THE ROLE OF NON-GOVERNMENTAL ORGANIZATION IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN NIGERIA

BY

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DECLARATION

I, **MURITALA, Oladimeji Abdul-Rasheed**hereby declare that the work in this dissertation entitled: **"The Role of Non-Governmental Organization in the Promotion and Protection of Human Rights in Nigeria"** has been carried out by me. The information derived from other literatures have been duly acknowledged. No part of this dissertationhas been previously presented for another Degree, or Diploma at this or any other institution.

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MURITALA, Oladimeji Abdul-Rasheed **Date**

CERTIFICATION

This dissertationentitled: **"The Role of Non-Governmental Organization in the Promotion and Protection of Human Rights in Nigeria"** by MURITALA, Oladimeji Abdul-Rasheed meets the regulations governing the award of the Degree of Master of Laws (LL.M) of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to my deceased father, Abdul-Rasheed Awe Aduroshakin (1927-1990). May Almighty Allah grant him Aljanah Firdausi. (Ameena)

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ABSTRACT

This Dissertation aimed at examining the legal framework for the promotion and protection of Human Rights in Nigeria in relation to the existing constitutive international instruments on human rights. In this regard, the sources of information relied upon here are relevant text materials, articles in journal publication, judicial authorities, conference papers, newspapers, magazines and internet materials. However, the justification for this research is that "human rights" in Nigeria has become not only a topical issue but the language of both the oppressors and the oppressed, yet little is known of its meaning and ramification. For example the right to fair hearing is not exclusive to either the accused or the prosecution. Does fair hearing means opportunity to be heard or the inalienable right to be heard? Further the denial of economic rights of human being which is presently being experienced in Nigeria is tantamount to denial of right to life because it is this means of livelihood that keeps a man alive. This unfortunate event is quite worrisome and constituted the statement of problem of this research because consequently there is moral decadence, corruption, lack of patriotisms and insecurity in Nigeria. On this note, the finding of this research (among others) was that there existed a weak institutional infrastructure for the promotion and protection of human rights in Nigeria. For example there is no specific law regulating the activities of non-government human rights organizations. Although it must be mentioned here that a bill to that effect is pending before the National Assembly. Finally, it was recommended that various governmental bodies in Nigeria must be strengthened and made effective by specific regulatory Act especially the National Human Rights Commission.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

This work examines the role of Non-Governmental Organisation in the promotion and protection of Human Rights in Nigeria. The importance attached to the concept of human rights has assumed phenomenal dimension since the Second World War when it became clear that universal respect for human rights is*Condicio sine qua non* for world peace and process. At the local level, the malevolent dictatorship of military juntas sensitized Nigerians to their human rights and the need to defend them. This era of military dictatorship also witnessed an upsurge in the emergence of non-governmental human rights organization across the country particularly in the South.

The expression "human rights" in its widest connotation embraces those civil, political, economic, social, cultural, group, solidarity, and developmental rights which are considered indispensable to a meaningful human existence. "Right", here is used in composite sense and not in the strict legal sense. Legal human rights are those human rights that are guaranteed by positive law (lexlata). Thus, Osita Eze defines human rights as representing demands or claims which individuals or groups make on society some of which are protected by law and have become part of *ex lata* while others remain aspirations to be attained in future.[1]

Human rights are inherent rights to be enjoyed by all human beings of the global village and not gifts to be withdrawn, withheld or granted at some one's whim or will. In this sense, they

[1] Osita Eze (1984): *Human Rights in Africa: some selected problems (Nigerian Institute of International Affairs)*, Lagos, in Cooperation with Macmillan Nigeria Publishers Ltd. p.38.

are said to be inalienable, imprescriptible. If they are removed from any human being, he will become less than human. They are part of the very nature of human being, and attach to all human being everywhere in all societies, but as much as do his arms and legal, Constitutions and other codes do not create human rights but declare and preserve existing rights, perhaps, this is why statutory provisions for the first generation human rights are couched in negative terms, for example, to say that no person shall be deprived of his personal liberty pre-supposes that personal liberty is an existing right.

However, the justification for this research is that "human rights" has become not only a topical issue in Nigeria but the language of both the oppressors and the oppressed. Yet little is known of its meaning and ramifications because practically human rights is not fully observed in Nigeria. This is evident in the fact of recent Nigeria has witnessed serious breaches of Human Rights such as the kidnapping, abductions, unjust killing and terrorist attacks. On this note the objective of this research is to identify reasons for the occurrence of these events in relation to the adequacy or otherwise of the provisions of the existing laws in Nigeria.

1.2 Statement of the Problem

Principal statement of problem in this research is that in Nigeria there is gross and massive violation of people's right have led to total lost of confidence in the government by her citizenry. For example the senses of insecurity have led to individuals devising private means of protection.[2] The consequence is total disrespect for the government.

Another related problem is the denial of economic right of human beings is tantamount to denial of right to life because it is the means of livelihood that keep a man alive, deprived a man

[2] Instances of insecurity in Nigeria are numerous, and this include: extrajudicial killings, abduction, kidnapping.

of his right of livelihood and you shall have deprived him of his life. The consequence is moral decadence corruption, lack of patriotism and insecurity.[3]

In Nigeria, if there is anything lacking to the implementation, protection and enforcement of international human rights laws within the local level, this research will bring it out and at the end make suggestion and recommendations in its conclusion.

1.3 Scope and Limitation of the Research

The scope of this research is confined to the following:

i. An examination of the various constitutive international, regional and domestic legal frameworks on Human Rights.
ii. To examine whether the non-governmental human rights organizations are actually serving the interest of the down trodden in society.
iii. An examination of the adequacy of the various institutional mechanism put in place for the enforcement of Human Rights in Nigeria.
iv. To examine the factors militating against the smooth operations of the institutional mechanism put in place in Nigeria (if any).
v. To proffer solution to the factors identified in iv above.

1.4 Aim and Objectives of the Research

This research aims at examining the legal framework for the promotion and protection of Human Rights in Nigeria in relation to the existing constitutive international, regional and domestic instruments on human rights.

[3] Instance of denial of economic rights are numerous and they including lack of housing, unemployment environment degradation, incessant, fuel scarcity and inadequate medical services.

In this regard, the objectives of the research are as follows:

i. To identify the adequacy or otherwise of the existing legal framework and institutional mechanism relating to human rights in Nigeria.

ii. To identify the challenges arising from the implementation of the law and the limitations of the institutional mechanism put in place for the promotion and protection of human rights in Nigeria

iii. To proffer practical measures to the challenges and limitations identified in the promotion and protection of human rights in Nigeria in order to ensure an efficient observance in Nigeria.

1.5 Research Methodology

Analysis of reality of which the research deserves ultimately depends on the methodological preference of the research. Appropriately, here, this research work is based on doctrinal method.In this regard, the sources of data include primary sources and secondary sources. Primary sources include, Constitution of the Federal Republic of Nigeria, judicial authorities while secondary sources includes journals, textbooks, magazines, conference materials and newspapers

1.6 Literature Review

Of course, a topical and controversial topic of this nature cannot be successfully undertaken without recourse to authorities who have distinguished themselves in this area of research. At the heart of this methodology is established works, and many of such works have been consulted for this research work.

For instant, the following are some authors who have written on the Human Rights Treaties. Some actually wrote on the implementation of International Human Rights while others did not look into the implementation or enforcement of Human Rights Treaties. But their contributions on Human Rights will greatly enhance the content and value of this work.

Ladan, M. T., in his book[4] highlights the understanding of the concept of human rights generally which the writer finds useful in definition of terminologies, such as: the difference between Ladan's work and this research is that the former was focused on international instrument on Human Rights while the latter is on the practical implementation of Human Rights in Nigeria.

Tabiu, M.[5] in his Article discussed several practical measures needed for protection of Human Right in Nigeria which the writer also finds to be important to this Dissertation as far as implementation is concerned.

The books of Falana, F.,[6] and D. J. Harris[7] have been found useful in the filed of International Human Rights Instrument.

The book of Dakas, D. C. J.,[8] is specifically relevant in the area of the rights, duties and implementation of the African Charter. Whereas this research is based on implementation in Nigeria.

Shaw, M. N.,[9] extensively discussed the first International Human Rights Instrument that is, the Universal Declaration of Human Rights, 1948.

[4] Introduction to International Human Rights and Humanitarian Laws, ABU, Press, Zaria (1999)
[5] Ladan, M. T. (ed) Strengthening the National Human Rights and the Commission (NHRC) in Human Rights and the Administration of Justice in Nigeria.
[6] Fundamental Rights Enforcement, Legal Text Printing, Lagos (1991)
[7] Cases and Materials, on International Law, Sweet and Maxwell, London, (1998)
[8] Implementation of African Charter, on Human and Peoples' Rights in Nigeria, Vol. 3, *U.J.U*, (1986-1990)

On the whole this research focus on the practical implementation of human rights in Nigeria and the factors militating against such implementation in relation to the existing legal frameworks and institutional mechanism which have not been discussed extensively by any of the authors mentioned above.

1.7 Justification of the Research

This research is absolutely imperative due to the problem of gross and massive violation of rights of peoples as enumerated under the 1999 Constitution and other international human rights treaties ratified by the Federal Government of Nigeria.

All Nigerian citizen have a right to have their legal and constitutional rights recognized and transformed in to actual judicial remedies without which these rights remain theoretical and of no value. In this regard, the justification of this research is to the effect of creating the awareness that rights guaranteed under 1999 Constitution are to be made workable and effective. This research will further expose the hidden aspects of these rights which makes it eludes an ordinary Nigerian.

The research work is also intended to benefits students studying law in various institutions, and also the general public who suffers human rights abuses, legal practitioners in the advocacy of human right, the Nigeria Police Force who are relevant stakeholders of human rights, the courts in their adjudicatory process, law enforcement agent and other relevant stakeholders(be it government or non-government al agent) will find this work handy and easily understandable material as well as to enlighten the public on how to channel their complaint whenever their rights are being violated.

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[9] International Law (2nd Ed) Grotius Publication Ltd. UK (1986)

1.8 Organizational Layout

This research comprises seven chapters and it begins with a title captioned “Abstract”.

Chapter one, deals with the general introduction, the objectives of the research, the scope of the research, research methodology and the organisational layout.

Chapter two discusses nature and scope of international human rights treaties. The definitions of human rights treaty will be attempted. Universality and cultural relation will be considered and the relevant subtopics under this heading will also be duly discussed.

Chapter three analyses the implementation of selected international treaties. Under which the Implementation of African Charter on Human and People’s Right will be examined.

Chapter four deals with the justiciable rights in Nigeria as it enherich in Chapter IV of the 1999 Constitution of Federal Republic of Nigeria as Amended 2011, the enforcement mechanism under the Nigerian Constitution

Chapter five will be discussing the regulation of the activities of the human rights groups. The source of funding of human rights group. How the source is affecting, has affected or will affect their approach and activities. Their supposed activities under a democratic government.

Chapter six deals with the establishment and the role of the Human Rights Commissions. How the commission has fared so far. The problem of the commission. And some of the patent defects noticeable in the activities of the non-governmental organisations that are promoting and protecting human rights in Nigeria.

Finally, Chapter seven deals with the recommendations and conclusions. This chapter will make some recommendations which will reasonably be expected to be useful to the policies

and decision of the government regarding human rights implementation within the domestic sphere (Nigeria). To each chapter, there is an introduction before the main topic.

CHAPTER TWO

PHILOSOPHICAL FOUNDATION OF HUMAN RIGHTS

2.1 Introduction

This chapter seeks to examine the philosophical foundation of Human Rights as a jurisprudential basis of the evolution of Human Rights in global research. This chapter also examines the historical development of human rights, the evolution of human rights in Nigeria, the contending perspective on human rights and the institutionalization of human rights at the international, regional and domestic levels.

2.2 Philosophical Foundation of Human Rights

The philosophical aspects of human rights is of a universal concern that cuts across nations in terms of ideology, politics and other barriers and it is of utmost preliminary importance in this discourse. However, it is pertinent to talk about its philosophy which according to Descartes, is nothing else but the study of wisdom and truth or in Latin "Love of Wisdom".[1]

According to Hobbes, philosophy is a method of reasoning and calculating by the use of words as to the causes of Philomena or an attempt to understand the universe as a whole.[2]Kant who related the sensory to a priori elements in knowledge, defines philosophy as the science of the relation of all knowledge to the essential ends of human reasons, that is, an attempt to examine man's social obligations and moral responsibilities in order to fathom divine intentions, and man's place with reference to them…[3]

[1] Descaretes, F. E. (1979) Human Rights, Problems, Perspectives and Texts, Westmead, UK, Saxon House, Pp. 8-9
[2] Hobbes (1588-1679) theory of Philosophy
[3] Kant (1777-1804) Pragmatic Approach to Philosophy

Thus philosophy is viewed by scholars from various perspectives, that is, in terms of discipline, interest and concern. Therefore philosophy can also be seen as logic ethics, theory of knowledge (epistemology), the theory of the nature of being (metaphysics) or existence. So one can speak of philosophy of mind, philosophy of law and justice, philosophy of Art, Philosophy of human rights et al.[4]

The early Greek Philosophers such as Francis Bacon, Alfred North to mention a few, viewed Human Rights from the perspective of physical science; St. Augustine, St. Aquinas and the Irish Catholic Bishop-George Berkeley from theology; Pythagoras, Descartes, Euclid and Bertrand Russell from mathematics and astrology. Plato, Thomas Hobbes, John Stuart Mill, Marx to say a few from politics, political economy or sociology. In the field of law and justice we have Plato, Socrates, Justin Ian also mention a few.[5]

Succinctly put, therefore, the philosophy of human rights revolve around a central idea, that peace cannot be established in a durable fashion so long as oppression, injustice economic distress prevail in the world. Thus, the individual and his rights take a vantage position in the scheme of things.[6]

This has found place in most of the charters dealing with human rights, be them international, regional, national or in the objectives of the non-governmental organizations (NGOs). It aims at preventing violations of individuals rights and give protection to such rights. Therefore a new concept and philosophy emerged within the international conscience that the

[4] Awotundun M. O. (1990) Philosophy and the Law, Unity Press Ltd., Lagos, p. 12
[5] Ibid p. 13
[6] Gaskiowu, M. O. U. (2003) Human Rights History Ideology and Law, Afab Publication, Jos, p. 5

inalienable rights of the individual are derived not from his status as a citizen of a state, but from his membership of the human family.[7]

What then is Right? The term Rights has a number of meanings. In ordinary usage 'right' is to have a claim to something and against someone, the recognition of which is for legal rules, or in the case of moral rights, by principles of enlightened conscience.[8] An academic writer defines rights as power of free action. That means the power with a capacity residing in one man or a group of men of controlling with the assent and the assistance of the state, the action of others.[9] Grotious defined it to mean "the moral quality which made it just and right hat a man has certain things or do certain things which the law so directs, approves or supports.[10] Human has been defined as pertaining to, characteristic of or having the nature of mankind.[11]

Having defined what 'right' and 'human' are, we are to examine the collective term. Human rights are therefore rights which all persons anywhere and at all times equally have by virtue of being moral and rational creatures. They are inherent in any human being simply because of his humanity – the birth –right of all mankind. The expression "human right" in its widest connotation embraces those civil, political economic, social, cultural, group solidarity, and developmental right which are considered indispensable to a meaningful human existence. 'Right' here is used in a composite sense and not in the strict Hofeldian sense and includes both

[7] Ibid
[8] Ajomo M. A (1985) Human Rights and Politics in Nigeria in New Dimensions in Nigerian Law, A Publication of the Nigerian Human Rights Commission Lagos, pp. 18-30, p. 18
[9] Nnamdi J. A. (1999) Human Rights and Social Justice in Nigeria: Issues and Dilemma and Options, in Osinbajo Y. (ed) Nigerian Government and Human Rights, A Publication of Ministry of Justice, Lagos State
[10] Grotious
[11] Nnamdi J. A. Op. cit

moral and legal rights. Human rights are those rights that are guaranteed by positive law (*lex lata),* while moral rights are claims which ought to be in the positive law (*lex feranda).*[12]

Therefore, from the above authorities, human rights could simply be taken to embody all the Natural and inalienable rights of a person, which for any reason whatsoever a person cannot be deprived (e.g. Right to life, liberty, property etceteras) as held in the case of ***Onwo v. Oko***[13]**.**These rights are fundamental by virtue of the fact that they are entrenched and guaranteed in the constitution of a given country (e.g. Nigeria). And according to Perrott, this fundamental rights "are such rights when they are expressed in, or guaranteed by laws which are basic or pre-eminent laws of the legal system in questions, for example rights which are specified in a written constitution, or in a judgment of a superior court interpreting the constitution, or in an enactment of a legislature designed to render the constitution clearer in certain area.[14]

From the various definitions of rights examined above, the central theme deducible is to the effect that human rights are not privileges in the sense that they could be withdrawn at the whims and caprices of the government of the day. They are rights which the executive, the legislature and the judiciary are all enjoined to protect. Any violation by the government is liable to be called to order. Also as all embracing the definitions of 'right' or 'human rights' seem to be, they are however not sacrosanct, rather it is an attempt to comprehend the issue under discourse. It is in this spirit that Hon. Justice Kayode (JSC-as he then was) said in the case of ***Ransome Kuti vs. AG Federation***[15] that "human rights is a right which stands above ordinary laws of the land and which infact is antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution since independence

[12] Sokefun J., (2001) Theory of Human Rights, Silop Press, Ibadan p. 7
[13] (1996) 6 NWLR pt. 456 at p. 574
[14] Perrot F. O. (1975) Legal Nature of Rights, Macmillan, London p. 29
[15] (1985) 2 NWLR pt. 6, p. 211 SC

is to have these right enshrined in the constitution so that the rights could be immutable to the extent of the immutability of the constitution itself."

At this junction, it is pertinent to consider the origin and historical evolution of human rights.

2.3 Historical Development of Human Rights

The concept of human rights has its philosophical ancestry in the natural law school.[16] That is why the expression 'human rights' had been used synonymously with natural law and natural rights. Thus Professor Maurice Cranston defines human rights as a "twentieth century name for what has been traditionally known as natural rights or in a more exhilarating phrase rights of man".[17]

F.E. Dowrick had gone further to assert that natural rights are the more appropriate words for natural law. In his words, "the postulates of natural law are general normative propositions offered by various philosophers as precepts for legislators and governments. These precepts are not as such actual laws in any state or international law; they are precepts for law. So to call them natural rights more aptly expresses the ethical rather than the legal nature of the doctrine".[18]

Natural law is predicated on the assertion that there are objective moral principles which depend upon the nature of the universe and which can be discovered by reason.[19] In other words, the theory of natural law is based on the reasoning that the rule of human conduct is a deduction

[16] Dias R. V. (1976) Jurisprudence, Butterworths London, p. 18
[17] Cranston M. (1987) Human Rights: Real and Supposed in Raphael (ed) Political Theory and the Rights of Man; Bloomington Publication p. 88
[18] Dowrick F. E. (1989) Natural Law and Natural Rights, Claredon Press, London, p. 220
[19] Dias R V. Op. cit

from the nature of man as it reveals itself in reason and independent of any man made enactment.[20]

As patron pointed out, the fundamental thinking in the natural law school is that law is an essential foundation for the life of man in society, based on the needs of man as reasonable being and not on the arbitrary whim of the ruler. The dominating task of natural law is to attune man-made law to the demand of universal conception of moral standard (justice). The natural law school detected that there is some connection between law and the values of freedom and equality, at least in the sense that a wholly oppressive and arbitrary rule over human beings is incompatible with human nature as conceived by the creator.[21]

The theory of natural law draws its inspiration from nature. It proceeds from the premise that there is a law of nature according to which tenets and principles all things, including man himself, ought to behave. As human nature is identical in all men and does not vary, its precepts have universal and immutable validity, notwithstanding the diversity of individual conditions, historical and geographical environments, civilizations and cultures. The content of natural law has however, never been constant.[22]

The ancient Greek thinkers conceive natural law as a body of imperative rules imposed upon mankind by nature. The classical example drawn from Greek literature is that of Antigone, who upon being reproached by Greon (the king) for defying his command not to bury her slain brother asserted that she acted in accordance with the immutable laws of gods. In any case,

[20] Ibid
[21] Patron D. L. (1973) The Logic of Fundamental Rights in Fundamental Rights, A Volume of Essays, London, p. 70
[22] Dias R. V. Op. cit, p. 20

Greco-Roman and medieval natural law thought of duties of man and not rights and tolerated slavery and serfdom.[23]

The most systematic position of the concept of natural law was made by the Stoics after the breakdown of the city states.It was the teaching of the Stoics that by the law of nature all men are equal and there could not be found any rational basis for making a distinction between men. The most important thing which unite all men and make them all equal is reason. Since all men possess reason given to them by the creator, the difference between men therefore is the result of chance or opportunity. Because all men share the capacity to reason which is given to them by one common creator, all men are brothers and therefore are equal.[24]

In the hands of the seventeenth and eighteen century philosophers, the natural law tradition and its concomitant natural rights theories translated themselves into political liberalism whose center-piece is the theory of individualism. It was the seventeenth and eighteen century philosophers who elaborated upon the modern conception of natural law as meaning natural rights.[25] Perhaps, the most prominent of these philosopher are Thomas Hobbes, Jean Jacques Rousseau, Baron de Montesquieu and John Locke. Modern conceptions of human right drew inspiration directly or indirectly from the writings of these philosophers. They postulate that the movement of man from the state of nature into society was based on social contract. In their social contract, human nature is posited a priori, pre-existing any form of political organization. Various qualities and characteristics including 'rights' then pertain to this human and constitute

[23] Robert N. (1974) Anarchy State, and Utopia, Blackwell Oxford p. 171
[24] See Pollack H & Smith B. A (1978) Civil Liberties and Civil Rights Macmillan, London, p. 100
[25] Dias R. V. Op. cit, p. 20

his essential nature. In this sense these right are said to be inalienable, imprescriptible orinherent. Jean Jacques Rousseau lamented that man was born free but he is everywhere held in chains.[26]

However, the use of social contract to construct a natural rights doctrine was articulated most fully in the writings of John Locke. Locke wrote that certain rights self-evidentlypertain to individual in the state of nature. That man entered into the social contract by which he surrendered to the sovereign not his rights, but only the power to preserve order and enforce the law of nature. The individual retained the natural rights to life, liberty and property for these were the natural and inalienable rights; it has no other end than to preserve the members of that society in their lives, liberties and possession.[27] So long as government fulfils this purpose, its laws should be binding. When it ceases to protect or begins to encroach or relegate these rights, it is liable to be overthrown. In this way Locke Championed the English Puritan revolution of 1688-1689. This revolution resulted in the English Bill of Rights of 1689. The revolution and the resulting bill of rights provided a rationale for the wave of revolutionary agitation that swept America and France. Both countries borrowed largely from English experience and thought, especially as embodied in the writings of Locke, and in the case of America, coke's commentary on Magna Carta and Blackstone's commentaries. America Colonies united against the Crown and seceded from the British Empire.[28]

They successfully established a Republic which was founded on the view that authority of the government derived from the people, not the king. Thomas Jefferson, who had studied Locke and Montesquieu and who asserted that his countrymen were a "free people claiming their rights as derived from the laws of nature and not as the gift of their government" gave poetic

[26]Ibid
[27]Locke J. (1676) Second Treaties of Civil Government
[28]See Alexander Y. M. (1940) Civil Liberties and Civil Rights in United States, St. Paul, Minnesota p. 77

eloquence to the theory of social contract in the Declaration of independence proclaimed by the thirteen American Colonies on July 4, 1776:

> We hold these truths to be self-evident that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these rights governments are instituted among men deriving their just powers from the consent of the governed; that whenever any form of government became destructive of these ends, it is rights of the people to alter or to abolish it and to institute new government".[29]

In spite of this pious declaration, the Constitution of America as adopted in 1789 did not contain fundamental rights provisions. The bill or rights was incorporated into the constitution in 1791 in the form of the first ten amendments.

The French people followed suit in 1789 when the representatives of the people assembled in the National Assembly, dispensed with the kind, took control of the state and assumed sovereignty. They considered that ignorance, neglect or contempt of human rights, are the causes of public misfortunes and corruption in Government, and resolved to set fort in a solemn declaration of natural imprescriptible and inalienable rights then declare as follows.

i. Men are born, and always continue free and equal in respect of their rights. Civil distinctions therefore, can be found only on public utility.
ii. The end of all political associations is the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security and resistance of oppression.[30]

In Great Britain where the system of a written constitution superior to the ordinary law of the land is unknown, the same result was achieved by the great constitutional enactments such as

[29] See American Declaration of Independence Documents, 1776
[30] See French Declaration of Independence Documents 1978

the Magna Carta in 1215, the Petition of Right in 1628, and the Bills of Rights and Acts of Settlement in 1689. The Magna Carta declares that:

> No free man may be taken or imprisoned or disseised of his freehold or liberties or free customs or be outlawed or exiled or in any way molested nor judge or condemned except by lawful judgment or in accordance with the law of the land;[31]
>
> Nor may justice be sold or denied or delay to any subject. And the Crown or its Ministers may not imprison or coerce the subject in any arbitrary manner;[32]
>
> In future anyone might leave the kingdom and return at will save in war time with the exception of prisoners, outlaws and alien enemies.[33]

The rights are, however, not granted to all. They were concessions which King John made to his barons-that is, the lords, the knights and other land owners. The Magna Carta however did begin the process of granting certain rights by the king to his subject.

The Petition of Right was passed by both Houses in 1628. King Charles I, first prevaricated but finally assented. The petition is memorable as the first restriction of the powers of the Crown since accession of the Tudors. The Bills of Rights (U.K) is a statute passed. Convention, Parliament of England in December 1689 as part of the Revolution Settlement for declaring the rights and liberties of the subject and settling the succession to the Crown.[34]

Since the Virginal Declaration of Rights 1776, the American Declaration of Independence and Bills of Rights in the form of the first ten Amendments to the Constitution, and the Declaration of the Rights of man and the citizen adopted in 1789 by the French National Assembly, the express recognition and the special protection of fundamental rights of man in the

[31] See Article 39 Magna Carta Declaration 1215
[32] Ibid Article 40
[33] Ibid Article 42
[34] Dicey A. Y. (1855) The Law of the Constitution

constitutions of various states have become a general principle of the constitutional law. Significant difference is that the constitutions of communist states include long list of economic and social rights provisions which appears to be manifestoes rather than legally enforceable rights.

Natural law suffered a decline by the end of the 18th century on account of its imprecise and revolutionary content. Historical and evolutionary theories of law contested the universality and immutability of natural law precepts and sought to explain law causally and by reference to certain evolutionary forces.

The most severe criticism of the natural law theory came from the philosophers, Marx and Engel; to them there is a continuous struggle between the rich (which were known as bourgeois) and the poor (known as the proletarians), at the end with the poor emerging free from oppression through a revolution. To these philosophers the state and government exists only to protect the interest of the rich and oppress the poor. With the proletarians emerging as holding the rains of government, that would ceaseto exist.[35]

2.4 Evolution of Human Rights in Nigeria

According to retired Supreme Court of Nigeria, Justice Chukwudifu Akunne Oputa, we in the common law countries have a common political and legal inheritance. We are co-heirs to the Magna Carta of 1215, and the Bill of Rights 1689. One of Britain's legacies to the Commonwealth is the libertarian tradition of the common law and its system of justice.[36] During the colonial era, there were legislative encroachments upon private rights but this did not go

[35] See Osita Eze (1984) Human Rights in African: Some Selected Problems, NIIA Lagos, p. 27

[36] Oputa C.A. (1985) The Practice and Application of Common Law in Nigeria in Issues in Nigeria Legal System a Publication of the Nigerian Bar Association, Lagos Pp. 81-92 p. 81

beyond what was necessary to administer a colonial territory. For instance, the law of sedition had to be made a little harsher to guard against the possibility of an articulate section of the population exploiting the general resentment against colonialism to incite the populace to rebellion. Apart from such cases, civil liberties were up to the time of internal self-government enjoyed in the colonial territories.[37]

When independence was at sight, a question that agitated the minds of people was how to preserve the libertarian heritage in the face of ethnic rivalry and ambition to dominate which was a predominant feature of Nigerian politics. The 1951 Macpherson Constitution of Nigeria which introduced representative government in Nigeria provided for one central and three regional governments. And there were three major political parties corresponding to the three regions. The Northern People's Congress (NPC) was the dominant party in the North and its main objectives was to protect the interest of the Northerners. Its main supporters are the Hausas, Fulani's and Kanuri's.

In the West, the Action Group (A.G) held sway and its main supporters were the Yorubas who are by far the largest tribe in the region. The National Council of Nigeria and Cameroun (NCNC) which was conceived as a broad-based national party later degenerated to a party for the Ibos, the dominant tribe in the Eastern region.[38]

There was unhealthy rivalry among these parties. In 1953 there was crisis at the centre arising from the motion for self-government in 1956 sponsored by the A.G and supported by NCNC but vehemently opposed by the NPC who were booed and jeered at. There was a counter action by supporters of the NPC against the A.G. members when they attempted to campaign in

[37] Oputa C. A. Op. cit

[38] See Onyemana O. K (1989) Human Rights Politics and Political Parties in Nigeria Historical Perspective, Majorlink Publications, Onitsha p. 29

the North. There was also a crisis in the Eastern Region.[39] As a result of these and other developments, the Colonial Secretary invited the political leaders to London for a review of the Constitution. The A.G. aligned with the NCNC and proposed an amendment to the Constitution which will incorporate a declaration of certain basic human rights. The aim being that such measure would allow them to campaign freely in the North. But this proposal was turned down at the London Conference in 1953 by the Colonial Secretary.

The conference culminated in the 1954 Litheton Constitution which made the Regions autonomous. Certain minority groups within the Regions, apprehensive of being dominated by the major ethnic groups, started agitating for their own states. Another conference was convened in 1957, at the 1957 Constitutional Conference, the A.G. led a number of minority groups who demanded their recognition as separate states. The party also raised the issue of the incorporation of a bill of rights in the Constitution. Both measures were calculated to weaken the predominance of the NPC in the North and to allow other parties campaign in the North. The Colonial Secretary constituted a Commission headed by Sir Henry Willink to look into the fears of the minorities and the means of allaying them. The commission not convinced of the constitutional guarantee of rights, nevertheless recommended a long list of human rights for inclusion in subsequent Nigerian Constitutions.[40]

In the opinion of the Commission, the sobering fact is that any government determined to abandon the democratic course could always find ways of violating such rights, but still, their inclusion in the constitution, it is hoped, would be of great value preventing a steady deterioration in standards of rights. The commission's recommendations on human rights

[39] Ibid
[40] Onyemana O. K. Op. cit, p. 32

wereaccepted at the 1958 constitutional conference. The accepted recommendations consequently formed chapter III of both the independence constitution of 1960 and the Republican Constitution of 1963.[41]

The 1979 Constitution made an advance. Chapter II of that Constitution contains the Fundamental Objectives and Directives Principles of State Policy. So also the 1999 Constitution. Though it is indisputable that Nationalists agitation and fear of minorities in the conglomerate state gave rise to the inclusion of fundamental rights in our constitution, it is not an exaggeration to say that as long as chapter II (which deals with economic and social rights) remain pious declaration which the state is merely enjoined to implement without being made justiceable, the full enjoyment of right of a man remain elusive. A state which owes no compulsory obligation to give a child education or to provide basic health facilities or provide social securities for the unemployed youth or make housing all-embracing cannot be said that its citizens are enjoying full fundamental rights.

2.5 Contending Perspectives on Human Rights

There are divergent views on the existence, inherent universality or relativity of human rights. Some schools of thought deny the existence or inherence of human rights while others contend that their precepts are not universal but relative. Other schools of thought hold yet quite different positions.

The positivists continue the existence of human rights as consisting uncertain positive institutional conditions. In this sense human rights exist, or a person has human rights when and in so far as there is social recognition and legal enforcement. In essence human rights are not

[41] Onyemena O. K. Op. cit, p. 33

inherent, imprescriptible or inalienable. The adherents of this school are pre-occupied with what law is as opposed to what law ought to be. To them, the individual enjoys such rights as the state permits. Their concern with law is morally, politically and evaluatively neutral. John Austin, a leading positivist, defined law as the command of the sovereign backed by sanction. To him, therefore, anything outside this definition is no law.[42] Similarly, another positivist, Jeremy Bentham, made uncomplimentary comments about the concept of natural rights. He said of the French Declaration of the Rights of Man and Citizens.

"Look to the letter, you find nonsense – Look beyond the letter, you find nothing…there are no such things as natural rights – no such things as natural right opposed to and in contradistinction to legal…Natural rights is simple nonsense –nonsense upon stilts. But this rhetoric nonsense ends in the old strain of mischievous nonsense; for immediately a list of these pretended natural rights is given, and these are so expressed to present to view legal rights."[43]

To Betham, 'right' is a child of law. From real law comes real rights; but from imaginary laws, from the law of nature comes imaginary rights.

The contrary position of the natural law school was beautifully articulated by Justice Tanaka in his dissenting opinion in the SouthWest African cases (Second phase). He said:

> A state or states are not capable of creating human rights by law or by convention; they can only confirm their existence and give them protection. The role of the state is no more than declaratory…Human rights have always existed independently of, and before, the State. Alien and even stateless persons must not be deprived of them…if a law exists independently of the will of the state and, accordingly, cannot be abolished or modified even by its constitution, because it is deeply rooted in the conscience of mankind and of any reasonable man, it may be called natural law,

[42] Dias R. V. Jurisprudence, Op. cit, p. 28
[43] Ibid

> in contrast to 'positive law'. Provisions of the constitution of some countries characterize fundamental human rights and freedom as 'inalienable' 'sacred' 'eternal' 'inviolate' etc. therefore, the guarantee of fundamental human rights and freedom posses a super-constitutional significance.[44]

A somewhat similar view was expressed by Justice Kayode Eso in ***Ransome Kuti vs. A.G. Federation***[45] when he said:

> "It is a right, which stands above the ordinary laws of the land and is antecedent to the political society itself. It is a primary condition for civilized existence."

William Blackstone also maintained that human rights are inherent. He said that "natural liberty consist property in a power of acting as one things fit, without any restraint or control, unless by the law of nature; being a right inherent in us by birth, and one of the gift of God to man at his creation, when He endowed him with faculty of free will."[46]

One of the greatest defects of legal positivism is that it is compatible with naked despotism and tyranny. Only a doctrine such as natural law could provide an authoritative basis for upholding the intrinsic dignity of the individual against the ruthless dictatorship. Attempt has been made to harmonize the conflicting positions of positivists and naturalists. According to David Feldman, the relationship between natural rights and positive rights is that they form the basis of human and civil liberties law. Both natural and positive theories of rights have strengths, but neither can operate effectively on its own. If rights can be identified only be reference to moral values, a natural law element is necessary background to provide substance for the scheme of human rights.[47] On the other hand, identifying specially important moral morality which produce the rights or can be coerced into respecting them. A system of politics is needed to give

[44] (1961) ICJ
[45] Supra
[46] Blackstone W. (1887) Commentaries on the Laws of England
[47] Cambell J. (1983) The Lefts and Rights: A Conceptual Analysis of Idea of Natural Rights. Routledge and Kegan Paul, London, pp. 175-178

socio recognition and authority to the skill of rights and translate them into positive law. Legal positivism, aiming to be neutral between different set of non legal values, serves merely to show how such values may be converted into legal rules; but the paraphernalia of positive law and legal institutions are important aids to securing respect for rights. Thus while natural law identifies the rights worthy of recognitions, and enforcement are accomplished through positive law.[48] It seems, then, that certain natural law and positivist approaches to rights are complementary rather than in conflict. Indeed, those aspects of positive law which consist of statement of proper or desired behaviour backed by a reward or sanction, presupposed the rightness of those forms of behavior. Such ideal of rightness can be derived only from a system of social or moral values operating independently of law.[49]

While the positivist deny the inherence of human rights, some philosopher such as Marx on various grounds denied the existence of human rights are excessively individualistic or egoistic. Marx wrote of the so-called right of man as "simply the rights of a member of a civil society, that is of egoistic man, of man separated from other men and from the community".[50] He saw liberty as founded not upon the relations between man and man but rather upon separation of man from man. It is the result of such separation. This is most glaringly depicted in the right of private property. Upon the attainment of communism, the concept of human rights would be redundant because the conditions of social life would no longer have need for such principles of constraint. The emphasis of the primordial role of the state which itself is seen as the guardian or incarnation of the interests of the workers, casts rights in an entirely different light from that known in the Western democracies. It is claimed that since the state represents by definition the

[48] Cambell J. Op. cit
[49] Ibid
[50] See Lloyd, D. (1981) The Idea of Law, Butterworths, London, p. 188

interests of the people, then the citizens can have no rights against the state. The socialist state expresses the will of the masses or the workers, and the individual owes to it absolute obedience.[51]

The Marxist criticism of human rights is based on the general principles of Marxist economic theory (the dialectic logic) which are not only utopian and chimaera but are based on unrealistic and extravagant assumptions.

Edmund Burke who was an avowed naturalist, nevertheless, described human rights as a "monstrous fiction which by inspiring false ideas and vain expectations into a man destined to travel in the obscure, serves only to exaggerate and emitter that real inequality which it never can remove".[52] Burke, a conservative, was writing against the backdrop of the destructions of the French Revolution of 1789. He bitterly and eloquently denounced the revolution. He saw revolution as merely destructive; he hated lawlessness and violence; he saw the value of social and political continuity. It was in reaction to Burke's criticism of the doctrine of human right and the French revolution that Thomas Paine wrote *The Rights of Man*[53] in order to, among other things re-assert the inherent and imprescriptibility of human rights.

The idealists, on the other hand, while accepting the concept of human rights, contend that rights belong not to individuals but to the societies or communities. For instance Ritchie opined that the right of the individual must be judged from the point of view of the individual. This school was dominant in mediaeval Germany. The German manifesto spoke of the right of

[51] Lloyd Op. cit
[52] Burke E. (1797) Fiction Nature of Rights
[53] Paine T. (1889) The Rights of Man

the German people in contradistinction to the American and French declarations, which asserted the right to the individual.[54]

It is true that there are some rights which belong to the society or community which the individual enjoys as a member of that society or community. However, it is true that there are some province of rights which are within the sphere of the individual. In any case, where there is a conflict between the right of the society or community and the right of the individual, the scale should tilt in favour of the latter. One is in sympathy with the view of Dworkin when he rejected any attempt to balance individual rights against public interest as to do so would weigh the scales almost inevitably in favour of the latter. According to him, if a right is granted, society must be prepared to pay the price of giving it full effect, and thus can only justify curtailing it when the cost of not doing so would be so great as to infringe other individual rights to an altogether unacceptable extent.[55]

Another controversy pertaining to the nature of human right is whether they are universal or culturally relative. The naturalists, of course, proclaim that human rights are universal, just as human nature. This view was forcefully canvassed by Justice Tanaka when he said:

> ……human rights which require protection are the same; they are not the product of particular juridical system in the hierarchy of the legal order, but the same human rights must be recognized, respected and protected everywhere man goes.[56]

Another school of thought, on the other hand, proclaims that these rights are neither inherent nor universal i.e. are not the same everywhere, but rather that they are relative to the particular society. Human Klenner, one of the proponents of this view, said:

[54] See Fale R. A. (1981) Human Rights and State Sovereignty, Itolmse & Meler, New York, p. 100
[55] See Fale R. A Op. cit, p. 105
[56] See South West African Case, Supra

Human rights are neither eternal truths nor supreme values…

> They are rooted neither in the conscience of the individual not in God's plan of creation. They are of earthly origin…. A comparatively late product of the history of human society and their implementation does not lie in everybody's interest. In their essential, man's interests are not the same in any particular country under the conditions of the system of private ownership of the means of production.[57]

Writing on "Underdevelopment and Human Rights violations in Africa" Julius Ihonvbere opined that human rights cannot be properly understood outside the social equation of specific societies. He said: "it is, of course, impossible in fact undesirable, to generalize on the issue of human rights. At the same time, it is inappropriate to transpose standards of evaluation and determination of human rights from one society to the other.[58] Those Africans who challenge the universality of the concept of human rights argue for an Afrocentric conception of human right. They hold the view that the African traditional conception does not know of a human being outside his community and culture. It has only to be added that culture is dynamic and not static. Chris Maina Peter has pertinently observed that the traditions refereed to here are those in pre-colonial society, in which there existed a close and complementary relationship between the individual and society in which by and large people lived and died with their kinsmen. This system worked very well in the communal and subsistence way of life which existed in most areas in Africa prior to the coming of colonialism, which completely destroyed this socio-economic system and had the effect of implanting foreign production relations accompanied by a new culture at the super structural level.[59] Moreover, there are some African cultural practices,

[57] Wener H. O (1979) The Practice of Freedom, Macmillan, London, p. 222
[58] Ihonvbere J. (2007) Human Rights – The African Perspectives in University of Benin Law Journal Vol. 12 Jan,. 2007 pp. 37-50
[59] Peter C. M. (1999) Human Rights in the Traditional African Setting in Osinbajo Y. (ed) Issues on Human Rights and Civil Liberties, A Publication of the Ministry of Justice, Lagos State p. 11-210

which are manifestly incompatible with the notion of human rights. The killing of twins and practice of slavery were widely accepted practices in pre-colonial times Igboland, for example.

In the same connection, at the United Nation's World Conference on Human Rights held in Vienna, Austria, in June, 1993, some undemocratic Asian countries canvassed support for their belief that Western nation's insistence on individualism at all costs is responsible for their problems of crime, drug addiction and family breakdown. According to them, when people are dying to authority and respect for elders, and the Asian instinct to seek consensus are all duties the individual owes to society which are as important as those in other direction.[60]

It must be observed that some of these criticisms against human rights and the so called alternative philosophy are usually ploys to cover up totalitarianism and despotism – an attempt to rationalize grave human right abuses. In the words of Kofi Anan, *"when have you heard a free voice demand an end to freedom? Where have you had a slave argue for slavery? When have you heard a victim of torture endorse the ways of the torture?"*[61] One will recall here the apt words of Francis Voltaire. He said: "…I am a human being before I am a Frenchman. I am by necessity a human being, where as I am a Frenchman only by chance". In consonance with this proposition, it is submitted that there are certain attributes, which inures to every human rights. "Human rights, properly understood are foreign to no culture and native to all nations". "They are universal moral right, something which all men everywhere, at all times ought to have and something of which no one may be deprived without grave affront to justice, something which is owing to every human being because he is human".[62] Since the Universal Declaration of Human Rights, the concept of human rights has acquired a multi-lateral sanction and legitimacy on the

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[61] Kofi A. Former Secretary General of United Nation on the Importance of Fundamental Human Rights and Freedom in New Delhi, India 1998

[62] Justice Kayode Eso in Ransomed Kutiu v. A.G. Federation, Supra

international plane. Human rights constitute the external criterion by which state laws and practices are evaluated. It is however, conceded that the content and scope of human rights expand according to the dictates of human experience, and the area of emphasis shifts in response to economic, socio-political, environmental and cultural variables. To this extent, human rights may be said to be relative. The Universal Declaration of Human Rights, far from, insisting on uniformity, is the basic condition for global diversity.

2.6 Institutionalization of Human Rights

Since the end of the Second World War the international community, under the auspices of the United Nations, has engaged in an extensive exercise of human rights standard setting in an attempt to create a legal framework for their effective promotion and protection. In general such standards have been by developing multilateral treaties, which create legally binding obligations upon member states. Parallel to this activity the international community, though the UN, has adopted numerous instruments for the promotion and protection of human rights that fall into the category of co called "soft law". The latter constitute a category of instruments that can be understood at best as giving recommendations to member states of the UN or as providing authoritative guidance on specific issues relating to human rights and freedoms. This sub sections will present an overview of the most important existing instruments of both categories.

a. The Universal Declaration of Human Rights (UDHR) is the comprehensive human rights instruments to be proclaimed by a universal international organisation.[63] It is intended to serve as "the common standard of achievement for all peoples and all nations"[64] in the

[63] U. N. Resolution 46 of 1948
[64] See the Preamble of the UDHR 1948

effort to secure universal and effective recognition and observance of the rights and freedom it lists.

The human rights proclaimed in the Universal Declaration can be broadly divided into two kinds. The first refer to civil and political rights, which include: the right to life, liberty, and security of person; freedom from slavery and torture; equality before the law; protection against arbitrary arrest, detention or exile; the right to a fair trial; the right to own property; political participation; the right to marriage; the fundamental freedoms of thought, conscience and religion, opinion and expression; freedom or peaceful assembly and association; and the right to take part in the government of his/her country, directly or through freely chosen representatives. The second are economic social and cultural rights, which relate to among others: the right to work, equal pay for equal work; the right to form and join trade unions; the right on an adequate standards of living; the right of education; and the rightto participate freely in cultural life.

The first article of the declaration expresses the universality of rights in terms of the equality of human dignity, and the second article expresses the entitlement of all persons to the rights set out without discrimination of any kind. The fundamental principle underlying the rights proclaimed in the Declaration is contained in the preamble in the declaration, which starts by recognizing the "inherent dignity, and the equal and inalienable rights of all members of the human family".[65]

Although the UDHR is not legally binding, over the years its main principle have acquired the status of acceptability only fifty-eight members states of the UN. Since that time, this number has more than tripled. The continuing impact of the declaration and the use made of

[65] See the Preamble of the IDHR

it bears out its universal acceptance, and it has become a common reference in human rights for all nations.[66]

The UDHR, together with the UN Charter, served both as an inspiration and a means for the millions of people under colonial rule to achieve self-determination in the 1950s and 1960s, and many incorporated the provisions of the declaration in their constitutions.

The consensus of the international community was reflected at the international conference on Human Rights in Tehran in 1968 that the declaration "states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the international community".[67] Twenty five years later, at the World Conference of Human Rights[68] 171 states reaffirmed that the UDHR constitutes a common standard of achievement for all peoples and all nations and that it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedom.[69]

b. The international covenants on civil, political economic, social and cultural right:

The Universal Declaration of Human Rights was the first part of the instruments that make up the International Bill of Human Rights; the other parts, designed to elaborate the content of the provisions of the declaration, took many years to complete. On 16th December, 1966, the UN General Assembly adopted two covenants – the International Covenant on Economic, Social and cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and an optional protocol to the ICCPR, allowing for complaints to be

[66] See Gasioukwu, Op. cit, p. 188
[67] Tehran, 22 April 13 May 1968
[68] Vienna, Austria 14-25, June, 1993, U. N. Doc A/CONF. 32/41 at 3 (1968)
[69] See U.N. Doc 32/$1 1968

made by individuals on violations of their rights embodies in the covenant. In adopting these instruments, the international community not only agreed on the content of each right set forth within the UDHR, but also on measures for their implementation. A further elaboration took place when, in December 1989, the second Optional protocol to the ICCPR, aimed at abolishing the death penalty, was adopted by the General Assembly.[70]

The adoption of these two covenants endorsed the General Assembly resolution of 1950 that "the enjoyment of civil and political rights and economic, social and cultural rights are interconnected and independent".

The covenants, unlike the UDHR, are legally binding treaties for those states which are parties to them and they are those obliged to respect the procedures for their implementation, including the submission of periodic reports on their compliance with their obligations under the covenants. Both covenants entered into force in 1976. As at April 1989, about 140 states have become parties to the ICCPR and to the ICESCR.[71]

The first optional protocol to the ICPR also entered into force in 1976 and as at April 1998 has been ratified by about 93 states. The second optional protocol, which entered into force in 1991, has as at April 1998 has been ratified by about thirty-two states.[72]

The International Covenant on Civil and Political Rights (ICCPR) elaborates the political and civil rights identified in the Universal Declaration, which include the rights to life, privacy, fair trial, freedom of expression, freedom of religion, freedom from torture and equality before the law.

[70] See Gasiokwu Op. cit, p. 200
[71] See Human Rights and World Public Orders U.N. Doc E/CN4 1998 rev. 1
[72] Ibid

Some of the rights can be suspended in terms of public emergency which threatens the life of the nation, provided that the derogation will not involve discrimination on grounds of race, colour, sex, language, religion or social origin. If a country wants to "opt out" in this way, it must immediately inform the Secretary General of the United Nations. States of emergency thus declared unfortunately often create the conditions under which gross violations of human rights occur. In no circumstances, in peace of war, sis derogation permitted under covenant from the following fundamental rights: the right to life, recognition before the law, freedom from torture and slavery, freedom of thought, conscience and religion, the right not to be imprisoned solely for inability to fulfill a contractual obligation, and the right not to be held guilty for committing a crime which did not constitute a criminal offence at the time it was committed.[73]

The right recognized by the international covenant on Economic, social and cultural rights (ICESCR) include the right to work, form and join trade unions; social security; and adequate standard of living including adequate food, clothing and housing; protection of the family; the highest attainable standard of physical and mental health; education; and participation in cultural life. Each state party to the covenant agrees to take steps to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the covenant. None of the rights protected under the covenant can be suspended.[74]

c. Other Major International Instrument:

There are a large number of conventions, declarations and recommendations adopted by the General Assembly and other legislative bodies of the universal declaration and the international covenants and which also affirm certain Rights. The declarations and

[73] Gasiokwu Op. cit. p. 210
[74] See the Preamble of International Covenant on Economic, Social and Cultural Rights

recommendations apply to all member states of the UN but do not have the same legal force as the conventions, which are legally binding upon states that have become parties to them.

Every effort is made to encourage states to observe international standard, to ratify or accede to international human treaties and incorporate these in their national legislation. These standards provide a normative base for the strengthening of democracy. Among the international instruments are those relating to the prevention of genocides, the prevention of discrimination (racial and against women), and the rights of the child, as well as the right of victims of war and refugees.[75]

In December 1948, the UN Assembly adopted the convention on the prevention and punishment of the crime of Genocide. It came into force in 1951 and has been ratified by approximately 120 states. Genocide is defined in the convention as certain acts "Committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religion group" 'Genocide is designated in time of war or of peace, and is defined as a crime against humanity.

Provision is made in Article 6 of the convention, for persons charged with committing genocide to be tried either by a competent tribunal in the state where the act was committed or by an international criminal tribunal which has been accepted as competent by state parties to the convention.

The two specific instruments on the filed of non discrimination relate to racial discrimination and discrimination against women.

[75] See the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) adopted in 1979 by the UN General Assembly

The International Convention on the Elimination of all Forms of Racial Discrimination came into force in 1969 and as at April 1988 has been ratified by about 150 states.[76] It represents the most comprehensive UN statement regarding discrimination on the grounds of "race, colour, decent, or national or ethnic origin".State parties to the convention undertake to pursue a policy of eliminating racial discrimination in all its forms and to ensure the protection of special racial groups, guaranteeing their members full and equal enjoyment of human rights and fundamental freedoms.[77]

The Convention of the Eliminations of all Forms of Discrimination against Women was adopted by the UN General Assembly on 18 December, 1979, and entered into force on 2 September 1981. By April 1998 there are about 161 states parties to this convention. There isprovision under the convention for inter-state complaints not complaints fro individuals.

The object of the Convention on the Elimination of all Forms Discrimination against Women is to implement equality between men and women and to prevent discrimination against women, in particular such specific forms of discrimination as force marriage, domestic violence and less access to education, health care and public life as discrimination work.[78]

The convention on the Rights of the Child, came into force on 2 September, 1990, less than a year it had been adopted by the UN General Assembly on 20 November 1989. By April 1998 about 191 states have ratified the convention. State parties to the convention agree to take all appropriate measures to implement the rights recognized in the convention, and in doing so

[76] The Convention was Adopted by the UN General Assembly in Resolution, 2106 (XX)^2 of 21st December, 1965
[77] See the Preamble of the Convention
[78] See Roberts H. (1988) The Liberation of Women, An X-Ray of the Convention on Elimination of all Forms of Discrimination against Women George Allen & Unwin, London

the best interest of the child shall be paramount consideration and guiding principle. The provisions are wide ranging and include recognition of the importance of family for the child.[79]

Although many of the rights the convention proclaims are set out in one form or another in existing international human rights treaties, this is the first time that children have been singled out as exclusive subjects of international rights and protection. The convention seeks to protect children against a large number of practices of special danger to their welfare, among them economic exploitation, illicit use of drugs, all forms of sexual exploitation and abuse, and traffic in children. It also bars the recruitment of children under the age of fifteen into the armed forces of the state parties.[80]

Other important international human rights instruments are:

1. Convention relating to the status of refugees:
2. Protocol relating to the status of refugees;
3. Convention against torture and other cruel, inhuman or degrading;
4. Treatment or punishment; and
5. Second optional protocol to the ICCR, aiming at the abolition of the death penalty;

The proliferation of international instruments protecting specific human rights can be seen as an indication of the growing awareness that broad instruments protecting a wide variety of rights may not be sufficient to protect some rights which do not easily fit within that schemes and also do not enable states, and others to focus on the need to protect a specific right or rights. This proliferation is also an example of the constant evolution of international society as its

[79] See Generally The Convention on the Rights of the Child
[80] See Adam P. et al (1992) Towards the Liberation of the Child in University of Pepperdine Law Journal available online @ www.pepperdinelibrary.org

members begin to understand about those who are oppressed within the society who require the protection of human rights instruments. At the same time, there is the criticism that the increasing volume of rights protected can dilute the power and coherence of international human rights law.[81]

2.7 Customary International Law

Even if a state has not ratified a human right treaty, it could be bound by customary international law to protect some rights.

It has been argued that the entire Universal Declaration of Human Rights (UDHR) embodies customary international law. While it does not bind states as a treaty obligation, it certainly may reflect ideals held by the international community. Any consideration of it as customary international law only be made after an article examination, as was done in the case of ***Filsrtiga vs. Pena-Irala***[82] in regard to the prohibition on torture. Nevertheless, the UDHR has significantly influence other international, regional and national human rights agreements. For example, it is referred to in the preambles of the two American and Europe Conventions on Human Rights and the African Charter of Human and Peoples' Rights, as well as in the Helsinki Final Act. The latter is of particular importance, as it was signed by Czechoslovakia, Poland, the USSR (as it then was) and Yugoslavia, each of which had abstained from the vote on the UDHR in 1948, as well as in the United States, which has ratified few human rights treaties.

It is evident that all states and all cultures and societies agree that most human rights should be protected. These states, cultures and societies do have different approaches about the extent to which the exception and the limitations on human rights are given priority. However,

[81] Gasiokwu Op. cit P. 270
[82] 630 F. 2d 876 (2nd Cir. 1980)

they accept that human rights exist and there is an obligation to protect them. So many human rights - for example, right to life, freedom from torture, freedom from racial discrimination, prohibition on genocide, right to education - can be considered to be customary international law and so binding on states which have not ratified treaties to protect those rights. Indeed, some of these rights may be *Jus Cogens* as was, accepted by the International Court of Justice in the Barcelona Traction Case.[83]

[83] (1970) ICJ 1

CHAPTER THREE

INTERNATIONAL IMPLEMENTATION OF HUMAN RIGHTS

3.1 Introduction

This chapter seeks to discuss the international mechanism for the implementation of human rights. The chapter also discusses the treaties and various regional protocols for the promotion and protection of human rights.

3.2. International Mechanisms for the Implementation of Human Rights

The international Dimension on Human Rights connotes in essence the enforcement/monitoring mechanism and machinery. The United Nations (UN) has created a number of procedures for protecting and promoting human rights and ascertaining where human rights violations occur. Primarily, these procedures are through independent bodies established by either general or specific human rights treaties,[1] discussed below.

There are six major human rights treaties and each has a committee to oversee their respective and effective implementation by state parties. These treaties are the:

i. Procedure under International Convention on Civil and Political Rights (ICCPR)

ii. Procedure under International Convention on Economic, Social and Cultural Right (ICESCR).

iii. Procedure under International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

[1] Ladan M. T (1997) African Human Rights Commission One Decade of Challenge in NHRC Newsletter, December 1997, p. 7

iv. Procedure under Convention on the Elimination of All form of discrimination against woman (CEDAW)

v. Procedure under Convention Against Torture and other Cruel, inhuman or Degrading Treatment or Punishment (CAT)

vi. Procedure under Convention on the Rights of the Child (CRC)

3.3 Regional Mechanism for the Implementation of Human Rights Protection

There are three regional organizations, which maintain permanent institutions for the protection of human right: The Council of Europe, the organization of African Unity (now African Union) and the Organization of American state. All of them have initiated instruments on human rights, which have been inspired by the Universal declaration of Human Rights. We examine the mechanism for the implementation of Human Rights briefly under the African Union, the Organization of American States and ECOWAS.

3.3.1 The African Human Rights Mechanism for Implementation of human Rights

The idea of establishing a regional human rights system is dated back to the African Conference on the Rule OF Law, held in Lagos in 1961. A non-governmental organization, the international Commission of Jurists, invited all African states to study the possibility of adopting a regional human rights convention. During the late 60s, the UN Commission on Human Rights repeatedly, but unsuccessfully tried to mobilize interest in the region for the creation of an African mechanism.[2] Eventually after almost two decades the African Charter on Human and Peoples' Rights was established with the emergence of the African Charter on Human and

[2] See Umozurike, O. (1997) *The African Charter on Human and People's Rights* (1998) Macmillan Press Lagos p. 8

Peoples' Rights other institutional mechanism were put in place for the full implementation of Human Rights in Africa; all of these are discussed below.

1. The African Charter on Human and Peoples' Rights

In 1979, the OAU Assemble of Head of States and Government called for the drafting of an African Charter. Experts met in Dakar and prepared a draft, which was finalized in Banjul, Gambia in 1981. The African Charter on Human and Peoples' Rights was adopted later that year. It came into force in 1986. In many ways, the African Charter is consisted with its predecessors in Europe and the Americas. But in contrast to those instruments, it goes beyond civil and political rights covering economic, social and cultural rights as well as a number of collective people's rights. And like the America Declaration, the earliest efforts of the Inter-American system, the African Charter also explicitly lists duties. The rather ambitious scope of many of the rights covered by the Charter puts pressure on the enforcement bodies and requires significant resources.[3]

The African Charter system has no court yet, but assigns oversight functions to the African Commission on Human and Peoples' Rights, which has eleven members, chosen by the Head of States and Government of O.A.U each member services in his or her own individual capacity for six years.[4]

The commission has three sets of responsibilities: promotional, investigative and advisory. Under its promotional mandate, the commission conducts studies, organized symposia, prepares studies on region-wide problems and assists Charter signatories in the drafting of national legislation directed at implementing the rights covered by the Charter. The commission

[3] Umozurike O. op. cit, p. 9
[4] Ibid

has held a few conferences to address this particular mandate, but in its first five years undertook no country studies.[5]

A state may refer a case to the commission for investigation if it considers that another state is violating its obligations under the Charter. The recognition of standing for individuals is a mandatory provision of the Charter. As in other regions, friendly settlement should be pursued, but Article 47 of the charter emphasizes negotiation even before the commission is contacted. After a case is referred to the commission it must evaluate whether domestic remedies have been exhausted, whether the claim is timely, and whether it is anonymous or insulting. On admitting an application, the commission must gather all relevant information, attempt a friendly solution and prepare a report on its fact-finding activities, which is sent to the state(s) concerned and the assembly of the OAU.[6]

If the commission considers that a state is serious or massive violations, it may undertake a country study of such "special cases". In such situations where the violations do not constitute special cases, however, the commission has no other function than to attempt to settle or failing that, to pass the matter on the Assembly. The Assembly may assign the case to the commission for reporting.

The Assembly may instruct the commission to undertake studies and may order publication of these studies and may order publication of these studies. Under Article 45 of the Charter, the commission seems to have the competence to issue advisory opinions, as it is explicitly responsible for interpreting the Charter.[7]

[5] Ibid
[6] See Generally Article 47 of the African Charter on Human and People's Rights
[7] Ladan M. T. Op. cit, p. 7

At ten years, the African Commission has examined reports submitted by 18 states parties' pursuance to Article 62 of the Charter. The total number of reports submitted so far is twenty three.

The commission since inception has conducted five missions of the following state parties to the charter namely, Senegal in June 1996 and Nigeria in March 1997. The commission has also undertaken missions to the following countries, that is Togo, Zimbabwe, Mali and Botswana.

At ten year, a total of 202 communications has been submitted to the secretariat of the African Commission under Article 5 of the Charter.[8]

2. African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The only regional convention that explicitly addresses abortion is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the African Union Summit in Maputo, Mozambique on July 11, 2003.

Protocol to the African Charter on Human and Peoples' Rights on the Rights ofWomen in Africa provides as follows:[9]

> Article 14. Health and Reproductive Rights
>
> 1. State Parties shall ensure that the rights to health of women are respected and promoted.
>
> These rights include:
>
> a) the right to control their fertility;
>
> b) the right to decide whether to have children;

[8] Ibid

[9] Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, 11 July 2003

c) the right to space their children;

d) the right to choose any method of contraception;

e) the right to protect themselves against sexually transmitted diseases, including HIV/AIDs;

f) the right to be informed on one's health status and on the health status of one's partner.

2. State Parties shall take appropriate measures to:

a) provide adequate, affordable and accessible health services to women especially those in rural areas;

b) establish pre-and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;

c) protect the reproductive rights of women particularly by authorising medical abortion in cases of rape and incest.

3. The ECOWAS Mechanism for the Protection of Human Rights

The primary objection for the establishment of ECOWAS in 1975 is to motivate free movement within the citizen of the sub-region. The 1979 protocol and the four supplementary protocols[10] that follow it provides for the citizen of 15 ECOWAS countries a legal framework for the progressive realization of the right of entry, residence, work and establishment. Despite the enormous achievement represented by the ECOWAS free movement protocol, migration within West Africa has received much less attention than the migratory movement to North Africa and particularly to Europe.

In the implementation of the free movement regime, ECOWAS has adopted a large number of legal instruments beginning with the Dakar Protocol of 1979. This protocol entered into force on 20 May, 1980 after ratification by seven member states. The first phase of the

[10] 1985 Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for the implementation of the Protocol on Free Movement of persons, Right of Residence and Establishment; 1986 Supplementary Protocol A/SP.1/6/89 amending and complementing the provisions of Article 7 of the Protocol on Free Movement of Persons, right of Residence and Establishment; and 1990 Supplementary Protocol A/SP.2/5/90 on the implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment.

protocol relating to the right of entry and abolition of visas was implemented between 1980-1985.[11] However, within 1985-1990 the second phase of the protocol (Right of Residence and Establishment) was implemented.

3.4 The Inter-American Human Rights Mechanisms

The organisation of American States (OAS) was among the pioneers of the modern human rights law.The OAS Charter of 1948 incorporates the "fundamental rights of the individual" as one of the organizations founding principles. The American Declaration of the Rights and Duties of man, prepared by the Inter-American Judicial Committee in 1947, was adopted by OAS in Bogota the following year to elaborate upon the Charter general committee to human rights.[12]

The Inter-American commission on Human Rights, the mechanism for overseeing national implementation of human right committee was created in 1959. Composed of seven members, elected in their individual capacity, the commission started operating in 1960 with a rather vague mandate. In 1965, its competence was extended to accept communications, request information from governments and make recommendations with objective of bringing about more effective observance of human rights. In 1967, the OAS Charter was amended and the commission became a principal organ of the organisations. The American convention of Human Rights, specific competence. The convention entered into force in 1978, currently; there are 25 parties to the convention.[13]

[11] Protocol A/SP.1/7/85 dated 6 July, 1985.
[12] The Internalization of Human R0ights Rights, New York, Aspen Institute for Humanistic Studies, 1979, p. 9
[13] See Generally Articles 35-73 of the Inter American Convention on Human Rights San Jose (Costa Rica) 22 XI, 1969

The Commission has three forms of jurisdiction. Its conventional jurisdiction applies to the 25 states that have, to date, become parties to the American convention. Its judicial invocatory jurisdiction, i.e. its competence to invoke the Inter-American court, applies to the states to the convention that have declared that they accept the court's jurisdiction. While these two forms of jurisdiction depend on adherence to the convention, the commission's declaration jurisdiction applies to all parties to the OAS Charter – indeed, to all states in the Americas. Hence every independent state in the hemisphere, even those, which have not, yet become parties to the convention, is subject, in some form, to the commission's jurisdiction.[14]

The commission's jurisdiction may be invoked by citizens and organizations within the hemisphere. In its own initiative, the commission may also prepare country reports. To facilitate both of these activities, the commission conducts visits to the country concerned. The commission also plays a role on regional codification and progressive developments for OAS, it provides technical assistance to state parties in matters concerning the convention, and it litigates cases before the American court.[15]

The commission receives petitions regarding alleged violations of human rights, and conduct investigations which include sending missions, making country studies and acting on individual complaints. Upon receiving reports of large-scale violations of human rights, the commission may undertake a study of situation. This includes investigating the facts, hearing witnesses and consulting with the government concerned. It may visit the country concerned and prepare special reports.[16]

[14] Some Effects of Reservations on Entry into Force of the American Conventions in Article 74 and 75 of the Convention
[15] Article 44 of the Convention
[16] See Generally Articles 48-50 of the Convention

3.5 Limitations on the Human Rights Treaty Obligations of States

The following notable limitations on human rights treaty obligations between states are as follows.

3.5.1 Reservation to Human Rights Treaties

The desirability to have as many states as possible acknowledging obligations to protect, uphold and enforce human rights within their jurisdiction had meant that there are many states which ratify human rights treaties but, for political, social, economic and cultural reasons, make reservations to some of those obligations. However there appears to be different rules about reservations to human rights treaties. This is because of the imbalance of power between a state and individuals within its jurisdiction, the potential for the abuse of that power by states and the lack of the element of reciprocity of human rights obligations between states.[17]

As a consequence, the bodies supervising human rights treaty obligations have tended to interpret any reservation to human rights treaties very narrowly. Indeed, in ***Belilos vs. Switzerland***,[18]the European Court of Human rights held a reservation to be invalid despite the lack of objectives by any of the other states, which were parties to that treaty.

The Inter-American Court of Human Rights was asked to advice whether Article 20 (4) of the Vienna Convention on Human Rights by virtue of Article 75 of the American Convention, which provides: "This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the law of treaties signed on May 23, 1969".

[17] See Generally Comment No. 24 (52) by the Human Rights Committee in International Human Rights Report (1975) p. 10
[18] ECHR Series A (193) No. 258 B

The court stated that; in this context, it would be manifestly unreasonable to conclude that the reference in Article 75 to the Vienna Convention compels the application of the legal regime established by Article 20 (40), which makes the entry into force of ratification with a reservation dependent upon its acceptance by another state. A treaty, which attaches such great importance to the protection of the individual that it, makes the right of individual petition mandatory as of the moment of ratification, can hardly be deemed to have intended to delay the treaty's entry into force until at least other state is prepared to accept the reserving party. Given the institutional and normative framework of the convention, no useful purpose would be served by such a delay.

Accordingly, for the purpose of the preset analysis, the reference in Article 75 to the Vienna Convention makes a sense only if it is understood as an express authorization designed to enable states to make whatever reservation they deemed appropriate, provided the reservation are not incompatible with the object and purpose of the treaty. As such can be said to be governed by Article 20 (4) of the Vienna Convention and consequently, do not require acceptance by any other state party.[19]

It should be noted that a valid reservation accepted by parties to the treaty modified the treaty between it and reserving state, but does not affect the relations between the party and non-reserving states.

Where a party has objected to a reservation (but not to entry into force of the treaty between the party and reserving state) then the treaty is inapplicable between the party and the reserving state to the extent of the reservation.

[19] See Legal effect of Reservations, under Articles 20-22 Vienna Convention

3.5.2 Derogations

Most Human Right Treaties allow states to limit their obligations to protect certain Human Rights when a "state of emergency" exists. The conditions necessary for a lawful derogation are set out in the treaties, for example, in Article 4 of the ICCPR, Article 15 of the ECHR and Article 27 of the ACHR. There is no derogation provision in the ACHPR, but any customary international law on derogations would probably apply to that treaty.[20]

There is always the difficulty in determining whether any derogation from the application from Human Rights treaties should be allowed. If derogations are allowed, as is generally the case, then they could be whenever a state simply considers it is expedient. This possibility is increased by the decision of the court in Branningan and McBride V.U.K.[21]

Different rights are considered non-derogable in different treaties – compare Article 15 (2) ECHR with Article 27 (2) ACHR though some rights, such as freedom from torture, are both universally non-derogable and no legal limitations otherwise on their protection.

3.5.3 Domestic Enforcement of Human Rights

In the relationship between states internationally, politics is often not far away. And in an international system that lacks coercive enforcement mechanism, it is all too ways to manipulate Human Rights issues in a most diabolical manner. Consequently, the international system has been all but helpless in providing succor to individual victims of human rights violations.[22] Thus, the inadequacies of international mechanisms to actually project human rights have pushed the ball firmly on to the domestic plane where the hope often is that domestic system will echo the

[20] See Umozurike Op. cit, p. 28
[21] 54 IILR (1997) 6
[22] See Ajomo A. (1990) Human Rights under the Nigerian Constitution, p. 30

issues as they are debated internationally. And not just echo them, it also raise them beyond the level of fancy and rhetoric. Thus, an ever-increasing role has been conceded to individual agreement can make impact domestically; the environment has to be conducive. But in a world community made up of regimes that still wallow in the tired logis of non-interference in internal affairs, the environment has been expectedly harsh. The answers to several preliminary issues are being sought.[23]

It is in the contention of this Charter that litigation and use of the court remain the most popular strategy of human rights enforcement. The judiciary plays a central role in the process. Many countries are not interested in the unhindered protection of human rights; thus the judiciary may be prevented from being effective in redressing abuses. In Nigeria it is no longer news that the courts are grossly constrained in their activities.

Infrastructure is poor, judicial officials are not well remunerated. The cost of seeking justice has gone too high and beyond the reach of many. Such procedural violations of due process such as restrictive interpretation of the **Locus Standi** discourage legal challenge of human rights abuses.[24] Above all, the Nigerian judiciaries under the military are affairs to deliver judgments in some politically sensitive case. Even under the military in recent years was so cowed and subjugated that judges are afraid to deliver the current democratic dispensation, judicial activism is still at its lowest ebb due largely to the fact that the judiciary is not totally independent of political manipulations and interference from the executive arm of the case of ***Governor Chris Ngige of Anambra State***,where superior order of the Court of Appeal of Enugu division was jettisoned for the inferior order of the State High Court is apt.

[23] Ibid
[24] Umozurike Op. cit, p. 32

Apart from these, there is the added constitutional problem the serious distinction between civil and political; rights and economic, social and cultural rights. While in the former, courts have largely implemented sets of rights; serious questions arise on the enforcement of different aspects of the later rights. This dichotomy has been foisted by the constitution, which entered civil and political rights in the justifiable point referred to as "Fundamental Rights" while placing socio-economic rights in the non-justifiable part called "fundamental and Directive principles of state policy".[25]

Consequently, under the constitution of Nigeria, 1999, no platform exists for the enforcement of the affected components of economic, social and cultural rights. While civil and political rights constitutes a double edged sword comprising sometimes claims and at other times freedoms, even the justice-able components of socio-economic rights constitute in the main, or preventing the implementation of government policies that puts rights in jeopardy. Hence, while a person can stop a forceful eviction from housing, such a person's right under Article II of the International Covenant on Economic, Social and Cultural Rights does not include a positive demand on the government to build a house for him.

But apart from the constitution, the various international instruments already highlighted also guarantee economic, social and cultural rights alongside civil and political rights but without any distinction. These instruments have been ratified by Nigeria.[26] As well; Nigeria did not just ratify the African Charter on Human and People's Rights this according to the Supreme Court in the case of ***Ogugu vs. The State***[27] is that country has adopted the African Charter as part of her municipal law, and the provisions of the charter as enforceable I the same manner as those of

[25] See Generally Chapter 2 of the 1999 Nigerian Constitution As Amended, 2011
[26] For Example, the African Charter on Human and People's Rights
[27] (1994) 9 NWLR (pt. 336) p. 1 SC

Chapter four of the Constitution. This means that for example, Article 13-18 of the African Charter, which deals with economic, social and cultural rights, are as enforceable as Chapter Four of the Constitution. If this is the situation, what remain to be seen in how the protection of these rights can be tested before the courts see also the case of ***Gani Fawehinmi vs. General Sani Abacha***[28] where the decision in Ogugu Supra was upheld.

But if the African Charter is enforceable by Nigerian courts following its promulgation into local legislation, what of the internationals covenants on economic, social and cultural rights which though it has been ratified by Nigerian but has not been enacted into domestic law? This leads to the inevitable question: what is the relationship between Nigeria's domestic laws and her international obligations contained in treaties?

By virtue of section 12(1) of the 1999 of the Nigerian constitution, "No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly".

Does it mean that since it has not been specifically enacted into Nigeria law, the ICESCR Covenant cannot be implemented in Nigeria? Far from it, there is now a new thinking in Nigeria and elsewhere that domestic conditions cannot justify the failure of any country to implement international agreements to which it is party. Various decisions of the Nigerian courts in recent times have strengthened this position even though such cases have arisen from efforts to vindicate political rights.[29]

Since 1988, judges within the Commonwealth have held series of meeting on the domestic application of international human rights norms. While summarizing discussions at the

[28] (1996) 5 NWLR pt. 447 CA
[29] See Fawehinmi v. Abacha Supra, See also Ogugu v. State Supra

first of such meetings held in **February 1988 in Bangalore, India chief Justice, Mr. P.N. Bhagwathi** stated thus:

> it is within the proper nature of the judicial process and well established judicial functions for national courts to have regard to international obligations which a country undertakes whether or not they have been incorporated into domestic law for the purpose of removing ambiguity or uncertainty from national constitutions, legislation or common law. However, where national law is clear and inconsistent with the international obligations of the state concerned, in common law countries the national court is obliged to give effect to national law. In such cases the court should draw such inconsistency to the attention of the appropriate authorities since the supremacy of the national law in no way mitigates a breach of international obligations which is undertaken by a country.

Since 1989, various legal pronouncements have been made by different Nigeria courts on the nature of the country's obligations under national agreement to which she is a party. However, almost all cases have been confined to the enforcement of the African Charter.***Ogugu vs. The State***[30] decided by the Supreme Court and ***Gani Fawehinmi vs. Abacha***[31] decided late 1996 by enforcement of the African Charter in Nigeria. The latter decision in fact whittled downs the absolute law making powers of the Federal Military Government. The court held the view that no Decree precludes Nigerian courts from adjudicating cases complaining about violations against the African Charter, which is protected by international law. According to the court, "The Federal government is not legally permitted to legislate out its obligations".

Given the almost blanket allowance for the implementation of the African Charter, which contains civil and political rights as well as economic, social and cultural rights, it is surprising that the full benefit of this thinking has not been exploited to protect ECOSOC rights in particular. This extend to the enforcement of provisions of the ICESCR, which though not yet

[30] Supra
[31] (1996) 7 NWLR (of 475) 710

enacted into domestic law, but forms part of her international obligations out of which she is not permitted to legislate.

In the case of ***Oshivire vs. British Airways***[32], the Court of Appeal held that: "it is useful to appreciate that an international agreement embodied in a covenant or treaty is autonomous of the municipal laws of contradicting states as the high contracting parties have submitted themselves to be bound by its provisions which are therefore above domestic legislation. Thus, any domestic legislation, which is in conflict the convention, is void.

This interpretation should apply to the provision of the ICESCR by whose provisions Nigeria has agreed to be bound. Consequently, any law or policy, which violates the provision of the covenant, is void. There is no justifiable reason why the rights protected under the covenant cannot be enjoyed by all Nigerians without discrimination. The previous thinking that these rights are not justifiable by the provisions of the constitution is no longer valid.

3.6 Conclusion

In this chapter, we focused attention on the origin and historical development of human rights wherein we highlighted some generalizations about some very complex philosophies. We saw the adoption of rights recognized by the adoption of rights recognized by the early philosophers and jurist devoted themselves to the protection of the right of man. We also saw the various instruments under the UN on the protection and enforcement of Human Rights. It is therefore of utmost importance to observe that human rights have gone beyond domestic issue, thus giving credence to the dignity of man.

[32] (1990) 7 NWLR Ppt. 163-489

CHAPTER FOUR

JUSTICIABLE RIGHTS IN NIGERIA

4.1 Introduction

Justiciable rights in Nigerian are provided for in chapter 4 of the Constitution as fundamental rights consequently, these rights are the one to be adjudicate upon by the courts. Therefore, this chapter seek to examine the variety of such rights in relation to the attitudes of the court in the implementation of such rights.

4.2 Justiciable Rights in Nigeria

Justiciable rights are trial rights. These Justiciable rights in Nigeria are as follows:

i. Right to Fair Hearing

ii. Right to Life

iii. Right to the Dignity of the Human Person

iv. Right to Personal Liberty

v. Right to Private and Family Life

vi. Right to Freedom of Thought, Conscience and Religion

vii. Right to Freedom of Expression and the Press

viii. Right to Peaceful Assembly and Association

ix. Right to Freedom of Movement

x. Right to Freedom from discrimination

xi. Right to Acquire and own immovable property anywhere in Nigeria

The above rights are discussed bellow

4.2.1 Right to Fair Hearing

Right to fair hearing is a fundamental right upon which the full enjoyment of the other rights is hinged. In fact, the painstaking observation of this right within any society means the foundation of such a society is rooted in justice and its citizens can be reassured of fair play at all times.[1] The 1999 constitution provides in S. 36 that:

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

This in effect means that a citizen's right or obligation must not be decided until the disputing parties are heard. Upon this then is founded the historical twin pillars of justice i.e. that a man must be given the opportunity of presenting his own side of a matter (*Audi alteram partem*) and that an accuser should not sit as a judge in his own cause (*nemo debet esse judex inpropria causa sua*). Furthermore, the impartiality of the judge must be assured and proceedings must take place before a court or tribunal set up according to law.[2]

As in the case of right to personal liberty, a number of other rights have been identified as vital to the effective guarantee of enjoyment of this right. These other "lesser" rights (16 in all) have achieved importance in themselves and are often quoted as independent fundamental rights. These are;

a. The right to have proceedings and decisions held in public

[1] Ajomo M. A. (1992) Fundamental Human Rights under the Nigerian Constitution, in Awau, Kalu and Osinbajo (ed) Perspectives on Human Rights vol. 12, 1992, Published by the Federal Ministry of Justice p. 77 – 93, p. 85
[2] Ibid

b. The right to make representation before an administering authority

c. The right to have the decision of the administering authority reviewed by a higher organ. In the case of a person charged with a criminal offence, we have these others.

d. The right to be tried in public within a reasonable time.

e. The right to be presumed innocent until proved guilty.

f. The right to be informed promptly in the language that he understands the detail and nature of the offence of the accused.

g. The right to be given enough time to prepare his defence.

h. The right to defend himself in person or by legal practitioners of his own choice.

i. The right to examine the witnesses of his accusers and to bring his own witnesses before the court.

j. The right to have an interpreter free of charge if he does not understand the language of the court.

k. The right to have records of the proceedings kept and the right to have copies of this within seven days of the conclusion of the case.

l. The right not to be tried for an act which was not an offence at the time it was committed.

m. The right not to have imposed upon him a punishment heavier than that prescribed by law.

n. The right not to be tried and convicted twice for the same offence.

o. The right to remain silent during the trial, and finally

p. The right not to be charged for an unwritten offence.[3]

[3] Ajomo, M. A. Op. cit

An important aspect of the constitutional provisio is that the right to fair hearing avails a person even where the government is involved. Under the 1963 constitution, before such right could be invoked against the government a fiat of the attorney general must be attained.

(i) The Scope of Proceedings Covered by Section 36(1) & (2)

Arguably the most difficult problem in the interpretation of subsection (1) and (2) of section 36 is the ascertainment of the nature of proceedings covered by these subsections. To invoke section 36(1) civil rights and obligations' must be in issue. An important question is whether section 36(1) applies to any situation involving or that ought to involve a hearing or determination. Or is it restricted to hearings in courts and judicial tribunals? Furthermore, does revocation of licenses come within the ambit of determination of civil rights and obligations" or should "right" here be interpreted in the strict Hofeldian sense? Must the determination of "civil rights and obligations in all circumstances be carried out by a court or tribunal established by law?

The last issue arose in ***Merchant Bank Ltd vs. Federal Minister of Finance***[4] in that case, the appellant held a banking license granted and issued under the Banking Ordinance. The Respondent made an order revoking the licenses and ordering the winding –up of the Bank's business. The minister had acted under section 14 of the Banking Ordinance, which required the Minister to give the Bank an opportunity to make representation before acting. It was not the appellant's case that the Minister did not comply with the requirements of section 14 rather, the appellant contended that the licenses issued under the Banking Ordinance conferred a right, which could only be revoked "by a court or other tribunal established by law" in dismissing the

[4] (1961) 1 All NLR 623

appeal, it was held that a right of license to engage in the business of banking is not a "Civil Right" and may be determined by a ministerial order.

It is submitted that this decision (as opposed to the reason for the decision) is right as far as the issues canvassed are concerned. To hold as appellant contended would have been tantamount to shutting our administrative determinations, which are indispensable in modern warfare and complex states. Of course, the proviso to clause 5 of the sixth schedule of the 1954 constitution clearly permitted administrative determinations. However, the court ought to have avoided the difficult question of whether a right to license comes within the meaning of civil rights and obligations and should have anchored its decision on the proviso. For, if for instance, a person's license is revoked capriciously and within hearing by the government or its agencies can it be said that the victim cannot invoke the constitutional provisio for fair hearing?

In ***Peterside vs. IMB (Nig) Ltd.***[5] Niki Tobi, J.C.A attempted an interpretation of section 33(1) of the 1979 constitution (the equivalence of S.36(1) of 1999 constitution). According to His Lordship, the operative expression in section 33(1) is civil rights and obligations. His Lordship adopted the Black Law Dictionary definition of civil rights' as 'civil liberties, personal natural rights guaranteed and protected by the constitution e.g. freedom of speech, press…" The same Dictionary defines "civil obligation" as "on which binds in law and may be enforced in a court of justice". Consequently, his Lordship came to the conclusion that the word "civil" in section 33(1) is not used in contradistinction to the word 'criminal'.

It is submitted with the greater respect that the Black Law Dictionary definition of "civil rights" is quire unhelpful here because it treats civil right as a phrase. The constitutional provision appears to have used the word "civil" as an objective qualifying the noun 'right' and

[5] (1993) 2 NWLR (pt. 279) 712

contradistinction to the word 'criminal'. It will be circuitous to contend that the operation of section 36(1) is limited to determinations involving human (natural) rights and civil obligations.According to Nnaemeke-Agu, JSC (as he then was) civil right refers to a plethora of rights which are enforced as between person and persons, or person and authority or government by the ordinary courts in any civilized society. Section 36(1) is intended to apply, but not limited, to all judicial determinations of rights and obligation section 33(2) of the 1979 constitution (the equivalence of section 36(2) of the 1979 constitution), according to Chinakwalam J. in ***Obih vs. Mbakwe***[6] is conceived to facilitate a smooth running of the administrative machinery by allowing agents of the executive to determine the rights of the people in accordance with certain laws that might be made from time to time. In ***LPDC vs. Fawehinmi***[7] the Supreme Court held that section 33(2) of the 1979 constitution refers to a situation where the statutory body determines nothing final and conclusive and where there is provision to make representation to the administering authority before the effective decision is made. It does not apply to the exercise of judicial powers, which are final and conclusive.

Another question is whether section 36(2) in addition to permitting administrative determination, inputs the common law doctrine of necessity. At common law doctrine of necessity. At common law the principles of natural justice admits of an exception that a "statute can in any giving circumstances exclude the application of the rule against bias either expressly or by necessary implication". The imports of the exception is that where a statute stipulated that only Mr. A happens to be one of the parties to the dispute, he must go ahead and sit on the case, the rule of bias notwithstanding. In **Ex-Parte Olakunrin**[8] the majority of the Supreme Court

[6] (1985) 6 NLLR 783 at 793
[7] (1985) 1 NWLR pt. 7, 300 SC
[8] (1985) 1 NWLR (pt. 4) 652

found as a fact that there was real likelihood of bias on the part of the first respondent. The court however held that the action of the 1st respondent could be sustained under the doctrine of necessity. According to Bello, JSC, necessity permits on adjudicator to be judge in his cause if his participation is absolutely necessary to arrive at a decision".

A learned writer has contrasted this decision with the ***LPDC vs. Fawehinmi***[9] where the Supreme Court in a unanimous judgment came to the conclusion that the nature of the disciplinary machinery provided under the Legal Practitioners Act No. 15 of 1975 is manifestly unconstitutional because it made possible the establishment of a disciplinary tribunal which would be at one and the same time the prosecutor and the judge. According to him, the decision in ***LPDC vs. Fawehinmi***[10] is preferable to the decision in **Ex-Parte Olakunrin**[11], because section 33(2) merely permits administrative adjudication without compromising the fundamental principle that justice must not only be done but ought to be manifestedly seen to have been done. It must however be noted that Fawehinmi's case was decided under (1) of section 33 and not (2) because the Supreme Court held that the Legal Practitioners Disciplinary Committee is a tribunal within the meaning of S.33(1) of the Constitution.

It has been contended in support of the Supreme Court decision in ex-parte Olakunrin that it was on the ground of necessity that God decided the case over Adam's disobedience because God was the prosecutor and at the same time the judge in that case. It is submitted that it must be very rare in human situation to find a situation where a particular person will be the only competent authority to decide a matter as to justify the disregard of the rule against bias.[12]

[9] Supra
[10] Supra
[11] Supra
[12] See Tobi N. (2006) The Law of Interim Injunction in Nigeria St. Paul's Publishing House, Ibadan, p.2

(ii) The Rule of Natural Justice

The rule of natural justice is anchored on the pillars that a man may not be a judge in his own case; and let the other side be heard (usually expressed in the Latin*Maxims Nemo Judex in causa sua and audi alterem partem* respectively).

a) Audi Alterem Partem

This rule demands that a party must be heard before a decision is taken against him. This is an old principle of law. In the old English case of ***R vs. Chancellor, University of Cambridge (Dr. Bentley's Case)***[13]Fortescue J. said:

> "I remember to have heard it observed by a very learned man upon such occasion, that even God himself did not pass sentence on Adam, before he was called upon to make his defence on Adam, before he was called upon to make his defence. For God said: "Adam, why then has thou eaten of the tree whereof I command you that you shall not eat".

In the Nigerian case of ***Garba vs. University of Maiduguri***[14] ***Chukwudifu OputaJSC,*** (as he then was) explained the ruled thus: "God has given you two ears, hear both sides". From decided cases the following propositions could be inferred as the implication of the *audi alterem* rule.

1. Every party appearing before a tribunal must be given equal opportunity to state his case. He must be given the name of the accuser, and be informed of the accusation against him. It is not enough to invite the person as a witness.[15]
2. A tribunal must base its decision on evidence in absence of the parties.

[13] (1723) 93 ER 698
[14] (1986) 1 NWLR pt. 18, 550 SC
[15] See Dedunwa vs. Ojorodudu (1976) 9 – 10 Sc 329

3. An accused person must be afforded reasonable opportunity to call his witnesses and for them to be accorded hearing.
4. It is wrong for adjudication body to withhold from an accused the nature of the evidence, which had been given against him before purporting to impose punishment on him. He must give a fair opportunity to correct or contradict evidence given against him.
5. A person who is liable to be affected by any decision, acts, or proceeding (whether administrative, judicial or quasi-judicial) must be given adequate notice of what is proposed so that he may be in a position to make representation by himself or through someone else on his behalf, or appear at the hearing or inquiry, and to effectively prepare his defence and to answer the case he has to meet.
6. The discretion to grant an adjournment must be exercised judiciously. Where it is exercised capriciously and unreasonably it may amount to a denial of fair hearing.[16]

In ***Council of Federal Polytechnic, Mubi vs. TLM Yusuf & One***[17] the 1st Respondent and one other senior employee of the appellant were suspected of masterminding the circulation of an anonymous letter which was an attack on the administrative style of the then Acting Rector of the appellant, and was therefore considered offensive. A joint committee made up of the academic staff and council members was accordingly constituted to investigate the allegation. The Council, after considering the report of the investigation committee before which the 1st Respondent appeared, decided to terminate his appointment. Although the 1st Respondent was put on trial for either authorizing or distributing the anonymous letter of which the Council was in doubt if he was responsible, the council however, went ahead to find him guilty of his "attitude and contempt for constituted authority as manifested in the foul language "…used in

[16] See Ntukidem vs. Oko (1986) 5 NWLR pt. 25, p. 765 SC
[17] (1998) 1 NWLR pt. 533, p. 343 SC

your letter to the Polytechnic Management and verbally when you appeared before the Committee which investigation the matter". The conduct of 1st respondent and his colleagues in reaction to the Committee was therefore what the Council regarded as "serious act of misconduct" but they were not heard in respect of that. The Supreme Court held that in all trials whether judicial or administrative, the person against whom a complaint is laid must be heard in compliance with the principle of *audi alteram partern*. That is the crux of section 33 of the 1979 Constitution and is always reflected in statutes where a person could be put on trial or investigated with possible consequence of reprimand and or punishment. For every accusation, there must be a right to be heard. The Supreme Court found that the appellant did not find the respondent guilty of the complaint against him; rather the committee set up to investigate the allegations against the respondent complained of foul language and rudeness while before them and this the council found as excuse to remove the respondent. The respondent was not availed the opportunity of being heard on these new allegations by the committee. Thus he was found guilty of what he was not confronted with.

The Supreme Court has held that the dismissal of an appeal by Court of Appeal for want to diligent prosecution without hearing appellant does not violate the right to fair hearing. The court however admitted that a case dismissed on such ground could be relisted because the matter has not finally been determined.

b) Nemo Judex in Causa Sua

The development of the modern law on rule against interest and bias is based on the principle of law enunciated by Lord Hewart, C.J. in ***R vs. Sussex J.J. Ex P. McCarthy***[18] where the learned Chief Justice stated that; It is not merely of importance but it is of fundamental

[18] (1924) 1 KB 24

importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

This arm of natural justice requires that a person should not be a judge in a case in which he is interested. Between the two sides, the judge must hold the scale impartially and disinterestedly, his only interest being that justice be done. Everything must be cleared which will engender suspicion and distrust of the court. Interest may come from the court having direct pecuniary or proprietary interest, or simply from against one of the parties.

(iii) Hearing within a Reasonable Time

S.36 of the 1999 Constitution and Amendment of the Bill of Right of the US Constitution provide for not only fair trail but trail within a reasonable time, for justice delayed, it is said, is justice denied. This is an area where the Nigeria Judiciary has failed woefully. Judicial determination of disputes takes such a long time that in some cases both the witness and the litigants die before a case is finally determined. Today, instances abound of court proceedings commended more than fifteen years back, which are yet to reach the trial stage. In many cases, favourable judgement obtained after a long and sometimes protracted trial through the hierarchy of courts tend to loose their favour principally because the res has, in the process undergone some irreversible and unproductive changes.[19] Successive government have neglected the judiciary. While modern structures and infrastructures are continually being provided for the executive and the legislatures, the judiciary continues to use colonial structures and facilities.

[19] Jegede, M. I. (1993) What's Wrong with the Law? Nigerian Institute of Advance Legal Studies, Lagos, p. 4

The European Court of Human Rights has stressed the obligation on states to ensure that their judicial systems are organized so that court can meet all their requirement.[20]

There are scanty local case law on this matter because delay in the judicial process has become a tradition in Nigeria. The crucial process has become a tradition in Nigeria. The crucial question is, when does time being to run? In ***God's Power Asakitikpi vs. the State***[21] the appellant was tried and convicted of army robbery in the Bendel State High Court. The offence was committed on 6th July 1981. On 8th February 1982 the appellant was arraigned before a High Court Judge but the charge was not read to him and no plea was taken. The case was adjourned 18 times between February 1982 and 8th February 1983 when it was adjourned to 10th March 1983 the appellant was arraigned before another judge and for the first time the charge was read and explained to him and his plea was taken. The trial then continued until 31st March 1983 when judgment was delivered. On appeal, the appellant complained among other things. That he was not trial within a reasonable time. The Supreme Court held that trial in a criminal case commences with arraignment, which in turn consist of the charging of the accused or reading over the charge to the accused and taking his plea thereon. According to the Court, although the appellant was taken to the High Court times, his trial did not commence until 10th day of March 1983. Consequently, the delay from the 6th day of July 1981 to the 10th day of March 1983, though most unfortunate and depreciable, is not the delay in trial which section 33(4) of the constitution envisages. This decision cannot be supported. Once a person is arrested, his personal condition has altered until he is freed of the offence for which he was arrested. The European Court of Human Rights has held that in determining whether a trial was held within a reasonable

[20]B. STARK, (2005) International Family Law: An Introduction, Ashgate Publishing Limited, England, p.146 http://www.ashgate.com 2/7/2014
[21] (1993) 6 SCNJ 201

time, the relevant stage is that at which the situation of the person concerned has been substantially affected as a result of the suspicion against him[22] in other words, time will begin to run as soon as a person is arrested or remanded on suspicion, whether or not he has been formally charged with any offence.

(iv) Waiver of the Right of Fair Hearing

Can the right to fair hearing be waived? If the answer is in the affirmative, in what circumstances can the right be waived? There has been judicial elucidation of the matter by the retired erudite Justice Supreme Court of Nigeria Justice Kayode Esq. according to his Lordship,

a. Fundamental right that are for the sole benefit of the private individual can be waived. Example is right to speedy trial, which a litigant can waived by asking for adjournment of the case. So far as the adjournment does not give rise to a miscarriage of justice the waiver is permissible.
b. Fundamental rights that are for the benefit of the litigant and the public. Again to give the example of a speedy trial, and a litigant seeking adjournment in the case or in other words, waiver of the right, but the adjournment sought is of a nature that the court will lose the advantage it has of accurate assessment of the witness it had observed in the course of the trial. In such a case waiver is not permissible. To permit, it will lead to injustice. It is against public policy to compromise illegality (manifest or latent).
c. Where the question of waiver relates to a right in the control of the state or, in sole control of the court, there is nothing to be waived. A good example is the instant case where the court after the close of the case for both parties adjourned for such a long time

[22] See

for judgment as to make it lose control over the case. In such cases the parties have nothing to waive. It is not within their competence to waive anything.[23]

4.2.2 Right to Life

Right to life is obviously the most fundamental of all human rights. This is because other human rights can only be exercised by a person who is alive. Section 33(1) of the 1999 Constitution of Nigeria which guarantees the right of life provides as follows:

> "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of a sentence of a court in respect of a criminal offence of which he has been found guilty".

Under section 33(1) of the constitution, the right to life is nevertheless subject to the execution of a death sentence of a court of law in respect of a criminal offence of which one had been found guilty in Nigeria.[24] Thus the section expressly authorize death penalty. Though section 33(1) of the constitution authorized killing in execution of a sentence of a court, it must be emphasized that killing in execution of a sentence of a court could only be justified under the provision where there is no pending appeal. Thus the Supreme Court of Nigeria in ***Bello vs. A.G. Oyo State***[25]awarded damages against the Government of Oyo State for executing a condemned criminal whose appeal was pending in the Court of Appeal. Appeal in the circumstance should operate as a stay of execution. Permissible limitations on the right to life are contained in section 33(2) of the constitution, which provides that a person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law of such forces as is reasonably necessary:

[23] See Olue vs. Enanwali 91976) 1 All NLR 70
[24] See Section 33 (1) of the 1999 Constitution
[25] (1986) 5 NWLR pt. 45, p. 868 SC

a. For the defence of any person from unlawful violence or property;

b. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

c. For the purpose of suppressing a riot, insurrection or mutiny.

The question that arises is whether the limitation clauses allow intentionally killing in the circumstances enumerated above.

Professor B.O. Nwabueze expressed the view that a similar provisio of the 1979 constitution sanctions intentional killing for the purpose enumerated above.[26] The better view, it is respectfully submitted, is that the killing permitted under section 33(2) should have the objective of achieving one of the specified aims and the killing is merely a consequence of using an absolutely necessary amount of force in doing so.[27] While the use of force may sometimes be necessary, conduct resulting in death whether intentional, negligent or accidental should always have to be justified. In the Nigeria case of ***Okonkwo vs. The State***[28] the appellant and the 1st accused lived in the same compound. The deceased arrived at compound of the 1st accused alone armed with a dagger at about 12 mid-night. The deceased forced himself into the premises of the 1st accused and when challenged by the 1st accused as to whom he was, he-pulled out his dagger at the 1st accused.

The 1st accused took the deceased to be a member of an armed robbery gang who have come to attack him. He therefore raised alarm shouting "thief, thief", and then grabbed the deceased by the hand and engaged him in physical combat to disarm the deceased. As they were struggling, other members of the compound came out and joint in beating the deceased. They ultimately over-power him and took the dagger from him. Among those that came out was the

[26] Nwabueze B. O. (1982) Presidential Constitution in Nigeria C. Hurst & CO. London, Pp. 499-500
[27] See R. vs. Edga (1938) WACA 133
[28] (1998) 4 NWLR pt. 544, p. 142, CA

appellant and after giving the deceased a thorough beating, he was tied down and kept in a part of the compound while the 1st accused went to the police and lodged a complaint of armed robbery. The police arrived at the compound and dumped the body of the appellant into the booth of their car. They then drove back to their station from where they deposited the body in the mortuary. At the end of trial, the trial court found the appellants and the 1st accused guilty of murder and sentence them to death by hanging. On appeal to the Court of Appeal, the court in unanimously allowing the appeal, held inter alia, that S.30 of the 1979 constitution allows a person to use such force as is reasonably necessary for the defence of his property. The court considered the force used in the instant case as reasonably necessary in the circumstances.

This decision must be criticized. The facts of the case disclose that the deceased was already over-powered and arrested before he was beaten to death. Consequently, the force used after he had been subdued cannot be justified under S.30(2) of the 1979 constitution. Due process requires that the deceased ought to have been handed over to the police. In ***Ahmed vs. The State***[29]the Court of Appeal rejected a similar defence put up by the appellant that he acted in defence of property. The Court rightly stated that even if the accused had acted in defence of property, the force used and the weapon was out of proportion with the way such property should be defended against attackers who were not armed.

A pertinent question is whether the provision-permitting killing in defence of property reflects our cultural value. In other words, in our value preferences, does property come before life? The answer to the question is obviously the negative. In Africa and Nigeria in particular, life is valued over and above every other thing. Consequently, any permissible qualification of

[29] (1988) 5 NWLR pt. 550 p. 493 CA

the right to life must be absolutely necessary for the defence of another life, or the security of the society. Most civilized societies do not permit killing in defence of property.

i) Duty of the State to Secure Life

It is necessary to consider whether S.33 of the Constitution merely imposes a negative obligation on the state not to take life, or whether it imposes any positive obligation on state agencies to act to save life. The law imposes obligations on states to take appropriate steps to safeguard life. This will, for instance, entail taking appropriate steps to promote security and to prevent murder and other crime threatening life. However, the states are not duty bound to provide bodyguards indefinitely to protect the lives of people who feat that they are likely to be attacked. Of course, the doctrine of the rule of law requires that there must be effective government capable of maintaining law and order. It is therefore submitted that the right to life requires states not only to abstain from taking positive steps to protect life but also to take positive steps to protect life. The United Nations Human Rights Committee has noted that the expression "inherent right to life, cannot properly be understood in arestrictive manner and the protection of this right requires that measures be undertaken to reduce infant mortality, to increase life expectancy and to eliminate malnutrition and epidemics. Thus the right to life includes a duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life.[30]

ii) Duty of the State not to Endanger Life

Another pertinent question is whether the existence of a state of affairs created by the state which will jeopardize the life of the people is violation of this section. For instance, where

[30] Umozurike U. O (1986) The Present State of Human Rights in Africa, University of Calabar Law Journal, pp. 62-63

prison conditions are such as to endanger life, does this not constitute and infringement of the section? In ***Rajasthan Kishan Sangthan vs. State of Rajassiah***[31], the Indian Supreme Court also held that a person even during lawful detention is entitled to be treated with dignity befittingany human being and the mere fact that he has been detained lawfully does not mean that he be subjected to ill treatment, much less any torturous beating. According to the court, the right to be treated even during lawful detention in a manner commensurate with human dignity is well recognized right under Article 21 of the Indian Constitution which guarantees the right to life, and if it is found that the police has maltreated any person in police custody which is not commensurate with human dignity, he is least entitled to monetary compensation for the torturous act by the police.

The condition of Nigeria prisons and police cell are so bad that sending a person there is tantamount to a sentence of death. There appears to be real difference between sending a person to such prison and out-rightly killing the person. Prison conditions which are manifestly unhealthy and dangerous to life, therefore, constitute infringement of the right to life.

The right to life has been so espoused in many jurisdictions that anything that threatens a person's means of livelihood is considered a violation of this right. In ***Olga Tellis vs. Bombay Municipal Corporation***, the Supreme Court of Indian held that the sweep of the right to life…does not mean merely that life cannot be extinguished or taken away… an equally important facet of that right is the right to livelihood because no persons can live without the means of living…deprive a person of his livelihood and you shall have deprived him of his life.[32]

[31] (1989) CLB 1177
[32] (1994) 20 CBL No. 446

iii) The Scope of Right to Life

The issue that comes to focus here is who is entitled to right of life? Does the provision protect the life or an unborn foetus? S.307 of the Criminal Code of Southern Nigeria provides that a person is considered a human being when it has proceeded in a living state from the mothers womb whether the umbilical cord has been severedor not. This provision, however has not answered the question; the 1999 Constitution of Nigeria has not been of help in this matter. What is involved here is a conflict between the foetus's right to life on the one hand, the mother's right to privacy or life, in some cases.

There are two schools of thought in matter-the pro-life school and the pro-choice school.[33] According to the pro-life school, the foetus is a person because life begins at conception and anything done from that period which result in the killing of the foetus is an infringement of the foetus's right to life. On the other hand, the pro-choice school holds the view that a foetus is not a person from conception but only a potential life that could mature into a person. Consequently, the foetus can only be considered a person whose right to life should be protected from the period it is capable of surviving independently of the mother. Medical evidence is to the effect that this period commences from the 7th month.[34]

In Nigeria criminal law, abortion is unlawful save it is procured for the purpose of the preservation of the mother's life.

As earlier stated, what is involved here is the balancing of interest and right of different right holders and in this balancing, the cultural value of each society has to be taken into consideration. Nigerian society has to be taken into consideration. Nigerian society is less

[33] See Jefferson M. (1992) Criminal Law, Pearson Education Ltd, London, p. 445
[34] Ibid

sexually permissive than the western world. Nigeria law on abortion is therefore a reflection of our cultural value and ought to be maintained.

4.2.3 Right to the Dignity of the Human Person

The right to the dignity of the human person is guaranteed under S.34 of the 1999 Constitution in the following terms:

1. Every individual is entitled to respect for the dignity of his person and accordingly:
    a. No person shall be subject to torture or to inhuman or degrading treatment.
    b. No persons hall be held in slavery or servitude; and
    c. No person shall be required to perform forced or compulsory labour

In ***Uzoukwu vs. Ezeonu*** II[35]the Court of Appeal stated that the specific acts which S.31(1) of the 1979 Constitution S.34(1) 1999 constitution regards inimical or antithetical to the word of "dignity" are clearly enumerated under (a), (b) and (c). Accordingly the world "dignity" is ejusdem generic to the specific acts mentioned under (a), (b) and (c). Since S.31(1) has specifically mentioned acts which will be regarded as a violation of the human dignity, a court of law has no jurisdiction to go outside the clearly enumerated acts in search for more violator acts. Similarly, in ***Onwo vs. Oko***[36] the Court of Appeal expressed the opinion that any complaint of acts which fall outside section 31(1) will not support an action under the provisions of section 31(1). These opinions clearly put the right to human dignity as guaranteed by the constitution within a very narrow compass, which should not have been intended by the makers of the constitution. in the words of Niki Tobi "The word torture etymologically means to put a person to some form of pain which would not be extreme. Also means to put a person to some form of

[35] 1991 C6 NWLR pt. 200 p. 708 CA
[36] (1996) 6 NWLR pt. 456 at p. 584

anguishing or excessive pain…it conveys the same meaning in section 31(1)(a). The torture under the subsection could be a physical brutalization of the human person. It could also be a mental torture in sense of mental agony or mental worry. It covers a situation where the person's mental orientation is very much disturbed that he cannot think and do things rationally, as the rational being he is[37] Torture is similar to in-human or degrading treatment but is directed towards a limited range of purpose 'An inhuman treatment is a barbarous, uncouth, and cruel treatment; a treatment which has no human feeling on the part of the person inflicting the barbarity or cruelty.[38] In the Nigerian case of ***Magaji vs. Board of Custom & Excise***[39]**.** Adefarasin, C.J. held that it is a violation or the constitutional prohibition of inhuman or degrading treatment to organize a raid with use of guns, horse whips, tear gas, and to strike or otherwise injure custodians of such goods. In ***Alaboh vs. Boyles & Anor***[40]the beating, pushing and submersion of the applicants head in a pool of water by the first respondent was held to be inhuman and degrading treatment.

The right to the dignity of the human person is most commonly violated in Nigeria in relation to detainees and prisoners. Detainees in Nigeria are subjected to all manner of torture, inhuman and degrading treatment, in some cases for the purpose of extracting confessional statement from them. The Supreme Court of Indian has stated unequivocally that a person even during lawful detention is entitled to be treated with dignity befitting any human being and the mere fact that he has been detained lawfully does not mean that he can be subjected to ill treatment. Much less any torturous beating.[41] In the Nigerian case of ***Fawehinmi vs. Abacha***[42]the

[37] Niki Tobi J.C.A. in Nzonkwu v. Ezeonu II Supra
[38] Ibid
[39] (1982) 3 NCLR 552
[40] (1984) 5 NCLR 830
[41] See Rahasthan Kishan Sangthan v. State of Rajassiah Supra
[42] Supra

Court of Appeal held that the state has a responsibility to ensure that a person in custody is not put in undue danger of his health and safety. Accordingly, where facts show that the good health and a person in custody of the state depends on his taking special drugs, which are not being made available to him, and he wants to have access to them at his own costs, then he is entitled to such drugs through members of his family and personal physicians.

It is pertinent to mention that the right to the dignity of the human person avails condemned person. In ***Peter Nemi vs. A.G. Lagos State and Another***[43]**.** The appellant and four other persons were convicted of conspiracy to commit armed robbery and sentenced to death on February 28, 1986 after the appellant had been in custody since he was arrested in September 9, 1982. His appeal was dismissed by the Court of Appeal on October 4, 1994. On January 17, 1995 the appellant applied for leave to enforce his fundamental rights and sought the following relief: a declaration that the prison confinement of the applicant under sentence of death since February 28, 1986, a period of eight years, constitutes infringement of applicant's fundamental rights against torture, inhuman and degrading treatment protected by section 31(1)(a) of the 1979 constitution of Nigeria; an order directing that the sentence of death on the applicant be quashed and/or commuted to such term of imprisonment as the Honourable Court may direct. The defendants raised a preliminary objection on the grounds that:

a. The appellant had no legal capacity to institute the action;
b. The Court lacked the jurisdiction to entertain it; and
c. The application was incompetent in law.

The learned trial judge, Olomojobi, J. on June 6, 1995 upheld the objection and came to the conclusion that the court was not competent to adjudicate on the action. The appellant's

[43] (1996) 6 NWLR pt. 452, p. 42, CA

appeal to the Court of Appeal was upheld. Uwaifo J.C.A, who read the lead judgment opined that the aspect of the respondent's brief that a condemned prisoner has no right to life, and cannot enforce any fundamental rights and is therefore as good as dead was quite perturbing. He posed the following questions. Does it mean that a condemned prisoner can be lawfully starved to death by the prison authorities; can be lawfully punished by a slow and systematic elimination of his one after another until he is dead? Is a condemned prisoner not a person or an individual? According to his Lordship, these questions gravely touch not only the heart but bring section 31(1)(a) of the constitution into focus even in case of condemned prisoner must be done according to due process of law, and the due process of law does not end with the pronouncement of sentence.

In the Jamaican case of ***Pret vs. Attorney-General of Jamaican***[44]it was held that execution should follow as swiftly as practicable after sentence of death, subject to allowance of a reasonable time for appeal and consideration of a reprieved, and an appellate procedure that permitted prolonged delay, for taking advantage of which no fault could be attributed to an accused, was incompatible with capital punishment. According to the court, to carry out executions after a delay of 14 years will constitute inhuman punishment contrary to 17(I), consequently their sentences were commuted to life imprisonment.

The Nigeria constitution provides for the circumstance under which the prohibition of forced or compulsory labour could be restricted, as follows:

Section 34(2) for the purpose of subjection 1(c) if this section, "forced or compulsory labor does not include:-

[44] (1988) 14 CLB No. IP 42

a. Any labour required in consequence of the sentence or order of a court.
b. Any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such or, in the case of persons who have conscientious, objections to service in the armed forces of the Federation, any labour required instead of such service;
c. Any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
d. Any labour or service that forms part of
    i. Normal communal or other civic obligations for the well-being of the community;
    ii. Such compulsory national service in the armed forces of the federation as may be prescribed by an Act of the National Assembly, or
    iii. Such compulsory national service which form part of the education and training of citizens of Nigeria as may be prescribed by Act of the National Assembly.

The concept of normal communal or other civic obligations' is intended to permit various community obligations to be maintained in the interest of a community. It has been suggested that their content will vary according to the needs and tradition of the community in question. Does the Death penalty amount to inhuman or degrading treatment?

If the death penalty amounts to inhuman or degrading punishment or treatment, then the prohibition of inhuman and degrading treatment in section 34 of the Constitution could be interpreted to override the provision of section 33 of the constitution, which permits death penalty.

Nwabueze, B.O.[45] has argued forcefully that the death penalty is unconstitutional in the Nigerian context. According to him, the death penalty, viewed as retribution for murder, may well not be cruel in the constitutional sense, but it is inhuman to terminate human existence by killing and the fact that it is inflicted as punishment for crime does not make it any less so'. If it is not inhuman, and even if some method of making it completely painless could be devised, it is still degrading and therefore a violation of the constitutional prohibition against degrading treatment, he argued.

4.2.4 Right to Personal Liberty

Section 35(1) of the 1999 Constitution of Nigeria guarantees the right to personal liberty. Similarly, Article 6 of the African Charter on Human and People's Rights provides as follows: "every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested and detained".

The word, liberty simply means freedom from arbitrary or undue external restraint, especially by a government, but what comes to mind is whether the word as used should be liberally or restrictively construed. In ***Adewole vs. Jakande***[46], Omolulu, J. gave the word a liberal interpretation when he held that closure of private schools will amount to interference with the personal liberty of parents to train their children as they deem fit.

The African Commission on Human and Peoples' Right also construed the word liberally when it expressed the opinion that Legal Practitioners (Amendment) Decree 93, which

[45] Nwabueze B. O. Op. cit
[46] (1981) N.C.L.R. 262.

established a new governing body for the Nigerian Bar Association constitutes, among other things, an infringement of the right to liberty[47].

The requirement that a person who is not tried within a reasonable time should be released is routinely being violated in Nigeria. Incidents of indiscriminate arrest and in ordinate delays in the criminal justice system in Nigeria are rampant. The practice in Nigeria is that a person arrested for a criminal offence, especially where the offence caries capital punishment or imprisonment for life or where the accused has elected to be tried by the High Court in an indictable offence, is taken to the Magistrate Court (under what is called a "holding charge") to be remanded in prison custody pending investigation of the case, or pending preferment of informationby the Attorney General[48].In some cases, the police may after several years, not forward the case file to the Attorney General. In other cases, where the case file has been forwarded to the Attorney General, information or charge may not be brought or preferred for several years while the accused person remains in detention. In cases where the accused person is brought forward for prosecution in the court, such prosecution often drags on indefinitely owing to long delays. The suspect is detained for unduly long periods while awaiting trial in terrible prison conditions.

Nigerian courts have in recent times come down heavily against the "holding charge" practice.

[47] See CLO/Nigeria reported in LANE ALERT, Vol. 2, No. 2, April – June 1995.
[48] See for instance, sections 240 – 264, Criminal Procedure Law, Cap. 37, Revised Laws of Anambra State, 1986, section 241 of the said law provides that "In capital offences and offences punishable with imprisonment for life proofs of evidence in respect of a charge shall be prepared after the charge has been read to the accused person".

In the case of ***Usman Abdullahi Shagari and 108 Ors vs. Commissioner of Police***[49], the appellants were arrested for the alleged offence of culpable homicide and were later arraigned before a Chief Magistrate Court. The learned Chief Magistrate who lacked jurisdiction to try the appellants on the said offence, refused to admit them to bail and thus ordered their remand in custody. Subsequently, all the appellants applied for their release on bail pending their trial. The trial court refused the application. The ruling aggrieved the appellants and they appealed to the Court of Appeal. While allowing the appeal and admitting the appellants to bail the Court of Appeal held thus:

> *A holding charge is unknown to Nigerian Law and any person or an accused person detained thereunder, is entitled to be released on bail within a reasonable time before trial (more so in non-capital offences). A holding charge has no place in Nigerian judicial system. Persons detained under an "illegal", "unlawful" and "unconstitutional" document tagged "holding charge" must unhesitatingly be released on bail. In the instant case, the appellants were arraigned before a Chief Magistrate's Court, which certainly lack jurisdiction in homicide cases/offences and there was no formal charge framed against them accompanied by proof of evidence as at the time the High Court heard their motion for bail. The above amounted to special circumstance for the High Court to admit them to bail but by continuing to detain them on a "holding charge" was not a judicious and judicial exercise of discretion.*

The "holding Charge" practice in Nigeria is therefore, no doubt, an infringement of the fundamental right to personal liberty guaranteed under section 35 of the 1999 constitution as well as article 6 of the African Charter on Human and People's Right[50].

It was also held in ***Hassan vs. E.F.C.C.***[51] It was held that, the Section 35 of the Constitution have no one in doubt that the Section is not absolute. It stated that personal liberty

[49] (2007) 5 N.W.L.R. (Pt. 1027 272 at 280, Ratio 1.
[50] Cap. A9, Laws of the Federation Nigeria, 2004.
[51](2014) 1 NWLR (PT 1389) C.A

of an individual within the contemplation of section 35(1) of the Constitution is a qualified right in the context of this case and by virtue of sub-section 1(c) thereof which permit restriction on individual liberty in the cause of judicial inquiry or where a person was arrested and put under detention upon reasonable suspicious of having committed felony. A person's liberty can also be curtailed in order to prevent him from committing further offence(s).

If every person accused of a felony can hide under the canopy of Section 35 of the Constitution to escape lawful detain, then an escape route to freedom is easily and willy made available to persons suspected to have committed serious crimes and that will not augur well for the peace, progress, property and tranquility of the society.

4.2.5 Right to Private and Family Life

Section 37 (1) of the Constitution of the Federal Republic of Nigeria, 1999 provides that, "The Privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected"[52].

In the case of ***Nigerian Navy vs. Garrick***[53], the respondent's house was vandalized and plundered. There was no court order to that effect. He was held hostage for 8 hours on his property. He was told not to return to his property except to pack out his personal belongings. The court held that the acts of the officers and men of the Nigerian Navy, is unlawful, barbaric and are flagrant violationsof the fundamental rights of the respondent guaranteed under section 37 of the 1999 Constitution.

[52] See also article 12 of the Universal Declaration of Human Rights; article 17 of the International Convenant on Civil and Political Rights. The African Charter did not expressly guarantee the right to private and family life but article 18 (2) rather impose a positive duty on the state to assist the family which is the custodian of moral and traditional values recognized by the community.

[53] (2006) 4 N.W.L.R. (Pt. 969) 69 at 103 – 104.

It was also held in***Hassan vs. E.F.C.C.***[54] It was held that: "where the premises of a person who is alleged to have committed an offence is to be searched, such an exercise can only be conducted upon the said premises sequel to obtaining a valid search warrant. For any search conducted on a premise without a warrant is unlawful and unconstitutional because the said act would amount to an infraction of the constitutional right to privacy as provided by section 37 of the constitution which states that the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communication is guaranteed."

4.2.6 Right to Freedom of Thought, Conscience and Religion

Section 38 of the 1999 Constitution guarantees the right to freedom of thought, conscience and religion.[55] This right is an extension of the rights to freedom of expression, assembly and association. Section 38 of the 1999 Constitution is normally read together with section 10 of the 1999 Constitution, which forbids state religion. A secular state is one, which creates a wall of separation between church and the state, which means complete dissociation of the latter from the former[56]. The view has been forcefully canvassed that Nigeria is not a secular state. According to Justice Bashir Sambo, Secretary General Jama'atu 'Nasril Islam, if we examine all the Nigerian Constitutions of the past and present together with the laws, we cannot find any provision which says that Nigeria is a secular state. It only surfaced in Nigerian Constitution in 1979 and re-appeared in 1999 Constitution[57].

There are other sections of the Constitution, which contradict secularism. Section 17 (3) (b) of the 1999 Constitution made it that the government can work towards ensuring and

[54]Ibid
[55] See also article 8 of the African Charter.
[56] Dhokalia, R. P., The Human Right to Religious Freedom: Problems of Definition and Effective Enjoyment, Cal. L. J. (1990) 3 Pp. 90 – 96.
[57] See section 10 of both 1979 and 1999 Constitutions.

promoting religious and cultural life. Section 18 of the 1999 Constitution on educational objectives contradicts secularism as education means intellectual and moral training, and moral training of Muslims and Christians can only be taught through their religions. The whole chapter VIII on Judicature covering sections 210 – 249 contradict secularity as the Government funds courts which apply common law, Islamic law and customary law. It is clear that these laws are inspired by religion.

In the case of ***Agbai vs. Samuel Okogbue***[58], the Supreme Court held that since the respondent's religion forbade him from joining an age grade, any custom which compelled him to do so violated his right to freedom of religion. In *West Virginia State Board of Education v. Barmette*[59], the Supreme Court of America by a majority of 6 – 3 held that compelling a flag salute by public school children violated their guaranteed right to freedom of religion.

The 1999 Nigerian Constitution under section 38 (4), however, prohibits any person to form, take part in the activity, or be a member of a secret society[60].

4.2.7 Right to Freedom of Expression and the Press

The right to freedom of expression and press is guaranteed under section 39 of the 1999 Constitution[61]. One of the best articulation of the rationale for freedom of expression could be found in the following immortal words of John Stuart Mill:

> *If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind …. The peculiar evil of silencing the expression of an opinion is, that it is robbing the*

[58] (1991) 1 N.W.L.R (Pt. 204) 391 at 444.
[59] 319 U.S. 624, 63 S. ct. The court overruled its earlier decision in *Minersville School District vs. Gobitis* 310 US 586, 60 S. Ct.
[60] *Registered Trustee of AMORC vs. Awoniyi* (1991) 3 N.W.L.R. (Pt. 178) 245.
[61] See also article 10 of the African Charter.

> *human race, posterity as well as the existing generation, those who dissent from the opinion is, that it is robbing the human race, posterity as well as the existing generation, those who dissent from the opinion still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong they lose, what is almost as great a benefit, the clear perception and the livelier impression of truth, produced by its collision with error.*[62]

There can be no progress if man is not in a condition where he has the freedom to search for the truth, and where ideas are able to clash with each other without hindrance from the state or the society. Democracy calls for an open society. It believes that as man advances in knowledge, he betters his condition and that of society and therefore man moves on the route of progress. In the words of Evans Hughes, "If we have any assurance for the future, it lies in education, in the dissemination of correct information in availing ourselves of the investigation of science, in the formation of a sound public opinion which must rest on a broad liberal culture".[63] Free speech and free press are instruments of self-government by the people because they enable the people to be informed and educated about affairs of government.[64] Political responsibility as a concept of democratic government requires that public opinion shall be one of the factors informing the actions of government.

In the case of ***State vs. Ivory Trumpet Publishing Co. Ltd***,[65] the accused persons were charged with "intention to bring into hatred or contempt or to excite disaffection against the person of Chief Jim Ifeanyichukwu Nwobodo, Governor of Anambra State of Nigeria" by publishing an article in the weekly Trumpet newspaper entitled "Just before the Battle". In

[62] Mill, J.S, On Liberty, Representative Government, the Subjection of Women, Oxford University Press, London (1912) Pp. 22 – 23.
[63] Hughes, E., Liberty and the Law – The Lawyers Treasury, Eugene, C. G. (ed.) Bobbs – Merril Company Inc. U.S. A. (1963) p. 31.
[64] Nwabueze, B. O., Presidential Constitution of Nigeria, C. Hurst and Company, London (1981) p. 458.
[65] (1984) 5 N.C.L.R. 736.

refusing to convict Ivory Trumpet Publishing Co. Ltd, the then Chief Judge of Anambra State, Justice Emmanuel Araka, held thus:

> *I am in no doubt whatsoever that any law which restricts the freedom of expression guaranteed to the accused persons under the constitution is not reasonably justifiable in a democratic society… and I … am not obliged to uphold the validity of such law… I feel no doubt that any construction of the law on sedition in this country should be against the background of a profound national commitment to the principle that debate on public issue should be uninhibited, robust and wide-open and it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials.*[66]

4.2.8 Right to Peaceful Assembly and Association

Section 40 of the 1999 Constitution guarantees the right to freedom of peaceful assembly and association.[67] Freedom of assembly and association is a necessary part of the democratic process. Democracy is essentially concerned with identifying and satisfying yearnings and feelings of individuals and groups. People ventilate their feelings and desires through demonstrations and by forming interest groups. Furthermore, the freedom of expression and the right to freedom of religion, thought and conscience, may be exercised in concert with others only if there is freedom of assembly and association.

The right to associate does not imply a correlative duty on any person to agree to associate with any other person. The Nigerian Supreme Court has held that a person cannot be conscripted into an association contrary to his will whether or not such conscription is sanctioned by customs and traditions. In ***Agbai v. Okogbue***,[68] one Mr. Samuel Okogbue, who lived in Aba, Abia State and was a member of Jehovah Witness, refused to join an Age Grade Union formed

[66] See also *Nwankwo vs. State* (1985) 6 N.C. L. R. 228
[67] See also articles 10 and 11 of the African Charter.
[68] (1991) 7 N.W.L.R. 391.

by members of his village. The Age Grade members requested him to pay ₦109.00 as his share of the amount the Association was collecting to build a hospital in their village. Upon his refusal to pay, the defendants being members and representatives of the Union entered Mr. Okogbue's tailoring shop and ceased his sewing machine. In so doing, the plaintiffs said that they were acting on the authority of the custom of their people, which they claimed, made membership of an Age Grade by all natives of the community compulsory; authorized the imposition of fines and levies on members; authorized the seizure of goods of a native who failed to pay any levy required by his age grade. The Supreme Court, per Nwokedi, J.S.C., held that, "Much as one would welcome development projects in the community, there must be caution to ensure that the fundamental right of citizens are not trampled upon by popular enthusiasm. The rights have been enshrined in the Constitution which enjoys superiority over local customs".

4.2.9 Right to Freedom of Movement

The right to freedom of movement is guaranteed under section 41 of the 1999 Constitution[69] and provides that every citizen is entitled to move freely throughout Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.

This freedom however can be curtailed with regards to the fact that a person has committed an offence or is reasonably suspected to have committed a criminal offence and is facing trial.

[69] See also article 12 of the African Charter. See *Federal Minister of Internal Affairs vs. Shugaba (1982) N.C.L.R. 915; Director of State Security Service and Anor vs. Olisa Agbakoba (1999) 3 N.W.L.R. (Pt. 599) 314.*

In ***Yunus vs. F.R.N***[70]. The court of appeal held that, where a person is facing criminal trial, his constitutional right to freedom of movement can be curtailed by the court seized of the matter or by a higher court, depending on the nature of the offence.

4.2.10 Right to Freedom from Discrimination

The right to freedom from discrimination is guaranteed under section 42 of the 1999 Constitution.[71] Discrimination, when it consists of an ability to differentiate right from wrong and good from bad, is an essential part of everyday life. Much of education, and arguably the whole of culture, is directed to establishing acceptable criteria for preferring one work of art, objective, technique, or person, to another, and encouraging people to develop their critical faculties to enable them to discriminate effectively according to these criteria. Discrimination becomes morally unacceptable only when it takes a particular form, namely treating a person less favourably than others on account of a consideration, which is morally irrelevant.[72]The outlawing of certain types of discrimination is justified on the basis of the simple premise that there are certain criteria for treating people differently which should never be regarded as morally relevant or which are relevant in admissible way only in a restricted range of situations which can be defined by law. The unacceptable criteria, which the Constitution forbids are when they are based on a citizen's ethnic group, place of origin, sex, religion, or political opinion, or the circumstances of one's birth.

[70](2015) 10 NWLR (PT 1466) p70
[71] See also article 2 of the African Charter.
[72] Feldman, D. et al. Civil Liberties and Human Rights in England and Wales, Oxford University Press Inc; New York (1993) Pp. 854 – 855.

In ***Adam vs. Attorney General of Borno State***[73], the appellants as plaintiffs claimed for declarations against a practice whereby they paid from their pockets, for their children's Christian Religions Knowledge instructions while the Gwoza Local Government paid Islamic teachers. The court of first instance held that the matter came under fundamental objectives and directive principles of state policy and as such was not justiciable. On appeal, it was held that where a local authority in the implementation of the fundamental objectives adopts a policy, which infringes a citizen's fundamental rights to non-discrimination, that breach of the citizen's right is justiciable.

In ***Okoli vs. Okoli***,[74] the court noted that the makers of our Constitution have very large hearts. They are very accommodating. They know the peculiarities of our polity. So, the circumstances of the birth of a person cannot be a bar to his legal and properly proven rights. The Nigerian Democratic Constitution in its language exhibits how much value it places on the worth of each and every one of the citizens. It does not and will not condone, nor indeed tolerate any discrimination whether by any law of the land or any action on the part of any executive or administrative authority or person or the state in sharing advantages and even disadvantages, based on sex, race, place of origin, ethnic, religious or political affiliation.[75]

4.2.11 Right to Acquire and own immovable property anywhere in Nigeria

The right to own immovable property anywhere in Nigeria is guaranteed under section 43 of the 1999 Constitution[73]. In the case of ***Peenok Investment Ltd vs. Hotel Presidential***[76], the court held the edict that sought to expropriate people of their property as being inconsistent with

[73] (1996) 8 N.W.L.R. (Pt. 465) 203.
[74] (2003) 8 N.W.L.R. (Pt. 823) 565 at 580.
[75] Anzaku vs. Governor of Nassarawa State (2005) 5 N.W.L.R. (pt. 919) 448 at 484 – 486.
[76](1982) NSCC 477

the constitution which guaranteed the right not to be expropriated of property. In ***A.C.B. vs. Okonkwo***[77], the Court of Appeal held that the 1st Respondent was right to have come to court by way of fundamental right enforcement to seek redress against an *exparte* order of court authorizing compulsory removal of her property in respect of an offence that the 1st Respondent's son was alleged to have committed.

One act of expropriation of private property is the Land Use Act[78]. The tenor of the Act is the nationalization of all lands in the country by the vesting of the ownership in the state leaving the private individual with an interest in land, which is a mere right of occupancy[79].

In ***Adefila vs. Popoola***[80]It was held thatthe fact that government, either federal or state takes steps to acquire land for public purposes does not in anyway violate the right of owners of such property, provided section 44 of the constitution is complied with.

Also in ***Dangabarvs. F.R.N***[81]The court of appeal held that the order of interim attachment and forfeiture of the assets of the appellant pending hearing and final determination of the criminal case against him was not inconsistent with the constitution.

4.3 Enforcement Mechanism under the Nigerian Constitution

The following enforcement mechanism are applicable in Nigeria.

4.3.1 Constitutional Measure

Section 42 (1),(2) and (3) of the constitution provided as follows:

[77] (1997), N.W.L.R. 195 C.A.
[78] Cap. L5, L.F.N., 2004.
[79] Ibid, Sections 6 &17.
[80](2015) 1 NWLR (PT 1460) 186 C.A.
[81](2014) 12 NWLR PT (1422) p.588.

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 take such order, issue such writs and give such directions as it consider appropriate for the purpose of enforcing or securing the enforcement within that state or any rights to which the person who makes the application may be entitled to under this chapter.
3. The Chief Justice of Nigeria may rules with respect to the practice and procedure of the High Court for the purposes of this section.

Pursuant to sub-section 3 above, the Fundamental Rights (Enforcement Procedure) Rules were made and came into force on 1st January, 2009

4.3.2 Fundamental Rights Enforcement Procedure Rules

Fundamental Rights Enforcement Procedure Rules provide for the following guidance:

a) Institution of Procedure

By order 1 Rule 2(1) of the rules, the proceedings may be commence by any person who alleges that any of the Fundamental Rights provided for in the constitution and to which he is entitled has been, is being, or is likely to be infringed. The Court of Appeal in ***Uzoukwu vs. Ezeonu***[82]stated:

[82]Supra

> *This section (S.42) requires that a person who wishes to obtain that, and this includes in my opinion a group of persons claiming together he is entitle to a fundamental rights…the Complainant of Applicant must be the person whose right has been or is likely to be contravened it is not every right of the petitioner which is involved here. It is only the right which falls within the provisions of chapter IV can found an action under the jurisdiction of court provided by sect 42…The court can exercise very wide powers under sub-section (2) of section 42 for the purpose of enforcing or securing the provisions of chapter IV no declaration or any other ruling or judgment can be made in the name of fundamental rights clear unambiguous and serious as the infringed right may be, the court cannot raise is status to that of a fundamental right if in fact it cannot be spelt out in chapter iv. The applicant must look for his right elsewhere under the common law or status law .*

In ***Olaniyi vs. Aroyehun***[83] the Supreme Court held that chieftaincy is not a matter falling under the fundamental rights umbrella as there is of fundamental right to be a chief.

The courts have introduced another elements on the eligibility of an applicant to bring proceedings under the rules. In ***Borno Radio Television Corporation vs. Basil Egbunonu***[84]the Court of Appeal held:

> When an Application is brought under the Fundamental Rights (Enforcement Procedure) Rules 1979, a condition precedent to the exercise of the court jurisdiction is that the enforcement thereof should be the main claim and not an accessory claim. Enforcement of Fundamental Right or securing the enforcement thereof should from the applicants claim as presented, be the principal or fundamental claim and no an accessory claim. In this case the alleged breach of the fundamental right to fair hearing under section 33 of the constitution of the Federal Republic of Nigeria 1979 flows from the alleged suspension and termination of the appointment. The termination of the appointment of the respondent was, having regard to all the circumstances of this case including the relief, that facts deposed to in the affidavit of the respondent and most of the findings made by the learned trial judge, the main claim or the Fundamental issues in this case. It was the cause of actions.

[83] (1962) All NLR 413
[84] (1962) All NLR 150

The Supreme Court had earlier in the case of ***Tukur vs. Government of Gongola State***[85] set the precedent which was followed by the Court of Appeal.

It is humbly submitted that this interpretation is too stultifying of the language used in section 42 of the constitution and is clearly geared at constricting rather expounding the liberties guaranteed in chapter iv.

b) Underlying Jurisprudence on when Institute Fundamental Rights Action

The underlying jurisprudence herein is both reactive and proactive or preventive. One as such need not wait until the infringement has occurred before heading to the court, thus, order 1 rule 2 (1) could conveniently be divided into three, to wit:

i. Where the infringement of Fundamental Right has already occurred.
ii. When the infringement is occurring and
iii. When a Fundamental Right is likely to be infringed.

Niki Tobi JCA has succinctly analyzed the three positions in the case of ***Uzoukwu vs. Ezeonu*** (Supra) as follows:

> *Section 42(1) Order 1 Rule 2(1) has three major limbs. The first limb is that the Fundamental Right in chapter 4 has been physically contravened. In other words the act of contravention is completed and plaintiff goes to court to seek for a redress. The second limb is that the Fundamental Right is being contravened. Here, that act of contravention may or may not be completed. But in the case of the latter, there is sufficient overt act on the part of the Respondent that the process of contravention is physically in the hands of the Respondent and the act of contravention is in existence substantially. In the third limb there is likelihood that the respondent will contravene the fundamental right or rights of the plaintiff. While the first and second limbs may ripen together in*

[85] (1989) 4 NWLR Pt. 117 P. 517

> *certain situation, the third limb of the subsection is entirely different. By the third limb a plaintiff or Applicant need not wait for the completion of the last act of contravention. It might be too late to salvage the already damaged condition. Therefore the third limb given him right to move the court to seek redress immediately he senses some move on the part of the Respondent to contravene his Fundamental Right.*

c) Court with Jurisdiction on Fundamental Rights Cases

The Application for leave by the rules should be brought in a court in the state where the violation occurred or is likely to occur. Court has been defined the rules to mean the Federal High Court or the High Court of a State but it must be a court in the state where the infringement occurred. In ***Umaru Abba Tukur vs. Government of Gongola State***[86] Oputa JSC observed.

"In this case, Alhaji Umaru Abba Tukur is complaining that there has been a breach of one or the other of his fundamental rights to his liberty or his freedom or movement. This contravention allegedly took place in Gongola State. From section 42(1) above, he has to apply to a High Court in that state, that is the High Court where the contravention or breach occurred. The Federal High Court Kano cannot be a High Court in that state which was envisaged by section 42(1) above.

Even if the jurisdiction of the Kano Judicial Division of the Federal High Court extends to and includes Gongola State, the Kano Federal High Court cannot without undue violence to the plain meaning of the words, be described "as a High Court in the state" namely a High Court in Gongola state where is fundamental rights were breached. The appellant in this case did not apply to a High Court in that state as required by section 42(1) of the 1979 Constitution".

[86] Supra

Special note should be taken of S.251 of the Constitution which gives "exclusive" jurisdiction to the Federal High Court in matters concerning any of the agencies of the Federal Government. The popular practice in matters involving the Federal Government or any of its agencies is for the institution of proceedings on Fundamental Right at the Federal High Court in the state of violation.

However, in the case of ***Military Administration of Kwara State vs. Lafiagi***[87] the Court of Appeal held that there is nowhere in the constitution where it was stipulated that any suit in which a Federal Government Ministry, agency, functionary or parastatal is sued must be justifiableonly in the Federal High Court. That is there is no blanket provision in these enactments which confers exclusive jurisdiction on the Federal High Court in suits against Federal Government or any of its agencies. The court went further to hold that where a commissioner of police in a state is sued, it is the High Court of the State and not the Federal High Court that has jurisdiction. The court stated:

> *A Police Officer in Nigeria is capable of enjoying a dual status. When he is complying with the directions of the Governor of the State with respect of maintaining and securing of public safety and public order within the state he is an agent of the state and not an agent of the Federal Government even though he is a servant of the Federal Government. On the other hand, where he is also complying with the directions of the president in maintaining and securing public safety and public order issued to the Inspector General of Police then he is acting as an agent of the Federal Government.*

d) Mode of Commencement of Proceedings in Fundamental Rights Actions

Proceedings for the enforcement of fundamental rights are divided into two:

i. Proceeding to obtain leave which is usually ex-parte and

[87] (1990) NWLR (pt. 129) CA

ii. Proceeding on notice after leave to apply leave to apply to enforce the right that has been granted.

An application to enforce a fundamental right is commenced by a motion ex-parte for leave of court and must be supported by a statement setting out the name and description of the applicant, the relief sought, and the ground on which the relief is sought and by an affidavit verifying the facts relied on. The court granting the leave may impose such terms as to giving security for costs as it thinks fit and the granting of leave under the rules if the judge so directs shall operate as a stay of all actions of matters relating or connected to the complaint until the determination of the application or the judge otherwise orders.

On the purpose of the constitutions stipulation for leave the case of ***Gani Fawehinmi vs. Colonel Halili Akilu***[88] appears to have explained the rationale when Uwais JSC (as he then was) stated"

> *It seems to me the purpose of the ex-parte application is to determine preliminary matters such as whether prima facial ground exist on which it can be assumed that the applicant's right has been violated and as such it is necessary to put the prospective respondent on notice so that the court, after hearing both sides to the dispute, can consider in detail the complaint of the Applicant. It is not necessary or proper for the court to comprehensively examine the Applicant's complaint at the first stage in order to decide whether to grant the ex-parte application. A mere suspicion or inking that dispute or controversy exists is enough for the judge to grant the ex-parte application. It is sufficient if the judge is satisfied the application ex-parte application. It is sufficient if the judge is satisfied the application ex-parte is not frivolous, vexatious, or an abuse of the process of the court.*

Though this postulation of the Supreme Court was made in respect of an action for mandamus, it is contended that the same rules apply to fundamental rights enforcement

[88] (1987) 1 NWLR (pt. 67) SC

proceedings. However it will be argued in the course of this discourse that the court does not have discretion in the matter of the grant of leave.

In ***Ndoma-Egba vs. Government of Cross Rivers States***[89]**,** the Court of Appeal held:

> *In dealing with an Application for leave, a trial judge must ensure that he deals with the application only and not dabble into the merits of the main application which is not before him. On no account should he anticipate the merits of the main application. He is not yet there and should not push himself there. A times the dividing line between the application for leave and the main application is factually thin. Nevertheless an Application for leave remains an application for leave and should be so carefully handled without altercating the merits or strengths of the main Application…*

It is therefore humbly submitted that since an Application for leave is determined on the uncontroverted Affidavit evidence of the Applicant, the courts should adopt a liberal attitude to grant of leave and make more use of their discretion to impose security for costs where it is in doubt whether a prima facie case exists. This is pertinent since the plain wording of order 1 rule 2 did not reserve discretionary powers of the court in the matter of Applications for leave to enforce fundamental rights.

The question that needs to be answered at this stage is whether an Application for the enforcement of Fundamental Rights can be brought in another manner not specifically in accordance with the rules. Kayode Esq. JSC has stated in the case of ***Saude vs. Abdullahi***[90] that an Applicant seeking redresscould still maintain an action in court in any manner that:

> Clearly depicts complaint on the infringement of the rights and the rules are so clearly worded that they do not lay the procedure therein as the only procedure by which redress could be sought.

[89] (2004) 6 NWLR pt. 452 p. 42 CA
[90] (1972) ANLR (pt. 1) 346

Where leave is refused by a court, the rules appear to be silent on whether it is necessary to appeal against the refusal to the Court of Appeal or to seek for fresh leave from another judge. In ***Gani Fawehinmi vs. Vice President of Nigeria***[91] Justice Ayorinde the Chief Judge of Lagos State declined leave to enforce the Applicant's fundamental rights including freedom of movement and personal liberty. A similar application was made to Honourable Justice Olusola Thomas who granted leave.

The time to apply for the leave shall not exceed twelve months from the date of the happening of the event, matter or act complained of, or such other period as may be prescribed by an enactment.[92] But where the delay in filing the Application can be accounted for in the Affidavit in support to the satisfaction of the judge, the court may grant the application notwithstanding that it is made out of time.

On the leave granted acting as a stay to further actions and matters relating whereto, it is at the discretion of the court and must be grounded on Affidavit or other evidence at the ex-parte stage to enable the court grant the request by exercising its jurisdiction favourably. See the case of ***Major General Zamani Lekwo & Ors vs. Judicial Tribunal on Civil and Communal Disturbances in Kaduna State***[93]**.**

e) After Leave

Under the old legal regime, it was obtainable but it is no longer obtainable. What is obtainable is to proceeding to hearing after 7 days of service of Originating process by virtue of order.

[91] (2003) 3 NWLR pt. 808 p. 604
[92] Order 4 Rules 1 of the Enforcement of Human Rights Procedure Rules 2009
[93]

When leave has been granted, the Applicant may proceed by Motion on Notice or Originating Summons for the substantive relief's and unless the court otherwise directs, there must be a minimum of eight clear days between the service of the notice of motion or originating summons and the day named for hearing the motion or summons.

The motion or summons must be entered for hearing within fourteen days after the grant of leave.[94] The Applicant wishing to quash any proceedings of an inferior court or tribunal or panel on the grounds that the decision or determination of such inferior court or tribunal negates any of the fundamental rights guaranteed by the constitution can also invoke the rules.[95] The court can also release the Applicant at the ex-parte stage unconditionally.[96] In practice the courts hardly make such order. The court will always like to hear the respondent before making an order for the 'unconditional' release of the Applicant. The wise words of Lord Scarman in ***R v. Home Secretary Ex-parte Khawaja***[97] is apposite at this point.

> The classic dissent of Lord Atkin in ***Liversidge vs. Anderson***[98]is now accepted in ***Reg. vs. Inland Revenue Commissioner ex-parte Ross Minister Limited***[99]as correct not only on the point of construction but in its declaration of English Legal principle. Lord Atkin put it thus at p.245 that on English law, every imprisonment is prima-facie unlawful and it is for the person directing the imprisonment to justify the acts.

This, we respectfully submit is also the position in Nigerian law as the constitution guarantees the presumption of innocence against the reasons of state and society.

[94] Order 1 Rule 2 (2)
[95] Order 1 Rule 2 (3)
[96] Order 1 Rule 2 (5)
[97] (1983) 1 All ER 765
[98] (1942 AC 206)
[99] (1980) (AC 652, 1011, 1025)

f) Service of Process

Service of notice of motion or the originating summons must be effected on all persons directly affected and where it relates to proceedings in or before a court, and the object is either to compel the court or an officer of the court to do any act in relation to the proceeding or to quash them or any order made therein, service then has to be effected on the registrar of the court, the other parties to the proceedings and where any objection is made to the conduct of the judge , service has to be effected on the judge.[100]

g) Powers of the Court to Issue Orders

Order 6 provides as follows:

> At the hearing of any application, motion or summons under these rules, the court or judge concerned may make such orders, issue such writs and give such directions as it or he may consider appropriate for the purpose of enforcing or securing the enforcement of any of the fundamental rights provided for in the constitution to which the complainant may be entitled".

Also under S.46(2) of the Constitution, a High Court is empowered to make such orders, issue such writs and give such directions as it may consider appropriatefor the purpose of enforcing or securing the enforcement within that state of any rights to which the person who makes the Application may be entitledunder chapter 4 of the Constitution.

h) Judicial Power and the Power of Judicial Review under the Nigerian Constitution

The superior courts have the powers to issue the following:

[100] See Nwabueze Op. cit, p. 305

i) Mandamus

Mandamus is an order issued by the court directing an authority to perform its public duty. The order is made to any authority which exercises administrative powers except the armed forces. The order can be made only when the authority is under a public duty to do a particular thing or action in particular manner. When such an authority does not act or refuses to act mandamus will be issued compelling such an authority to do the Act required of it by law.[101]

Mandamus will not be issued if the authority has the discretion to Act or not to act. By mandamus the authority cannot be complied to exercise the discretionary power one way or the other. But if the authority does not exercise the discretion or refuses to exercise the discretion, mandamus can be issued to compel the authority to exercise the discretion one way or other.[102]

Mandamus is granted only at the discretion of the court. It is not a matter of right but court's discretion. The court would refuse to grant mandamus if the person has an alternative remedy under the law. mandamus can be applied only by the person who has right or interest in the performance of the publicduty authority concerned.[103]

Mandamus can be positive as well as negative i.e. by the authority may be directed to do a particular act – as directed to refrain from doing an act. The negative part is not being used in practice because instead of that the court can issue an order of injunction which is another remedy the court can grant.

[101] Malemi E. (2006) The Nigerian Constitutional Law, Princeton Punishing Co. Lagos, p. 321
[102] Ibid
[103] See Fawehinmi vs. Akilu Supra See Also, Akunnia vs. A. G. Anambra State, (1977) 5 SC

ii) Certiorari and Prohibition

Certiorari and prohibition are common in many respects. They are issued to judicial and or quasi-judicial authority and by these writs the illegality committed by the judicial or quasi-judicial authority are corrected. However they differ in that certiorari is issued to quash a proceeding whereas prohibition is issued during the course of the proceeding before such authority. By prohibition the authority is directed not to act in an illegal manner.[104]

Certiorari is issued by superior courts to the subordinate courts and other judicial or quasi-judicial authorities for correcting their decisions. By this the record of the subordinate authorities are called by the superior court to determine whether the proceedings and the decisions were strictly according to the law.

Certiorari is issue in any of these three cases.

1. When the authority has exceeded its jurisdiction or has acted ultra vires.
2. When the authority has acted in violation of the principles of natural justice.
3. When the superior court finds that there is an error of law on the face of the record.

The principles of Natural justice, the violation of which attracts certiorari are:

a. The right to fair hearing
b. The authority must not bias[105]

[104] Malemi E. Op. cit
[105] Ibid

iii) Quo Warranto

Quo warranto is issued to a person holding a public office to show under what authority of the law he holding the office. This writ is justified on the ground that it is better the legality of the person holding public office is determined at the earliest, otherwise if his holding the office is illegal, then all his acts and decision being illegal, the general public will come to suffer quite considerably because after a long time his holding the officer is declared illegal all the parties affected by his decision will suffer irreparable injury.[106]

The standing in Quo-warranto is given to any member of the public because one cannot be sure as to whose interest and rights will come to be affected.

iv) Hebeas Corpus

Hebeas corpus is the most expeditious remedy known to the law. It determines the legality or otherwise of any arrest or detention of any person. By this writ the superior court directs the authority of person who has the custody of the individual to produce him or his body before the court, and show under what authority or law he is being detained or kept in prison. The legality of arrest or detention is determined by the superior court on the basis of application of the person arrested of his family or friend and the return of the file by the authority having the custody of the person and if necessary also of the authority which has ordered the arrest or detention of that person.[107]

If the arrest or detention is found illegal the court will order the release of the person there and there and then otherwise the authority is directed to immediately release the person.

[106] Oluyede P. A. (1979) Administrative Law in Nigeria, University Press Ltd, Ibadan, p. 215
[107] Ibid at P. 225

v) Injunction

The order of injunction is made by the court when any authority judicial or administrative commits an illegal act. By the order of injunction the concerned authority or person is directed to refrain from acting in a manner illegally affecting the right and interest of the person concerned. It is directed to undo or prevent the effects of that illegal action.[108]

vi) Declaratory Order or Judgment

Declaration orders are made in determine the rights and obligations of the person entitled to asked for such a declaration of the court. The parties involved in a particular case may not like to wait until such time when they will be infringed. But before acting one way or the other they would like to know the scope and limits of their powers, rights claims and obligations. Therefore a request is made in the court to declare what exactly the position is according to law.[109]

If the declaration order or judgment is made only when there is a real case on hand and not when the question is only a hypothetical one or subject of academic debate between the person concerned the parties applying for such an order must show that they have an interest in the determination of the question of law and fact and, that such a determination is immediately necessary for them to adjust their legal relationship.[110]

The writs and order cannot be taken as exhaustive for the purpose of enforcement of the Fundamental Right. Once the High Court determines that a person's Fundamental Right has been violated then, the courthas the power to select any of those writs and orders singly or combining one or more or mayeven make any other order not confined to the ones discussed above that the

[108] Oluyede Op. cit, p. 230
[109] Ibid at p. 223
[110] Oluyede Op. cit

High Court considers appropriate for effectively enforcing the fundamental right. This will show how wide the power giving to the court in enforcing the fundamental right provisions.[111]

vii) Award of Damages and Monetary Compensation

The case of ***Candide Johnson vs. Edgin***[112] held that a claim for monetary compensation is within the ambit of chapter 4 of the constitution and unless special damages are claimed, the award is usually one of general damages.

Though neither section 46 nor section of the constitution except S.36 which provides for compensation and public apology in the case of any person whose right to personal liberty has been unlawfully violated proves for a specific right to compensation. However the constitution does not set out to take away vested rights rather it set out to expand them and make them sacrosanct; further the *maxim ubi jus ibi remedium* (where there is a right there is remedy) as utilized by the Supreme Court in ***Bello vs. Attorney General of Oyo State***[113] can grouped the existence of an enforceable right to compensation.

Further the Omnibus nature of the wording of S.46 of the constitution and order 6 of the Rules makes it clear that the court has powers to award damages for breach of Fundamental Rights. Considering that what gives rise to a cause of action is not the damages claimed but the injuries suffered and damages which are merely incidental will necessarily follow. In the celebrated case of ***Federal Ministry of Internal Affairs vs. Shugaba Darman***[114]the court held that:

[111] Ibid at p. 237
[112] (1990) 1 NWLR pt. 129
[113] Supra
[114] (1981) 2 NCLR 459

> The purpose of the Fundamental Rights (Enforcement Procedure Rules is to facilitate the enforcement of the infringement of fundamental rights by avoiding the procedure of having two sets of remedies for the enforcement of such rights. Thus where the infringement amounts to a tort, and the facts are such that can independently sustain a claim for damages resulting from such injury, it will be depriving the citizens of the rights of action legitimately due to him if the only remedy he got is the quashing of the illegal order constituting the infringement. Apart from this there may be the temptation which may be irresistible for the Applicant to bring another action for damages resulting in a multiplicity of actions in respect of the same facts. It is therefore consistent with the age old legal maxim. It is well settled that wherever a right exists, there is a remedy. The 18th century case of ***Ashby v. White*** already cited in this judgment has established this proposition beyond controversy…It is well settled that in law some interest such as freedom of movement of the kind we are concerned with in this appeal, the exercise of a voting right at a parliamentary election as in ***Ashby v. White***[115]been considered so important that any violation of them is actionable perse hence on proof, general damages flow naturally and logically from such injury (underlining ours).

From the principle enunciated above, there is no doubt that the award of damages is an inherent power of the court which it can exercise where there is jurisdiction in accordance with S.66(6) of the constitution. See the case of ***Bank of Nigeria vs. Mareba***[116] where the learned trial judge awarded damages to the Applicant for the infringement of his fundamental right.

4.3.3 Limitation of the Application of the Fundamental Rights Enforcement Procedure Rules

It is used to be the view that the Rules cannot be invoked against governmental authority. In ***Ategie vs. MCK Nigeria Limited***[117] justice Aka held that a person cannot bring an application against a company under the Rules even if it alleges a breach of his rights.

[115] (1703) 1 ER 417
[116] 1991 NWLR (pt. 188)
[117] (1993) 2 NWLR (pt. 276) 410

Also in the unreported case of ***Inspector Ale vs. General Olusegun Obasanjo (Rtd)***,[118] the trial judge rules that fundamental rights can only be enforced against the government or a governmental authority and relied on the dictum of Karibi-White JCA (as he then was) in Shugaba's case supra.

However in the case of Uzouukwu v. Ezeonu II Supra Mamman Nasir held:

> "The provisions of section 31(1) of the 1979 Constitution is enforceable not only against the state and its apparatus also private persons……..

Further, the Court Appeal in ***Peterside vs. IMB***[119] held"

> "It is wrong to say that the fundamental rights guaranteed in chapter iv of the constitution can be enforced against government but cannot be enforced by one individual against another. While some of the provisions of chapter iv can only be enforced against the government there are some others which can be enforced against both the government and an individual or against an individual or against both depends on whether the provisions of the section in question guarantees the right against the state only or against both the state and private person" (Emphasis ours).

[118] Unreported
[119] 1984 AC 206

CHAPTER FIVE

THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

5.1 Introduction

The role of non-governmental organisations cannot be overemphasis in the promotion and protection of human rights, it role have led to various development of human rights activities in Nigeria. However,this chapter seeks to examine therole of non-governmental organisations in the promotion and protection of human rightsin Nigeria.

5.2 Non -Governmental Organizations (NGOs)

These are civil society, nonpolitical, nonprofit oriented, and autonomous organization which function and sometimes flourish in the large and close bounded zone between organized sovereign authority and family unit.[1]The basic features and operational strategies of a typical non-governmental *human rights organization*was described by O. Francesco and J. Zalaguitt as one which:

> "Has the objective to be in the immediate projection of human rights; impartial, regardless of who thevictims or victimizers are, and, on the long run, to the erection of safeguards for such protection through the promotion of appropriate institutions."[2]

This description succinctly depicts those basic features and functions of a typical non-governmental human rights organization which form the subject of subsequent discussion in this research. For now, one may highlight two points. The first point is that typical human rights

[1] Young C. "In search of Civil Society" quoted in Gana A.T. "Civil Society and the Consolidation of Democracy in Nigeria" in Ayua, Goubadia and Adekunle, (Eds.) Nigeria Issues in the 1999 Constitution NIALS, Lagos, 2000, p. 254.
[2] Francesco O. and Zalaquett 1, (1987) Evaluation of TFDP, Philippines p. 34

NGO is essentially apolitical. PoliticalAffiliation strikes at the credibility, (and the very essence) of a human rights organization. A discussion paper of the Netherlands Organization for International Development Cooperation (NOVIB), title "Human Rights and Development", puts the position thus:

> *If a human rights organization is connected to a specific political movement or party, the organizationwill easily be suspected of striving for political ends under the guise of human rights. To accuse a government of violating human rights may then be seen as maligning a political opponent. This may affect or even ruin the credibility and thus the effectiveness of the organization. On the international level (UN, etc) too, political impartiality and subscribing the universality of human rights are deemed to be a sine qua non. In this way, political partiality can detract from the credibility of local human rights organizations on the internal level.*[3]

The second point touches upon operational strategy and is itself crucial to the survival and efficiency of a human rights organization. It is the task of human rights NGO to protect human rights through monitoring and enforcement strategies. But these strategies must strike a balance between two needs: the need to get the job done, on one hand, and on the other to avoid adverse government measures and sanctions such asproscription and banning orders. I need hardly say that it is a good strategy to stay alive and be effective than to be dead and useless. So there must be accurate reporting; no sensationalism unless it enhances the procedures. A repressive government certainly will stand in the way. So it is very critical in promoting strategies that only serious issues be probed. Being objective and un-emotive enhances credibility. Human rights NGO must strive hard to avoid being labeled, because it destroys credibility, which is very important if the work must endure.

[3] Novib Discussion paper on Human Rights and Development, Hague, 1991/1992, p. 12.

It is within these policy frameworks that human rights NGOs must strive to achieve their ultimate goals, viz the promotion and protection of individual rights. The various activities with which a typical human rights NGO must be involved in the process of implementing individual rights may be outlined as follows:[4]

1. To see to it that human rights are laid down, adjusted or extended in international and domestic human rights jurisprudence.
2. To see to it that legal procedures are laid down toenforce rights, and to ensure that these procedures are made accessible.
3. To expose human rights violations.
4. To provide humanitarian assistance to victims of human rights violations.
5. To create the legal and organizational conditions necessary to achieve the above stated objectives, as well as to strengthen the NGO human rights structure.

Before elaborating on each of these activities, it is pertinent to say a word about the evolution of human rights NGOs in Nigeria. Human rights NGOs are a relatively recent development in Nigeria. Before their advent, the pace of human rights monitoring was set by individuals like Chief Gani Fawehinmi, Professor Wole Soyinka, Dr. Olu Onagoruwa and Mr. Alao Aka Bashorun. A few pressure groups like the National Association of Nigerian Students (NANS) the Nigeria Labour Congress (NLC) occasionally addressed human rights issues but only when these incidentally arose in the pursuit of their basic objectives. The birth of the Civil Liberties Organization (C.L.O.) on October 15, 1987 marked the beginning of human rights protection and monitoring at an organizational level.

[4] This is derived from an outline contained in the Novib discussion paper (supra) at page 16 but with minor modifications.

Since 1987 there has been a proliferation in human rights NGOs, and other bodies which roughly approximate to Human Rights NGOs, but cannot, strictly speaking, to be so categorized. These include the Committee for the Defence of Human Rights (CDHR), the Constitutional Rights Project (CRP), and the Gani Fawehinmi Solidarity Association (GSFA), the Universal Defenders of Democracy (UDD, Human Rights Africa (HRA) and the Campaign for Democracy in Nigeria (CD). These groups, in different ways, work within the policy frameworks and are involved in the activities outlined above. However, at the risk ofsounding complacent, one can easily say that the CLO provides the most perfect Nigerian model of human rights NGO within the context of the aforementioned policy frameworks and operational strategies. Therefore, as when elaborating on each of these operational strategies, practical illustrations will be draw from the activities and experiences of the CLO since 1987.

5.3 The Role of Non -Governmental Organizations (NGOs)

The Role of Non -Governmental Organizations (NGOs) are as follows:

5.3.1 Human Rights Protection and Promotion

Human rights are not static but dynamic. Their scope and content expand according to the dictates of human experience. So also areas of emphasis shift to accommodate the exigencies of political, economic and socio-cultural environments. It is possible to conceptualize human rights in this manner without compromising naturalist positions about the universality and inherence of human rights. An example will suffice: fifty years ago it would have been impossible or difficult to conceptualize a “right to a livable environment’’ but today,the conditions are different. Large scale global warming result in the depletion of the Ozone layer (the “greenhouse effect”), population explosions and desert encroachments have led to the emergence of “the right to a

livable environment" as an important third generation right. But man has always had inherent in him a right to a livable environment. The only reason why this right has not been articulated in earlier conceptualizations of human rights is because the conditions than simply did not call for it.

Human rights therefore, must both in conceptualization and implementation, address issues that are relevant within political, economic and socio-political contexts. The first major task of all human rights NGOs is not only to ensure that human rights are not laid down, but also that the scope of their substantive contents are adjusted or extended in international and domestic jurisprudence to accommodate changes in human needs and experiences. I must say there that in this regard, human rights NGOs in developing countries face amajor challenge; their operational strategies must be directed towards elevating social and economic rights beyond the fanciful rhetoric of charters and conventions. For it is these rights that are to all intents and purposes more meaningful to their undernourished and illiterate populace rather than class of civil and political rights which make little sense to the man whose lot is starvation or who lives under the bridge for want of a better accommodation or the university graduate who has become disillusioned and frustrated by the fruitlessness of his search for subsistence. The CLO is now pushing a campaign for development rights. This means that the government has a responsibility to use public revenue for public development. Government has a duty to provide basic amenities (water, electricity etc). But it cannot do this if public funds end up in private accounts. We have started a campaign to link overseas development assistance to the willingness of our government to repatriate ill-gotten wealth stashed in the vaults of foreign banks. If public officers realize that there is no safe haven in anypart of the world, the process of democratization will be substantially enhanced.

5.3.2 Establishment and Accessibility of Legal Procedures

Another major task of all human rights NGOs is to ensure that facilities and procedures exist for the enforcement of human rights within domestic and international legal frameworks and that these are readily accessible to all victims of human rights violations. Again in this regard, the question of economic and social rights poses a major challenge to human rights NGOs in developing countries. Many of these countries operate constitutional systems which distinguish between civil and political rights which are justiceable (capable of legal enforcement) and economic rights which are non-justiceable (incapable of legal enforcement). The rationale usually given for this dichotomy is that civil and political rights do not compel affirmative action on the part of government authorities, but merely put the authorities under an obligation not to interfere while economic rights require affirmative action that may wellbe dependent on the availability of resources. The fallacy in this analysis becomes obvious when it is realized that the right to freely receive and impact information (a civil right} is entirely devoid of practical content in a society plagued by illiteracy because the right to education (a social right) is not adequately implemented. As the NOVIB paper[5] points out:

> *The approach in which the different categories or rights are seen as contrasting hierarchies is out of date. It has made way for the notion in which the rights of the categories are seen as interdependent and indissolubly linked. This approach in which equivalent rights are seen as a universal system of cohesive equivalent rights, are seen as a universal system of cohesive equivalent rights has gradually gained common ground in the world of human rights NGOs,governments, and within the UN organizations.*

Human rights NGOs must therefore address their attention to the absence of specific legal machineries and procedures for the enforcement of economic, social and cultural rights. But even

[5] Ibid at Page 9

within civil and political rights for which there exist specific procedures for legal enforcement, human rights NGOs still face tremendous challenges to make these procedures accessible to victims of human rights violations. The factors which inhibit accessibility of legal procedures in a country like Nigeria, for instance, include:

(i) Restrictive doctrine of standing to sue (locus standi)and

(ii) Statutes ousting the jurisdiction of courts in respect of matters whichare otherwise justiceable.

There is of course, also the question of costs of litigation in a society plagued by poverty, but I have chosen to discuss thisunder a subsequent sub-topic ("humanitarian assistance to victims of human rights violations"). For now, I will turn my attention to the question of locust standi and ouster clauses. These are questions which all human rights NGOs must address if existing legal procedures for the enforcement of human rights are to be made readily accessible to victims of human rights violations. But is a task that cannot be accomplished without the collaboration of a dynamic judiciary. How has Nigerian Judges faired so far?

It cannot too be seriously stressed, or credibly be doubted that Judges are the bastions of fundamental rights and freedoms. And in the hierarchy of Judges and the judiciary, the Supreme Court has an onerous duty to set the pace of development of human right jurisprudence. Unfortunately, the restrictive doctrine on standing to sue which presently prevails in Nigerian constitutional law to the effect that a general interest common to all members or some section of the community isnot a litigable interest is held on the authority of a decision of the Supreme Court of Nigeria: ***Adesanya vs. the President.***[6]

[6] (1981) 1 All NLR 9 (pt 1) 1

This stands in sharp contrast to the more dynamic position taken in some other jurisdictions, like India,[7] Canada[8] and the United States of America, in India, the Supreme Court has democratised access to the court by watering down the rigours of locus staid through the medium of Public Interest Litigation (P.I.L.). Giving expression to this development in the case of Peoples Union for Democratic Rights v Minister of Home Affairs, Dayal J. said:[9]

> *Following English and American decisions, our Supreme Court has of late admitted exceptions from the strict rules relating to locus standi and the like in the case of a class of litigations which have acquired classification known as " public interest litigation, that is where the public in general are interested in the enforcement of fundamental rights and other statutory rights.... Today it is perhaps common place to observe that as a result of a series of judicial attitude since 1950, there has been a dramatic, radical change in the scope of judicial record. The change has been described as…an upsurge of judicial activism.*

Elucidating further on the nature of Public Interest Litigation" in the same case, Judge Bhagwati of Indian Supreme Court explains that:[10]

> *Public Interest Litigation, as we conceive it, is essentially a cooperative and collaborative effort on the part of the petitioner, the state or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them...The state or public authority which is arranged as a respondent in public interest litigation should in fact, welcome it as it would give it an opportunity to right a wrong or redress an injustice done to the poor and the weaker sections of the community whose welfare is and must be the concern of the state or the public authority. There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigations is unnecessarily cluttering up the files of the court and adding to the already staggering arrears of cases which are pending for long years and it should not therefore be encouraged*

[7] Peoples Union for Democratic Rights vs. Minister of Home Affairs (1986) LRC (cont)
[8] Thorson vs. A-G, Canada (1975) ISCR 138: Nova Scotia Board of Censors vs. McNeil (1976) ISCR 265
[9] Supra
[10] Supra, at pages 1477-1478

> *by the court. This is to our mind, a totally perverse view smacking of elitist and status quo approach.*

This is the spirit that has enabled the Indian Judiciary to brew a uniquely Indian jurisprudence completely weaned of the alien inhibitions of the common law tradition and in which, today it is possible for a court in India exercising what has been describedas the "Epistolean Jurisdiction" to act on latter or press report and treat it as a Writ petition.

It is possible that the jurisprudence of the Nigerian Supreme Court on the issue of locus standi has, of recent; come under the influence of these positive developments in other jurisdictions. There are noticeable attempts by the Nigerian Supreme Court to relax the conditions for approaching the courts. In the case of ***Fawehinmi vs. Akilu & Anor 14*** the Supreme Court[11] widened the concept of locus standi within the context of criminal law, when it held that a private legal practitioner could institute legal action to compel the Director of Public Prosecutions to either prosecute an alleged murder or permit a private prosecution thereof. The Supreme Court based its decision on the premise that, within the context of criminal law, "every Nigerian is his brother's keeper". Recent pronouncements made by some Justices of the Nigerian Supreme Court at intellectual fora suggest a change of attitude.

In a paper delivered at the Judicial Colloquium on the Domestic Application of International Human Rights Norms held in Abuja, Nigeria between 9 and 13 December, 1991, Justice Nnaemeka Agu of the Nigerian Supreme Court observed:

> "We look forward to a time when Nigeria will advance to the position of Canada where every citizen has not only the right to be

[11] (1982) 2 NWLR (Part 67) 122

> heard, but also the locus standi to challenge such breaches of the provision of the Constitution."[12]

The CLO has, through its Legal Resources Directorate, sought to consolidate and concretize these nascent positive developments on the issue of locus standi. In 1991, we instituted an action,[13] in collaboration with other Nigerian human rights NGOs, challenging the illegal closure of the Guardian Newspapers by government authorities, an act which was generally perceived as a gross violation of the rights to freedom of expression and the freedom of the press.

The suit was challenged on the ground that CLCO and other NGOs had no locus standi. Justice Hunponu Wusu of the Lagos High Court held that there was a right to sue as concerned citizens. Again a ruling was secured[14]from the Lagos High Court (per Christopher SegunJ.) to the effect that a legal practitioner has the locus standi to sue, in his own name, to seek legal clarification and vindication of his client's fundamental rights, a decision which will prove most useful in cases where the client is held incommunicado or in other circumstances which is impracticable inform him to seek legal redress.

The decision of the Supreme Court in ***Famehinmi vs. Akilu Anor*** may well have inspired these positive developments, and is sometimes regarded as marking a turning point in thejurisprudence of Nigerian courts on the question of locus standi. But I think the decision does not go far enough. First the Adesanya decision was not specifically overruled. Secondly, most of the pronouncements in Fawehinmi were probably obiter, and for this reason it has been possible for some lower courts to ignore the decision. Thus, in ***Fawehinmi vs. Maryam Babangida***

[12] P. Nnaemeka Agu: Human Rights Proceeding: Domestic Provisions and Experience of Nigeria" paper delivered at Judicial Colloquium on Domestic Application of International Human Rights Norms- Abuja, Nigeria 9-13, 1991 at page 7.
[13] Beko Ransome Kuti vs. A.G. of the Federation, (unreported Suit No. M/287/92
[14] Mike Ozekhome & Ors. vs. President of the Federal Republic of Nigeria & Anor (1990) 2 WBRN 58 at 71-72.

&Anor,[15] it was possible for a high court Judge (Ope Agbe J.) to hold, in spite of ***Fawehinmi vs. Akilu***, that a tax- paying citizen of Nigeria lacks locus standi to challenge unauthorized expenditures of public funds. Decision such as this may persist for as long as it takes the Nigerian Supreme Court to unequivocally and authoritatively endorse the attitude of the Indian and Canadian Supreme Courts on the question of locus standi within the context of Public Interest Disputes. I hope this will happen very soon.

The second factor which seriously militates against the accessibility of legal procedures is the phenomenon of "ouster clauses". Decrees enacted by Nigeria's military authorities usually contain clauses preventing the courts from inquiring into the validity of acts done under them, even when these acts violate (as they almost always do) justiceable human rights.[16] Here again human rights NGOs face a major challenge, although the task has been made a lot easier by the jurisprudence of the Nigerian Supreme Court on the question of ouster clauses. Succinctly, put the Nigerian Supreme Court has taken the position of that and only acts validly done within the jurisdictional parameters set by the enabling Decree can be protected by an ouster clause contained the said Decree. And the courts will first assume jurisdiction to ascertain whether the act in question was validly done[17] as Justice Nnaemeka Agu recently put it:

> *When there were such provisions, the courts merely applied their interpretative jurisdictions to inquire whether the matter in litigation came squarely within the ambit of the ouster provision. Once it was satisfied it did, it declined jurisdiction to adjudicate. But as shown by the decision of the Supreme Court in the* ***Governor of Ondo State vs. Adewunmi*** *and many other cases, the*

[15] Unreported Suit No. LD 533/90

[16] See, e.g. the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 13 of 1984

[17] Barclays Bank of Nigeria vs. Central Bank of Nigeria (1976) 6 ac 175; Wibon vs. Attorney General of Bendel State(1985) NWLR(part4) Garba vs. A.G. Federation (1988) 1 NWLR (part 71).

> *courts guarded their jurisdiction jealously and so critically examined such ouster provision.*[18]

Working within the frame set by these authorities, the CLO has recorded major achievements in watering down the adverse effects of ouster clauses.

I must admit that these achievements could have been possible without positive collaborative effort on the part of dynamic Judges of the Lagos Pligh Court. A case in point is ***Gloria Mowarin vs. Nigeria Army and others***,[19] a case in which the Applicant challenged her detention under the State Security (Detention) of persons Decree(No.2) of 1984. Notwithstanding the ouster clause contained in the Decree, Justice FrancisOwobiyi declared the detention of Applicant illegal and unconstitutional and quashed the detention order issued by the Vice President in purported exercise of powers under the Decree, on the grounds that:

> *Although Decree No. 24 of 1990 purports to assign to the Vice President the powers exercised by the former Chief of General Staff in Section 1 of Decree No. 2 of 1984 as amended, as at the time this was purported to be done there was no Vice President. The situation here is anomalous and strange, and I may add, absurd. How could somebody perform the functions created for a post that was not in existence at the material time? It seems to me that Decree No. 24 1990 is a piece of bad legislation. It is a case of putting the cart before the horse. Counting the chicken as it were, before they are hatched. And I will describe it as a legislative absurdity.*

Another case filed by the Legal Resources Directorate of theCLO is ***Mike Ozekhome and other vs. President of the Federal Republic of Nigeria and Anor.***[20] In this case, Justice Christopher Segun of the Lagos High Court was called upon to pronounce on the extent of the legislative powers of the Federal Military Government in the context of the exercise of power of preventive detention under Decree No. 2 of 1984.

[18] Nnaemeka Agu (Supra), at page 9.
[19] Unreported suit No. M/348/90 of 19th Feb. 1991.
[20] Supra

The State objected to the competence of the action, brandishing, as its authority, the ouster clause contained in Decree No. 2. Rejecting this objection, the learned trial judge held that:

> *The right of the citizen under the rule of law should be respected and the judiciary is a necessary agency of the Rule of Law and the courts stand between the citizen and the government alert to see that the state or government isbound by the law and respect it….A government in whichthe citizen is entitled to repose confidence and trust is not expected to act in breach of the faith which it owes to the citizens and it does so act, the courts will intervene.*

Yet another significant instance is a fall out from the tensions between the Nigerian Bar Association and the Federal Military Government over the question of obedience to court orders and respect for the rule of law. It is the case of ***Dr. Beko Ransome Kuti vs. The Attorney General of the Federation***.[21] In the wake of the various protests and demonstrations ignited by the fuel crisis of May, 1992, certain human rights activists, (Dr. Beko Ransome Kuti inclusive) had been arrested and detained by Security Agents. An application was brought on behalf of Dr. Ransome Kuti to secure his release. The Respondents exhibited a detention order purportedly issued by the Vice President, but certified by another office. The Respondents had also failed to comply with an order made by the Hon. Justice Owobiyi that the Applicant, Dr. Ransome Kuti be produced in court. JusticeOwobiyi dismissed he Respondents contention that the court had no jurisdiction in the following terms"

> *The position therefore is that there is no detention order before the court upon which the ouster of the jurisdiction of the court can be based. It must be borne in mind that the position of the law as has been amply demonstrated in the earlier part of this ruling as regards matters of this nature is that strict compliance with the provisions of the law is called for a condition precedent to the ousting of the jurisdiction of the courts. Even if I had come to the conclusion the Exhibit "A" (the Detention order) is proper before*

[21] Supra

> *the court, I would still have rejected it so is also the counter affidavit of the Respondents to obey the order of this court to produce the Applicant in court on the 3rd day of June, 1992 and the subsequent days on which the court ordered that the Applicant be produced in court. He who seeks equity must do equity. Having not purged themselves of their contempt of the court by their persistent and deliberate acts of disobedience of the orders of thecourt, they ought not to be heard on this application*.

The only other point worth mentioning here is that, apart from restrictive attitudes on locus standi and the phenomenon of ouster clauses, there are other aspects of our legal system which curtail the ready accessibility of legal procedures for seeking redress against human rights violations. These have been identified by Justice Nnaemeka Agu[22] to include: the potential weakness of the judiciary in the enforcement of its own processes and execution of its judgments, the non-justiceability of social economic and cultural rights (mentioned above), and powers of censure which the Attorney General has over the enforcement of certain classes of money judgements.

Another problem which may be added is that of delays in the prosecution of human rights suits, quite against the spirit of the Fundamental Rights (Enforcement Procedure) Rules which lay specific time standards to ensure speedy hearing and determination of human rights suits. The issue has been discussed extensively by the Hon. Justice Niki Tobiof the Court of Appeal in his learned work: Fundamental Rights: Enforcement and Procedure Rules and Speedy Trials. This is not the forum for elaborating on these issues, but I must emphasize that they are issues on which all human rights NGOs must focus the attention of their legal resources personnel, if legal procedures are to be made accessible to victims of human rights violations.

[22] Nnaemeka Agu (supra) at pages 12 to 14

5.3.3 Exposure of Human Rights Violation:

This is a core function of all human rights NGOs in which all available resources, viz campaign, research, litigation, documentation, etc are involved. I will illustrate this activity by drawing upon two major achievements of the CLO's prison project, documented in its 262 page report "Behind The Wall." Based on a survey of fifty six prisons and lock-ups scattered around the country and on other materials gathered over the course of three years of human rights work in prisons, Behind the Wall throws a harsh light on the conditions of prisons in Nigeria, and makes harrowing revelations about them. The report reveals, for instance, that the average Nigerian prison is congested by about twice its rated capacity which forces inmates to sleep in batches, with each batch sleeping for three or four hours a night while others line up against the walls, awaiting their time. I can easily say that the CLO prison project successfully made prison conditions an important issue on the national agenda. Evidence of this exists not only in the amountof press attention which this issue has attracted since the publication of the report, but also in the attitude of the government itself: where hitherto it hardly discussed the question, today it expresses serious interest in improving prison conditions, and even organized a national seminar on prison reform in June, 1990.

The second achievement worth mentioning concerns the 12 persons sentenced to death for their alleged role in the unsuccessful coup of April, 1990. They were not given a fair trial. The military trial was constituted in a manner that did not guarantee fair hearing. Choice of counsel was denied and the proceedings were conducted in secret. The CLO alerted the public that the 12 were to face a firing squad. International pressure followed. Amnesty International issued urgent action appeals. Happily, the government commuted the death penalty to life terms.

Once more word on this,the CLO's campaign efforts have also been employed in the process of strengthening thedemocratization process. CLO run an empowerment programme for the state houses of parliament. The technique is simple. The CLO call attention to human rights concerns and urge that legislative action be taken in form of committee hearings and in some cases votes of censure against executive misconduct. We have place before legislator's diverse issues: police extra-judicial killings, the 12 kids on death row, the plight of slum dwellers, and so on.

5.3.4 Humanitarian Assistance to Victims of Human Rights Violations

Humanitarian assistance to victims of human rights violations comes in many forms,the most familiar of which is legal aid. The CLO's Legal Resources Directorate generates an extensive legal aid scheme which provides legal services to indigent victims of human rights violations at absolutely no cost. Under the auspices of this scheme, a large number of long standing detainees havesecured their release from unlawful custody. If is important to state that CLO's legal aid programme is available for all categories of human rights violations, and is not restricted to personal liberty alone.

The state itself is under a constitutional obligation to provide humanitarian assistance in the form of legal aid to victims of human rights violations. Section 42(4)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) stipulates that the Armed Forces Ruling Council shall make provisions.

> "for the rendering of financial assistance to any indigent citizen of Nigeria where his rights under Chapter 4 have been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim".

The CLO has made significant achievements in the area of providing humanitarian assistance to victims of human rights violations. But there are grounds yet to be adequately covered. These include:

a. creating legal awareness by means of education and dissemination of information;
b. training "paralegals" (i.e. people from the regions to stimulate legal education an d organization forming at the local "grassroots" levels;
c. establishing "social action" groups to put certain collective issues before the courts, all of which have been identified as activities essential for providing humanitarian aid to victims.

5.3.5 Creating Legal and Organizational Conditions

This function is ancillary to the realization of the activities discussed above, but no less important. It arises from the need to create conditions necessary to enable human rights NGOs embark effectively upon the said activities as well as for the empowerment of human rights NGOs. It includes such activities as national expansion, development co-operation (e.g. development of networks of human rights organizations; links with other organizations); research, documentation and information, as well as exchange programmes and traineeships with third parties.

In the area of national expansion and networking, the CLO has recorded significant achievements, although there are more grounds to be covered. If human rights monitoring will be effective, it is of first importance to have effective presence in the area. A good spread at the grassroots help in reporting violations. The CLO has 2 regional offices in Kaduna and Cross Rivers States. It also has 6 active branches in 6 states but this is hardly enough to report human

rights violation across 36 states. One of the tasks is how to expand membership. It is very difficult. People are not inclined to join voluntarily and CLO continually think up ways of sustaining interest. A good approach is to locate local concerns and use it to mobilize new members. It is effective to build the membership base around relevant civil and economic rights readily understood by the community. One example was about the tragic case. 300,000 slum dwellers lost their homes when the Lagos State Government destroyed their community. It became a greatnational issue and evoked much concern because the intentionof the government was to allocate the land to speculators and developers. CLO went to court in 3 separate jurisdictions and finally obtained an injunction from the Court of Appeal restraining re-allocation of Maroko land. The embittered slum dwellers readily identified with CLO work for them. New members poured in as they could empathize with the cause. The networking strategy encourages members of the human rights community to work together and stay close knit. It enhances the voice. A striking example occurred in July 1991 when the Federal Government shut down the Guardian Newspapers for "sensational" reporting about the murder of two Polytechnic students by the police. Six human rights group filed suit which established definitive guidelines about executive interference with press freedom. Collective action had aneffect.

Another good reason why members of the human rights community must and do work together is that it enables each group focus and develop special skills and expertise. Limited resources are well spread and repetitive work avoided. This has allowed the CLO concentrate on campaigns while yet others look at human rights education.

Another feature networking plan is getting plugged into the international Human Rights Community. This is so very important. The impact of human rights work at the local level is

limited by organizational scope and funding. Sot it helps that NGOs stay in close touch with the international community. This strategy proved useful.

I have also undertaken substantial activities in the area of research, publications and documentation. As the names suggests, research publications and documentation is about fact finding and documentation. Our documentation unit monitors and report on human rights situation in Nigeria. Theresult is published annually. The 1990 annual report covered diverse subjects as police abuse, prison conditions, the military coup d'état, fundamental freedoms, economic rights, women's and children's rights, the rule of law, and the death penalty. The report enables the national authorities assess their performance and provides the internal community with an agenda of action. The regular quarterly news magazine of the CLO is produced by the research unit. This provides a forum for human rights ideals to be discussed. It also reports the findings of studies which have no change of publication in the regular papers.

It is useful that NGO's develop a mode of communication where the regular newspapers prove inadequate. The research unit also publishes books and journals to aid information flow on human rights. The high point of the effort remains the publication on prison conditions - Behind the Wall. The government was forced to take action when the report was released. 5,300 inmates were granted PresidentialAmnesty to help decongest the prisons. Food allowances were increased by 100%. CLO produced a journal on human rights law - the journal of Human Rights Law and Practice. It have 5 books on different subjects coming out this year and it is to be hoped that they will play a strong part in the strategy to inculcate human rights values in Nigeria. In the area of exchange programmes and traineeships with third parties, the CLO runs an internship programme for foreign nationals. The programme has been mutually beneficial both for the

organization as well as its interns, arising from the collaboration of ideals and strategies between both parties.

5.4 The National Action Plan for the Promotion and Protection of Human Right (NAP)

The National Action Plan for the Promotion and Protection of Human rights (NAP) is the response of the government of Nigeria to the recommendation of the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in Vienna Austria in 1993. It requested that:

> "Each state considers the desirability the desirability of drawing up a national action plan identifying steps whereby the state would improve the protection and promotion of human rights".

Though the present democratic government was not in existence at the time of the World Conference, it has fully associated itself with the Vienna Declaration and Programme of Action since coming into office. The Vienna Declaration and Programme of Action emphasizes that all human rights are universal, indivisible, interdependent and interrelated; and that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcement. In developing a National Action Plan, Governments are called upon to:

- Assess the current measures in place to protect and promote rights
- Identify areas that need improvement
- Commit themselves to improving the protection and promotion of human rights

The Commission is the agency coordinating the efforts of the Federal Government in Fashioning out a National Action Plan for the promotion and protection of human rights. The draft Plan,which was presented to the public on 21st October, 2001, during the Human Rights

Summit constitutes an integrated and systematic national strategy to help realize the advancement of Human Rights in Nigeria.

The National Action Plan is Government's Commitment for the promotion and protection of human rights. It involves an audit of the human situation in Nigeria, identifying areas for improvement and commitment to concrete measures to be adopted towards improving those areas where the enjoyment of human rights is inadequate. It constitutes a framework for sustained and coordinated measures to be undertaken by the country as a whole to protect and promote human rights within a given time frame.

The plan created an opportunity for identifying and agreeing on areas of co-operation between the Government, the Private Sector, the Civil Society in general and other stakeholders regarding improvements to be made in the task of promotion and protection of human rights in Nigeria.[23]

Since the report at the Bar Conference in 2003, further projects have been initiated to complete the NAP document. The Commission will be holding three Dialogue Sessions on the Nation Action Plan for Promotion and Protection of Human Rights in Nigeria next week. This will be with Parliamentarians, both at National and State Assemblies, the Media and with Government Ministries, Parastatals, Agencies and Extra- Ministerial Departments. The aim is to identify the role of these three bodies in the implementation of the National Action Plan. On conclusion of this final consultative project, the NAP Document will be presented to the President, and the National Assembly for adoption. After that, the NAP document will then be

[23]NHRC's Information Brochure Op. cit, p. 55-59

presented to the United Nations High Commissioner for Human Rights (UNHCHR) at Geneva as Nigeria's Commitment to the promotion and protection of human rights.[24]

Once presented to the United Nations, the NAP document will become a benchmark for both the Nigerian and International Community to measure Nigeria's compliance with Human Rights Standards and efforts to promote and protect human rights. As I said last year, a professional body like the Nigerian Bar Association (NBA) or any citizen for that matter could take up issues with the government or any of its agencies on why certain commitments in the document have not been met within the stipulated time frame. This is another veritable avenue for the institutionalization of transparency and accountability in the polity.[25]

5.5 Human Rights Protection and the Police

Although rudimentary, informal and even formal forms of policing existed in traditional Nigerian societies before the onset of British rule, British colonialism is responsible for the current system of policing in Nigeria. True to its origin the colonial police force sought primarily to impose and maintain a colonial order in its jurisdiction. This by the time Nigeria regained independence in 1960; it had inherited a police force cultivated under colonial rule.[26]

An examination of the origins development and role of the British-inspired police forces in Nigeria reveals that they were shaped by the nature of Europe on interests in the country and the reaction of the indigenous people to their activities. This, it will be safe to say that the

[24] NHRC's Information Brochure Op. cit, p. 502
[25] Ibid at p. 63
[26] Oluyede P. A. (1979) Administrative Law in Nigeria, Macmillan, London, P. 328

Nigerian police at onset was an agent of imperialism and used as army or occupation to kow-tow the indigenous populace to the submission of their colonial overlords.[27]

One must appreciate the fact that after independence, the constitutional responsibility of preventing and detecting crimes. It was the police Act of 1943 that first made the provisions for the duties and the organization of the Nigeria Police Force. These have been largely incorporated in the constitutional provisions that: "the police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property, and the due enforcement of all laws and regulations with which they are directly charged as well as perform such Military duties as may be required of them within or outside Nigeria.".[28]

However, perhaps the source of greatest abuse of suspects has been the police powers of arrest. The police have the powers to arrest a suspect with or without a warrant and the aim, it is said is to allow early intervention before a crime occurs. The highest allegation or abuse against the police has been levied by suspects in police custody proceeding from the well-known premise that everyone is presumed innocent until the contrary is proved. Iwendi, the Nigerian Police Chief spokesman in at a seminar in 1993 in Lagos gave succinct insights into why the Relationship of the police and crime suspects has not always been cordial. He said inspite of the usual police declaration that they are friends to the larger society "a crime suspect knows that there is no way he can be friend the police except possibly to pervert the cause of justice.

[27] Ibid
[28] See Section 4 of the Police Act Cap P19 LFN, 2004

According to him the abuse of the due process of law will always be there because the policemen are recruited from the society.[29]

> "The Nigerian crime suspects are people that even when you catch them red-handed, they will tell you 'I am not guilty'. They are a problem to us if you treat them with kid gloves you will be accused of corruption. If you deal harshly with them you will be accused of police brutality. The police therefore find itself between the devil and the deep blue sea".[30]

Often police abuses of suspects derive from their powers to arrest without persons **"reasonably suspected"** of having or being about to commit a crime. There is no protection here from the subjectivity or malice of a police in who develops **"reasonable suspicion"** lacking in any objectivity.

[29] Iwendi H. A. 91993) Speech Delivered at the Seminar Organized by the Nigerian NGOs in collaboration with the Police titled: "Police and Human rights in Nigeria" held at Onikan Lagos, September, 1993
[30] Iwendi, H. A. Op. cit

CHAPTER SIX

RELATIONSHIP BETWEEN NATIONAL HUMAN RIGHTS COMMISSION AND THE NON-GOVERNMENTAL ORGANISATIONS

6.1 Introduction

The National Human Right Commission was established by the National Human Rights Act 1995. In 2012, a new Act was promulgated to amend the 1995 Act[1]. Its establishment aims at creating an enabling environment for extra-judicial recognition, promotion, protection and enforcement of human rights, in addition to providing a forum for public enlightenment and dialogue on human rights. It is also aimed at facilitating the implementation of Nigeria's various international and regional treaty obligations on Human Rights issues.[2] National Human Rights Commission as a governmental Agency have established relationship with non-governmental agencies. This is needed in order to achieve the objectives of its formation. On this note, this chapter examines the roles of the National Human Rights Commission in relation to the recognition of the existence of non-governmental human rights organisations.

6.2 The Role of National Human Rights Commission

The functions and powers of the Commission are provided in S.5 of its enabling act and include the following:

[1] In July 2004, the Commission held in various parts of the country four consultative meetings on the proposed amendments to the National Human Rights Commission Act 1995 with civil Society organizations in Nigeria. The consultations were held as follows:

a) 19th July 2004 - consultative meeting with civil society organizations from the South East and South - South was held in Enugu;
b) 20th July 2004 - Consultative meeting with civil society organizations from the South West was held at Lagos;
c) 21st July 2004 - Consultative meeting with civil society organizations from the North was held in Kaduna;
d) 28th July 2004 - Consultative meeting with civil society organizations from the FCT was held in Abuja.

[2] Cap N. Laws of Federation of Nigeria, 2004

a. Deal with all matters relating to the protection of human rights as guaranteed by the Constitution of the Federal Republic of Nigeria, the African Charter (CAP A9 LFN 1990), the United Nations Charter and the Universal Declaration on Human Rights and other international treaties on human rights to which Nigeria is a signatory;[3]

b. Monitor and investigate all alleged cases of human rights violation in Nigeria and make appropriate recommendations to the Federal Government for the prosecution and such other actions as it may deem expedient in each circumstance;

c. Assist victims human rights violations and seek appropriate redress and remedies on their behalf;

d. Undertake studies on all matters relating to human rights and assist the Federal Government in the formulation of appropriate policies on the guarantee of human rights;

e. Publish regularly reports on the state of human rights protection in Nigeria;

f. Organize local and international seminars, workshops and conferences on human rights issues for public enlightenment;

g. Liaise and cooperate with local and international organizations on human rights for the purpose of advancing the promotion and protection of human rights;

h. Participate in all international activities relating to the promotion and protection of human rights;

i. Maintain a library, collect data and disseminate information and materials on human rights generally; and

[3] Section 5 of the National Human Rights Commission Act

j. Carry out all such other functions as are necessary or expedient for the performance of these functions under the Act.

6.3 Structure of National Human Rights Commission

The National Human Rights Commission is structured as follows with the Governing Council as the highest organ of the institution.

i. Constitution of Governing Council

The Governing Council of the Commission consists of 16 members appointed by the President representing the Legal Profession, Non-Governmental Organizations. In the field of human rights, the media, Ministry of Justice, Foreign Affairs and Internal Affairs, and a variety of other interests. The Council is responsible for the discharge of the functions of the Commission. It holds its statutory meetings at least once every month. Members of the council, other than the Executive Secretary, hold offices for a term of 4 years on a part time basis.[4]

The Executive Secretary of the Commission is the Chief Executive Officer of the Commission and is in charge of the day to day running of the activities of the commission.

ii. Head Office and Zonal Offices

The Commission has its headquarters situated at Plot 800 Blantyre Street, Wuse II, Abuja. Work is still in progress at the permanent Headquarters building project at Aguiyi Ironsi Street, Maitama, Abuja. In order to extend the reach of its services to the grass roots, the Commission has established five zonal offices in five geo-political zones of the country. The offices include that in the South-West with the zonal office in Lagos, North-East with the zonal

[4] See Information Brochure: National Human Rights Commission, p. 7

office in Maiduguri, South- East with the zonal office in Enugu, North-West with the zonal office in Kano and South-South with the zonal office in Port-Harcourt. While presenting our report last year, to this conference, we had hoped that by thisyear, we would have established our6th Zonal OfficeinJos.However, due to dire financial constraints, this hope has not yet been realized. The Headquarters office in Abuja is therefore still covering the North Central geo-political zone.[5]

iii. Management Structure of the Commission

The Commission has the following Departments and Units:

1. Department of Legal and Investigation
2. Department of Public Affairs and Information
3. Department of Administration
4. Department of Finance
5. Department of Planning, Research and Statistics
6. Human rights Violation Monitoring Unit
7. Audit Unit
8. Council Secretariat Unit
9. Anti-Corruption Unit.[6]

iv. Staff

The expansion of the Commission through the establishment of zonal offices led to the recruitment of additional staff. The staff complement of the Commission is now three hundred

[5] See Information Brochure NHRC
[6] Ibid

and seventeen (317), Comprising one hundred and sixty - six (166) senior staff and one hundred and fifty one (151) junior staff.[7]

6.4. An Overview of the Activities of the Commission

This overview of the activities of the National Human Rights Commission covers the general mandate of the jurisdiction of the Commission. There mandates includes protective, monitoring, promotional and human rights forum, all of which are discussed below:

i. Protective Mandate

The Commission has a viable and effective complaints mechanism for treating petitions on allegations of human rights violation. The Commission's work of investigating complaints and making appropriate recommendations as well as seeking redress and remedies on behalf of victims of human rights violations is undoubtedly one of its most important and challenging activity and there is no gainsaying that it is of immense benefit to the ordinary citizens of this country.

However, it should be noted that investigating complain and seeking redress and remedies on behalf of such victims by the Commission is only a complementary function to that of the courts of law, which have the primary responsibility for the protection and enforcement of those fundamental human rights under Chapter IV of the Constitution. The Commission has from inception to August 15th 2004, received 2,916 complaints of violation of human rights covering the cases of over 14,000 persons. The Commission charges no fees for filing of complaints nor charges any fees for any of its functions under the Act.[8]

[7] Information Brochure Op. cit
[8] NHRC's Information Brochure Op. cit, p. 12

The subject matter of the complaints since inception of the commission to date has not changed. They include allegations of high-handedness by Security Agents and Officials of government; disrespect or failure to obey court orders by Government Agencies/Officials; undue delay in the dispensation of justice, detention without trial, illegal confiscation of property; unlawful termination of appointment;pleas for the grant of clemency; child abuse, communal clashes, environmental degradation, extra-judicial killings, domestic violence, torture, inhuman and degrading treatment, discriminatory practices against persons, harmful traditional practices etc.[9]

With the advent of democracy and constitutional Government, the number of complaints received yearly has more than quadrupled. This is certainly due to democratization of the polity and the public enlightenment embarked upon nationwide by the Commission. Specifically, the Commission received a total of 993 complaints in the 4 year period of June 1996 to June 2000 while comparatively in July 2000 to August 15th 2004, another four year period; it received a total of 1923 complaints, which is an increase of over 200%. This has understandably stretched our capacity in terms of human, financial and material resources.[10]

Generally, parties to complaints whether Government agencies, corporate bodies or individuals have been cooperating with the Commission in the determination of complaints. However, the Commission has sometimes encountered some constraints in thetreatment of complaints. These include the reluctance of some officials/authorities in responding to inquiries by the Commission on alleged violations on time. In such cases, the Commission has found itself in a difficult situation and this hassled to undue delay in the disposal of complaints, as the

[9] Ibid p. 13
[10] Ibid , p. 15

enabling Act confers only omnibus rather than express powers to the Commission to compel such response. Hence the present efforts of the Commission to propose amendments to the said Act to strengthen the Commission to effectively discharge its mandate and further guarantee its independence and autonomy.[11]

ii. Monitoring Activities - Visit to Prisons, Police Cells and Detention Centres

In the discharge of its mandate of monitoring human rights situation in Nigeria, the Commission has been undertaking monthly fact-finding visits to prisons, police cells and other detention centers in the country. The objective, among others, is to acquaint itself with the condition of the police cells, prisons and the inmates in order to make appropriate recommendations for the improvement of the conditions of the said centres and the inmates therein or the possible release of the said inmates. The commission and the National Working Group on Prison Reforms and Decongestion with the support ofOpen Society Initiative of West Africa (OSIWA) is presently undertaking a physical National Prison audit exercise to strengthen recommendations expected to herald further decongestion of prisons and bring about institutional and legal reforms with the Prison system including the infrastructural rehabilitation and development of the prisons.[12]

iii. Human Rights Forum

The Commission holds monthly Governing Council meetings in different States of the Federation. The Governing Council uses the opportunity of its meetings to hold monthly human rights enlightenment programmes in the state where the meeting is held. The forum creates the opportunity for members of the council and the public to meet and exchange ideas on human

[11] Ibid, p. 20
[12] NHRC's Information Brochure, Op. cit, p. 25

rights issues. Over the years this has proved to be a very good strategy to reach out to the public for the purpose of education and enlightenment. The forum also allows the Commission to determine the State of human rights violations in the states visited.[13]

iv. Promotional Activities

With the reconstitution of the Commission's Governing Council in June 2000, a strategic work plan was drawn up spanning 2000- 2004. The work plan is a programme of activities lined up for implementation during the period. The plan seeks partnership with the civil society and input from the grass roots to the top involving both Non-governmental human rights organizations, professional bodies, community based organizations and government agencies. Under the work plan, the main thematic areas of focus for the Commission during the said period were identified and Special Rapporteurs were appointed for each thematic area of focus from amongst the Commissioners, and Programme Officers from amongst the staff of the Commission were attached to each of the said Special Rapporteurs to handle these areas of concern. The thirteen (13) thematic areas of focus identified in the said work plan are in response to the ever expanding frontiers of the promotion and protection of Human Rights.

They are as follows:

a) Women and other gender related matters
b) Police, Prison and other Detention Centres
c) Communal Conflicts and other Related Violence
d) Environment and the Niger Delta
e) Independence of the Judiciary

[13] NHRC's Information Op. cit, p. 27

f) Corruption and Good Governance

g) The Rights of the Child

h) Extra-Judicial Killings, torture, degrading and inhuman treatment

i) Rights to Health

j) Right to Food and Protection to the Family

k) Right to education

l) Sharia Legal system

m) Law Reform and Law Review[14]

The Commission has also embarked on series of educational and public enlightenment programmes to raise public awareness of human rights norms and also the duties of the citizens. These include seminars, workshops, conferences, publications, Radio and Television programmes.

These human rights programmes are sometimes organized in collaboration with Local NGO's and International organizations, and are more often than not directed at a particular target group, such as the Police Force, Prisons, schools, media, judiciary etc.[15]

In 2001, he Commission in collaboration with the Office of the Inspector-General of Police drew up a Curriculum for Human Rights education for Police institutions. The Commission is alsoworking on the development of Curriculum for Human Rights education for primary, secondary and tertiary institutions. Funding has been a major constraint to the take off the usage of the curricula developed. However, arrangements have reached advanced stages with the Government and some funding agencies in that regard and we are optimistic that the project

[14] NHRC's Brochure op. cit, p. 28
[15] Ibid p. 30

would soon take off. In July 2, 2002, the Commission collaborated with Constitutional Rights Project, UNICEF and Penal Reform International to organize a National Conference aimed at stimulating reforms in the administration of Juvenile Justice Sector in Nigeria. A National Working Group (JNWG) of which the NBA is a member was established pursuant to that conference. In March 2003, the Commission in collaboration with UNICEF, Constitutional Rights Project (CRP), Penal Reform International (PRI), NBA and other National Working Group (JNWG) on Juvenile Justice Administration, undertook a national study visit to 68 Prisons, Police Cells and other detention centres. The objectives of the visit were:

a) To gather information (policies, practices, problems, opportunities and challenges) on juvenile courts, police and prison cells for young persons in conflict with the law and state juvenile custodial facilities.

b) To assess prisons, police cells and state owned juvenile facilities for the care and protection of:

    i) Young persons in conflict with the law in prison;

    ii) Girls and adolescent mothers; and

    iii) Children born in prison.

c) To come up with recommendations to improve the juvenile justice Administration in Nigeria.

An important outcome of the information gathered by the working group is the overwhelming need for Pro bono services in our administration of justice system. It is therefore a welcome development to see the NBA seriously considering this issue. Lawyers should take up leadership roles and show humanitarian example to the society. Offering pro bono services will

go a long way to develop our justice system especially through the defense of juveniles who are clearly one of the most vulnerable groups in our society.[16]

The National Working Group on Juvenile Justice Administration,in which the Commission serves as the Secretariat, hascompleted work in the following areas:

a) Organization of sub-National conference on JJA at Kano and Ibadan
b) Inauguration of Zonal / State Working Groups (ZWG) at the Zonal / State levels to monitor and coordinate juvenile justice reforms at those levels.
c) Completion of National Study Visit to Prisons, Police Cells and other Detention Centre in Nigeria.
d) Completion of International Study Visit to four (4) selected countries namely; South Africa, Namibia, Malawi and the United Kingdom.
e) Compilation of the following reports for publication:
    i. National Conference on Juvenile Justice Administration in July 2002
    ii. Sub-National conferences on JJA in Kano and Ibadan in September and November 2002 respectively.
    iii. National Study Visit to Prisons, Police Cells and Other Detention Centre.
    iv. International Study Visit to South Africa, Namibia, Malawi and the United Kingdom.

In 2002, after the National Assembly threw out the Child Rights Bill, the commission in partnership with UNICEF took steps thatresulted in the following:

(a) Establishment of a National Advocacy Group on the Child rights Act. This group was made up of experts in Child Rights issues drawn from the academia, judiciary, media, and NGO's amongst others. They held several advocacy / sensitization meetings with the

[16] NHRC's Information Brochure, Op. cit, p. 33

NASS, media and civil society organizations on the expected benefits of the Child Rights Law on the lives of Nigerian Children.

(b) Successful advocacy which resulted in the passage of the Child Rights Act into Law by the President in September 2003.

(c) Establishment of zonal and state Child Rights Advocacy groups in the zones and states of the Federation to facilitate the passage of the Child Rights Bill in their various states.

(d) Passage of Child Rights Law in Ogun and Anambra States respectively.

(e) On-going advocacy on the implementation process of the Child Rights Act 2003 in other states.

In December 2003, the Commission in partnership with Child Rights Brigade (CRIB) commemorated the International Human Rights Day with a human rights quiz competition among pupils and students of primary and secondary schools respectively within the FCT. This was aimed at arising human rights awareness within our schools particularly with the signing into Law of the Child Rights Act 2003.

In December 2003, the National Human Rights Commission in partnership with Commonwealth Human Right Initiative, (CHRI) and Legal Resources Consortium, held the first ever commonwealth Human Rights Forum (CHRF) in Abuja. The forum was part of activities leading up to the Commonwealth Heads of Government Meeting (CHOGM) in Abuja. It provided a platform for raising vital and urgent human rights issues facing countries in the commonwealth, discussing the human rights work of the commonwealth and making recommendations to the Heads of governments. The Forum brought togetherrepresentatives of National Human Rights Institutions (NHRIs) and human rights non-governmental organizations from across the commonwealth.

In February 2004, the Commission in collaboration with the UK Foreign and Commonwealth Office organized a workshop titled National human Rights Institutions and Legislatures - Building an effective relationship. Participants which were drawn from commonwealth member countries and beyond highlighted best practices in working with legislatures. From April to July 2004, the commission in partnership with UNICEF organized four workshops focusing on child rights and juvenile justice issues. They are as follows:

a) 2 days Children Rights Act (CRA) Advocacy Group Consultative Meeting held at Lagos from the 22-24 April 2004.
b) 2 day Meeting of the National Working Group on Juvenile Justice Administration held at Lokoja from the 13-16 June 2004.
c) 2 day Meeting of Child Rights Act (CRA) National Facilitators& Zonal Chair persons held in Abuja from the 23 - 26 June 2004.
d) 2 - day workshop to disseminate the Child Rights Act (CRA) to traditional/religious leaders, media and other civil society organization held in Lokoja from the 13-16 July 2004.[17]

[17] NHRC's Information Brochure Op. cit, p. 35-47

CHAPTER SEVEN

SUMMARY AND CONCLUSION

7.1 Summary

This dissertation examined the role of non-governmental organization in the promotion and protection of human rights in Nigeria. In doing this, the dissertation examines in chapter one, the general introduction, the arm and objectives of the research, the scope of the research, research methodology and the organisational layout. The justification for the research is that "human rights" has become not only a topical issue in Nigeria but the language of both the oppressors and the oppressed. Yet little is known of its meaning and ramifications because practically human rights is not fully observed in Nigeria.

Chapter two discusses nature and scope of international human rights treaties. The definitions of human rights treaty. Universality and cultural relation were considered, the chapter also discusses philosophical foundation of human rights, jurisprudential basis of the evolution of Human Rights in global research. And historical development of human rights, the evolution of human rights in Nigeria, the contending perspective on human rights and the institutionalization of human rights at the international, regional and domestic levels were also examined.

Chapter three analyses the implementation of selected international treaties. The, international mechanisms and regional mechanism for the implementation of human rights protection under which the Implementation of African Charter on Human and Peoples' Rights, the African Charter on Human and Peoples' Rights, African Charter on Human and Peoples' Rights on the Rights of Women in Africa and The ECOWAS Mechanism for the Protection of Human Rights were examined.

Chapter four deals with the justiciable rights in Nigeria as it entrench in Chapter IV of the 1999 Constitution of Federal Republic of Nigeria (as Amended), the enforcement mechanism under the Nigerian Constitution with Fundamental Rights Enforcement Procedure Rules, and also discussed the Limitation of the Application of the Fundamental Rights Enforcement Procedure Rules.

Chapter five discusses the role of non-governmental organisations in the promotion and protection of human rights. The source of funding of human rights group. How the source is affecting or has affected their approach and activities. Their supposed activities under a democratic government was also examined.The National Action Plan for the Promotion and Protection of Human Right (NAP) and Human Rights Protection and the Police were elaborated on.

Chapter six examines the establishment and the role of the Human Rights Commissions. How the commission has fared so far. The problem of the commission.The relationship between national human rights commission and the non-governmental organisations. As already stressed, the evolution of human rights NGOs in Nigeria was a reaction to the autocratic repressive, and inhuman military rule in the country which engendered the subversion of the social, economic and political rights of the people. NGOs in Nigeria not only fought against human rights repressions but for the enthronement of democratic government. However, the discussion was focused on the Role of National Human Rights Commission, Structure of National Human Rights Commission and An Overview of the Activities of the Commission

Finally, Chapter seven deals with the recommendations and conclusions. This chapter make some recommendations which will reasonably be expected to be useful to the policies and

decision of the government regarding human rights implementation within the domestic sphere (Nigeria). There is no doubt civil society represented by non-governmental organisations, has become an important factor in world society of particular reference are group concerned with development, human rights and environment.

7.2 Findings

In view of all that have been discussed in the preceding chapters, the following finding are made:

a. In the course of this research, it was found that there exists a weak institutional infrastructure for human rights protection in Nigeria. Effective enforcement of human rights largely depends on the domestic machineries of the national government. It is for this reason that major international human rights instruments mandate state parties to take appropriate domestic measures to ensure the realization of the rights proclaimed. Although Nigeria, in recognition of its obligation as a signatory to major human rights instruments, has established relevant institutional mechanisms such as the courts and the National Human Rights Commission for human rights protection, regrettably, the mechanism are weak, and incapable of providing strong and effective platform to meaningfully discharge their mandates.
b. The need for multifarious strategies and approaches to protection of human rights in Nigeria was also observed in the course of the work. In order to ensure effective implementation of human rights, wide-ranging strategies and approaches are required. Indeed, there is not enforcement mechanismwhich can exclusively and adequately ensure

optimal human rights protection. This, thus make the role of NGOs, in the promotion and protection of human rights not only exclusive but very important and crucial.

c. Impediments to the effectiveness of human Rights NGO is also an observation in the course of the research. Without doubt, human rights NGOs in Nigeria have not been able to fill the gap created by the near absence of executive agencies in human rights promotion and protection. There are some constraints in the efforts of NGOs in Nigeria towards the protection of human rights among which is access to justice. Access to justice connotes the availability of accessible affordable, comprehensible justice system, and the dispensation of justice fairly, speedily and without fear and favour. The issue of access to justice is a significant constraint to the effectiveness of human rights in NGOs. Access to justice has been denied through the use of what has been termed "negative legal" and "access curtailing devices" such as ouster clause, Limitation Acts, protection of public officer from suits, the doctrine of state immunity and dragon of *Locus Standi*. The doctrine of *Locus Standi*constitutes a formidable if not insurmountable impediment to human rights NGOs in Nigeria.

d. Non favourable political environment for NGOs human rights protection activities is another observation. It is no exaggeration to say that Nigerian's political environment is not only non receptive, but sxphatiatingly hostile of criticisms, even constructive ones. The role of human rights NGOs often constitutes irritation to governments for obvious reasons.

e. Financial constraint on the part of the NGOs in Nigeria was also observed. Without doubt, the human rights protection activities of the NGOs require funding for any meaningful results. Many human rights activists in Nigeria, like their counterparts across

the globe, are not men and women of means and affluence such that they can finance the activities of their respective NGOs from personal donations.

7.3 Recommendations

In line with the above outlined finding, the following recommendations are made for reform:

i. Various governmental and quasi-governmental bodies established in Nigeria should ensure human rights promotion and protection are strengthened and made efficient and effective by specific regulatory Act. The Human Rights Commissionespecially must be further empowered legislatively to be able to adjudicate and give binding verdicts on issues bothering on human rights violations.

ii. The Non-Governmental Human Rights Organizations in Nigeria must be seen as regarded for what they are –Human Rights Protectors. The National Assembly should pass an Act which give any Human Rights NGO *Locus Standi* in any issues that relates to violation of human rights anywhere in Nigeria such that the NGOs can institute action for human rights violation on behalf of victim(s) without the hindrance of *Locus Standi*.

iii. Since human rights was better protected before violations and not after, NGOs in Nigeria should be proactive in their human rights protection and promotional activities. There should be a deliberate outreach to the rural communities where structural inhibitions account for gross human rights violations than experienced in urban areas. Human rights NGOs have mostly concentrated in urban centers and they often denounce human rights violations without offering suggestions. This limits their

scope and value. It is therefore suggested that human rights NGOs must offer constructive suggestions in appropriate cases on how things can be done differently. Consequently, the NGOs must designed and pursue a more pragmatic and result oriented way of advancing the cause of human rights in Nigeria. It is by doing so that the current democratic experience may not be aborted and the fortunes of human rights meaningful.

iv. As regards issue of funding, NGOs in Nigeria should strengthen their relationship with their counterparts abroad and United Nations through some of its agencies e.g. World Health Organization (WHO). Grants from these international bodies which has over the years proven their strong dedication to promotion and protection of human rights will come handy. Nothing is wrong with taking grants from governments so long as such governmental grants will not stifle the activities of the NGO.

v. It should be stressed however that the challenge to the legitimacy, credibility and accountability of human right NGOs has the capacity to blur their vision, action and efficiency, regardless of the good intentions of their leaders, and members. It is relevant to recall that it was once reported that some human rights organizations in Nigeria because of the crisis of confidence. It is therefore imperative to chart an agenda for reform in order to boaster the value of NGOs in human rights protection in Nigeria.

BIBLIOGRAPHY

(a) Books

Ajomo M. A (1985) Human Rights and Politics in Nigeria in New Dimensions in Nigerian Law, A Publication of the Nigerian Human Rights Commission Lagos.

Ajomo M. A. (1992) Fundamental Human Rights under the Nigerian Constitution, in Awau, Kalu and Osinbajo (ed) Perspectives on Human Rights vol. 12, 1992, Published by the Federal Ministry of Justice.

Alexander Y. M. (1940) Civil Liberties and Civil Rights in United States, St. Paul, Minnesota.

Awotundun M. O. (1990) Philosophy and the Law, Unity Press Ltd., Lagos.

Cambell J. (1983) The Lefts and Rights: A Conceptual Analysis of Idea of Natural Rights. Routledge and Kegan Paul, London.

Cranston M. (1987) Human Rights: Real and Supposed in Raphael (ed) Political Theory and the Rights of Man; Bloomington Publication.

Descaretes, F. E. (1979) Human Rights, Problems, Perspectives and Texts, Westmead, UK, Saxon House.

Dowrick F. E. (1989) Natural Law and Natural Rights, Claredon Press, London.

Fale R. A. (1981) Human Rights and State Sovereignty, Itolmse & Meler, New York.

Gaskiowu, M. O. U. (2003) Human Rights History Ideology and Law, Afab Publication, Jos.

Jefferson M. (1992) Criminal Law, Pearson Education Ltd, London.

Jegede, M. I. (1993) What's Wrong with the Law? Nigerian Institute of Advance Legal Studies, Lagos.

Ladan M. T (1997) African Human Rights Commission One Decade of Challenge in NHRC Newsletter, December 1997.

Ladan, M. T. (ed) Strengthening the National Human Rights and the Commission (NHRC) in Human Rights and the Administration of Justice in Nigeria.

Malemi E. (2006) The Nigerian Constitutional Law, Princeton Punishing Co. Lagos.

Nnamdi J. A. (1999) Human Rights and Social Justice in Nigeria: Issues and Dilemma and Options, in Osinbajo Y. (ed) Nigerian Government and Human Rights, A Publication of Ministry of Justice, Lagos State.

Nwabueze B. O. (1982) Presidential Constitution in Nigeria C. Hurst & CO. London.

Oluyede P. A. (1979) Administrative Law in Nigeria, University Press Ltd, Ibadan.

Onyemana O. K (1989) Human Rights Politics and Political Parties in Nigeria Historical Perspective, Majorlink Publications, Onitsha.

Oputa C.A. (1985) The Practice and Application of Common Law in Nigeria in Issues in Nigeria Legal System a Publication of the Nigerian Bar Association, Lagos.

Osita Eze (1984): Human Rights in Africa: some selected problems (Nigerian Institute of International Affairs, Lagos, in Cooperation with Macmillan Nigeria Publishers Ltd.

Patron D. L. (1973) The Logic of Fundamental Rights in Fundamental Rights, A Volume of Essays, London.

Perrot F. O. (1975) Legal Nature of Rights, Macmillan, London.

Peter C. M. (1999) Human Rights in the TraditionalAfrican Setting in Osinbajo Y. (ed) Issues on Human Rights and Civil Liberties,A Publication of the Ministry of Justice, Lagos State.

Pollack H & Smith B. A (1978) Civil Liberties and Civil Rights Macmillan, London.

Robert N. (1974) Anarchy State, and Utopia, Blackwell Oxford.

Roberts H. (1988) The Liberation of Women, An X-Ray of the Convention on Elimination of all Forms of Discrimination against Women George Allen & Unwin, London

Sammy Adelman (1989) "The Right to Development: Problems and Potentials" (Human Rights Unit Occasional Paper, Human Rights in Development Series, Commonwealth Secretariat).

Sokefun J., (2001) Theory of Human Rights, Silop Press, Ibadan.

Tobi N. (2006) The Law ofInterim Injunction in Nigeria St. Paul's Publishing House, Ibadan.

Umozurike, O. (1997) *The African Charter on Human and People's Rights* (1998) Macmillan Press Lagos.

Wener H. O (1979) The Practice of Freedom, Macmillan, London.

(b) Article in Journal Publications

Ihonvbere J. (2007) Human Rights – The African Perspectives in University of Benin Law Journal Vol. 12 Jan,. 2007.

Iwendi H. A. 91993) Speech Delivered at the Seminar Organized by the Nigerian NGOs in collaboration with the Police titled: "Police and Human rights in Nigeria" held at Onikan Lagos, September, 1993.

Nnaemeka P. Agu: Human Rights Proceeding: Domestic Provisions and Experience of Nigeria" paper delivered at Judicial Colloquium on Domestic Application of International Human Rights Norms- Abuja, Nigeria 9-13, 1991 at page 7.

Umozurike U. O (1986) The Present State of Human Rights in Africa, University of Calabar Law Journal.