AN APPRAISAL OF THE ENFORCEMENT OF HUMAN RIGHTS UNDER THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 IN NIGERIA

BY

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DECLARATION

I declare that the work in this dissertation entitled AN APPRAISAL OF THE ENFORCEMENT OF HUMAN RIGHTS UNDER THE FUNDAMENTA RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009, IN NIGERIA, has been carried out by me in the Department of Public Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided .No part of this dissertation was previously presented for another degree or diploma at this or any other institution.

Name of Student _____ Signature _____ Date _____

CERTIFICATION

This dissertation entitled AN APPRAISAL OF THE ENFORCEMENT OF HUMAN RIGHTS UNDER THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009, IN NIGERIA by Jamila SHUAIBU meets the regulations governing the award of the degree of Master of Laws of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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This work is dedicated to Almighty Allah, to my parents, my heroes, and to my husband, my best friend

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LIST OF ABBREVIATIONS

ASN1	Assistant Superintendent of Narcotic
CA	Court of Appeal
CAP	Chapter
CSN	Chief Superintendent of Narcotic
DSN	Deputy Superintendent of Narcotic
FHC	Federal High Court
FHC	Federal High Court
FHCLR	Federal High Court Law Report
FREPR	Fundamental Rights (Enforcement Procedure) Rules 2009
FWLR	All Federation Weekly Law Report
L.F.N	Laws of the Nigeria
LPELR	Law Pavelion Electronic Law Report
NA	Nigerian Army
NIPSS	National institute of Policy and Strategic Studies
NWLR	Nigeria Weekly Law Report
RADIC	Rapidly Deployable Integrated command and Control
SCNJ	Supreme Court of Nigeria Judgment
SNA	Senior Narcotic Agent
UNESCO	United Nations Educational scientific and cultural organization
WLR	Weekly Law Report
FCT	Federal Capital Territory

ABSTRACT

The Constitution of the Federal Republic of Nigeria 1999 chose certain rights to protect under chapter IV and termed them as Fundamental Rights. These rights are chosen to be protected not only by the Constitution, but also by the African Charter on Human and Peoples 'Right. Whenever there are breaches of these fundamental rights, the law provides a procedure for their enforcement, which is the Fundamental Rights (Enforcement Procedure) Rules 2009. The basic objective of the 2009 Rules is to facilitate enforcement procedure by removing some of the impediments in 1979 rule. Unfortunately it is clear that the procedure for enforcement of Fundamental Rights is still bedeviled by delay. Many applications alleging serious human rights violations are routinely struck out or dismissed. However, the pertinent question is: to what extent are the human rights provision in these legal instruments realized or enforced? It is worthy of note that there are equally other important impediments in the realization of the objective of Fundamental Rights (Enforcement Procedure) Rules 2009, such as the distinction between main claim and ancillary claim in the Nigerian fundamental rights, because litigants are cautious of whether or not their claim will succeed because of this distinction. This research examines the problem of delay associated with the Fundamental Rights (Enforcement Procedure) Rules 2009 This dissertation made an in depth analysis of the rules and considered to what extent it achieved its objective in order to enhance a robust human right regime. To achieve a close –to- accurate' if not accurate result, the research embarked on a field work. To this end, both doctrinal and empirical method of research is used. This research found out that the Fundamental Rights (Enforcement Procedure) Rules 2009, though has brought tremendous changes in the field of human rights protection (e.g the abolishment of locus standi and leave, is still faced with some major setback like the issue of principal and ancillary claim in the enforcement of fundamental rights and the jurisdiction of the National Industrial Court which is not clear in the rule. The work recommend that Courts should do away with the dichotomy between principal and ancillary and the definition of courts in the Rule should include the National Industrial Court.

CHAPTER ONE

1.0 GENERAL INTRODUCTION

1.1 Background to the Study

Fundamental Rights are rights derived from natural or fundamental or constitutional law[1]. They are rights which remain in the realm of domestic law, which are recognized, entrenched and guaranteed in the constitution of a country or any other legal instrument such as the African Charter on Human and People's Rights. Fundamental Human Rights are also described as rights which are inalienable and guaranteed to every person.

The Constitution of the Federal Republic of Nigeria and the African Charter on Human and Peoples' Right guarantee fundamental human rights. These Fundamental 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 and legislature are enjoined to respect and the judiciary to protect. However, there are instances where these guaranteed rights are violated either by the law enforcement agents or in quasi-judicial proceedings[2]

Furthermore, where there are breaches of these rights, the appropriate means to secure the enforcement of the victims' fundamental right is paramount. It is against this background that the Fundamental Rights (Enforcement Procedure) Rules was enacted. On 29th May, 1999, a new constitution came into being. Some judicial opinions[3] were of the view that the Fundamental Rights (Enforcement Procedure) Rules1979 was dead pursuant to section 42(3) which provides who to make rules for the practice and procedure for the High court towards the enforcement of the provision of Chapter IV. For effective enforcement of the rights guaranteed under the 1999

[1] *Chief Francis Igwe&Ors v. Mr. GoddyEzeAnochu&ors* (2010) 7 NWLR pt 1192 p. 84-85

[2] *Trust Fund v Adebiyi(*1999)13 NWLR,PT.633,P.16.where the applicant sought to enforce his fundamental right to fair hearing ,having been breached in the course of his dismissal.

[3] Evans U.(2015),*Fundamental Human Rights Enforcement Under the Law*, Retrieved on 18th April,2016,from www.connectnigeria.com

Constitution, the 2009 Fundamental Rights (Enforcement Procedure) Rules was enacted, It was signed In November 11,2009 by the then Chief Justice IdrisLegboKutigi and came into force with immediate effect replacing the Fundamental Rights (Enforcement Procedure)Rules 1979.

The purpose of the Fundamental Rights (Enforcement Procedure) Rules is to facilitate the enforcement of fundamental rights[4]. The Rules provide for redress where there is a violation or even apprehension of likely violation of these rights[5]. The fundamental rights are provided in Chapter IV of the 1999 Constitution and Chapter 1 of the African Charter on Human and Peoples' Rights. Where the violation has occasioned injury which could be compensated in financial terms, courts are duty bound to make orders of reparation in monetary terms if applied for and proved.

1.2 Statement of the Research Problem.

The Fundamental Right (Enforcement Procedure) Rules, 2009 is a new Rule made to replace the Fundamental Rights (Enforcement Procedure) Rules 1979. The basic objective of the 2009 Rules is to facilitate enforcement procedure by removing some of the impediments in 1979 rule which causes delay in enforcement of fundamental rights. Unfortunately it is clear that the procedure for enforcement of Fundamental Rights is still bedeviled by these impediments such as the distinction between principal and ancillary claim. Many applications alleging serious human rights violations are routinely struck out or dismissed[6]because of the impediments.

However, the pertinent question is: to what extent are the human rights provision in these legal instruments realized or enforced? It is worthy of note that there are equally other important

[4]*Minister of Internal Affairs v Shugaba*(1982),3NCLR P 915.
[5] Order II Rule 1of *the Fundamental Rights (Enforcement Procedure)Rules* 2009.Also provided in section 46 of the 1999 *Constitution*
[6] Chief Ben IfeatuvMrAustineNwankwo and others FCT/HC/M/3707/11 retrived 0n 18th april 2016 from fcthighcourtelibrary.com.

impediments in the realization of the objective of Fundamental Rights (Enforcement Procedure) Rules 2009, such as the distinction between main claim and ancillary claim in the Nigerian fundamental rights, because litigants are cautious of whether or not their claim will succeed because of this distinction.

The third problem is with respect to Order IV rule 4 of the Fundamental Rights (Enforcement Procedure) Rules 2009, the section provides."Where in the course of any human rights proceedings, any situation arises for which there is or appears to be no adequate provision in these rules, the civil procedure rules of the court for the time being in force shall apply". There is no uniform high court civil procedure rules in Nigeria, For example, an applicant brought an application under the High Court Civil Procedure Rules of Kano State with regards to a matter not covered by the Fundamental Rights (Enforcement Procedure) Rules 2009, and the application was granted. The question is, can a different applicant with the same subject matter bring same application in Kaduna State relying on the previous precedent in Kano? This will be in the negative because both cases where decide on a different principle of law, except where the Kano and Kaduna State High Court Civil Procedure Rules make the same provisions in respect of the same subject matter.

1.3 Aim and Objective of the Research

The aim of this research is to examine theFundamental Rights (Enforcement Procedure) Rules 2009 towards the enforcement of fundamental rights.The research therefore sets its objectives as follows:

1. To assess the impact of the Fundamental Rights (Enforcement Procedure) Rules 2009, on the enforcement of Fundamental Human Rights in Nigeria.

2. To identify problems in the implementation of the Fundamental Rights (Enforcement Procedure) Rules 2009 in Nigeria.

1.4 Scope of the Research

The scope of the research covers the application of the Fundamental Rights (Enforcement Procedure) Rules, in Nigerian courts.

1.5 Research Methodology

The research employs doctrinal and empiricalapproach of study.Both primary and secondary source will be used in this research. The primary source includes, the Fundamental Rights Enforcement Procedure Rules as the principal legislation.The Constitution, other relevant statute, and case laws also constitute primary sources of materials.The secondary sources include, articles, literatures of legal writers in books, and news papers on the subjectmatter. In the empirical research, this research will make use of questionnaire, which will be administered to the members of the legal profession and the law enforcement agents. This will give a fair if not accurate result as to the problems affecting the application of the Fundamental Rights (Enforcement Procedure) Rules 2009.

1.6 Literature Review

Very few scholars have written books that touched on the subject matter of the research.This is because the Fundamental Rights Enforcement (Procedure Rules) 2009 is a recent regime. After careful perusal of the available books it was discovered that though the authors discussed a vast area of the subject matter, they have not written on the new Fundamental Rights (Enforcement Procedure) Rules 2009, which is the subject of this research.

Jamo[7] made a critical analysis of fundamental rights.He gave philosophical dimensions of human rights, including United Kingdom's Bill of Rights, perspective of human rights, and definition of human rights and conceptualization of human rights. Most importantly is his discussion on human rights under the 1999 Nigerian Constitution, which this work also looked into.However, it is observed that the procedure of enforcement of this right is not mentioned. This research seek to elaborate on this procedure i.e the Fundamental Rights (Enforcement Procedure) Rules 2009

KayodeEso[8], made a brief explanation on the concept of human rights and theories. Tohim, to understand human rights ,there is need to go back to history of notable antecedents e.gthe great Britain, the Romans and the American experience. He also looked at the theories on the origin of human rights from the perspective of religion, morality, and divinity in brief. His analysis is limited, without mentioning the group of people who first developed the idea of human rights. This work elaborates on the development of human rights with critical analysis of philosophers.

Dalhatu[9]discussed fundamental rights, problems of limitation on fundamental rights, distinction between human rights and fundamental rights. In his analysis of fundamental right, the author did not contemplate the provision of Chapter II of the Constitution which is the fundamental objectives and directive principles of State policy as a fundamental right and unjusticiable. The author only gave priority to Chapter IV of the Constitution.

Akande[10], In her discussion on fundamental objectivesand directive principles of state policy, emphasized fundamental obligation of the government. However, her limitation is based

[7]Jamo N.M,(2000),*Human Rights in Nigeria:Law and Practice*,(Unpublished PhD Dissertation),Faculty of Law ,Ahmadu Bello University ,Zaria.
[8]Eso K,(2008),*Thoughts on Human Rights and Education,* Paul's PublishingHouse,Oke- Ado,Ibadan
[9]Dalhatu M.B, (2008),*What is Constitutional Law,*Sacombuc,Zaria.
[10]Jadesola A. O,(1982), *Introduction toThe Constitution of the Federal Republic Of Nigeria 1979,*Sweet and Maxwell,London.

on provision of the section without looking at the practical applicability of its provision, which will reveal that the provision is just in paper and unattainable. The research considers the current situation in Nigeria which is the practical violation of the provision of the sections,due to lack of enforcement of the provision which makes it unjusticiable. More so this research considers the provision of the 1999 Constitution as against the 1979 which was the focus of the author.

Peter[11] made elaborate analysis of the constitutional provisions of fundamental rights with limitations encountered under the military and civilian regime of the first, second, and third republic. This research goes further and discussed the limitations on Enforcement of these rights in recent time.

Campbell and Goldberg[12]discussed the realization of human rights and constitutional protection of human rights. However, their work being foreignmade reference to the American and the British Constitutions. This research appraises the Fundamental Rights (Enforcement Procedure) Rules 2009 and the Rights under Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 and the African Charter on Human and Peoples' Right.

Ladan[13] discussed the domestic enforcement of Human Rights, including the African Charter on Human and Peoples' Rights but did not expatiate on the procedure of enforcement of such rights. This is another area this research explores.

Abdulwahab[14] made an appraisal of the new Fundamental Rights (Enforcement Procedure) Rules 2009 pointing out the issue of principal and ancillary claim as a major problem faced by applicants.However, the injury this principle has caused in the area of human rights and

[11]Olumide P*,(1992),Introduction to Nigerian Constitution,*EvansBrother,Ibadan
[12] Tom C and David G.etal,(1986),*Human Rights From Rhetoric to reality*,BasilBlackwell,Oxford ,UK
[13] Mohammed T.L,(1999),*Introduction to International Humanitarian Laws*, Ahmadu Bello University Press,Zaria
[14]AbdulwahabA*,Innovation in New Fundamental Rights Rule*,retrieved on 14th January 2012,from www.vanguardngr.com

practicability of its application with regards to the test on the determination of what are principal and ancillary claims is one area this research dwelled upon.

Duru[15] made an overview of the new Fundamental Rights (Enforcement Procedure) Rules 2009,giving the positive side and tremendous changes brought by the Rules in comparison with the old Rules of 1979.However this work tend to point out the limitation or setbacks in the 2009 Rules and the need for improvement in order to create a society devoid of constant human rights abuse.

Lastly, Danladi[16] made an in-depth analysis of enforcement procedure of the old Rules applicable at that time. With the coming of the new Rules, thisresearch made an in-depth analysis of the new Rules i.e The Fundamental Rights (Enforcement Procedure) Rules, 2009, which is the current law applicable, replacing that of 1979.

1.7 Justification for the Research

The Constitution of Nigeria 1999(as amended) provides for fundamental rights of persons under Chapter IV. When there is breach or likely breach of these rights, the Fundamental Rights (Enforcement Procedure) Rules, 2009 is in place to guide on the procedure for redress. Certainly it is imperative to examine the procedure for enforcement of these rights when they are violated because there are lacunae in the application of the rule.

1.7 Organizational Layout

This work is divided into five chapters.Chapter One introduces the topic of the Research. It opens with an introduction, setting the background for the thesis. More importantly this chapter

[15]Duru O,*(2009),An overview of the Fundamental Rights Enforcement Procedure Rules* retrieved on 14th January,2013,www.academia.edu15185466/A

[16]Kabir M.D,(2006),*The Imperative of Reviewing the Fundamental Rights (Enforcement Procedure) Rules,* Ahmadu Bello University Law Journal,Vol 24-25,p 144.

singles out the research problem, outlines the scope, sets out the aim and objectives, analyzes literature on the point, reveals the methodology, and attempts to justify the research.

Chapter Two examines the concept of 'fundamental rights, Human rights, and Constitutional Rights' in relation to the historical context of Fundamental Human Rights and the quest for Fundamental Human Rights are also examined.

Chapter Three considers the process of enforcement of fundamental rights, while chapter four goes further to examine the Presentation, Analysis and Interpretation of Data. The research is concluded in chapter five with a Summary and recommendations.

CHAPTER TWO

2.0 THE CONCEPT AND DEVELOPMENT OF HUMAN RIGHTS IN NIGERIA

2.1 Introduction

Human Rights are the basic guarantees which individuals enjoy simply because they are human beings. The rights are enshrined in Chapter IV and Chapter II of the constitution[17]as fundamental Rights and fundamental objectives and directives principles of state policy.

Human Rights today have not only become a global concern but remarkable interest aimed at protecting and promoting universal respect for and observance of human rights has eventually been shown at the international, regional and national levels. There have been contending explanations as to their scope and nature, regards being had to the contextual realities of the society in which they are sought to be enjoyed.

The present codification of human rights in the national constitution flows from the Universal Declaration of Human Rights(UDHR) 1948 which provides a firm foundation for the historical development and globalization of human Rights. The UDHR represents a bold attempt by the UN to elaborate on and give concrete and authoritative expression to the imprecise and ambivalent definition of human rights contained in the UN Charter[18].Since the promulgation and adoption of the UDHR the United Nations has made its commitments to the promotion and protection of human rights around the globe. This justifies the numerous resolutions, declarations and conventions[19]which have been passed in the area of human rights. Human rights have become indispensable that virtually all constitutions the world over, make provisions for them in

[17]1999 Constitution.

[18]Schifer,F. (1988) *Forty Years of the Universal Declaration of Human Rights*, Bulletin of Human Rights, UN, New York, P.92.

[19] Some of the declarations and conventions include, Declaration on the Right of thechild ,International Convention on the Elimination of all forms of Racial Discrimination and the Convention on the Rights of the Child.

the preamble or substantive provisions.For example, the French constitution of 1958 refers in its preamble, to the 1789 Declaration of the Rights of Man and of the Citizen. The Nigerian and Indian constitutions incorporated virtually all the rights contained in UDHR[20].

In the Nigerian Constitution, beginning from the post –independent, attention has always been given to the issue of human rights.Human Rights cannot be over emphasized because; it is the State, with its various institutions which is primarily responsible for guaranteeing the implementation and enforcement of these rights. While the need for the guarantee and protection of human rights in national constitutions cannot be doubted, it is important to do a critical content-analysis of these constitutional provisions with a view to seeing their real value and what gave rise to the quest for these Rights.

2.2 Meaning of Human Rights.

The word "right" is derived from the Latin word *rectus* which means that to which a person has just, valid claim. This right may be classified into legal right, which is the liberty of acting or abstaining from acting on a specific manner, or the power of compelling a specific person to do or abstain from doing a particular thing[21].The Black's Law Dictionary defines right as that which is proper under the law, morality or ethics, something that is due to a person by just claim, legal guarantees or legal principle.[22]

"Human Rights" have been defined by the United Nations *"Human rights could generally be defined as those rights which are inherent in our nature and without which we cannot function as human beings".* Human rights is a process that has taken years in the history

[20] Jean-Bernard,(2003*) National Systems for the Protection of Human Rights in Human Rights InternationalProtection, MonitoringEnforcement,*Januzsymonides(Ed.) Aldershot Hants, Ashgate, UNESCO Publlishing, p.258.
[21]Kabir M.D.,(2010), *A Comparative Analysis of European Convention on Human Rights and AfricanCharter onHuman and Peoples Rights*, (Unpublished Phd dissertation), Faculty of Law, Ahmadu Bello University,Zaria.
[22]Backs Law Dictionary, 8th edition p.1347.

of mankind, it has been a process which has gone through many stages[23].It is not certain as to how such liberties can be described as "Human rights" in the modern sense.

The concept of human rights is one of the most profound questions that have ever tasked scholars. Discourse on the precise meaning and content of human rights has taxed the ingenuity of eminent scholars as the issue raises, more questions than answers on issues such as the Universality – relatively palaver[24], as well as the ethical, moral, cultural, philosophical, legal and ideological underpinning of the subject matter. For this reason it is a prerequisite to examine the major stands in the various approaches to human rights.

Natural law Approach and the Sociological Approach to Human Right

The natural law approach: philosophers and jurists in their search for a law that was higher than positive law, developed the theory of natural law. It was first elaborated by the stoics of the Greek Hellenistic period, and later by those of the Roman period. Natural law, they believed, embodied those elementary principles of justice which were right reason i.e. in accordance with nature unalterable and natural. Medieval Christian philosophers, such as Thomas Acquinas, put a great stress on natural law as conferring certain immutable rights upon individuals as part of the law of God.

Natural law theory led to natural rights theory,the theory most closely associated with modern human rights. The chief exponent of this theory was John Locke, who developed his philosophy within the framework of seventeenth century humans and political activity known as the age of enlightenment. Another exponent of this view is Thomas Hobbes, an English philosopher who suggested the existence of a social contract by which men and women mutually

[23]Ige, O. L,(1999),*Human Right Made Easy* (3rd Edition),Legal Research and Resource Development Centre, Lagos .
[24]Na'am.A.A and Deng. F (Eds),(1990). *Human Rights in Africa-Cross Cultural perspectives*,: The Brooking Institution, Washington.

agreed to form a community and setup a body politics. Individuals agree for the sake of the common good to form institution to govern them[25]. Thomas Hobbes and John locke construct a general scheme of rights which are common to mankind irrespective of nationality, creed or sex in line with Anold lien conception of human rights as: *"Universal rights or enabling qualities of human beings attaching to the human beings wherever he appears, without regard to time, colour, sex, parentage or environment"*[26].In setting up that political authority, individuals retained the natural rights of life, liberty, and property.

The socialist approach, on the other hand, is predicated on the dialectical thesis that the economic infrastructure is determinant of the superstructure. Consequently, it has been noted that.

> *... It is the concrete material conditions of the society which gives rise to the sort of rights that can be enjoyed, therefore, there can never be rights with divine content derived from natural law synthesis from this point given. What are considered human rights in a bourgeoisies society is the liberty allowed to either the exploitation as alienation of the working class and pleasantly by the Dominant class…*[27]

Thus, the socialist synthesis questions the validity of the naturalist and maintains human rights as a more legal potentiality which depends on material conditions for its concretization as a social reality. The sociological school is seen to have contributed its emphasis on obtaining a just equilibrium of interest among prevailing moral sentiments and the social and economic conditions of time and place.

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[25]Eze O. (1988),*Human Rights in Africa,* Nigerian Law Publication Ltd, Lagos.

[26] Lien A.J,(1973),*A Fragment of thoughts concerning the nature and fulfillmentof Human Rights*, West port Greenwood Press Publishers

[27]Gye-wado.O,A ,(1990),*Comparative Analysis of International Framework for Enforcement of Human Rights inAfrica and West Europe*,2RADIC,P.188. retrieved on 22nd November 2014,from www.africabib.org>

2.3 The Concept of Fundamental Rights, Human Rights and Constitutional Rights Distinguished

There is a clear distinction between fundamental rights, human rights and constitutional rights. Human rights are rights which were derived from the wider concept of natural rights, they are rights which every civilized society must accept as belonging to each person as a human being irrespective of citizenship, race, religion, and so on[28].Therefore, human rights can be seen as legal rights conferred on individuals and group of individuals by law and such rights are regarded as inalienable, interdependent, inherent and indivisible because they are based on the principles of law, namely equality and non discrimination. When these human rights are guaranteed by a law other than the constitution they are fundamental rights e.g. Freedom of Information Act 2011 gave freedom to seek for information and also access the information.[29] It is a fundamental right guaranteed under a law different from the Constitution. However, another view is that determining the fundamental nature of a human right is whether or not it can be derogated from only during public emergency. If a right cannot be derogated from even during public emergency, then it ranks as a fundamental right[30].Similarly, the African Charter on Human and Peoples'Rights makes provisions for rights from which no derogation is allowed even in time of public emergency e.g. right to life[31], and right to dignity of human person[32]. When fundamental rights are guaranteed in a Constitution they become Constitutional Rights. They are carefully selected by national constitutional law for guarantee and protection in favour of individuals and groups in particular politically organized society.

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[28]Dalhatu. M.B,(2008),*The Role of the Judiciary in the Enforcement of Human Rights in Nigeria,(*Unpublished Ph.D Thesis) Faculty of Law, Ahmadu Bello University,Zaria,
[29]Section 1, Freedom of Information Act, 2011.
[30]Gaius.E.(1999),*TheDevelopment of the Concept of Human rights: Definition and Philosophical* Foundation in A.O.Obilade(Ed),*Text for Human RightsTeaching in Schools, Constitutional Rights Projects* P. 8.
[31]Article 4 of African Charter on Human and Peoples' Rights.
[32]Article 5, Ibid.

It follows that while all rights enjoyed and asserted by human person may be described generally as human rights not all human rights can be termed fundamental rights or fundamental human rights under the constitution unless they are entrenched in the Constitution[33]The purpose of this classification is to show that some human rights are ranked higher and more important than the others. However, the recognized human rights were never in any way arranged in a hierarchical order. Therefore only a careful perusal of the human rights instrument will indicate which of the rights is considered weightier and therefore fundamental.

2.4 History of Fundamental Human Rights in Nigeria

The development of human right began in Greece, around the year of 300BC[34].Philosophers then, began to take an interest in the relationship that existed between the society, the state, religion and the individuals that makeup the city state[35].

A group of people called the *stoics* were the first people to discuss their perception of the world and the role or place of Man[36].They claimed that human beings were masters of their own destiny. To them, a person's destiny did not depend on gods. Ancient philosophers, such as Aristotle and Plato, wrote extensively on rights e.g. the contribution of Plato laid the foundation for the concept of a universal and external set of laws derived from and based on the dignity of the individual human beings[37].

It was the Greek and Roman philosophers that first formulated natural law, that it was a universal law because it applies to everybody in the state irrespective of whether you are a

[33]Odje, M, (1986),*Human Rights ,Civil,Political,Social,Economic,and cultural their Place and Protection in theFuture Political Order*, in Nigerian Bar Journal,vol.21,August P.87

[34] Ibid
[35] Ibid
[36] Ibid
[37]Ibid

citizen or not[38]. It was superior to every positive law and embodied those principles of justice, which were apparent to the "eye of reason". According to Cicero,it is for universal application, unchangeable and everlasting… it is a sin to try and alter this law, nor is it allowable to try to repeal any part of it, and it is impossible to abolish it entirely. We cannot be free from its obligation by senate or people…And there will not be different laws at Rome or at Athens or different laws now and in the future ,but one eternal and unchangeable law will be valid for all nations and for all times[39]

The concept of natural law suffered some set-back in the 16th century due to theabolition of the new and emerging national states during that period[40]. It was however revitalized in the 16th and 17th centuries by two factors. The first was the reformation which paved the way for religious struggle in Europe. This resulted in the demand for the natural rights of freedom of conscience and religious belief. Secondly was the doctrine of social contract. This was resorted to in order to strike a balance in the relationship between the individual and the community. In the work of John Locke[41], before country or state existed, Man was free to do whatever he sought irrespective of others. An individual relinquished some of his rights to the community or country established and in return the individual's rights are protected by the government However, the individual can rebel against the government.

In the19th century, human rights became a central concern over the issue of slavery. A number of reformers such as Williams Wilberforce in Britain worked towards the abolition of slavery. This was achieved in the British Empire by the Slavery Abolition Act 1833.The huge losses of life and gross abuses of human rights that took place during the First and Second World

[38] Gaius E,(1999).*The Development of the Concept of Human Rights: Definition and Philosophical Foundation:* In A.O. Obilade (Ed),Text for Human Rights Teaching in Schools, Constitutional Rights Project, p.1.
[39] Ibid pg.2
[40] Ibid pg.2
[41]Ige.O.L,opcit P. 16

wars were a driving force behind the development of modern human rights instruments. Modern international conception of human rights as earlier stated can be traced to the aftermath of World War II and the foundation of the United Nations[42]. Article 1(3) of the United Nations Charter set out one of the purposes of the United Nations thus "Achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion[43]

The development of fundamental human rights in Nigeria can be appreciated at three historical epochs – pre-colonial, colonial and post colonial. Pre-colonial era was one neither culturally nor politically homogeneous, yet it had its own notion of human rights, informed largely by the material condition of the time[44]. Unfortunately, the colonial era was one of the diminished, if not extinguished, human rights promotion and protection. This is because colonial domination inheres with gross injustice and inhumanity and is therefore the very antithesis of human rights[45].This is partly attributed to the social, political, economic and cultural dislocation occasioned by colonialism. Since the colonized people were excluded from history, forgotten in geography (and) only existed in relation to colonial point of reference[46].Many of the rights that existed during this period were seen and termed as barbaric by the colonial masters, since theydid anchor with the law of the White Man.eg. In*Edet v. Essien*[47], the Plaintiff was the original husband of a woman. The defendant had an affair with the woman which yielded a baby.

[42] Peacock H.L, *A History of Modern Europe 1889-1979*(six edition),Heinemann Educational Book, Hong Kong, p.445-458.
[43]Article 1(3) United Nations Charter.
[44]Gye-Wado,O (1999), *The Rule of Admissibility under the African Charter on Human and Peoples' Right*, 3 RADIC, 742-743.
[45] Ibid
[46]Gye-Wado.O, January,(1993),*The African Charter ;its implementation in Nigeria-Problems and Prospects*, Presented at a Workshop on the process and Human Rights in Nigeria ,Jointly Organized by the ClO and the NuJ, Abuja, 27-28 P.4.
[47](1932) 11 NLR,47

Although the woman had packed out of the house of the plaintiff before the affair but the marriage was still subsisting as divorced rights were not performed. In a claim under the prevalent communal law, the plaintiff had the right to lay claim over the baby as his own. The trial judge held that the customary law which gave a child to a person other than the natural father is repugnant to natural justice equity and good conscience. One may be tempted to agree that the judgment was right.However, the interest at stake when properly articulated in the light of the interest of the people willbe appreciated. It is the failure to obtain divorce that is being punished by taking away the fruit of the illicit association. After all, a legal maxim stipulates, *exturpicausa no oritur action* (out of an illegal transaction no cause of action can rise).The penalty was a means of preventing promiscuity and protecting the sanctity of the home[48].

In the post-colonial era, Nigerians witnessedparty to so many international human rights treaties and conventions including, International Convention on Civil and Political Rights (ICCPR), Convention on the Rights of the child (CRC), International Convention on the Suppression and Punishment of the Crime of Apartheid, Slavery Convention of 1926 (as amended), the African Charter on Human and Peoples Rights 1981 which became part of Nigerian Law on the 17th March, 1983 by virtue of African Charter on Human and People's Rights (Application and Enforcement) Act Cap 10 Laws of the Federation 1990. Nigeria has also ratified the UNESCO Convention against Discrimination Education, among others.

The government human rights record was mixed and generally worse under the military rule. There were many Decrees by the previous military administrations which ousted the court's Jurisdiction. For example, the Military Empowerment (Supremacy and Enforcement of Powers) decree No. 13 of 1984 though not well known to non-lawyers has been described as

[48]Olayde A.(1987),*Cases and Texts on Equity Trust and Administration of Estates*, Ayo Sodomu publishers Ltd, Abeoukuta, Ogun State, p.38

aFrankenstein Monster in its not adherence to the Rule of Law. It contains the following provisions

> No civil proceedings shall be or be instituted in any Court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if such proceedings are instituted before or on or latter the commencement of this Decree the proceedings shall abate or be discharged and made void.

The irony of this is that the Military were found making promises to respect Human Rights provisions in the previous constitutions. For example, former military head of state,Yakubu Gowon declared:

> The Human Rights and Fundamental Freedom we have mentioned constitute the cornerstone of the constitutions of the Federal Republic of Nigeria we therefore remain irrevocably committed in many aspect of our national life to the principle of upholding individual rights and personal freedom of our citizens within the framework of the existing laws.[49]

At the inception of General Babagida's administration he once said while commenting on the issue of numerous Nigerians being detained under various Decrees that: *"... we must never allow ourselves to lose our sense of natural justice. The innocent can not suffer the crimes of the guilty. The guilty should be punished only as a lesson for future..."*[50]

One nagging question that must be addressed is the compatibility of military administration with the rule of law.Rotimi Williams (SAN) in a paper said that military government in Nigeria as we have come to know it since the coup of January, 1996 is not a system of government in which a despot or military oligarchy operating above the law exercises absolute power. It is rather a

[49]Abiola O,(1987),*Constitutional Law and Military Rule in Nigeria*,Evans Brother Nigeria Ltd,Ibadan,.p.253.
[50] Ibid

system of government, which after coming into existence by overthrowing the existing legal orderreplacing it with a new legal order[51], maintains that

> … there could be a world of difference between government under law and government under the rule of Law, while it must be appreciated that all the military administration in Nigeria have operated under law there is still lacking those elements of constitutionalism which keep them away from being government under the rule of law. Constitutionalism involves not only the proposition that the exercise of governmental powers must be bound by rules but also that the government is genuinely accountable to an entity or organ distinct from itself, where elections are freely held on a wide franchise at frequent intervals, where Political groups are free to organize in opposition to the government in offices and where there are effective legal guarantees of fundamental civil liberties enforced by an independent judiciary. The nature of military administration does not admit all these requirements. They can be government under law but certainly not under the rule of law…[52]

Having made the above preliminary remarks, one can now zero his mind that the military is anti human right and the development of fundamental human right during this regime was handicapped.

In 1976, after the creation of Nigerian Security Organizations (NSO), human rights violation became frequent. During the Second Republic, human rights violation was reduced.However the development of human rights was poor because of the harassing power of the Police Force and the NSO and the constant harassment of political opponents. The government not only gave the NSO greater powers but also promulgated decrees that directly violated human rights, one of which was the State Security (Detention of persons) Decree Number 2 of 1984, which empowered the Chief of Staff at Supreme Headquarters to detain anyone suspected of being a security risk indefinitely without trials. Before the establishment of

[51]Ojo J.D,(1985),*Development of the executive under the Nigerian Constitution* 1960-1981,University Press ,p.271.
[52] Ibid.P.22

human rights organization in Nigeria some notable individuals like GaniFawehinmi, Professor Wole Soyinka, Dr. BalaUsman to mention a few, were most visible criticizing the government on occasions where gross violations of human rights were observed[53]. It was not until 1987 that the first Human Rights Organization, the Civil Liberties Organization came on stream. Since then, there have been considerable numbers of groups like the Constitutional Rights Project (CRP), National Association of Democratic Lawyers (NADL), Committee for the Defense of Human Right (CDHR) Committee for the Advancements of Rights and Law (CARC), GaniFawehinmi Solidarity Association (GFSA), and Women Justice Programme (WJP). The growth of these non-governmental Organizations could be traced to consciousness and a concern for the preservation of liberty which they conceived was gradually being eroded[54]

Also freedom of expression and the press was greatly curtailed. Several methods, including arrest and detention of media practitioners, their arraignment before the court/tribunal on spurious charges, proscription of news papers, invasion and occupation of press houses, arrest of news paper vendors, etc have been used to achieve the destruction of the independent press in Nigeria[55].One of the incidences was the arrest and detention by the State Security Services of Christ Mammah and Godwin Agbonko on 6th of September 1995,the Managing Director and Editor respectively of the Week Magazine.They were released days later without being charged to court[56].

In the 90's, human rights remained substantially circumscribed. There where radical and outspoken critics of the government like GaniFawehinme, Balarabe Musa where regular callersof

[53]Ademola D,(2015),GaniFawehinmi,Lawyer and activist who fought for human rights in Nigeria,retrieved on 11th oct,2015 from www.nairaland .com/26692041g
[54]Newswatch,June 29,(1992),p.15
[55]Annal Report of Human Rights Situation in Nigeria(1995), Published by the Committee for the Defence of Human Rights (CDHR),P.32-34.
[56] Ibid P.34

the security cells, in 1988 News Watch was proscribed for six months, and journalists, academics and Civil Rights activists were harassed by state security agents[57].

With return to democratic rule in Nigeria in 1999, it is difficult to assert that there has been a substantial improvement in reduction of human rights abuses in the country by the government, its agents and individuals against the public. There have been social unrest, violent clashes, religious and ethnic riots in different parts of Nigeria. Whilst the estimate of the causalities of these unrest are somewhat difficult to ascertain, from July 26 to 29, violent clashes between police and militant member of Boko Haram fromfour Northern States resulted in more than 700 deaths.Quick burials in mass graves precluded an accurate account of the dead.[58]Media reports indicate that, Plateau State has recorded the highest number of internally displaced persons (IDPS) in the country since the return of civilian rule. While an estimated one million Nigerians were displaced by internal conflict between 1999 and 2004 fighting in Plateau State, and between February and May, 2004 alone generated some 250,000 IDPS[59]. There has been increase in the assassination of political opponents and people's votes do not count in any election. While only small minorities of the human rights abuses that have been documented were directly carried out by the Federal Government Officials, the Federal Government's failure to combat widespread impunity for abuses orchestrated by government and party officials at the State and local level fostered the unabated continuation of those abuses[60]

[57]Nwanko C. etal,(1993),*The Crisis of Press Freedom in Nigeria*,CRP ,Lagos, ,.

[58] Audi J.A.M.(2012),*Challenges of Constitutional Governance in Nigeria*,in Legal Essay in Honour of Dr Samson Sani,Private Law Department,ABU,.

[59] Nigerians faltering Experiment, International Crisis Report(ICR),African Report N119,Dakar/Brussel,25 october.2006

[60]Aniekwe C.C and Kushie.J, (2012),*Electoral violence Situational Analysis: Identifying Hot-Spots in the 2011 General Elections in Nigeria*,retrieved on 22nd November,2014,form www.nevr.org>media>resources>Nig

2.5 Nature of Constitutional Provisions

Pre-colonial Nigeria was politically and culturally heterogeneous, yet, notions of human rights were extant, predicated essentially on the communalistic ethos of that era. Consequently human rights were collectivized. Colonialism largely abridged rather than enhanced human rights, as Gyewado rightly points out.

> …One of the glaring index of colonial period was the denial of the fundamental rights of the colonized peoples. It is in this context that the argument of civilizing mission can be floured, while the colonizers pretended notions of human rights, as a least natural right they paradoxically never saw the necessity for the enjoyment of these rights by the colonized peoples. Of course the logic of colonialism was incapable of allowing the full effect of the rights; otherwise colonialism would have ceased to be relevant. Additionally, the derogation from these rights had also affected the development and articulation of Africa, human right dispensation and perspectives…[61]

Nigeria, because of her colonial experience has adopted fundamental human rights provisions which are "civil and political" rather than "socioeconomic"[62].Many reasons have now emerged as regards the origin of the inclusion of the fundamental human rights provisions in the 1960 Constitution. The most popular is the recommendation by the Willink Commission on Minorities in 1958 which recommended the inclusion of human rights in the Constitution. Others are the demands by early nationalists[63]. It has been said that the late sir AbubakarTafawaBalewa was quoted to have said

> ...Now I remember that during the constitutional discussion which preceded our independence the question came up of enshrining in

[61]GyeWado.O(1992). *Africa Reparations and International Law*, Presented at the 18th Annual Conference of Nigeria Society International Affairs, NIPSS Kuru 23-25, November,
[62]Osita E, (1984,)*Human Rights in Africa*, Nigerian Institute of International Affairs in Association with Macmillan Publishers, Lagos,P.31
[63]Abiola O.(1977-80), *Fundamental Human Rights in Nigeria;The 1963 and 1979 Constitutional Provisions*, P,118

> the constitution those rights which we believe to be fundamental in a civilized society and it was pointed out that most of those rights were already included in the law of Nigeria nevertheless we felt that this was a subject of such tremendous importance that the human rights should not be left hidden here and there in a legal maze and we insisted on having a special chapter of our constitution devoted to the exposition of those fundamental rights…[64]

Late Chief ObafemiAwolowo expressed his own views thus, "Fundamental human rights are ordained not for the protection of ethnic minorities as such but for the citizens at large against exclusive and legislative tyranny exercise"[65].The Willink Minorities' Commission report was accepted and fundamental rights, principally first generation rights, found expression in the constitution that year and were retained in subsequent constitution that followed it in Chapter IV, 1979, 1989 and 1999 Constitution of the Federal Republic of Nigeria.

It can be rightly asserted that one of the greatest objectives of the post independence Nigerian constitution is the protection and promotion of human rights. The preamble to the 1999 constitution unmistakably set the tone by dedicating itself to promote "good government and welfare of all persons on the principles of freedom, equality, and justice". Chapters two and four of the Constitution extensively deal with human rights issues. Second and third generation rights do not find expressions under the three 1979, 1989, and 1999 Constitutions as justiciable rights. Instead, they form the basis of Chapter II titled "Fundamental Objectives and Directive Principles of State Policy", consisting of economic, social, cultural, political, educational and foreign policy objectives and directive principles. These rights are predicated on the necessity for the material wellbeing of the citizenry with the state playing a pivotal role. These rights which are essentially equalitarian and egalitarian in character are rooted on the belief that the

[64]Odje, M.(1986) August,*Human Rights, Civil, Political, Protection in the Future Political Order*, The Nigerian Bar Jornal,Vol.21 No3,.

[65]Abiola O, Opcit,P.22

attachment of certain level of social and economic standard is a necessary condition for the enjoyment of the civil and political rights. Accordingly, these rights require affirmative governmental action for their enjoyment. Obligation of the state towards the effectuation and realization of the rights is fully captured by section 13 which provides that *"It shall be the duty and responsibility of all organs of government, and of all authorities and persons exercising legislative, executive or judiciary powers, to observe and apply the provisions of (the*fundamental objectives and directive principles of state policy"[66].In*Attorney-General of Ondo State vs. Attorney General of the Federation and 35ors*[67], the Supreme Court held that the foregoing section does not only impose a solemn duty to observe the mandate contained in chapter two on all organs of the government and all authorities and persons exercising legislative or judicial powers, but also private individuals as well. The court rejected the argument that the section applies only to government officials and held that the argument "does not take account of the undeniable fact that those organs do not operate entirely within their official cocoons. They do not, in performance of their duties act in isolation of the public"[68].

The first fundamental objective stated in Chapter II is the political objective which state that Nigeria shall be a state based on the principles of democracy and social justice[69]. Section 16, provides for the economic objectives of the nation. It guarantees, among others, the right of any person to participate and engage in any economic activities, subject to necessary restrictions, and obliges the government to protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

[66]Section 23, Constitution of the Federal Republic of Nigeria, Cap 23, LFN 2004.
[67](2002) 9 NWLR PT 772, P.222.
[68] Ibid
[69] Section 14 and 15, Constitution of the Federal Republic of Nigeria, Cap. 23, LFN, 2004.

By section 17, the state is obliged to "direct its policy towards ensuring that all citizens, without discrimination whatsoever have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment. Further, the state obliged that the conditions of work are just and humane and that there are adequate facilities for leisure and social, religious and cultural life and that the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused. Government policy is also required to ensure that there is equal pay for equal work without discrimination on account of sex, or any other ground whatsoever. By section 18, government is obliged to direct the policy towards ensuring that there are equal and adequate educational opportunities at all levels and government shall and when practicable provide the compulsory and universal primary education, free university education and free adult literacy programme. Section 21 which deals with cultural rights provides that the state shall protect, preserve and promote the Nigerian cultures which enhance human dignity. On the other hand section 6(6)(C) provides that the "judicial powers" vested in the courts enumerated in the constitution;

> ...shall not except as otherwise provided by this constitution extend any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and direct principles of state policy set out in chapter II of this constitution…

The inclusion of this section is understood to make Chapter II non-justiciable; consequently, no action may lie to enforce compliance. Unlike chapter II, chapter IV of the 1999 Constitution guarantees a catalogue of enforceable rights. The fundamental rights guaranteed under chapter IV are essentially the civil and political rights which form the bedrock of the first generation rights. The rights seek to protect and safeguard the individuals, whether alone or as a group,

against the abuse of power, especially by political authority[70]. It is pertinent to enumerate these rights since what is involved is comparable with the rights guaranteed in the UDHR, African Charter on Human and People's Right.

- Rights to life[71],
- Right to dignity of human person[72],
- Right to personal liberty[73],
- Right to fair learning[74],
- Right to private and family life[75],
- Right to freedom of thought conscience and religion[76],
- Right to freedom of expression and the press[77],
- Right to peaceful assembly and association[78],
- Right to freedom of movement[79],
- Right to freedom from discrimination[80], and
- Right to acquire and own immovable property[81].

The enforcement machinery of chapter IV of the Constitution of the Federal Republic of Nigeria 1999 is as provided for in section 46 of the Constitution. The section which is part of chapter IV providesthat:*"*Any person who alleges that any ofthe provisions of this chapter has

[70]Vasak.A,A(1977),*30-Year Struggle: "the Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights*", UNESCO Courier, November, , Paris, P.29.
[71]Section 33 of the 1999 Constitution and Article 4 African Charter on Human and Peoples' Right.
[72]Section 34 of the 1999 Constitution and Article 5 African Charter on Human and Peoples' Right.
[73]Section 35 of the 1999 Constitution and Article 6 African Charter on Human and Peoples' Right.
[74]Section 36 of the 1999 Constitution and Article 7 African Charter on Human and Peoples' Right.
[75]Section 37of the 1999 Constitution and Article 18 African Charter on Human and Peoples' Right.
[76]Section 38 of the 1999 Constitution and *Article 8 African Charter on Human and Peoples' Right*.
[77] Section 39 of the 1999 Constitution
[78] Section 40 of the 1999 Constitution and Article 10 & 11 *African Charter on Human and Peoples' Right*.
[79]Section 41 of the 1999 Constitution and Article 12 *African Charter on Human and Peoples' Right*.
[80]Section 42of the 1999 Constitution and Article 2 *African Charter on Human and Peoples' Right*.
[81]Section 43 of the 1999 Constitution and Article 14 *African Charter on Human and Peoples' Right*.

been, is being or is likely to the contravened in any state orrelation to him may apply to the court in that state for redress"

Section 46(2) empowers the High Court to hear and determine any application made to it in pursuance of section 46(1) and make such orders, issue such writs and give such direction as it may consider appropriate for the purpose of enforcing or securing the enforcement of any rights which are called into question. Section 46(3) similar to section 42(3) of the 1979 Constitution empowers the Chief Justice of Nigeria to make rules with respect to the practice and procedure of the High Court for the section in question.[82]

Pursuant to section 46(3) of the Constitution of the Federal Republic of Nigeria, 1999 the Chief Justice of Nigeria made the Fundamental Rights Enforcement Procedure Rules, 2009 for the enforcement of the provisions under Chapter IV of the 1999 Constitution, as well as the African Charter on Human and People's Rights. In the preamble to the Rules, Matters initiated under are to be given priority over all other matters before the court[83]

2.6 The Nature of Fundamental Rights.

The development of human rights has gone through three contemporary generations. The first generation deals with the question of civil and political rights. A right is political when it gives an individual the rights to participate in decision making e.g. the age in which to participate in politics. Civil rights are rights given to civilians; the example of civil and political rights is the entire Chapter Four of the Nigeria constitution[84]. This has been the trend of the Nigerian Constitution.Such rights include; rights to life, freedom from torture and inhuman treatments,

[82]Section 46(3) of 1999 *Constitution.*
[83]Section 3(9) *Preamble of the Fundamental Human Rights (Enforcement Procedure) Rules,* 2009.
[84] Section 34-43 of the Constitution of the Federal Republic of Nigeria, Cap.23, Laws of the Federation of Nigeria, 2004.

freedom from slavery and forcedlabours, freedom of movement, Right to fair hearing, freedom of thoughts, conscience and religion.

First generation rights largely represent western liberal democratic ideals which are anchored on a definition of the person as an isolated, autonomous individual and inherent with individual self aggrandizement and the glorification of private property as fundamental inalienable human rights. This is in agreement with Ake's critique of the liberal regime as atomized and individualistic[85].First generation rights find expression in the constitution of many countries as fundamental rights. Various regional human rights regimes also embody these rights while at the international levels the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966 are instructive.

The second generation of Human Rights is referred to as the economic, social and cultural rights. These rights are intended to provide for the material well being of individuals. It was realized that while it was possible to enjoy civil and political rights, there was the necessity for the State to put in place the material conditions upon which economic, social and cultural rights can be enjoyed. While the first generation of rights may be said to be libertarian in nature, the second generation of rights is essentially egalitarian. Example of rights under the second generation include right to education, health, social security, adequate standard of leaving, employment/work, housing, food, equal pay for equal work and to participate in cultural life.

The second generation rights unlike the first generation rights need budgetary allocation for their realization. The rights also require affirmative governmental action for their implementation. Consequently, they are positively represented as "rights to" rather than

[85]Ake. C, (1985), *The African context of Human Rights in Africa today*, James currey publishers ,P.5

"Freedom from" as its characteristic of first generation rights[86].The National constitution of many countries do not embody second generation rights except as fundamental objectives and directives principle of state policy which, as is the case in Nigeria, isnon justiciable[87].

The third generation rights deal with solidarity rights. They deal with the organic and corporate existence and working of the society and embrace inter alia, the rights to safe and healthy environment, development and to share in the common heritage of mankind[88]. These rights are concerned with the development of states, noting that the organized world community is a composite whole of the States which should work in solidarity with each other. These rights are still being progressively developed. It is hoped that the cooperative synthesis which forms the core of third generation rights will be concretized and become the shared expectation and responsibility of the entire human race. Additionally, generational conflicts must not be given pride of place over complementary synthesis which runs through the generations of human rights.

[86] Welch. C,(1984),*Human Rights as a Problem in contemporary Africa*, in Welch and Meltzer(eds),Human Rights and Development in Africa, Albany sunny press, P.24.
[87] Section 13-24, Constitution of the Federal Republic of Nigeria, Cap 23, L.F.N, 2004.
[88] Section 14-23, Ibid and Article 11,17,18,19,20,21, and 22, African Charter on Human and Peoples Rights.

CHAPTER THREE

3 .0 EXAMINATION OF FUNDAMENTAL HUMAN RIGHTS ENFORCEMENT PROCEDURE

3.1 Introduction

Fundamental human rights and freedoms are inherent in all human kind and they find expression in constitutions and legal systems throughout the world and in the international human rights instruments. Fundamental human rights have been described as rights which are inalienable and guaranteed to every person; they stand above the ordinary laws of the land. These fundamental rights are embodied in chapter IV of the Nigerian Constitution 1999 and in the African Charter on Human and Peoples' Right. The Charter became part of Nigerian laws by virtue of the African Charter on Human and Peoples' Rights (application and enforcement) Act Cap A9 Laws of the Federation 2004.

In Nigeria, the process of protection and enforcement of the rights may be classified as conventional and unconventional or orthodox and unorthodox ways. The orthodox ways are provided by the law[1], they are regularly adopted in seeking relief against an alleged infringement of right. These include invocation of judicial powers and the recourse to police enforcement. Mediation can be classified as an unorthodox procedure, which is a means of alternative dispute resolution, a process whereby parties request a third person to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a constructional or other legal relationship[2]. The resolution of disputes is by consensus and is a decision of the parties and not of the mediator, the mediator is not concerned with the issue of right and wrong, his primary interest is to assist parties in reaching amicable, acceptable settlement.

[1] *Nigerian Social Insurance Trust Fund Management Board v Adebiyi*,(1999), 13 NWLR pt 633 pg 16.
[2] *United Nations General Assembly Document* ,January,2003 No A/RES/57/18

Fundamental rights are personal rights,the person entitled to benefit from such rightsmay decide to litigate in the event of violation of it, compromise it or abandon it. Where he decides to litigate, the 1999 Constitution,and the African Charter on Human and Peoples' Right[3] guarantee to any person the right to seek redress in a High Court. He needs not wait for his right to be violated; likely hood of the violation gives him the right for redress. However, some of the fundamentalrights guaranteed in the Constitution are not justiciable: consequently no action can be brought thereby.

3.2 The Right to Institute Human Rights Cases

With the promulgation of Fundamental Rights (Enforcement Procedure) Rules 2009, efforts to tackle human rights abuses which are prevalent in Nigeria received a boost. By paragraph 3(e) of the preamble to the Rules, the Courts are obliged to encourage and welcome public interest litigation in human right cases. In human rights litigation, the applicant may include any of the following:

i. Anyone acting in his own interest;

ii. Anyone acting on behalf of another person;

iii. Anyone acting as a member of, or in the interest of a group or class of persons;

iv. Anyone acting in the public interest; or

v. Association acting in the interest of its members or other individuals or group.

Other persons that can institute human right cases are human rights activists, advocates or group as well as any non-governmental organization who may institute human rights application on behalf of any potential applicant. Instead of leaving the issue of *locust standi* to the

[3] Section 46,1999 *Constitution* and *Article 7[a}African Charter on Human and Peoples' Right*

ideological inclination of individual judges, the 2009 Rules has abolished the doctrine in order to enhance public interest litigation in the field of human rights in Nigeria. It has been expressly stated in the rules that "no human rights case may be dismissed or struck out for want of *locus standi*"[4].

Before the enactment of the 2009 Rules, the term "any person" under section 46(1) of the 1999 Constitution was interpreted by the courts to mean the actual person whose fundamental right has been, was being or likely to have been violated.[5] Despite the restrictive approach of Nigerian courts to the doctrine of *locus standi*in the repealed 1979 Fundamental Rights (Enforcements Procedure) Rules, activist and lawyers repeatedly sought to enforce the fundamental rights of the disadvantaged members of the society through public interest litigation. But they were usually met with frustration as the courts struck out cases filed either by individuals or organizations on behalf of other persons. The courts under the old Rules must ascertain whether the party has *locus standi*. To ascertain whether a plaintiff has locus standi, the statement of claim must be seen to disclose a cause of action vested in the plaintiff and also establish the rights and obligation or interest of the plaintiff which have been or are about to be violated, and in respect of which he ought to be heard upon the reliefs he seeks. The interest which the plaintiff alleges must be real not superficial or merely imaginary. The new Rules welcomes public interest litigations in the fields of human rights and no human rights case may be struck out or dismissed for want of locus standi[6]. Group or class of persons, human rights activists or nongovernmental organization have the right to institute an action on fundamental right enforcement as envisaged in paragraph 3(e) of the preamble to the 2009 Rules.

3.3 Justiciabilty or Otherwise of Fundamental Human Rights under the Constitution.

[4]Preamble to the African Charter on Human and peoples' Right.
[5]*OlusolaOyegbemi v. Attoney General of the Federation* (1982)3NCLR 895
[6] Paragraph 3(e) of the preamble to the Fundamental Human Rights (Enforcement Procedure)Rules,2009.

Justiciability means proper examination in court of justice and it depends on whether there is a right or obligation known to the law to be protected or enforced[7].The question of justiciability lies in the enforcement of Chapter II of the Constitution. The rights in Chapter II of the 1999 Constitution of the Federal Republic of Nigeria are second generation rights. First generation human rights often called "blue" rights deal essentially with liberty and participation in political life[8].They are fundamentally civil and political in nature. They serve negatively to protect the individual from excesses of the state. First generation rights include the right to life, freedom of speech, freedom from torture and inhumane treatment[9].The secondgeneration does not find expression under the constitution as justiciable rights.Instead, they form the basis of Chapter II fitted "Fundamental Objectives and Directive Principles of State Policy" .The third generation rights remain largely unofficial, it houses an extremely broad spectrum of rights to participate in cultural heritage. The African Charter on Human and Peoples' Rights ensures many of those: rights to self determination, right to satisfactory environment[10].

The second generation rights are political, economic, social, cultural, educational and foreign policy objectives and directive principle. Section 13 of the Constitution is to the effect that: "It shall be the duty and responsibility of all organs of the government and of all authorities and persons exercising legislative, executive or judicial powers to conform to observe and apply the provision of the chapter of the constitution".

Section 6(6) (c) provides that the judicial power vested in accordance with the provision of this section

> Shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any

[7] *Adamu v. Borno State (*1996)8 NWLR 203
[8] Htts:llen.m.Wikipedia.org>wiki> retrieved on 10th April 2016.
[9] Chapter IV of 1999 Constitution
[10] Article 20,21,22 and 24 African Charter on Human and Peoples' Right

> authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution.

It may be noted that by the provision of this section the rights stated under the section are not justiciable. Consequently no action may lie to enforce compliance. Fundamental rights contained in the constitution will be meaningless if we cannot enforce their breaches.It is often said that a right which cannot be enforced is no right at all. The rights under chapter II which are political, economic, social, cultural, educational and environmental rights encompass the right to work, right to just condition of work, right to fair remuneration, right to organize, form and join trade unions, right to collective bargaining, right to equal pay for equal work, right to security, right to property, right to education, and right to participate in cultural life and enjoy the benefit of scientific progress. A perusal of section 16 of that chapter reveals an interesting contradiction of what is contained in the provision of the section and practical experience of the Nigerian citizens, which indicates that the policy is observed more in breach than in compliance. According to Section 16 (1) the state shall within the context of the ideals and objectives for which provisions are made in this constitution.

a) Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy every citizen on the basis of social justice and equality of status and opportunity.

b) Control the natural economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.

2) The state shall direct its policy towards ensuring

a) the provisions of a planned and balanced economic development.

b) that the material resources of the nation are harnessed and distributed as the best aspossible to served the common good.

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

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

The Niger Delta region of Nigeria which harbors a great chunk of the country's oil resources has been agitating for some time now as people protest the injustice from unfair distribution of the country's oil wealth. Warri ex-millitant leaders of Urhobo extraction gave the federal government a 14 day ultimatum to release their"fair share" of the Niger Delta amnesty programme or face attacks on oil operations in the area[11]if this is the matter then there is a clear violation of section 16(2)(5) which provides that the material resources of the nation are harnessed and distributed as best as possible to serve the common good.

Section 18 of the Constitution talks of government ensuring educational opportunities at all levels. How tainable is this today? The educational system does not meet with the requirement of the constitution. For example, the Academic Staff Union of Universities (ASSU) entered into an agreement with the Federal Government in October 2009.One of the key areas on which the agreement was signed is the funding requirements for revitalization of the Nigerian universities, and the Federal Government assistance to state universities. As a result of the failure by the federal governments to implement the agreement the union having persevered for nearly

[11]*Vanguard,2013,October 28,pg.6*

four years proceeded to strike on Sunday 30thJune, 2013. The government on several occasions disrupted the union's peaceful public demonstration to educate the public. In Akure on 24th of October 2013, the police disrupted a rally organized by the Academic Staff Union of Universities, of the Federal University of Technology Akure, to educate the public on their four-month-old industrial action[12]

The Niger Delta Coalition of Universal Periodic Review (UPR) called on the Nigerian government to take necessary steps in bringing the perpetrators of the various acts of extra-judicial killings in the Niger Delta to justice .The coalition in a report to the 17th UPR session of the United Nations Human Rights council in Geneva –Switzerland said

> During the four year period after the review, rather than Nigeria improving on its record in promoting its citizens right to life, the country, particularly the Niger Delta regions has become a killing field where innocent citizens have been extra –judicially killed in their hundreds by the police and the various security forces established in different states [13]

In contrast to the above, section14(2)(b) provides that the security and welfare of the peopleshall be the primary purpose of government and section 17 states that , the state social order is founded on ideals of freedom, equality and justice. Yet, those affected cannot question this act of insecurity in court because these sections are non-justiciable.

The essence of relief that these provisions are thought to have provided is obliterated by the constitution itself, which unequivocally provided in section 6 (6) (c) of the 1999 constitution. Until the constitution is amended to make the provisions of chapter II justiciable, the expectation of having a Nigerian society free from human right violation will be a mirage.

[12]Ibid.Pg 11.
[13]Ibid.Pg 6

3.4 Cause of Action

Cause of action has been defined variously as a fact or set of facts which establish or give rise to a right of action, a factual situation which gives a person a right to judicial relief[14].Order II Rule 1 of the 2009 Rules and section 46 of 1999 Constitution provide for cause of action in matters of enforcement of fundamental human rights respectively.

Section 46 of 1999 Constitution provides that:

> Any person who alleges that any of the provisions of this chapter has been, is being or likely to be 'contravened in a state in any state in relation to him may apply to a High Court in that state for redness.

Order II Rule I of the 2009 Rules, provides that:

> Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement)Act and to which he is entitled has been, is being or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redness.

The first limb of Section 46 applies where the fundamental rights in Chapter IV has been completely contravened or infringed, this is to say, the act of contravention or infringement has been completed and the plaintiff goes to court to seek for redress.[15] The second limb is where the fundamental right is being infringed. There is sufficient overt act on the part of the respondent, the process of infringement must be physically in the hands of the respondent. Also the act of contravention must be in existence substantially. The third limb, there is likelihood that the respondent will contravene or infringe the fundamental right or rights of the Applicants. By the last limb, the applicant need not wait for the completion or last act of contravention or infringement before he institute an action.

[14] *FBN PLC &Ors V Attorney General of the Federation &Ors* (2013) LPELR-20152(CA) Retrieved on 25-6-2015
[15] *Egbe v Belgore*(2002) 8 NWLR (pt.285) 336.

By virtue of Order 1 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, every victim of human rights violation is empowered to seek redress in a High Court located in any State of the Federation where there fundamental right has been, is being likely to be contravened. The 1999 Constitution of Nigeria confers on the court original jurisdiction to hear and determine any application pertaining to such violation. In *Isuanla v Governor of Ebonyi State*[16]**,** the Court of Appeal held

> Section 46 of the 1999 constitution is a special provision which deals with matters of fundamental rights. It confers jurisdiction on any High Court in a state in matters of fundamental rights irrespective of who is affected by an action founded on such rights. Section 42 of the 1979 constitution is now 46 of the 1999 constitution. In short, a person whose fundamental right is breached, being breached or about to be breached may apply to a High Court or Federal High Court in that state for dress. *Jack v. University of Agriculture, Makurdi (2004) 5 NWLR pt.865 pg. 208.*

The African Charter in Human and Peoples' Rights guarantees the right of every individual to appeal to competent national organs against acts of violating their fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.[17] In *Abacha v Fawehinmi*[18], the Supreme Court held that Nigeria has given due recognition to the African Charter by enshrining most of the rights and obligations guaranteed there in chapter IV of the 1999 constitution. The Court further held

> Since the charter has become part of our domestic laws, the enforcement of the provisions, like all other laws falls within the judicial powers of the courts as provided by the constitution and all other laws relating thereto, … it is apparent .. that the human and peoples' rights of the African Charter are enforceable by the several High courts depending on the circumstances of each case and in accordance with the rules, practice and procedure of each court.

[16] (2007)20WKN 170
[17] Article 7(a) of the *African Chatter on Human and Peoples' Right*.
[18] (2000) 6 NWLR (pt. 660) p 229

For the application to succeed in matters for enforcement for fundamental rights, the violation of the applicant's right must be the principal claim and not ancillary claim. The breach of a fundamental right alleged by an applicant must be the main claim in the application for enforcement, where the violation of a fundamental right is merely incidental or ancillary to the principal claim or relief, it is improper to constitute the action as one for the enforcement of a fundamental right. In *Igwe v Ezeanoche*[19]**,**the court held,

> Whenever the court is confronted with an application brought under the Fundamental Rights (Enforcement Procedure)Rules, it is imperative that the court should critically examine therelief sought by the applicant, the ground for seeking the relief and the facts contain ed in the statement accompanying the application and relied on for the relief sought. Where the facts relied ondisclose infringement of the fundamental right of the applicant or the the main basis of the claim, then it is a clear case for the enforcementof such rights through the Fundamental Rights (Enforcement Procedure)Rules.But where the main or principal claim is not a fundamental right,the jurisdiction of the court cannot be properly exercised as the court will be incompetent to do so.

The issue of principal claim and ancillary relief are one of the major headaches of the applicants. The courts in some decided cases on fundamental human rights have increased restrictions on the scope of the applications for the enforcement of fundamental human rights cases. Indeed, application alleging serious human rights violations are routinely struck out or dismissed on the grounds that they are ancillary relief[20]. However, the factors that can assist the

[19](2010) 7 NWLR PT. 1192,Pg.61
[20]*Tukur v Gongola State*(1989)4NWLR (PT 117) p.517

court to discover the principal claim in a fundamental rights application include the reliefs sought, the grounds for seeking the reliefs and the supporting affidavit.[21]

In *Raymond Dangtoe v. Civil Service Commission of Plateau state*[22]**,**the Supreme Court held:

> The claim of the Appellant was for an order enforcing his fundamental right against (1) Plateau State Civil Service Commission (2) Board of Internal Revenue, Plateau State.(3) Attorney – General of Plateau State, in terms of the reliefs set out in the motion. None of the reliefs claimed by the Appellant falls within any of the specific rights enumerated in chapter iv where a breach of the provisions of chapter IV is the principal claim, the procedure can be invoked upon even though other claims are made.

The infringement of the fundamental rights of workers to freedom of association is viewed as an ancillary relief which cannot be enforced under the Fundamental Rights (Enforcement Procedure) Rules[23]. Therefore, the Applicant needs to be vigilant in identifying and differentiating between a principal and ancillary claim to avoid his claim being struck out. However, the courts have not hesitated to uphold the right of public service employees to fair hearing before dismissal or even termination of their employment if the rules of natural justice are incorporated in their conditions of service. In particular appointments which enjoy statutory flavour cannot be determined without affording an employee the opportunity to make representation to the employer. In *S. O. Adedeji v. Police Service Commission*[24], the applicant sought an order of certiorari to quash the Police Service Commission's decision to dismiss him from the police force for misconducts alleging that the procedure adopted by the Commission, an administrative tribunal with disciplinary powers established by the constitution, was irregular and contrary to natural justice. The commission heard no oral evidence. The evidence on which

[21]*Olawoyin v ObafemiAwolowoUniversity*(2004) 2 FHCLR 166.
[22] (2001) 19 WLR 125 at 147
[23]*Anigboro v Sea Truck Ltd* (1997) 8 NWLR (PT 415) 547
[24] (1967)ALL NLR 72.

it relied against him was a counter affidavit sworn by a police officer which contradicted the version given by the applicant in his letter to the Commission, the trial judge concluded from the commission's letter and the nature of the applicant's reply to it that the applicant knew very well what complaint was made against him and dismissed the application. On appeal the court held that.

1. The Police Service Commission, like any other tribunal of this nature is in the absence of any declaration to the contrary, entitled to decide its own procedure and lay its own rules of the conduct of enquiries regarding discipline and the like. Such enquiries must however, be in accordance with the principles of natural justice, but although a person entitled to protection under the *audialterampartem* rule must be given adequate opportunity not only to know the case against him but also to answer it, he is no entitled to an oral hearing unless such hearing is expressly prescribed.

2. The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rule under which the tribunal is acting,the subject matter that is being dealt with and so on and so forth (Per Tucker L.J in *Russel v Duke of Norfolk and others)*.Here the proper course was for the Commission to supply the applicant with a copy of the written complaint made against him. He was entitled to know all that was said about him and by who before it could be said that he was given full opportunity to know and meet the case against him, and in view of the contents of the counter the commission's letter significantly appraised him of the case against him giving him adequate opportunity to meet it.

3.6 Jurisdiction of Courts

Jurisdiction means the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.[25] The limits of this authority are imposed by the statute, charter or commission under which the court is constituted and may be extended or restricted by similar means; if no restriction is imposed the jurisdiction is unlimited. A limitation may either be as to the kind and nature of the actions and matters of which a particular court had cognizance or as to area over which the jurisdiction extends or it may partake of both these characteristics.[26] Once the jurisdiction of a court to determine a matter has been ousted, any further hearing in the matter is null and void because any decision it makes amounts to nothing. Even if parties are before a court that has jurisdiction and a new law comes into existence which withdraws the jurisdiction of a court from hearing the case, that court automatically ceases to have jurisdiction to continue with the case.

Jurisdiction is a function of the law. Every court is established by some law and usually the law that establishes a court that also defines its jurisdiction.[27] Jurisdiction may be reference to the subject matter that the court may adjudicate upon or the financial limit in such subject matter. Jurisdiction may be by reference to constitution or composition of the court, or may be determined by reference to the geographical area of operation of the court.[28]

In an action for enforcement of fundamental human rights, section 46(1) of the 1999 Constitution confers jurisdiction on a High Court of that state in which the infringement occurred. It is the claim of the plaintiff as contained in the writ of summons and the statement of

[25]*Shell Petroleum Development Corporation v H.B. Fisherman* (2002) 4 NWLR pt. 758 P. 516
[26]Ibid.
[27]*Afolayan A.F. and Okorie P.C* (2007) Modern Civil Procedure Law, Dee-Sage, Lagos P.8.
[28]Ibid.

claim that determines the jurisdiction of a court,[29] in respect of fundamental human right what document should the court consider in determining whether it has jurisdiction? The answer is provided for in *Igwe v. Ezeanochie*[30] in ratio 9 and 10.

> When the court is confronted with an application brought under the Fundamental Right (Enforcement Procedure) Rules, it is imperative that the court should critically examine the reliefs sought by the applicant, the grounds for seeking the reliefs and facts contained in the statement accompanying the application and relied on the relief sought. Where the facts relied on disclose infringement of the fundamental rights of the applicant as the main or basis of the claim then it is a clear case for the enforcement of such rights through the Fundamental Rights (Enforcement Procedure) Rules, but where the main or principal claim is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the court cannot be properly involved or exercised as the court will be incompetent to do so. And in determining the competence of an action vis-à-vis the jurisdiction of the court, it is the plaintiffs or applicant's claim of relief that has to be looked into and thoroughly examined by the court. In an action commenced by writ of summons or motions and the affidavit in support or statement accompanying the application which will contain the facts relied upon by the applicant. In other words, in the consideration or determination of the jurisdiction of the court to entertain a matter brought before it, the statement of defense or counter Affidavit of the defendant or respondent has no relevance and should never be considered.

In *Isuama v. Governor of Ebonyi State*[31], the Court of Appeal held

> Section 46 of the 1999 Constitution is a special provision which deals with matters of fundamental rights. It confers jurisdiction on any High court in a state on matters of fundamental rights irrespective of who is affected by an action founded on such rights. Section 42 of the 1979 constitution is now 46 of the 1999 constitution. In short, a person whose fundamental right is breached, being breached or about to be breached may apply to a High Court or Federal High Court in that state for redress.

This was the same position held in *Jack v University of Agriculture Makurdi.*[32] However, the statements are obiter of the court.In*Director-General,State Security vOjukuru.*[33]the court held

[29]*Owena Bank (Nig) Plc v Punjab National Bank* (2000) 5 NWLR pt. 658 P. 643
[30] (2010) 7 NWLR pt. 1192
[31](2007) 20 WKN 170.

> The pronouncement by the Supreme Court in*Grace Jack v University of Agriculture Makurdi (supra)* that both the federal and the high court of a state have concurrent jurisdiction when a person's fundamental human right is breached cannot be relied upon because it was an obiter…

The court went ahead to rule that the relief being claimed by the 1st respondent against the appellant, 2nd and 3rd respondents are decisions of the Federal government agencies, and fell within the provision of Section 251 (1)(q)(r) ad 3 of the 1999 Constitution. As such, the section has completely taken away the jurisdiction of the State High Court and conferred same exclusively on the Federal High Court in respect of actions involving the Federal Government or any of its agencies .

Similarly in *FUTECH, Yola v. Musa SaniTulules*[34], the Court of Appeal held that where the subject matter before the trial court questions the action of the appellant, the Federal University of Technology Yola, which is a Federal Government Agency, the subject matter certainly comes within the exclusive jurisdiction of the Federal High Court and as such Adamawa State High Court (the lower court) has no jurisdiction to entertain the matter.

Therefore, the jurisdiction of the Federal High Court to entertain an action for the enforcement of fundamental rights as entrenched in the 1999 Constitution is limited to matters specified under Section 7(1) and (2) of the Federal High Court Act 1973 and Section 251 of the 1999 Constitution. The enforcement of fundamental rights outside these matters is not within the contemplation of section 46 (2) of the 1999 constitution.

Article 7(a) of the African Charter has also guaranteed the rights of every individual to appeal to competent national organs against acts of violation of their fundamental rights as

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[32](2004) 5 NWLR (pt. 865) 208.
[33] (2006) 13 NWLR (pt. 998) 575
[34](2005) 12 NWLR pt. 938 P. 175.

recognized by conventions, laws, regulation and customs in force. In *Ohakosin v Commissioner of Police, Imo State*[35] the court held that

> … since the Charter has become part of our domestic laws, the enforcement of its provisions, like all our other laws fall within the judicial powers of the court as provided by the constitution and all the court as provided by the constitution and all other laws relating thereto, … it is apparent .. that the Human and People's Rights of the African Charter are enforceable by the several High Courts depending on the circumstances of each case, and in accordance with the rules, practice and procedure of each court.

The jurisdiction of the National Industrial Court, Order 2 Rule 1 of Fundamental Rights (Enforcement Procedure) 2009 provides|"Any person who alleges that any of the fundamental rights provided for in the constitution or African Chatter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the court in that state where the infringement occurs or is likely to occur, for redress…..". Order 1 rule 2 defines 'court' to mean the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja. From the foregoing National Industrial court is not mentioned as a court with jurisdiction under the Rule. However Section 254C (1)(d) of the Constitution provides:

> Notwithstanding the provision of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters…
>
> (d) relating to or connected with any dispute over the interpretation and application of the provision of chapter IV of this constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the court has jurisdiction to hear and determine.

[35](2009) 15 NWLR pt. 1164 P.229.

This raises the issue of whether or not the National Industrial Court has jurisdiction to entertain cases on fundamental rights enforcement.

3.5 Procedure of Enforcement

Before the coming into force of the 2009 Rules, procedure for the enforcement of fundamental human rights in the High Court required obtaining of leave of court by filling a motion exparte supported by an affidavit, the statement of material facts and verifying affidavit within twelve months of the occurrence of the event complained against[36] The same procedure was adopted for the enforcement of the provisions of the African Charter on Human and People's Rights[37]

The Rules[38]brought innew innovations.Order II Rule 2 of the rules provides that: 'An application for the enforcement of the Fundamental Right may be made by any originating process accepted by the court which shall, subject to the provisions of these Rules, lie without leave of court'. Fundamental rights of citizen are so important that the manner in which the court is accessed for the enforcement of such rights does not matter once it is clear that the originating process seeks redress for the infringement of the rights so guaranteed under the constitution or the African Charter on Human and Peoples' Rights.

In*Alhaji MohammedSha'abaLafiajivs Military Administrator of Kwara State*[39]Jega J (as he then was) relied on the case of *TofivsUba*[40] when he held as follows:

> Matters concerning the enforcement of Fundamental Rights of citizens are so important that the mode of access to courts to enforce these basic rights should not be restricted to one particular means or the procedure used in the attainment of the enforcement of these basic rights be made cumbersome and technical…I therefore find that a citizen's access to court to secure the

[36] Order 2 rule 1&2, Fundamental Rights (Enforcement Procedure) Rules 1979
[37] Ibid
[38] Which was signed on the 11th day of November by Honourable chief justice of Nigeria, Justice IdrisLegboKutigi
[39] (1995) FHCLR 321
[40](1987) 3 NWLR (pt. 62) p. 707.

> enforcement of any alleged infringements of any of the fundamental rights provided for in the constitution is not restricted only to the mode prescribed by the Fundamental Rights (Enforcement Procedure) Rules".

The object of the Rules is to provide a simple and effective judicial process for the enforcement of fundamental rights. It is therefore not mandatory for a citizen to restrict himself by one of any of the modes prescribed by the Rules in enforcing his rights. This is because the rules of court are hand maid of the law;they are made to help the court do justice to the parties by deciding on the merit of their cases. This was justified in the case of *Oladekoyi v. I.G.P*[41] where the court held

> … Rules of Procedure are made for the convenience and orderly hearing of cases in court. They are made to help the course of justice and not to defeat justice. Courts should not follow the rules slavishly when it is obvious from the facts of the particular case that the rules are unnecessary.

The Applicant has a right to elect the procedure for securing the enforcement of his fundamental rights. In the case of *National Union of Teachers v. Conference of Secondary School Tutors of Nigeria*[42] the Court held

> … The victim has a right of election in respect of the procedure to be adopted for obtaining redress. He may initiate an ordinary civil claim under the relevant rules of court (as the respondent did in this case) or he may invoke the constitutional procedure under the fundamental rights (enforcement procedure) rules.

However, where a particular procedure has been adopted, it is erroneous to change to another procedure. The procedure chosen must be strictly complied with.[43]The procedure set out in the Fundamental Rights (Enforcement Procedure) Rules does not exclude other means of securing the enforcement of fundamental right[44], going by the pronouncement of the Supreme

[41] (2011) 16 NWLR pt.11273 p. 410
[42](2007) 23 WNR 63 at 90.
[43]*Effiong v. Ebong* (2007) 28 WlR 71 at 83.
[44]*Nemi v the State (*1994) 10 SCNJ 1.

Court on the issue of procedure. It has been said that "Neither section 46 of the 1999 Constitution nor the rules made under itexcludes the application of other means of their enforcement either under the common law, statute or rules of court".[45]

3.5.1 Action Commenced by Originating Summons.

An action may be begun by originating summons where the sole or principal question in issue is or likely to be, one of construction of a written law or any instrument made under any written law, or of any deed, will, contract or other document or some other question of law, or there is unlikely to be any substantial dispute of fact.[46] An original summons must be supported by affidavit disclosing the facts of the case. Failure to file a counter affidavit means that the respondent has admitted the facts deposed in the affidavit in support of the originating summons[47].Any action commenced by originating summons without a supporting affidavit is incurably defective and is liable to be struck out. In *Keyamo v Lagos State House ofAssembly*[48]the Supreme Court held that:

> "Without the verification by affidavit evidence of the facts alleged in the originating summons, the summons was incompetent and was rightly struck out by the trial court. Furthermore, looking at the unverified facts they seem contentious and it is doubtful if the appellant could have come by way of originating summons".

Where the action involves contentious issues and hostile proceedings an originating summons should not be used.[49]

Order II Rule 3 of the Rulesdeals with filling of statement thus:

> "An application shall be supported by a statement setting out the name and description of the applicant, the relief sought, the

[45] Ernest .O &Neson C.O, (2002)*Introduction to Civil Procedure,* Snaap Press Ltd, p.338
[46] Order I Rule 2(2) Abuja High Court Civil Procedure Rules
[47]*Governor of Kogi State v Mohammed*(2009)13NWLR(PT.1169) P.491
[48](2003) 21 WLR135.
[49]*Doherty v. Doherty* (1968) NMLR 242.

> grounds upon which the reliefs are sought and supported by an affidavit setting out the facts upon which the application is made".

The question is, whether the application is incompetent if Order II Rule 3 is not complied with. In *AkobiyiTochukwu v Chinonso&Ors*,[50]the applicant counsel failed to comply with the provision of Order 2 Rules 3 of the Fundamental Right (Enforcement Procedure) Rules. He did not accompany his statement setting out the names and description of the applicant, the relief sought and the grounds upon which the reliefs were sought. However the court held

> …. Despite this failure, I will look at the substantive rather than technicality since this application deals with the applicants fundamental right to his human liberty, I will rightly invoke the provision of order IX rule 1 thereby treating as a mere irregularity...

However, the Court of Appeal in *Economic and Financial Crimes Commission vEkeocha*[51]held that the application for the enforcement of fundamental rights is materially defective if it is not accompanied by a statement containing

(a) The name, address and description of the applicant

(b) The reliefs ought from the court and

(c) The grounds upon which the application relied on.

Order I of the 2009 Rules provide that "Fundamental Right" means any of the rights provided for in Chapter IV of the Constitution and include any of the rights stipulate in the African Charter on Human and People's Rights (Ratification and Enforcement) Act. Therefore, in challenging the violation of fundamental rights, the relief sought by an applicant should be formulated from chapter IV of the Constitution and/or the African Charter.[52] It was held in *Odoemenam&OrsvsAttoney General of the Federation &ors*[53] by Belgore C.J that it was wrong

[50] KDH/Z/90/2011 (unreported)
[51](2008) 4 NWLR (pt.1106) 161 at 176.
[52] (CAP A9) Laws of the Federation of Nigeria, 2004.
[53] (1989) FACLR 525

to challenge an infringement which had already taken place under section 42(1) of the 1979 constitution. A similar decision was made also *in OlufemiAdegboyegavs Nigerian Air force*[54] **,** that the applicant ought to have sued in tort since the illegal shooting of his person as alleged by him had already occurred.

It is submitted with the greatest respect that the decision are at variance with the Fundamental Rights Enforcement Procedure Rules and section 46 of the 1999 constitution. The constitution stated clearly that the applicant can apply to a High Court not only when there is likelihood of his right been contravened but also when this right has being contravened.[55]

3.5.2 The Grounds for Seeking Reliefs

The application shall be supported by a statement which must set out the reliefs sought and the grounds upon which the reliefs are sought, with an affidavit in support of the application.[56] It has been contended that declaratory reliefs cannot be sought under the Fundamental Rights(Enforcement Procedure)Rules, since applications for Enforcement of Fundamental Rights are argued on the basis of affidavit evidence.[57] This was the position in the case of *OlisaAgbakobavs Director, State Security Service.*[58]In that case, one of the grounds for refusing the application by the lower court was that the declaration sought could not be granted in default of pleadings. The Court held

> …The application is heard on the affidavit in support of the application and the affidavit which every party to the application proposes to use at the hearing…

The Affidavit shall be sworn to by the Applicant or a person authorized by him.

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[54] (unreported) Suit No. FHC/L/CS/99 of the 29th January, 2000

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[55]Section 46 1999 Constitution.

[56] Order II Rule 3 of the Fundamental Right (Enforcement Procedure) Rules 2009.

[57] Femi Falana, (2010), *Fundamental Rights Enforcement in Nigeria*, Legal Lex Publishing Company Ltd, P.73.

[58](1994) 6 NWLR (pt.351) 475.

> The Affidavit shall be made by the applicant, but where the applicant is in custody or if for any reason is unable to swear to an affidavit, the affidavit shall be made by a person who has personal knowledge of the facts or by a person who has been informed of the facts by the applicant, stating that the applicant is unable to depose personally to the affidavit.

The affidavit shall be sworn to by the applicant or a person authorized by him, who shall clearly state by making reference in the affidavit where the facts are based on knowledge, information and belief or on records. Where they are based on information, the source of the information, i.e. the informant, the grounds upon which the beliefs, the time and place shall be disclosed. And where they are based on records, sufficient particulars shall be given to identify the record which shall be attached as an exhibit. The facts contained in the affidavit should be restricted to information within the personal knowledge of the deponent. Where the averments in the affidavit are not based on facts within the personal knowledge of the deponent, the application may be struck out.

Where averments contained in an affidavit are not challenged they are admissible and are generally admitted to prove facts contained therein[59]. Any part of an affidavit which is in material conflict with the provisions of the Evidence Act 2011, is liable to be struck out.[60]

3.5.3 Applicant's written Address and Respondent's Written Address

A written address should consist of issues for determination, the argument in support of authorities, and a statement of facts. The issues must arise from the reliefs sought by the applicant. Where the respondent intends to oppose the application, he shall file his written address within 5 days of the service on him of such application and may accompany it with a counter affidavit.[61] There must be evidence that parties have filed and exchanged copies of affidavits before a court can proceed to trial. However, failure of a respondent to file any counter

[59] *Azuh v. U.B.N Plc*(2004) 14 NWLR pt. 893 P. 420
[60] *The Military Governor of Lagos State vChief Ojukwu* (1936) 4 NWLR (pt.18) 620.
[61] Order II rule 6 of the Fundamental Rights(Enforcement procedure)Rules.

affidavit will not prevent the court to proceed if it is proved that the respondent has been given the opportunities to react to the application.[62] It is a settled principle of law that a respondent who fails to file a written address is deemed to have admitted the issues raised in the applicants written address.The failure of the respondents to file any counter affidavit to the motion on notice meant that the facts in support of the application were never contradicted nor challenged by them, as such the court is bound to accept them as true. In *OlisaAgbakobavs Director StateSecurity Service*[63]*the court held:*

> It will work injustice and defeat the whole purpose of enforcement of fundamental rights were a complainant to be deprived of a declaration of infringement of his right merely by reason of the fact that the other parties to the proceedings failed, despite all opportunities given them, to offer either affidavit or any evidence or appear to be heard on the application. The true law, in my judgment is that the court will not declare a right to be infringed merely because the other party to the application has neither filed an affidavit nor come forward to be heard on the application if the affidavit and materials placed before him in support of the application show that the right claimed does not exist or, if it exists has not been infringed

The applicant may on being served with the respondent's written address, file and serve an address on points of law within 5 days of being served and may accompany it with a further affidavit.[64] A further affidavit is to reply on new issues raised in the respondents brief i.e. counter-affidavit. The applicant is not to duplicate or further re-argue the content of his case. In *Muoyo v Fidelity Bank Plc.*[65] the Court of Appeal held that the purpose of a reply brief is simply to respond to new issues raised to the respondent's briefs and no more

[62]*Nice V Attorney – General of the Federation* (2007) CHR 218
[63](1994) 7 NWLR (pt.351) 353 at 500.
[64] Order II Rule 7 *of FundamentalRights Enforcement (Procedure Rules*) 2009.
[65] (2009) 14 WNR 75

CHAPTER FOUR

4.0 PRESENTATION, ANALYSIS AND INTERPRETATION OF DATA.

4.1 Introduction

Fundamental rights are generally regarded as those aspects of human rights which have been recognized and entrenched in the constitution of a country[1]. Fundamental rights are provided in chapter IV of the Constitution of the Federal republic of Nigeria 1999.they are also provided for in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act[2].

Where any of these rights is infringed or likely to be infringed, the victim can apply to the court to enforce his fundamental rights through the Fundamental Rights (Enforcement Procedure) Rules 2009[3].The Rules came into force on December 1, 2009[4],replacing the Fundamental Rights (Enforcement Procedure) Rules1979.The Rule came with certain modifications including the abolishment of *Locus standi* in the commencement of action, in the fundamental rights enforcement cases .This is to give effect and meaning to chapter IV of the Constitution and the African Charter on Human and Peoples' Rights . The court shall adopt a liberal approach in the interpretation and application of the Fundamental Rights (Enforcement Procedure) Rules[5].The objective of this modification is to enhance public interest litigation in the field of human right. In*Olatunji v Hammed*[6] it was held:

> …courts should always endevour to treat fundamental Rights applications with dispatch, ignoring procedural regularities or deliberate obstacle designed to frustrate the hearing and give decisions if possible very soon after hearing arguments of the parties.

[1] Femi Falana,(2010*),Fundamental Rights Enforcement in Nigeria*, legal text,Lagos,p.6
[2] Cap A9 Laws of the Federation of Nigeria 2004.
[3] Order II Fundamental Rights (Enforcement Procedure) Rules 2009
[4] Federal Republic of Nigeria Official Gazette No 74, vol.96,Lagos,17th November 2009.
[5] Paragraph 3(a),Preamble to the Fundamental Rights (Enforcement Procedure) Rules 2009.
[6] (2009)49WRN 46

This is because adherence to technicalities will delay the speedy dispensation of justice, besides litigants will also be discourage with the procedure.

4.2 Instrument.

The instrument or procedure used in gathering information for this research was through the administration of questionnaires. The questionnaires were designed to collect the views of persons from the legal profession and law enforcement agents. Section "A1" consists of the personal information of the respondent's, members of the legal profession while section 'A2" also a personal information to be completed by the law enforcement agents. Section "B" is made up of the actual research questions which aimed at finding out whether the Fundamental Rights (Enforcement Procedure) Rules 2009,has fully met its objective on speedy dispensation of justce.

In the questionnaire, questions were asked in which the respondents were required to tick the appropriate answer which convey their view in the boxes provided.

4.3 Sample and Sampling Techniques.

Since the focus of this research is on the Fundamental Rights (Enforcement Procedure)Rules 2009,which is a rule applicable all over Nigeria, the research covers Nigerian States at random. In an attempt to achieve the objective of this research, the researcher adopted a sampling technique which covers the law enforcement agents and members of the legal profession, who are persons who deal with the Rules so as to obtain fair if not accurate view of the population. The questionnaires were distributed in the following proportion.

1. Police……..10
2. Nigerian Army…….5
3. National Drug Law Enforcement Agents……15
4. State Security Service……..10
5. Economic and Financial Crimes Commission….10
6. Members of the Legal profession…….50

4.4 Statistical Tool for Analysis of Data.

In analyzing the result of the data collected in the course of the study, the researcher has employed simple percentages which is derived by using the normal percentages formular of 100% .The descriptive table includes the use of frequency and percentages in analyzing and interpreting the data collected.

4.5 Reliability and Validity of Instrument.

Any instrument is valid when it measures correctly and accurately the quality it is designed to measure. While reliability is the stability, dependability, predictability of a measuring instrument. It entails the accuracy or precision of measuring instruments. That is, when a measuring instrument measures consistently under varying conditions and at different times.

The questionnaires that have been used as instrument in this research have been tested to ascertain its validity and reliability. The researcher consulted other legal practitioners by giving them the instrument to review the relevance of the questions on the subject matter in order to know whether it will actually test what it is designed for.

4.6 Method of Data Analysis.

To understand a clear view of the problems and prospects of the fundamental Rights enforcement process in Nigeria, a data was proffered. To analyse the data only descriptive tool of analysis of analysis was employed. The descriptive table includes the use of frequency table and percentages in analysing and interpreting the data collected.

4.7 Data Presentation and Analysis

Two sets of questionnaires were administered for the collection of the primary data. The first set of questionnaires was based on purposive sampling because they were administered only to those directly involved in the legal profession i.e judges, legal practitioners, and academicians. The second set of questionnaires was administered to the law enforcement agents e.g. Police, Army and National Drug Law Enforcement Agents .After this stratification, random method was employed to administer the questionnaires.

The questionnaires were administered in Jigawa , Kaduna, Adamawa, Akwaibom, Sokoto , Borno, Katsina, Lagos, Niger, F.C.T, Bauchi, and Benue states. 100 questionnaires were administered for the collection of the primary data. Out of the questionnaires, 50 were administered to the members of the legal profession and 50 to the law enforcement agents. Some of these questionnaires were however not returned, and some were rejected by the law enforcement agents. From the 50 administered to the members of the law enforcement agents, twenty-one were returned, 29 were rejected by the state security service, Nigerian army, and Economic and Financial Crimes Commission. From the 50 administered to the members of the profession, 38 were returned. All the questionnaires returned were considered for analysis. The percentages are calculated based on the relative values of the different responses.

4.8 Test of Proposition

A proposition One

Proposition one of this study states that the Fundamental Rights (Enforcement Procedure Rules 2009 has not fully met its objective on speedy dispensation of justice. In order to test the proposition, a series of unstructured questions were asked to respondents of both questionnaires. The questionnaires began by sampling the bio-data of the various respondents. This data is important because it enables us to analyze the information in their perspective.

4.9 Frequency Table

Table 4.9.1 Sex of Respondents

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	32	84.2	84.2	84.2

	Female	6	15.8	15.8	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

The table above shows the sex of the respondents, where 32 respondents representing 84.2% of the respondents were male, while 6 respondents representing 6% of the total population werefemale. This indicates that majority of the respondents were male.

Table 4.9.2 State of Origin of Respondents

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Edo	1	2.6	2.6	2.6
	Jigawa	1	2.6	2.6	5.3
	Kaduna	9	23.7	23.7	28.9
	Kano	5	13.2	13.2	42.1
	Katsina	2	5.3	5.3	47.4
	Kogi	2	5.3	5.3	52.6
	Kwara	1	2.6	2.6	55.3
	Lagos	3	7.9	7.9	63.2
	Nasarawa	2	5.3	5.3	68.4
	Niger	3	7.9	7.9	76.3
	Akwaibom	1	2.6	2.6	78.9
	Oyo	1	2.6	2.6	81.6

	Taraba	1	2.6	2.6	84.2
	Zamfara	2	5.3	5.3	89.5
	F.C.T	1	2.6	2.6	92.1
	Bauchi	1	2.6	2.6	94.7
	Benue	2	5.3	5.3	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

The table shows the state of origin of the respondents where it appears that only 1 respondent representing 2.6% of the population are from Jigawa, Kwara, Bauchi, FCT, AkwaIbom, and Taraba States respectively, and 2 respondents representing 5.2% are from: Benue, Zamfara, Katsina, Kogi and Nasarawa respectively, and 3 respondents representing the 7.9% of the population are from Niger and Lagos states respectively. The table also indicates that 5 respondents representing 13.2% of the total population are from Kano State and 9 respondents representing 23.7 of the total population are from Kaduna state, this indicate that majority of the respondents constituting in the total population, are from Kaduna State.

Table4.9.3 Specialization of Respondents

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Legal practitioner	32	84.2	84.2	84.2
	A judge	1	2.6	2.6	86.8
	An academician	5	13.2	13.2	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

Table4. 3 shows the specialization of the respondents where 32 respondents representing 84.2% of the population are legal practitioners and 1 respondent representing 2.6% of the population is a judge, while 5 respondents representing 13.2% of the total population are academicians. This indicates that legal practitioners constitute the majority of the total population. This goes further to say that the research will receive an objective analysis because the legal practitioners are more conversant with the procedure for the enforcement of fundamental rights.

Table 4.9. 4 State the present State where you carry on your Vocation

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Kaduna	12	31.6	31.6	31.6
	Kano	7	18.4	18.4	50.0
	Katsina	1	2.6	2.6	52.6

	Lagos	3	7.9	7.9	60.5
	Niger	2	5.3	5.3	65.8
	AkwaIbom	1	2.6	2.6	68.4
	F.C.T	10	26.3	26.3	94.7
	Bauchi	1	2.6	2.6	97.4
	Benue	1	2.6	2.6	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

Table 4.4 indicates states where the respondents carry on their vocation, where 12 respondents representing 31.6% of the total population indicates that they carry their vocation in kaduna state, 7 respondent representing 18.4% of the population chose Kano, 3 respondents representing 7.9% of the population chose Lagos, 2 respondent representing 5.3% of the total population carry on their vocation in Niger, 1 respondents representing 2.6% of the population each indicated that they carry on their vocation in Katsina, AkwaIbom, Bauchi and Benue respectively while 10 respondents representing 26.3% of the population indicated that they carry on their vocation in Federal capital territory (FCT.) This shows that majority of the respondents chose Kano and Abuja as their state of vocation.

Table 4. 9.5 Years of Experience

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	0 – 5	16	42.1	42.1	42.1
	6 – 9	12	31.6	31.6	73.7

	above 10	10	26.3	26.3	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the years of experience of the respondents, where 16 respondents representing 42.1% of the population are within the range of 0-5 years of experience, 12 respondents representing 31.6% of the respondents are within the range of 6-9 years of working experience and finally 10 respondent representing 26.3% of the population are within the range of 10 and above years of experience. This indicates that respondents within the range of 0-5 years of working experience constitute the majority of the population followed by those within the range of 6-9 years of working experience.

Table 4.9.6 Are you aware of the Fundamental Rights (Enforcement Procedure) Rules 2009

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	38	100.0	100.0	100.0

Source: Result from Questionnaire administered 2014.

This table shows the response of the population concerning their awareness of the fundamental rights enforcement procedure rule of 2009 where 38 respondents representing 100% of the population indicates that they are aware of the fundamental Rights enforcement procedure rule 2009.With this we are confident that the responses will be to a large extent be reflective of the Nigerian human rights system, everything being equal.

Table 4.9.7 How will you rate the level of Awareness of Nigerians on the Existence of their Fundamental Rights

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	High	11	28.9	28.9	28.9
	Low	22	57.9	57.9	86.8
	very low	5	13.2	13.2	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the view of the respondents as regards to the Nigerians' level of awareness of the existence of fundamental Right where 11 respondents representing 28.9% of the population are of the view that there is high level of awareness of the existence of fundamental right, 22 respondents representing 57.9% of the population are of the view that there is low level of awareness of the existence of fundamental right and 5 respondents representing 13.2% of the population are of the view that the level of awareness of the existence of fundamental right is very low. This indicates that Nigerians' awareness of the fundamental right is not adequate.

This data reveals that, a good number of Nigerians are not aware of their fundamental rights. This is true in cases of illiteracy, so that the inability to read and write constitute a serious challenge to the enforcement of fundamental rights in Nigeria. A good number of the people in Nigeria are illiterates who cannot appreciate or understand what rights they have. Many benefits are lost because majority of the population of Nigerians are illiterates.

Table 4.9. 8 Have you been involved in the Process of enforcement of Fundamental Rights in Nigeria

	Frequency	Percent	Valid Percent	Cumulative Percent

Valid	Yes	35	92.1	92.1	92.1
	No	3	7.9	7.9	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the response of the respondents involvement in the process of fundamental right in Nigeria where 35 respondents representing 92.1% of the population indicates that they were involved while 3 respondents representing 7.3% of the total population are not involved. This indicates that almost all the respondents are in one way or the other involve in the process of enforcing fundamental rights in Nigeria. However, the next table will establish their level of participation.

Table 4.9.9 Do Nigerians like to enforce their fundamental human rights

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	8	21.1	21.1	21.1
	No	30	78.9	78.9	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the respondents view regarding Nigerians willingness to enforce their fundamental rights, where 8 respondents representing 21.1% of the population are of the view that Nigerians like to enforce their Fundamental Right while 30 respondents representing 78.9%

of the population are of the contrary view. Based on their response, it shows that Nigerians do not like enforcing their fundamental rights

Table 4.9.10 Reasons why they don't like enforcing their fundamental rights

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	It is expensive	7	18.4	18.4	18.4
	Procedure is cumbersome	8	21.1	21.1	39.5
	Courts are not accessible	2	5.3	5.3	44.7
	You need a lawyer	2	5.3	5.3	50.0
	plenty delays	4	10.5	10.5	60.5
	They leave things to God	15	39.5	39.5	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the perception of the respondents why Nigerians do not like enforcing their Fundamental Right, where 7 respondents representing 18.4 percent of the population are of the view that enforcing fundamental rights is expensive, 8 respondents representing 21.1% of the population are of the view that the procedure is cumbersome, 2 respondents representing 5.3% of the population agreed that courts are not accessible, 2 respondents representing 5.3% of the population states that you need a lawyer before you can enforce your fundamental right, 4 respondents representing 10.5% of the population are of the view that enforcing fundamental

rights has plenty delays and 15 respondents representing 39.5% of the population are of the view that Nigerians leave things to God that is why they don't like enforcing their fundamental Right. This indicates that most Nigerian do not like enforcing their fundamental rights because they leave things to God.

Table 4.9.11 Do you agree that removal of the requirement for leave of court has facilitated the enforcement of fundamental right

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	11	28.9	28.9	28.9
	Agree	18	47.4	47.4	76.3
	Disagree	4	10.5	10.5	86.8
	Neutral	5	13.2	13.2	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the response of the respondents concerning their view on whether the removal of the requirement for leave of court has facilitated the enforcement of fundamental right where 11 respondents representing 28.9% of the population strongly agreed, 18 respondents representing 47.4% of the population agree, 4 respondents representing10.5%of the population are of the contrary view and 5 respondents representing 13.2% of the population are neutral. This indicate that majority of the respondents agreed that the removal of the requirement for leave of court has facilitated the enforcement of fundamental right.

The requirement of leave which was a *sine quanonConditio* for the enforcement of fundamental right under the Fundamental Right (Enforcement Procedure) Rules 1979, has been abolished pursuant to Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009. This according to the majority of the respondents has facilitated the enforcements of the fundamental rights. The manner in which the court is approached for the enforcement of the fundamental right does not matter once it is clear that the originating process seeks redress for the infringement of the right so guaranteed under the constitution or the African Charter on Human and Peoples' Rights.

Table 4. 9.12 Which law confers jurisdiction on courts to hear and determine fundamental human rights cases in Nigeria

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Constitution	23	60.5	60.5	60.5
	All of the Above	7	18.4	18.4	78.9
	Fundamental Rights (Enforcement Procedure) Rules 2009	8	21.1	21.1	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the view of the respondents on the law that confers jurisdiction on court to hear and determine the fundamental human rights cases in Nigeria, where 23 respondents representing 60.5% of the population agreed that it was the Constitution that confers the jurisdiction, 8 respondents representing 21.1% of the population are of the view that it was the Fundamental Rights (enforcement procedure) Rules 2009 that confers the jurisdiction while 7 respondents representing 18.4% of the population agreed that both the Constitution and the Fundamental

Rights (Enforcement Procedure) Rule 2009 confers jurisdiction on court to hear and determine Fundamental human rights cases in Nigeria.

Majority of the respondents are of the view that the Constitution confers jurisdiction on courts to hear and determine fundamental rights cases. This position is in line with section 46[7] which confers jurisdiction on High Courts to determine cases on fundamental rights. Those that hold the view that fundamental rights (enforcement procedure) Rules 2009 confers jurisdiction on courts to determine cases of the fundamental rights enforcement, perhaps may gain support of Order 1 Rule 2 Paragraph 5[8] which define courts to mean, Federal High Courts or High Courts of a state or High courts of the Federal Capital Territory Abuja. However, the Constitution over ride any law and any law which is inconsistent with the provision of the Constitution is null and void to the extent of its inconsistency.

Table 4.9.13 Do you consider the National Industrial Court to have jurisdiction to entertain fundamental rights enforcement cases

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	15	39.5	39.5	39.5
	No	23	60.5	60.5	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

In an attempt to find out whether the National Industrial Court has jurisdiction to entertain fundamental rights enforcement cases, a possible question was asked if the court has jurisdiction to entertain fundamental rights cases. Where 15 respondents representing 39.5%

[7] 1999 Constitution
[8] Fundamental Rights (Enforcement Procedure) Rules 2009

agreed that the National Industrial Court have jurisdiction to entertain fundamental right enforcement cases while 23 respondents representing 60.5% of the population are of the contrary, they did not consider the National industrial court to having jurisdiction to entertain fundamental rights enforcement cases. Majority of the respondents opined that the National Industrial Court do not have jurisdiction to entertain fundamental rights cases. This may be supported because the National Industrial Court is not in any way mentioned in section 46 of the Constitution and the Fundamental Rights (Enforcement Procedure) Rules 2009.

Table 4.9.14 If your answer to question 10 above is yes, which law enables it?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Constitution	14	36.8	36.8	36.8
	Act of National Assembly	2	5.3	5.3	42.1
	All of the above	17	44.7	44.7	86.8
	Fundamental Rights (Enforcement Procedure) Rules 2009	5	13.2	13.2	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the view of the respondents about the law that enables the National Industrial Court to have jurisdiction to entertain fundament right cases.14 respondents representing 36.8% of the respondents agreed that it was the constitution,2 respondent representing 5.3% of the population are of the view that the Act of National Assembly enables it,5 respondents representing 13.2% of the respondents agreed that it was the Fundamental Rights (enforcement procedure)Rules 2009 that enables it and finally 17 respondents representing 44.7% of the

population are of the view that both the Act of National Assembly and the Fundamental Rights Enforcement Procedure Rules 2009 give the National Industrial Court jurisdiction to entertain Fundamental Rights cases.

Majority of the respondents are of the view that the Constitution confers jurisdiction on the court to hear and determine fundamental rights cases.Then the few that hold the view that the National Industrial Court has Jurisdiction may gain support of section 254D of the constitution[9]which states "for the purpose of exercising any jurisdiction conferred upon it by this constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court" This confusion is drawn from the fact that at the time the Fundamental Human Rights (Enforcement procedure) Rules 2009 was signed to law, and the 1999 constitution, the National Industrial Court was not made court of record. It was made court of record under the constitution pursuant to the alteration of the constitution on 4th day of March 2011[10]. This Constitutional amendment made reference to the National Industrial Court, giving it all the powers of a High Court[11]. Therefore it can be drawn that the National Industrial Court has the constitutional power to entertain fundamental rights cases.

Table 4.9.15 Multiplicity of courts has enhanced the enforcement of Fundamental Human rights in Nigeria

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	6	15.8	15.8	15.8
	Agree	21	55.3	55.3	71.1

[9] Constitution of the Federal Republic of Nigeria (Third Alteration) Act,2010
[10] Ibid
[11] Ibid Section 254D.

	Disagree	4	10.5	10.5	81.6
	Strongly agree	1	2.6	2.6	84.2
	Neutral	6	15.8	15.8	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014

The table shows the views of the respondents on whether the multiplicity of courts has enhanced the enforcement of Fundamental Human Rights in Nigeria. Where 6 respondents representing 15.8% of the population strongly agreed that it has enhanced the enforcement of Fundamental Human Rights, 21 respondents representing 55.3% of the total population agreed that it has enhanced the enforcement of Fundamental Human Right, 4 respondents representing 10.5% disagree that it has enhance enforcement of Fundamental Hunan Right, 1 person representing 2.6% strongly disagreed and finally 6 respondents representing 15.8% of the population are neutral on wither it has enhanced or not. Based on the responses, it therefore appeares that the multiplicity of court has enhanced the enforcement of fundamental human rights in Nigeria.

Table 4.9.16 Do you agree that the fundamental rights enforcement procedure rules provides for lacunae to be filled by various High Court Civil Procedure Rules?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	26	68.4	68.4	68.4
	No	12	31.6	31.6	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

The table shows the views of the respondents whether the fundamental human right has provides for lacunae to be filled by various high court civil procedure rules it appeared that 26 respondents representing 68.4% of the population are agreed that it has provides for lacunae to be filled while 12 respondents representing 31.6% of the respondents are of the contrary opinion that it has not provides for lacunae to be filled by various high court civil procedure rule. Based on the responses, it appeared that fundamental human rights enforcement rule has provided for lacunae to be filled by various high court civil procedure rules. This belief is well re-inforced under Order xv Rule 4" Where in the course of any human rights proceedings, any situation arises for which there is or appears to be no adequate provision in these rules, the Civil Procedure Rules of the Court for the time being in force shall apply"[12]

Table 4.9.17 Do you agree that lack of uniform High court civil procedure rules may breed inconsistency in the enforcement of fundamental human rights in Nigeria

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	21	55.3	55.3	55.3
	No	17	44.7	44.7	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the response of the people concerning lack of uniformity in high court civil procedure rules as it breed inconsistency in enforcing fundamental human rights in Nigeria where it appears 21 respondents representing 55.3% of the population agreed that it may breed inconsistency in the enforcement of fundamental human rights in Nigeria, 17 respondents representing 44.7% of the population are of the contrary view that it may not breeds

[12] Fundamental Rights (Enforcement Procedure) Rules 2009

inconsistency. However, based on the response it appears that the majority of the population agreed that it may breed inconsistency in the enforcement of fundamental human right. This analysis may be supported by the fact that there is no uniform Civil Procedure Rules across the country.

Table 4.9.18 Do you agree that the requirement of Locus Standi hindered the enforcement of fundamental rights?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	12	31.6	31.6	31.6
	Agree	19	50.0	50.0	81.6
	Disagree	3	7.9	7.9	89.5
	Strongly disagree	2	5.3	5.3	94.7
	Neutral	2	5.3	5.3	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the response of the population concerning whether requirement of *locus standi* hinders the enforcement of Fundamental Rights. It appeared that 12 respondents representing 31.6% of the population strongly agreed that it hinders the enforcement of human rights,19respondents representing 50% of the population agreed that it hinders enforcement of fundamental rights, 3 respondents representing 7.9% disagree, 2 respondents representing 5.3% of the population strongly disagreed that the requirement of the *Locus standi* hinders the enforcement of fundamental rights and finally 2 respondents representing 5.3% of the population are neutral concerning whether it hinders or not. However, the result shows that the requirement of *locus standi* hindered the enforcement of fundamental rights.

Table 4.9.19 Do you agree that the removal of locus standi has encouraged public interest litigation in the enforcement of fundamental human rights in Nigeria

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	11	28.9	28.9	28.9
	Agree	19	50.0	50.0	78.9
	Disagree	4	10.5	10.5	89.5
	Strongly disagree	1	2.6	2.6	92.1
	Neutral	3	7.9	7.9	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

Table 21 shows the response of the people concerning the removal of *locus standi* has encouraged public interest litigation in enforcing fundamental human right. It appeared that 11 respondents representing 28.9% of the population strongly agree that it has encourage public interest litigation in enforcing fundamental human right, 19 respondents representing 50% of the population agreed that it has encouraged public interest litigation on the enforcement of fundamental human rights, 4 respondents representing 10.5% and 1 respondent representing 2.6% of the population disagreed that it has not encourage public interest litigation in enforcement of fundamental human right while 3 respondents representing 7.9% of the population are neutral. This indicates that the removal of *locus standi* has encouraged the public interest litigation in enforcement of fundamental human rights.

This is buttressed by the forgoing analysis in the table above. It is further submitted that, the strict adherence to the doctrine of *locus standi* cannot be justified under article 27(2) of the

African Charter on Human and Peoples' right[13], which provides that the rights and freedom of each individual shall be exercised "With due regard to the rights of others, collective security, morality and common interest" and article 29(2) of the same charter which has imposed a duty on every individual to serve their natural community by placing their physical and intellectual abilities at its service. In **S***ocio-Economic Rights and Accountability Project (SERAP) v Federal Government of Nigeria*[14]**,**the defendant challenged the *locus standi* of the plaintiff, a nongovernmental organization in seeking a relief at ECOWAS court which sought to compel it to justify the diversion of over 10 billion Naira from the universal basic education fund by some government officials, in dismissing the preliminary objection the community court held:

> ...Public international law in general is infavourof promoting human rights and limiting the impediments againstsuch a promotion, lends evidence to the view that in public interestlitigation ,the plaintiff need not show that he has suffered any personal injury or has a special interest that needs to be protected to have standing.

Instead of leaving the issue of *locus standi* to the ideological inclination of individual judges the 2009 Rules has abolished the doctrine[15] in order to enhance public interest litigation in the field of human rights in Nigeria.

Table 4.9.20 Have you been granted order(s) under the fundamental rights enforcement procedure rules?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	2.6	2.6	2.6
Yes	25	65.8	65.8	68.4

[13] Cap A9 LFN 2004
[14] (Unreported) suit No, ECW/CCJ/APP/08/08
[15] Preamble to the Fundamental Rights(Enforcement Procedure)Rules 2009,

	No	12	31.6	31.6	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the respondents view as regards to grants of order(s) where 25 respondents representing 65.8% of the population agreed that they have been granted order(s) under the fundamental Rights Enforcement procedure Rule while 12 respondent 31.6% are of the view that they have not been granted order(s) under the Fundamental Right (Enforcement Procedure) Rule. Based on the result it appeared that most of the respondents have been granted order(s) under the fundamental rights rule, which indicates they are familiar with the procedure of enforcement of this Orders.

Table 4.9.21 If your answer to question 17 above is yes, against whom was the order granted?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Nigerian Police Force	25	65.8	65.8	65.8
	Nigerian army	3	7.9	7.9	73.7
	State Security Service	1	2.6	2.6	76.3
	Economic Financial Crimes Commission	2	5.3	5.3	81.6
	Others	7	18.4	18.4	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

Table 23 shows the response regarding the agency against whom the order(s) was granted where 25 respondents representing 65.8% of the respondent are of the view that the order is granted

against Nigerian Police Force, while 3 respondents representing 7.9% of the respondents state that the order(s) was granted against Nigerian army, 1 respondent representing 2.6% of the respondents indicates that the order(s) was granted against the State Security Service, 2 respondents representing 5.3% of the respondents indicates that the order(s) was granted against Economic and Financial Crimes Commission while 7 respondents representing 18.4% of the respondents indicates that the order(s) was granted against other agencies. However, the result indicates that the order(s) was granted mostly against Nigerian Police Force.

Table 4.9.22 Was there compliance with the order(s) as regard question 18 above

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	26	68.4	68.4	68.4
	No	12	31.6	31.6	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

Table 24 shows the level of compliance with the order (s) where 26 respondents representing 68.4% of the population agreed that there was compliance with the order(s) while 12 respondents representing 31.6% of the respondents are of the contrary view that there was no compliance with the order(s).

Table 4.9.23 If your answer to question 19 above is No, what was the reason for noncompliance?

	Frequency	Percent	Valid Percent	Cumulative Percent

Valid	The order was ambiguous	7	18.4	18.4	18.4
	Deliberate refusal or neglect to comply with the orders	7	18.4	18.4	36.8
	Refusal to accept service of the Orders	1	2.6	2.6	39.5
	All of the above	7	18.4	18.4	57.9
	Others	16	42.1	42.1	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

Table 25 shows the response concerning noncompliance with the order(s) where 7 respondents representing 18.4% of the total population are of the view that the order(s) was ambiguous that was what leads to noncompliance, 7 respondents representing 18.4% of the total respondents agreed that it was deliberate refusal, 1 respondent representing 2.6% indicates that it was refusal to accept service of the order,7 respondents also representing 18.4% of the total respondents are of the view that the reason for noncompliance was as result of the ambiguity of the order, deliberate refusal or neglect to comply with order and refusal to accept service of the order(s) while 16 respondents representing 42.1% of the total respondents are of the view that the noncompliance of the order(s) was as a result of other issues.

Table 4.9.24 Did you take any measure to ensure compliance?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	29	76.3	76.3	76.3
	No	9	23.7	23.7	100.0

Table 4.9.24 Did you take any measure to ensure compliance?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	29	76.3	76.3	76.3
	No	9	23.7	23.7	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

Table 26 indicates the views of the respondents concerning measures taken to ensure the compliance of order(s), where 29 respondents representing 76.3% of the total respondents indicate that they have taken measures to ensure the compliance of the order(s) while 9 respondents representing 23.7% of the total respondents indicates that they did not take any measure to ensure the compliance of order(s). However, the result indicates that several measures were taken to ensure the compliance of the order(s).

Table 4.9.25 If yes, what was the measure taken to ensure compliance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Issuance of form 4 as provided by Order 14 of the Fundamental rights (enforcement procedure) rules 2009	3	7.9	7.9	7.9
	Contempt proceeding	6	15.8	15.8	23.7
	All of the above	12	31.6	31.6	55.3
	Others	17	44.7	44.7	100.0

Table 4.9.25 If yes, what was the measure taken to ensure compliance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Issuance of form 4 as provided by Order 14 of the Fundamental rights (enforcement procedure) rules 2009	3	7.9	7.9	7.9
	Contempt proceeding	6	15.8	15.8	23.7
	All of the above	12	31.6	31.6	55.3
	Others	17	44.7	44.7	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the measures taken to ensure the compliance of the order(s) where 3 respondents representing 7.9% of the total respondents indicates that they took issuance of form 4 as provided by Order 14 of the Fundamental Rights(enforcement procedure)Rules 2009 as a measure to ensure compliance of the Order(s), 6 respondents representing 15.8% of the population indicates that it was contempt proceeding they took to ensure the compliance of the Order(s), 12 respondents representing 31.6% of the total respondents indicates that they took both issuance of form 4 as provided by Order 14 of the Fundamental Rights(enforcement procedure)Rules 2009 and contempt proceeding as a measure to ensure the compliance of the Order(s) and 17 respondents representing 44.7% of the total respondents indicate that they took other measures apart from contempt proceeding and issuance of form 4 as provided by Order 14 of the Fundamental Rights(enforcement procedure)Rules 2009 as a measure to ensure compliance of the order(s).

This analysis go a long way to indicate that the respondent's whose order(s) was not granted did not fold hands, but rather took one measure or the other to ensure that there was compliance with the order(s). However despite the measures taken, the order(s) were not enforced

Table 4.9.26 If No, what was your reason for not taking any measure to ensure compliance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	the procedure is cumbersome	10	26.3	26.3	26.3
	lost hope in the whole process	1	2.6	2.6	28.9
	Because the law enforcement agents are above the law	4	10.5	10.5	39.5
	all of the above	3	7.9	7.9	47.4
	Others	20	52.6	52.6	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table indicates the reason for not taking any measure to ensure the compliance of the order(s) where 10 respondents representing 26.3% of the total respondents are of the view that the procedure for taking measure is cumbersome, 1 respondent representing 2.1% of the total respondents indicate that he lost hope in the whole process, 4 respondents representing 10.5% of the total respondents indicate that the law enforcement agent are above the law that is why they could not take any measure to ensure the compliance of the order(s), 3 respondents representing 7.9% of the total response indicates that they did not take measure because the procedure for taking measure is cumbersome, lost hope in the whole process and also the law enforcement

agent are above the law that is why they could not take any measure to ensure the compliance of the order(s)

Table 4.9.27 The issue of main claim and ancillary claim is a problem of fundamental rights enforcement procedure

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	8	21.1	21.1	21.1
	Agreed	17	44.7	44.7	65.8
	Strongly disagreed	1	2.6	2.6	68.4
	Disagree	12	31.6	31.6	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table indicates the view of the respondents concerning the issue of main and ancillary claim as a problem of fundamental right enforcement, where 8 respondents representing 21.1% of the total respondents strongly agreed that it is a problem of fundamental right enforcement, 17 respondents representing 44.7% of the total respondents agreed that it is a problem of fundamental right enforcement, 1 respondent representing 2.6% and 12 respondents representing 31.6% of the total response are of the contrary view they disagreed that it is not a problem of fundamental right enforcement.The overall result indicates that the issue of main claim and ancillary claim is a problem of fundamental right enforcement.

The predicament can be viewed from the angle of the tests for determining principal and ancillary claims. It is a distinction that is not beneficial and is of no practical relevance to the

court or litigants. The drafters of the Constitution choose certain rights to recognize under Chapter IV of the Constitution. As such the courts should determine whether or not a claim before it falls within the provision of this chapter[16]. The requirement of a principal claim is a product of the judiciary because section 46 of the 1999 constitution speaks of the enforcement of "any of the provision of this chapter". The section in nowhere refers to the enforcement of a claim whose principal tenor is a human rights claim.

The Nigerian courts proffer different means of determining whether a claim is principal or accessory. A survey of the cases shows that two possibilities seem to have emerged. The first test is based on the manner in which the claim is couched, especially the relief sought by the applicant. The second seems to turn on whether the claim is for a procedural right or a substantive right.

The first test relies on the interpretation of the claim before the court. This can be drawn from analysis of cases including *AbdulhamidvAkar*[17], where the Supreme Court held that the manner in which the relief is couched is important. In this case the applicant, who owed the respondents, sought to enforce his fundamental human rights against the respondents for employing the services of the Nigerian Army and Air Force who in a bid to recover the money, subjected him, his family business and employees to repeated harassment, intimidation and degrading treatment. The relief sought and granted by the trial court was an order of restraint against the respondents from harassing, intimidating and subjecting the applicant's property and award of damages as compensation. In the relief sought no mention was specifically made to fundamental human rights in terms of which a cause of action is said to have violated a specific section of Chapter IV. Nevertheless there was reference to "degrading treatment" which implies

[16] See the case of *Peterside v IMB (Nig) Ltd*(2000) 6 NWLR (pt 278) 712 where the court of Appeal held that the rights of a master and servant are not protected as fundamental human rights.
[17] Ibid

section 34(1) a of the 1979 constitution. The learned trial judge granted their prayers. The Court of Appeal over turned the decision of the trial court by holding that, of the four reliefs sought, none of them touched upon the violation of fundamental rights. The Supreme Court agreed with the Court of Appeal, Kutigi JSC, who read the lead judgment of the unanimous court, held that

> The jurisdiction of a court is determined by a plaintiff's claim or relief and that the applicant's claim in this case did not disclose any infraction of a human right. The court also held that the judgment of the trial court inter alia that the actions of the respondents in this case are not only infringement of the applicant's fundamental rights but are also tortuous in nature. In other words they are common law reliefs. These could only have been claimed strictly by issuing a writ of summons and filing pleadings thereof …..Needless to say that ….. the tortuous claims are the principal claims even if there existed some fundamental rights infringement as found by the trial judge...[18].

Even if this research concede that the Supreme court is correct in stating the principle that jurisdiction is to be determined solely from the claim/reliefs, its application in *Akar* is less than satisfactory. While the court of Appeal proceeded on the ground that the actions were common law actions, it is important to note that this was the conclusion drawn by the courts and not that stated by the litigants. The plaintiffs did not identify the conduct they complained of. They simply summarized it. The learned trial judge was therefore correct to have identified the conduct as amounting to fundamental human rights and also tortious by analysing the claim and grounds upon which they were based. It was the Court of Appeal that was wrong in only concluding that the case was tortuous when there were enough facts to show that it could qualify as a fundamental human rights claim.

The difficulty in correctly determining whether the claim is principal or accessory, lies in the fact that there is no stated procedure in the enforcement procedure rules as to how claims are to be couched. More importantly, there are no reliefs that are confined for fundamental human

[18] Ibid

rights claim as the system is flexible. Indeed section 46(2) of the 1999 constitution relies on this fact and empowers the courts to "make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of securing the enforcement…of any right to which the person who makes the application may be entitled".

The lack of meaningful standard for identifying principal and ancillary claims hints at the impractical nature of the principle. This is manifest in a confusing oscillation by Nigerian courts between the nature of the claim and the relief sought. In *Agwuocha v Zubeiru*[19],the plaintiff/respondent alleged that his right to liberty and privacy were threatened and provided unimpeached evidence of a failed arrest. Yet the Court of Appeal advised the appellant to come to court by writ of summons. Assuming the appellant was arrested, the question is, would the Court of Appeal have insisted that that he should commence his suit by a writ of summons? Certainly the claim was of no assistance to the court which looked at the facts that led to the failed arrest.

In *AbubakarTatarri Ali Polytechnic v Ali*[20]**,** the reliefs sought by the applicant/respondent were: "(1) A declaration that the act or series of acts of the respondent toward or concerning or with regards to the applicant constituted a violation of the applicant's fundamental human rights; and (2) an order directing the payment of 1,000,000.00 general damages for breach of the applicant's fundamental rights."The Court of Appeal dwelt on the fact that the applicant/respondent sought damages instead of reinstatement as justifying its characterization of the principal claim as the wrongful termination of his appointment.

[19] (2002)FWLR(pt99)1129
[20] (2005)All FWLR(pt 284) at 250

In*Dongtoe v Civil service commission, Plateau State*[21], the appellant was a permanent and pensionable employee of plateau state when his appointment was terminated sequel to a query issued to him formally demanding for explanation for commission of certain criminal offences. Dissatisfied with the action of his employers, he instituted an action for unlawful dismissal, re-instatement and for fair hearing under the Fundamental Rights (Enforcement Procedure) Rules, 1979. The Supreme Court held that "none of the reliefs claimed by the applicant falls within any of the specific rights enumerated in chapter IV[22]. The appellant had claimed for a declaration, an order of reinstatement and an injunction. The position of the Supreme Court is stunning given that no relief except compensatory damages in respect of section 35 of the 1999 constitution, which protects the right to liberty, is set out in Chapter IV of the 1999 constitution.

Also in *WAEC v Akinkumi*[23], the respondent's main claim was for an order of reversal of his cancelled results of the examination he took in May/June 1992, which the appellant conducted. The Supreme Court held that a careful consideration of the three reliefs show clearly that the first relief claims a declaration that the cancellation of respondent's result was a breach of his right of fair hearing and therefore unconstitutional. The main claim is the order for restoration of the cancelled result and making same available to the university of Ilorin for his graduation and therefore the respondent's suit was not principally for the enforcement for any fundamental right. Consequently, the action was wrongly commenced under the Fundamental Rights (Enforcement Procedure)Rules. With due respect to the Supreme Court, it did not take cognizance of section 46(2) which imports the element of flexibility in a court determining the appropriate remedy. Even if the distinction is valid, what the court ought to concentrate on is

[21] (2001)9NWLR(PT 717) 13
[22] Ibid
[23] (2008)9NWLR(pt 1091) 151 at169-170

whether the alleged facts appear to fall within any of the rights protected by Chapter IV of the Constitution. It is after such consideration that the relief claimed becomes important. Therefore to determine the character of the claim by reference to the relief does injustice to the clear provisions of section 46(2) of the 1999 Constitution.

In *FBN plc&ors v AG Federation &ors*[24]**,** the decision of the Court of Appeal is commendable. The trial court struck out reliefs 1, 3, 7, 6, and 8 out of the 8 reliefs of the Appellant's motion on notice on ground that the reliefs were not cognizable under the fundamental rights procedure. However the Court of Appeal held that the claim falls within the purview of Chapter IV of the 1999 Constitution on calm consideration of the relief sought.The grounds for the reliefs and the facts relied upon by the appellants shows clearly that the principal claim of the appellants is predicated upon the breach of fundamental right of the Appellants.

Also *Adinuso v Omeire*[25], one of the reliefs sought by an applicant/respondent in an action seeking leave to enforce his fundamental human rights was for a declaration that "their arrests and detention on three occasions without a warrant of arrest are wrongful, unconstitutional and a violation of the liberties of the applicants as guaranteed under Chapter IV of the 1979 Constitution. The trial court dismissed the objection and respondents/appellant appealed to the Court of Appeal. One of the common issues set down for determination by the appeal court was whether the reliefs sought by the respondent were cognizable under Chapter IV of the Constitution. The appellants conceded that the relief seeking declaration of the respondents' right to liberty, as well as the damages sought concerned fundamental human rights but were not principal claim. The Court held that the declaratory relief "is related to human rights. It is an invitation to the court to pronounce on the legality or otherwise of the arrest and

[24] 2013 LPELR, 20152(CA); WWW.lawpavillion personal.com/ipad/books/20152.pdf retrieved at 10pm 4th August,2014.
[25] 2006 ALL FWLR(pt 310) at 1759

detention of the applicants"[26]. It further held that the other reliefs were connected to the declaratory reliefs. It is to be noted that the relevant sections of Chapter IV of the 1999 Constitution were not even stated in the claim before the court, yet the Court correctly assessed the claim and evidence to arrive at its conclusion. It was open to the Court to find that the principal claim was for a declaration of title to piece of land, as controversy over that piece of land led to the arrest of the applicant.

The second means of indentifying a principal or accessory claim is to make a distinction between procedural and substantive human rights. Where procedural human rights, such as the right to a fair hearing, is involved, Nigerian courts have held that the substratum of the matter around which the procedure is challenged is the principal claim and the procedural right is an accessory claim. It is to be noted that, in such instances, there is always a subject matter about which a complaint of a breach of the right to a fair hearing arises. This is a point that was briefly considered in the*Tukurcases*[27]. It is clear from that case, the appellant's claim resulted from his allegation that he was removed without a fair hearing.

The lack of a fair hearing was considered in the following cases: in*AbubakarTatari Ali Polytechnic v Ali*[28]**,** the lack of fair hearing was in issue in an allegation that the respondent was unlawfully dismissed but the court decided that the principal claim was the unlawful termination of the respondent's contract of employment. In *Trust FundvAdebiyi*[29],the Court of Appeal held that the issue of the termination of the employment and reinstatement to such employment of the respondent /applicant was the principal claim. The applicant/respondent had successfully sought leave of the High court to

[26] Ibid
[27] *Tukur v Government of Gongola State*(1989)4NWLR(pt.117) 517 and *AbubakarUmaru Abba Tukur vGovernment of Taraba State*(1997)6NWLR (pt.510) P. 549
[28] Supra
[29] (1999) 13 NWLR 9 (pt 633)

enforce his fundamental rights to fair hearing and, that having been breached in the course of his dismissal; he was entitled to a declaration to that effect and reinstatement to his position. The applicant had framed seven reliefs in his application. The first three reliefs sought a declaration that the dismissal was unconstitutional on the ground that it breached his right to fair hearing. The fourth reliefs sought an order of reinstatement, while the fifth sought an order for damages for breach of his fundamental human right. The sixth relief asked for an order directing his employers to pay his arrears of salary until the disposition of the case. The Court of Appeal conveniently overlooked the first three reliefs and held that:"From the reliefs sought, the claim of Applicant/Respondent was for reinstatement to his job after termination of his employment and payment of arrears of his salaries… thus the issues in question here are the applicants/respondent's job and salaries"[30]. The court sought to locate the question of the applicant/respondent's job and salaries within the rights enumerated in Chapter IV of the constitution.If the court had had properly characterized the claim as one of the lack of a fair hearing, it would have had no choice but to conclude that the claim fell within Chapter IV of the constitution.

Another point about the inclination towards regarding the right to a fair hearing as ancillary stems from the fact that courts believe that, in examining compliance with the right, the main issue which is not a fundamental human right will be determined, this was evident in *Tukur V Government of Taraba State*[31].This was also in issue in *Akintola v Vice ChancellorUnilorin*[32] where a student complained of a lack of fair hearing in his expulsion from the University. Insistence on a fair hearing does not empower the public authority to act in the way that it has. It is a complaint on the exercise of the power. If the allegation of the breach of a

[30] Ibid pg 25
[31] supra
[32] [2005] ALL FWLR [pt 259] at 1957

fair hearing is upheld, an insistent public authority could well proceed to exercise its endowed power in a way that complies with the right to fair hearing.

It is frustrating that, instead of determining whether an individual is entitled to a right, the Nigerian Courts are fused on a procedural principle of little significance. Without conceding that the principle can be said to be of some value, why punish litigants who rely on their counsel to present their position in court? It is difficult to understand why litigants should suffer from the mistake of their counsel in this case, since the Nigerian Courts have in a long line of cases held that the incompetence of counsel should not be visited on their litigants[33].Moreover, for a court that on several occasions declared that it will not allow technicalities to defeat the end of justice[34],it is surprising that it is not able to recognize that the distinction between principal and ancillary claim is a clear example of technicality.

Table 4.9.28 Human rights cases alleging serious human right violation are routinely struck out or dismissed for lack of compliance with mode of enforcement

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	strongly agree	4	10.5	10.5	10.5
	Agree	17	44.7	44.7	55.3
	Strongly disagree	4	10.5	10.5	65.8
	Disagree	13	34.2	34.2	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

[33]*Ebe v Nnamani* (1997) 7 NWLR (pt 513) 479

[34]*Chikwendu v Mbamali*(1980)3-4 SC 31 at 82 : "care should be taken by the court always not to sacrifice justice on the alter of technicalities"; *Attorney General of Bendel State v Attorney General of the Federation*(1982)3 NCLR 1 at p 82: " this research incline to the view that in suits calling for decisions on issues relating to the constitution, this court ought not duly to allow technicalities to deter it from making vital pronouncements".

This table indicates the view of the respondents concerning dismissal of human right cases for lack of compliance with mode of enforcement, 4 respondents representing 10.5% of the total respondents strongly agreed,17 respondents representing 44.7% of the total respondents agreed and 4 respondents representing 10.5% and 13 respondents representing 34.2% of the total respondents are of the contrary view that human right violation are routinely struck out or dismissed for lack of compliance with mode of enforcement. Going by this analysis, majority of the respondents are of the view that cases alleging serious human rights violation are routinely struck out or dismissed for lack of compliance with the mode of enforcement. If this is the case, one of the overriding objectives of the Fundamental Rights (Enforcement Procedure) Rule 2009 has been defeated. This is because, the court is empowered to give effect to the overriding objectives of the rules at any stage[35], one of which the Constitution, especially Chapter IV as well as the African Charter, shall be expensively and purposely interpreted and applied, with view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by them[36]

Table 4.9.29 Do you agree that non grant of frequent adjournment has facilitated speedy enforcement of fundamental human rights

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	strongly agree	8	21.1	21.1	21.1
	Agree	23	60.5	60.5	81.6
	Disagree	7	18.4	18.4	100.0
	Total	38	100.0	100.0	

Source: Result from Questionnaire administered 2014.

[35]Pragraph 1, Preamble to the Fundamental Rights (Enforcement Procedure) Rule 2009.
[36] Paragraph 3a, Preamble to the Fundamental Rights (Enforcement Procedure) Rule 2009

Table 31 indicates the view of the respondents concerning whether they agree that non grant of frequent adjournment has facilitated speedy enforcement of fundamental human right, where 8 respondents representing 21.1% of the population strongly agreed that it has facilitated speedy enforcement of fundamental human right, 23 respondents representing 60.5% of the total respondents agreed that it has facilitated speedy enforcement of fundamental human right only 7 respondents representing 18.4% of the total respondents are of the contrary view that it has not facilitated speedy enforcement of fundamental human rights. However, the result indicates that the non-grant of frequent adjournment has facilitated speedy enforcement of fundamental human rights.

b. Hypothesis Two

The second hypothesis states that the law enforcement agents contribute to the delay in the enforcement of fundamental rights. In a bid to test this hypothesis, some questionnaires were asked to some selected respondents based on their specialized area. These respondents include, Nigerian Army, National Drug Law Enforcement Agent, State Security Service, Economic and Financial Crimes Commission.

Frequency Table

Table4. 9.30 SEX

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	19	90.5	90.5	90.5
	Female	2	9.5	9.5	100.0
	Total	21	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the sex distributions of the respondents, where 19 respondents representing 90.5% of the total respondents are Male while 2 respondents representing 9.5% of the population are Female. This indicates that male respondents dominate the population of the study.

Table 4.9.31 Respondents State of Origin

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Jigawa	5	23.8	23.8	23.8
	Kaduna	2	9.5	9.5	33.3
	Kano	1	4.8	4.8	38.1
	Adamawa	2	9.5	9.5	47.6
	Kogi	1	4.8	4.8	52.4
	Lagos	1	4.8	4.8	57.1
	Plateau	2	9.5	9.5	66.7
	Sokoto	1	4.8	4.8	71.4
	Zamfara	1	4.8	4.8	76.2
	Bauchi	1	4.8	4.8	81.0
	Benue	3	14.3	14.3	95.2
	Borno	1	4.8	4.8	100.0
	Total	21	100.0	100.0	

Source: Result from Questionnaire administered 2014.

Table 2 shows the states of origin of the respondents, where 5 respondents representing 23.8% of the respondents, are from JigawaState ,2 respondents representing 9.5% of the total respondents

are from Kaduna State, Benue State has 3 respondents representing 14.3% of the respondents, Adamawa State has 2 respondents representing 9.5% of the total respondents while Kano,Kogi,Lagos,Sokoto,Zamfara, Bauchi and Borno has 1 respondent each which represent 2.6% of the total respondents. This indicates that the majority of the respondents are from Jigawa State.

Table 4.9.32 State the present state where you carry on your vocation.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Jigawa	12	57.1	57.1	57.1
	Kaduna	5	23.8	23.8	81.0
	Adamawa	1	4.8	4.8	85.7
	AkwaIbom	1	4.8	4.8	90.5
	Sokoto	1	4.8	4.8	95.2
	Borno	1	4.8	4.8	100.0
	Total	21	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the present states where the respondents carry on their vocation where 12 respondents representing57.1% of the total respondents indicates that they carry on their vocation in Jigawa State, 5 respondents representing 23.8% carry on their vocation in Kaduna State while Adamawa, AkwaIbom,Sokoto and Borno has 1 respondent representing 4.8% of the total respondent each who carry on their vocation in each state. This indicates that the majority of the respondents are presently carrying on their vocation in Jigawa state.

Table 4.9.33 Which of the agencies do you belong to

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Nigerian Police Force	6	28.6	28.6	28.6
	Nigerian Army	1	4.8	4.8	33.3
	National Drug Law Enforcement Agency	14	66.7	66.7	100.0
	Total	21	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the agency in which the respondents belong to, where 6 respondents representing 28.6% of the total response indicates that they belong to Nigeria Police Force, 1 respondent representing 4.8% of the total response belongs to Nigeria Army and 14 respondents representing 66.7% belongs to National Drug Law Enforcement Agency. This indicates that the majority of the respondents are from National Drug Law Enforcement Agency. A number of questionnaires was also given to the State Security Services and the Economic and Financial Crimes Commission, which was rejected by the agencies on the basis that the information required is confidential and for security reasons.

Table 4. 9.34 Do you have power of arrest without a warrant of arrest?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	18	85.7	85.7	85.7
	No	3	14.3	14.3	100.0
	Total	21	100.0	100.0	

Source:Result from Questionnaire administered 2014.

This table indicates whether the respondents have power to arrest without warrant and it appeared that18 respondents representing 85.7% of the total population agreed that they have power to arrest without warrant while 3 respondents representing 14.3% of the total respondents are of the contrary view that they have no power to arrest without warrant. However, the result indicates that the respondents have power to arrest without warrant.

Table 4.9. 35 For how long does your agency detain a suspect under normal circumstances?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	2 days	13	61.9	61.9	61.9
	5 days	1	4.8	4.8	66.7
	7 days	1	4.8	4.8	71.4
	6 days	6	28.6	28.6	100.0
	Total	21	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the number(s) of days to which the agencies have power to detain a suspect under normal circumstances in which 13 respondents representing 61.9% of the respondents indicates that they can detain a suspect for 2days, 1 respondent representing 4.8% of the respondent indicate 5days, 1 respondent representing 4.8% indicates 7days and 6 respondents representing 28.6% indicate 6days. Based on the result it appeared that the agencies detain suspect for 2days under normal circumstances. However, any person who is arrested or detained

shall be brought before a court of law within a reasonable time[37]. A reasonable time means in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers a period of one day[38].Therefore, law enforcements agents are obliged to detain persons not less than a day under normal circumstances.

Table 4.9.36 Do you agree that the Law enforcement agency cannot detain a suspect beyond 24 hours?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	5	23.8	23.8	23.8
	Agree	9	42.9	42.9	66.7
	Disagree	7	33.3	33.3	100.0
	Total	21	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the view of the respondents on whether they cannot detain a suspect beyond 24 hours where 5 respondents representing 23.8% of the population strongly that they cannot detain suspect beyond 24 hours,9 respondents representing 42.9% of the total response agreed also and 7 respondents representing 33.3% are of the contrary view, however the result indicates that the agencies cannot detain suspect beyond 24 hours.

Table 4.9.37. In practice you do detain a suspect for more than 24 hours?

	Frequency	Percent	Valid Percent	Cumulative Percent

[37]Section 35(4) 1999 Constitution.
[38] Section 35(5)(a) 1999 Constitution.

Valid	Yes	18	85.7	85.7	85.7
	No	3	14.3	14.3	100.0
	Total	21	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table indicates whether the agencies detain suspect for more than 24hours and it has appeared that 18 respondents representing 85.7% of the total response agreed that in practice they detain Suspect beyond 24 hours while 3 respondents representing 14.3% of the total respondents are of the contrary opinion that they do not detain suspect for more than 24 hours, however the result indicates that the agencies do detain suspect beyond 24 hours.

Table 4.9. 38 Has there been any Order(s) granted against your agency on Fundamental Rights Enforcement

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	19	90.5	90.5	90.5
	No	2	9.5	9.5	100.0
	Total	21	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the view of the respondents on whether there has been orders granted against their agency on fundamental rights enforcement,19 respondents representing 90.5% of the total response agreed that there have been order(s) granted against their agency on fundamental right enforcement while 2 respondents representing 9.5% of the total response are of the contrary view that there has never been any order(s) against their agency on fundamental rights enforcement.

Table 4.9.39 If your answer to question 4 above is yes did you comply with the court order(s)?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	21	100.0	100.0	100.0

Source: Result from Questionnaire administered 2014.

This table shows the view of the respondents on whether their agencycomply with court Order(s) and it appeared that all the respondents agreed that their agency always comply with the court order(s).However, this contradicts cases where the law enforcement agents refuse court

orders. In *Abbas Ali v Director State Security Services &ors*[39], the court granted an order enforcing the applicant's fundamental human right to personal liberty which has been contravened by the respondents by the continuous unlawful arrest and detention of the said applicants since the 21sth of March,2013.And is perpetually detained by the respondents in suit No FHC/ABJ/CS/265/2013 to charge the applicant to court within three weeks from the date of the order (20/11/2013) to answer whatever charges that are leveled against him, but the respondents neglected the orders and continued to violate the applicants fundamental human right to personal liberty. This is corroborated by the refusal of the State Security Services to accept the questionnaire that they do refuse court orders.

Table 4.9.40 If your answer to question 5 above is yes, was compliance prompt?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	19	90.5	90.5	90.5
	No	2	9.5	9.5	100.0
	Total	21	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows whether the agencies compliance with the court is prompt and 19 respondents representing 90.5% of the total response indicates that their agency do comply with the court promptly, while 2 respondents representing 9.5% of the total response indicates that their agency does not promptly comply with the court, However, based on the result it appeared that the agencies do comply with the court promptly.

[39] Unreported suit NO FHC/ABJ/CS/112/2014

Table 4.9.41. If your answer to question 5 above was No, what was your reason for noncompliance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	The order(s) was ambiguous	3	14.3	14.3	14.3
	The order(s) was not served	3	14.3	14.3	28.6
	All of the Above	6	28.6	28.6	57.1
	Others	9	42.9	42.9	100.0
	Total	21	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table indicates the view of the respondents on the reason for noncompliance with the court, where 3 respondents representing 14.3% of the total response agreed that the order was ambiguous. Also another 3 respondents representing 14.3% of the total respondents indicates that the order(s) was not served, 6 respondents representing 28.6% of the total response indicates that the order(s) was not served and it was also ambiguous while 9 respondents representing 42.9% of the total response are of the view that there was noncompliance as a result of other reasons.

Table 4.9.42 Respondents Rank

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	SNA	2	9.5	9.5	9.5
	ASN1	1	4.8	4.8	14.3
	CAN	1	4.8	4.8	19.0
	ASN 2	1	4.8	4.8	23.8
	Others	2	9.5	9.5	33.3
	CSN	2	9.5	9.5	42.9
	CAN	1	4.8	4.8	47.6
	DSN	2	9.5	9.5	57.1
	Commander	1	4.8	4.8	61.9
	SP	2	9.5	9.5	71.4
	Copra	2	9.5	9.5	81.0
	Sargent	2	9.5	9.5	90.5
	NA	2	9.5	9.5	100.0
	Total	21	100.0	100.0	

Source: Result from Questionnaire administered 2014.

This table shows the rank of the respondents, where 2 respondents representing 9.5% of the total respondents are within the rank of SNA, 1 respondent each representing 4.8% are ASN1,

CAN,ASN2 and commander while the 2 respondents 9.5% of the total respondents each belong to the rank of CSN,SP, Copra, Sargent, NA,DSN and other ranks respectively.

From the analysis above it goes a long way to show that, the Fundamental Rights (Enforcement Procedure) Rules 2009 though has enhanced human rights enforcement with the innovation in the rules, such as abolishment of *locus standi* and leave, still has lapses in the provision and needsto improve on the rules in order to enhance more public interest litigation.

CHAPTER FIVE

5.0 SUMMARY, CONCLUSION AND RECOMMENDATION

5.1. Summary

Fundamental rights constitute the cornerstone of the Constitution of the Federal Republic of Nigeria. These rights are provided under Chapter IV of the 1999 Constitution and in the African Charter on Human and Peoples' Right. The concept of human rights is that aspect that tasks scholars on its precise meaning and content.Different scholars, like those of Natural and sociological schools, see human rights from different point of view.

Despite the guaranteed rights under the constitution and African Charter, the legislature contemplated that there could be breach of these rights. This is why the law laid down procedure for the enforcement of these rights when breached. The Fundamental Rights (Enforcement Procedure) Rules 2009 provides for the mode of enforcement.

The fundamental Rights (Enforcement Procedure) Rules 2009 replaced the fundamental Rights (Enforcement Procedure) Rules 1979, bringing new modification to enhance public interest litigations in the field of human rights.. With the Fundamental Rights (Enforcement Procedure) Rules 2009,there is improvement such as in the area of human right in the aspect of enforcement e.g the abolishment of *LucusStandi* and leave for enforcement. However, there are still setbacks in the Fundamental Rights (Enforcement Procedure) Rules 2009.e.g the issue of main claim and ancillary claim. The fundamental rights enshrined in Chapter IV of the Constitution are to protect the rights of individual against arbitrary violation. However, it is without gain saying that the Nigerian courts understanding of principal and ancillary distinction is capable of rendering the fundamental human rights in the Chapter meaningless.

To test whether the Rules met its objectives in order to enhance public interest litigation, field research work was taken. Questions were asked with regards to the procedure of enforcement which revealed the extent to which this objective was achieved. From the analysis of the field work, it was discovered that though the 2009 Rules brought tremendous changese.g the abolishment of *locus standi,* there is need for improvement e.g the issue of jurisdiction of the National Industrial court.

In the course of this work the researcher made the following findings. .

(a) The review of cases shows that no consistent test is applied in determining the distinction between principal and ancillary claim. Some of the instances of the distinction cannot be explained on any ground other than that the court laboured under an improper understanding of the scope of the different rights protected by chapter IV of the constitution.

(b) The difficulty in correctly determining whether the claim is principal or ancillary lies in the fact that there is no stated procedure in the enforcement procedure rules as to how claims are to be couched. More importantly, there are no reliefs that are confined for fundamental human rights claim

(c) The provision of Order xv Rule 4 "where in the course of any human rights proceedings, any situation arises for which there is or appears to be no adequate provision in these rules, the Civil Procedure Rules of the court for the time being in force shall apply". This has breed inconsistency in the enforcement of fundamental rights in Nigeria.

5.2 Recommendation

It is recommended that:

(a) It is imperative that the Supreme Court formalizes the understanding that the distinction between principal and ancillary claim negates human rights, and hence discard this dichotomy.

(b) There should be Uniform High Court Civil Procedure Rules across Nigeria so as to enhance the doctrine of judicial precedent.

There is no doubt that the Fundamental Rights provided under Chapter IV of the Constitution and in the African Charter on Human and Peoples' Right will be breached, this is why the fundamental Rights (Enforcement Procedure)Rule 2009 is enacted to provide procedure for the enforcement of these rights when breached. For this reason the Rules being a procedure for remedy must attain the utmost objective to enhance litigation in the field of human right. Therefore there is need to improve the Rules in the areas it havelapses. Until the constitution is amended to make the provisions of chapter II justiciable, the expectation of having a Nigerian society free from human right violation will be a mirage.

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APPENDIX A

Faculty of Law,
Ahmadu Bello University,
Zaria,
Kaduna State.

20th May, 2014.

Dear Respondent,

RESEARCH ONAN APPRAISAL OF THE APPLICATION OF THE FUNDAMENTAL HUMAN RIGHT ENFORCEMENT PROCEDURE RULES IN NIGERIA.

I am a postgraduate student of the Faculty of Law, Ahmadu Bello University, Zaria and this research is in partial fulfillment of the requirement for the award of Master of Laws.

The purpose of these questionnaires includes:

(a) To ascertain the perception of the bar and the bench on the factors responsible for the problems of enforcement of fundamental human rights in Nigeria.
(b) To ascertain the perception of the Bar and the Bench on the prospect of the 2009 Fundamental right enforcement procedure Rules.
(c) To ascertain the level of compliance of the Law enforcement agents with regards to orders granted by the Court.
(d) To enable this researcher examine the impediments if any to the successful implementation of the Fundamental Right Enforcement (Procedure Rules) 2009
(e) To generate baseline data that would be used for effective implementation of the Fundamental Right Enforcement (Procedure Rules) 2009

I will sincerely want to assure you that information supplied in this questionnaire will be treated with utmost confidentiality and will only be used for research purpose. I appeal to you to be candid and accurate in your responses. Kindly answer all the questions as uncompleted questionnaires will create problem in the analysis of same

To ensure confidentiality, do not sign or write your name in any part of the questionnaire.

Thank you immensely for your cooperation

Yours faithfully,

JamilaShuaibu

SECTION "A1" BIO DATA

(This section is to be completed by members of the legal profession)

1. Indicate your sex
   (a) Male
   (b) Female
2. What is your state of origin……
3. What is your specialization
   (a) Legal practitioner
   (b) A judge
   (c) A police officer
   (d) An academician in the law profession
   (e) A and D

4. State the present state where you carry on your vocation……..

5. Experience (years)
   (a) 0-5 [ ]
   (b) 6-9 [ ]
   (c) Above 10 [ ]

SECTION "A2" BIO DATA

(This section is to be completed by the Law enforcement agents)

1. Indicate your sex

   (c) Male
   (d) Female

2. What is your state of origin……

3. State the present state where you carry on your vocation……..

4. Which of the agencies do you belong to?
   (a) Nigerian Police Force
   (b) Nigerian Army
   (c) National Drug Law Enforcement Agency (NDLEA)
   (d) State security service (SSS)
   (e) Economic Financial Crimes Commission (EFCC)
   (f) Others specify……

5. Please state your rank……

SECTION "B" ENFORCEMENT OF FUNDAMENTAL RIGHTS IN NEGERIA.
(This section is to be completed by members of the legal profession)

1. Are you aware of the Fundamental Rights (Enforcement Procedure) Rules 2009?

(a) Yes
(b) No

2. How will you rate the level of awareness of Nigerians on the existence of their Fundamental Rights?

(a) Very high
(b) High
(c) Low
(d) Very low

3 Have you been involved in the process of enforcement of Fundamental Rights in Nigeria?

(a) Yes
(b) No

4. If your answer to 3 above is yes, how will you rate your level of participation in the process of enforcement of fundamental rights?

(a) Very high
(b) High
(c) Low
(d) Very low

5. Do Nigerians like to enforce their fundamental human rights?
   (a) Yes
   (b) No

6. If yes tick reasons

   (a) It is cheap
   (b) Procedure is easy
   (c) Courts are not accessible
   (c)You don't need a lawyer
   (d)They know their rights

7. If your answer to question 5 is No tick the reasons from the following

   (a) It is expensive
   (b) Procedure is cumbersome
   (c) Courts are not accessible
   (d) You need a lawyer
   (e) Plenty delays
   (f) They leave things to God.

8. Do you agree that removal of the requirement for leave of court has facilitated the enforcement of fundamental rights?

   (a) Strongly agree
   (b) Agree
   (c) Disagree
   (d) Strongly disagree
   (e) Neutral

9. Which law confers jurisdiction on courts to hear and determine fundamental human rights cases in Nigeria.

   (a) Constitution
   (b) Rules of court
   (c) Act of National Assembly
   (d) All of the above
   (e) Fundamental Rights (Enforcement Procedure) Rules 2009

10. Do you consider the National Industrial Court to have jurisdiction to entertain fundamental rights enforcement cases
   (a)Yes
   (b) No

11. If your answer to question 10 above is yes, which law enables it?

(a) Constitution
(b) Rules of court
(c) Act of National Assembly
(d) All of the above
(e) Fundamental Rights (Enforcement Procedure) Rules 2009

12. Multiplicity of courts has enhanced the enforcement of Fundamental human rights in Nigeria.

(a) Strongly agree
(b) Agree
(c) Disagree
(d) Strongly disagree
(e) Neutral

13. Do you agree that the fundamental rights enforcement procedure rules provides for lacunae to be filled by various High court civil procedure rules.

(A) Yes
(B) No

14. Do you agree that lack of uniform High court civil procedure rules may breed inconsistency in the enforcement of fundamental human rights in Nigeria?

(a) Yes
(b) No

15. Do you agree that the requirement of Locus Standi hindered the enforcement of fundamental rights?

(a) Strongly agree
(b) Agree
(c) Disagree
(d) Strongly disagree
(e) Neutral

16. Do you agree that the removal of locus standi has encouraged public interest litigation in the enforcement of fundamental human rights in Nigeria?

(a) Strongly agree
(b) Agree
(c) Disagree
(d) Strongly disagree
(e) Neutral

17. Have you been granted Order(s) under the Fundamental Rights Enforcement Procedure Rules?

(a) Yes
(b) No

18. If your answer to question 17 above is yes, against whom was the order granted?

(a) Nigerian Police Force
(b) Nigerian Army
(c) National Drug Law Enforcement Agency (NDLEA)
(d) State security service (SSS)
(e) Economic Financial Crimes Commission (EFCC)
(f) Others specify……

19. Was there compliance with the order(s) as regard question 18 above.

(a) Yes
(b) No

20. If your answer to question 19 above is No, what was the reason for non compliance?

(a) The order was ambiguous
(b) Deliberate refusal or neglect to comply with the order(s)
(c) Refusal to accept service of the Order(s)
(d) All of the above
(e) Other(s) specify……..

21. Did you take any measure to ensure compliance?

(a) Yes
(b) No

22. If your answer to question 21 above is yes what was the measure taken to ensure compliance

(a) Issuance of form 4 as provided by Order 14 of the Fundamental Rights (Enforcement Procedure) Rules 2009
(b) Contempt proceeding.
(c) All of the above
(d) Other(s) specify……..

23. If your answer to question 21 above is No what was your reason of not taking any measure to ensure compliance.

(a) The procedure is cumbersome
(b) Lost hope in the whole process
(c) Because the law enforcement agents are above the law.

(d) All of the above
(e) Other(s) specify……..

22. To what extend do you agree with the following statement about the Fundamental Rights (Enforcement Procedure) Rule, 2009

	Strongly agree	Agree	Strongly disagree	Disagree
	1	2	3	4
(a) The issue of main claim and ancillary claim is a problem to fundamental right enforcement procedure.	[ ]	[ ]	[ ]	[ ]
(b) Human Rights cases alleging Serious human right violation Are routinely struck out or dismissed for lack of compliance with mode of enforcement .	[ ]	[ ]	[ ]	[ ]
(c) Do you agree that non grant of frequen adjournment has facilitated speedy enforcement of fundamental human rights	[ ]	[ ]	[ ]	[ ]

SECTION "C" ENFORCEMENT OF FUNDAMENTAL RIGHTS IN NEGERIA.
(This section is to be completed by the Law enforcement agents)

1. Do you have power of arrest?
(a) Yes
(b) No

2. For how long does your agency detain a suspect under normal circumstances?

(a) 2 days
(b) 5 days
(c) 7 days
(d) 2 weeks
(e) one month and above
(f) Other specify……

3. Do you agree that the Law enforcement agency cannot detain a suspect beyond 24 hours?

(a) Strongly agree
(b) Agree
(c) Disagree
(d) Strongly disagree
(e) Neutral

4. has there being any Order(s) granted against your agency on Fundamental Rights Enforcement
(a) Yes
(b) No

5. If your answer to question 4 above is yes did you comply with the court order(s)?
(a) Yes
(b) No

6. If your answer to question 5 above is yes, was compliance prompt?
(a) Yes
(b) No

7. If you're your answer to question 5 above was No, what was your reason for non compliance
(a) The order(s) was ambiguous
(b) The order (s) was not served
(c) All of the above
(d) Other(s) specify……..