by which human rights can be made truly meaningful for ordinary Nigerians.

4.4 Comparative Synthesis

A comparative review of the United Kingdom, South Africa, and India reveals common trends and important divergences in the enforcement of fundamental human rights. Despite differing legal traditions and socio-political contexts, all three jurisdictions exhibit an increasingly assertive judiciary, a commitment to purposive and flexible constitutional interpretation, and a willingness to innovate procedurally in response to enforcement challenges.

In the United Kingdom, the judiciary exercises interpretive discretion under Section 3 of the Human Rights Act 1998, allowing courts to read legislation in a rights-consistent manner without

directly invalidating statutes.¹⁶⁶ In South Africa, the Constitutional Court plays a central role in transformative constitutionalism, particularly by rendering supervisory and structural remedies that ensure government accountability in socio-economic matters.¹⁶⁷ India, meanwhile, leads in procedural innovation, having expanded locus standi through Public Interest Litigation and judicially integrated socio-economic rights via expansive readings of the right to life.¹⁶⁸

Yet key divergences remain. For example, the justiciability of socio-economic rights is constitutionally entrenched in South Africa but remains aspirational in India and the UK. Similarly, standing rules are far more relaxed in India than in the UK or Nigeria, thereby enabling broader access to justice. Additionally, South Africa's post-apartheid constitutional design uniquely commits the state to redressing historical injustices, influencing the breadth and ambition of its human rights jurisprudence.¹⁶⁹

These differences underscore the importance of institutional, political, and historical contexts in shaping the enforcement of human rights. While legal frameworks provide the formal basis for rights protection, their effectiveness is contingent on judicial capacity, political will, and the level of societal commitment to constitutional ideals.

¹⁶⁶ Human Rights Act 1998, s 3 (UK).

¹⁶⁷ *Government of the Republic of South Africa v Grootboom* (2001) 1 SA 46 (CC); *Minister of Health v Treatment Action Campaign (No. 2)* (2002) 5 SA 721 (CC).

¹⁶⁸ *Maneka Gandhi v Union of India* (1978) AIR SC 597; *Olga Tellis v Bombay Municipal Corporation* (1985) AIR SC 180.

¹⁶⁹ Karl Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 SAJHR 146.

4.5 Lessons for Nigeria

The comparative analysis yields critical lessons for Nigeria as it seeks to strengthen its human rights enforcement regime. Firstly, Nigeria would benefit from enacting a comprehensive domestic human rights statute akin to the UK's Human Rights Act 1998. This would enhance the accessibility and enforceability of international human rights obligations locally, bridging the gap between constitutional rhetoric and practical remedies.¹⁷⁰

Secondly, there is a pressing need for judicial training and greater independence. Nigerian judges must be equipped to engage with international human rights jurisprudence, adopt purposive interpretive methods, and assertively enforce rights against state agencies. The Indian and South African experiences demonstrate that a robust, independent judiciary can act as a bulwark against state overreach and institutional inertia.

Thirdly, Nigeria must reform procedural rules that currently hinder access to courts. This includes relaxing the rigid standing doctrine that limits who may approach the courts, simplifying court processes, and providing fee waivers for indigent litigants. India's experience with PIL demonstrates how such reforms can democratize the legal system and amplify the voices of vulnerable populations.¹⁷¹

¹⁷⁰ K A Adegoke, 'The Imperative of a Human Rights Act in Nigeria' (2019) 5(1) NOUN LJR 112.

¹⁷¹ S Muralidhar, 'Public Interest Litigation: A Voice for the Voiceless' (2004) 4(2) SCC J 22.

Fourthly, there is a need to encourage public interest litigation and strengthen legal aid mechanisms. By institutionalizing PIL and providing funding for public interest lawyers, the Nigerian state can ensure that fundamental rights are not only protected on paper but are actively defended in practice.

Overall, the comparative insights suggest that legal reform must be accompanied by institutional commitment and cultural change, ensuring that fundamental rights are not treated as privileges but as enforceable entitlements intrinsic to human dignity.

4.6 Summary

This chapter has explored the enforcement of fundamental human rights in three common law jurisdictions the United Kingdom, South Africa, and India with a view to drawing actionable insights for Nigeria. Common threads such as judicial assertiveness, procedural flexibility, and creative interpretation emerged across these systems, reflecting a shared judicial commitment to constitutional values and the protection of vulnerable groups.

The analysis also highlighted divergent approaches to socio-economic rights, the scope of judicial remedies, and the role of courts in governance, all of which are shaped by each country's unique legal history and political evolution. Importantly, these variations reveal that effective enforcement of rights is not merely a legal question, but one that depends on broader institutional frameworks, access to justice, and public engagement.

For Nigeria, the lessons are clear: enforcement gaps must be addressed through substantive legal reform, strengthening of judicial capacity, and the creation of inclusive enforcement mechanisms. These reforms are essential for transforming Nigeria's constitutional guarantees from theoretical promises into tangible protections.

The next chapter will build on these findings by offering practical recommendations aimed at bridging the gap between the normative framework and the lived reality of human rights in Nigeria. It will propose a roadmap for legal, institutional, and cultural reforms necessary for advancing a rights-respecting society.

CHAPTER 5:

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

It must be noted that despite a robust constitutional guarantee of fundamental rights, Nigeria's enforcement regime is hampered by overloaded and under-resourced courts, procedural barriers that shut out indigent litigants, entrenched cultural stigmas discouraging many victims from seeking redress, pervasive impunity within security agencies, and a legal aid framework too weak to foster meaningful public-interest litigation. Each of these factors interlocks to render rights protections largely aspirational. Drawing on comparative lessons, this chapter proposes a suite of interlocking reforms statutory, procedural, institutional, and educational—aimed at transforming formal guarantees into lived realities.

5.1 Summary of Findings

Despite the entrenched constitutional architecture safeguarding fundamental human rights in Nigeria principally articulated under Chapter IV of the 1999 Constitution (as amended) the enforcement landscape remains significantly underdeveloped, owing to a confluence of systemic, institutional, procedural, and socio-cultural obstacles. These interlocking challenges have the cumulative effect of reducing rights protections to largely aspirational ideals, inaccessible to the average citizen.

1. Judicial Capacity Constraints.

One of the most persistent structural barriers is the chronic under-capacity of the judiciary. Courts at both federal and state levels suffer from severe case congestion, arising from staff shortages, poor remuneration, and infrastructural decay. The National Human Rights Commission (NHRC), in its 2022 Annual Report, noted that more than 30% of fundamental rights petitions filed at the Federal High Courts remained unresolved beyond the statutory three-month period, in violation of the provisions of the Fundamental Rights (Enforcement Procedure) Rules.¹⁷² This delay frustrates not only access to justice but also the credibility of the judiciary in enforcing rights.¹⁷³

Compounding the problem is the limited judicial specialization in human rights matters. Most judges, being generalists, lack the focused training necessary to interpret evolving international human rights norms or address complex constitutional issues in a transformative manner. The situation is worsened by a lack of digitized case management systems, leading to frequent adjournments and administrative bottlenecks. As Obilade aptly observed, the Nigerian judiciary is "overwhelmed not by the complexity of rights jurisprudence, but by the weight of systemic inefficiency".¹⁷⁴

2. Procedural Bottlenecks and Access to Justice.

Under the Fundamental Rights (Enforcement Procedure) Rules 2009, strict locus standi requirements and high filing fees preclude many indigent and marginalized litigants from

¹⁷² (FREPR) 2009

¹⁷³ National Human Rights Commission (NHRC), 2022 Annual Report on the State of Human Rights in Nigeria (Abuja, NHRC 2022).

¹⁷⁴ Obilade AO, 'Judicial Reform in Nigeria' (2018) 5(1) NIALS Journal of Legal Studies 31.

initiating actions;¹⁷⁵ .Although the FREPR 2009 was designed to simplify procedural requirements for human rights litigation, in practice, many barriers still persist. These include unclear rules on standing (*locus standi*), lengthy procedural timelines, and prohibitive filing fees, particularly at the state high courts. Despite the expansive interpretation of standing in *Fawehinmi v Akilu*,¹⁷⁶ many lower courts continue to apply outdated and restrictive *locus standi* doctrines, requiring direct personal injury or legal interest. Empirical data from the U.S. Department of State Human Rights Report (2022) reveals that only 12% of claimants initiating fundamental rights applications in Nigeria pursued their cases to final judgment, a figure attributed to a mixture of legal illiteracy, cost of legal representation, and institutional delays.¹⁷⁷

3. Societal and Cultural Barriers.

Deep-seated patriarchal norms and communal loyalties stigmatize those—especially women, persons with disabilities, and minority groups who pursue rights enforcement, resulting in significant under-reporting of violations.

Cultural and communal factors significantly deter individuals—especially women, children, persons with disabilities, and sexual minorities—from seeking redress for rights violations. Patriarchal structures discourage reporting of gender-based violence, with family pressure often overriding legal remedies. In many communities, victims are

¹⁷⁵ Federal Ministry of Justice, “Fundamental Rights (Enforcement Procedure) Rules 2009,” <https://fmj.gov.ng/fundamental-rights-enforcement-procedure-rules-2009> (accessed 15 May 2025).

¹⁷⁶ (1987) 4 NWLR (Pt 67) 797

¹⁷⁷ United States Department of State, 2022 Country Reports on Human Rights Practices: Nigeria (US Department of State 2023) <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/nigeria> accessed 3 July 2025.

expected to "settle" disputes informally through traditional or religious means rather than resort to the courts.

As noted in *Amina Lawal v Attorney-General of Katsina State*, unreported judgment of the Sharia Court of Appeal, 2003, societal backlash and religious stigmatization discouraged the enforcement of her constitutional rights until international and civil society advocacy intervened. This reflects the broader challenge of rights enforcement in contexts where legal and cultural norms are in tension¹⁷⁸

4. **Security Sector Impunity.**

Another major barrier lies in the widespread impunity within Nigeria's law enforcement and security agencies. Arbitrary arrests, prolonged detentions, torture, and extrajudicial killings are routinely reported without meaningful disciplinary consequences. According to Human Rights Watch, fewer than 5% of complaints lodged against members of the Nigerian Police Force or military between 2020 and 2023 resulted in internal investigations or prosecutions.¹⁷⁹

The culture of impunity is further sustained by the absence of effective civilian oversight mechanisms, and a reluctance by courts to award punitive or exemplary damages against security agencies, thereby failing to establish deterrence. The Supreme Court in *Inspector-*

¹⁷⁸ Oko O, 'Seeking Justice in Transitional Societies: An Analysis of Judicial Attitudes in Nigeria' (2010) 8 African Human Rights Law Journal 623.

¹⁷⁹ Human Rights Watch, Nigeria: Patterns of Abuse and Accountability Failures in the Security Sector (HRW 2023) <https://www.hrw.org/nigeria> accessed 3 July 2025.

*General of Police v Aigbiremhon*¹⁸⁰ emphasized the inviolability of fundamental rights but stopped short of imposing systemic accountability measures.

Human Rights Watch documented that fewer than 5 % of complaints against police and military for arbitrary detention, torture, and unlawful killings led to any disciplinary action in 2023, perpetuating a culture of unaccountability.

5. Insufficient Legal Aid and Public-Interest Mechanisms.

The Legal Aid Council of Nigeria covers fewer than 10 % of eligible fundamental-rights litigants, and narrow standing rules block NGOs from bringing public-interest lawsuits on behalf of disadvantaged communities. The Legal Aid Council of Nigeria (LACoN), which should ordinarily play a central role in expanding access to rights enforcement for indigent persons, remains grossly underfunded and understaffed. According to its 2023 report, less than 10% of qualified fundamental rights claimants received assistance from the Council.¹⁸¹

Additionally, current rules on standing and judicial interpretation largely prevent NGOs and civil society organizations from filing public interest litigation on behalf of affected communities, thereby limiting structural reform litigation. This is contrary to emerging jurisprudence in other African jurisdictions such as Kenya and South Africa, where public

¹⁸⁰ (2006) 4 NWLR (Pt 971) 584

¹⁸¹ Legal Aid Council of Nigeria (LACoN), Annual Report 2023 (Abuja, LACoN 2023).

interest standing is broadly interpreted (see *Doctors for Life International v Speaker of the National Assembly*).¹⁸²

6. Weak Invocation of International Norms.

Although Nigeria is party to the African Charter and the ICCPR, domestic courts seldom apply these instruments directly; the U.S. State Department’s 2023 report highlights a persistent gap between treaty obligations and enforceable rights.¹⁸³ Nigeria is a signatory to major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act,¹⁸⁴ which is domesticated and enforceable in Nigerian courts. However, Nigerian judges seldom invoke or interpret these instruments in fundamental rights litigation, even where their provisions are more expansive than domestic law.

The U.S. State Department’s 2023 Human Rights Report on Nigeria noted that “domestic courts continued to apply constitutional provisions rigidly without reference to international obligations that Nigeria has voluntarily undertaken”.¹⁸⁵ This judicial conservatism undermines Nigeria’s obligations under Article 1 of the African Charter, which mandates state parties to give effect to rights and freedoms contained in the Charter.

¹⁸² (2006) ZACC 11.

¹⁸³ U.S. Department of State, “2022 Country Reports on Human Rights Practices: Nigeria,” <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/nigeria/> (accessed 15 May 2025).

¹⁸⁴ Cap A9, LFN 2004

¹⁸⁵ United States Department of State, 2023 Country Reports on Human Rights Practices: Nigeria (US Department of State 2024) <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/nigeria> accessed 3 July 2025.

5.2 Recommendations

To move the protection of fundamental human rights in Nigeria from a largely theoretical ideal to an accessible and enforceable reality, a combination of statutory reforms, institutional strengthening, judicial transformation, and public education is urgently needed. The following recommendations are proposed to address the multi-dimensional barriers identified:

5.2.1 Judicial and Institutional Reforms

The Nigerian judiciary must be revitalized to discharge its constitutional mandate under Section 6(6)(b) of the 1999 Constitution. The following reforms are crucial:

Increased Budgetary Allocation: Funding to the judiciary should be significantly improved to modernize court infrastructure, digitize case management, and recruit more judges and support staff. The National Judicial Council (NJC) must ensure transparency and accountability in the utilization of judicial funds.

Human Rights Divisions in Courts: Dedicated human rights divisions should be established within High Courts and the Federal High Court. This will promote specialization, reduce delays, and ensure a consistent body of jurisprudence in fundamental rights litigation.

Training and Continuing Judicial Education: Judges and magistrates should undergo regular training on international human rights law, the African Charter, and best practices in rights adjudication, to enhance the depth of their interpretive tools.

5.2.2 Procedural Reforms and Access to Justice

To ease access to courts, the procedural hurdles that frustrate rights litigation must be dismantled:

Review of the FREP Rules 2009: The Fundamental Rights (Enforcement Procedure) Rules should be reviewed to clarify issues around locus standi, widen public interest standing, and provide express waivers for filing fees in cases brought by indigent persons or NGOs acting in public interest.

Legal Aid Reform: The Legal Aid Council of Nigeria (LACoN) must be restructured and better funded to cover a wider range of fundamental rights cases. An Independent Human Rights Legal Aid Fund should be established to support pro bono and public interest litigation.

Expansion of Court-Annexed ADR: Alternative Dispute Resolution mechanisms should be integrated into human rights litigation processes where applicable, especially in cases of non-lethal state abuses, to ensure timely redress.

5.2.3 Legislative Interventions

Legislation must be reviewed to better reflect Nigeria's domestic and international human rights obligations:

Enactment of a Human Rights Enforcement Act: This Act should codify existing case law and FREP Rules into a standalone statute, clarify procedural uncertainties, and institutionalize safeguards against delay.

Amendment of Standing Rules: The Civil Procedure Rules in various states should be amended to formally recognize class actions and NGO standing, in line with progressive jurisprudence from South Africa and India.

Enforcement of Section 46(3) of the Constitution: The National Assembly must enact legislation under this provision to give effect to the enforcement of fundamental rights in a uniform and comprehensive manner.

Enact a Domestic Human Rights Act:

- a. **Scope:** Incorporate key treaties (African Charter, ICCPR) directly into domestic law.

- b. Effect: Allow Nigerian courts to enforce Convention rights without first resorting to foreign tribunals, as in the UK model.¹⁸⁶

5.2.4 Cultural Re-orientation and Public Education

To break the cultural and societal barriers that hinder rights enforcement:

Human Rights Education: Civic education on fundamental rights should be incorporated into school curricula at all levels. This will foster early awareness and empower future generations to assert their rights.

Community Sensitization Campaigns: Governmental and non-governmental bodies should conduct widespread sensitization campaigns, especially in rural areas, to counter patriarchal and communal ideologies that stigmatize victims who seek justice.

Engagement with Religious and Traditional Leaders: These leaders must be trained as allies in the human rights movement, to help shift cultural perceptions and reduce community-based resistance to legal redress.

¹⁸⁶ Amnesty International, “Nigeria: Submission to the UN Human Rights Committee,” <https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria/> (accessed 15 May 2025).

5.2.5 Accountability and Oversight of Security Agencies

Impunity among law enforcement agents undermines the rule of law and human dignity.

Therefore:

Strengthening the Police Complaints Response Unit (CRU): The CRU should be made autonomous and empowered to discipline officers without bureaucratic bottlenecks. Their activities must be subject to public reporting and parliamentary oversight.

Human Rights Desks in Police Divisions: Every major police station should have a dedicated human rights desk with trained officers to respond to complaints and educate the public.

Establishment of an Independent Torture Investigation Body: In compliance with the Anti-Torture Act 2017, an autonomous investigatory body should be set up to handle allegations of torture and unlawful killings, with powers to prosecute directly.

5.2.6 Judicial Application of International Human Rights Norms

Courts must embrace Nigeria's obligations under treaties such as the ICCPR, CEDAW, and the African Charter, which is domesticated under Nigerian law via Cap A9 LFN 2004:

Judicial Activism: Judges should be encouraged to apply and enforce the African Charter and other ratified instruments in human rights cases. This will ensure that Nigeria's international commitments translate into real domestic protections.

Mandatory Citation of International Norms in Rights Cases: Court rules or judicial practice directions should encourage or require the use of international instruments in the interpretation of constitutional rights provisions.

5.2.7 Strengthening the Role of the National Human Rights Commission

The NHRC must be repositioned to play a proactive role in rights enforcement:

Quasi-Judicial Powers: The Commission's powers should be expanded to include the ability to award compensation or compel compliance with its decisions.

Funding Independence: Like the Independent National Electoral Commission (INEC), the NHRC should enjoy financial autonomy to ensure neutrality and operational efficiency.

5.3 Conclusion

This work has synthesized the core barriers obstructing the enforcement of fundamental human rights in Nigeria Overburdened courts, procedural exclusion, societal taboos, security-force impunity, and anemic legal-aid frameworks and translated these findings into a coherent set of

reforms. By enacting a domestic Human Rights Act, overhauling procedural rules, bolstering judicial capacity, institutionalizing legal aid, and fostering a rights-aware culture, Nigeria can bridge the gap between constitutional promises and everyday realities. These recommendations, informed by comparative best practices from the United Kingdom, South Africa, and India, chart a feasible path toward making fundamental rights truly meaningful for all Nigerians.

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