AN ANALYSIS OF JUDICIAL PROTECTION OF HUMAN RIGHTS IN NIGERIA: ISSUES AND CHALLENGES

BY

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DECLARATION

I, ESIEVO Cynthia hereby declare that the work in this thesis titled: "**An Analysis of Judicial Protection of Human Rights in Nigeria: Issues and Challenges**" has been carried out by me. The information derived from other literatures has been duly acknowledged. No part of this thesis has been previously presented for another Degree or Diploma at this or any other institution.

_____	_____	_____
ESIEVO Cynthia	**Signature**	**Date**

CERTIFICATION

This Dissertation titled: "**An Analysis of Judicial Protection of Human Rights in Nigeria: Issues and Challenges**" by **ESIEVO Cynthia** meets the regulations governing the award of the degree of Master of Laws (LLM) of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to God Almighty.

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ABBREVIATIONS

A.C	African charter
A.J.	Administration of Justice
A.U	African Union
AGF	Attorney-General of Federation
ALL FWLR	All Federation Weekly Law Report
CA	Court of Appeal
Cap	Chapter
F.R.N	Federal Republic of Nigeria
H.R.R.	Human Rights Reports
I.H.L	International Humanitarian Rights
Ibid	In the same source as previously cited
J.C	Juvenile Court
J.S.C	Justice of the Supreme Court
JCA	Justice Court of Appeal
LF.N	Laws of the Federation of Nigeria
LFN	Laws of the Federation of Nigeria
N.H.R.C	National Human Right Commission
N.I.C	National Industrial Court
N.J.C	National Judicial Council

NRNLR	Northern Region of Nigerian Law Report
NWLR	Nigerian Weekly Law Report
Op. Cit	Opere Citato (In the work already cited)
P.C	Privy Council
P.O	Public Interest
R.P.L	Right to Personal Liberty
SC	Supreme Court
SCNJ	Supreme Court of Nigeria Judgment
U.D.H.R	Universal Declaration of human Right
U.N.O	United Nations Organizations
W.A.C.A	West African Court of Appeal

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ABSTRACT

Generally, the protection and promotion of human rights is a core function of the three terms of government to wit: The executive, legislature and the judiciary. In particular, judicial protection of human rights becomes expedient not only for the rule of law but the determination of equality governance. For example, an organized government needs a functioning legal and judicial system to bring forth its aspirations through an enormous regard for the protection and promotion of human rights. On this note, this dissertation aimed at examining the effectives of the judiciary in discharging its duty in the enforcement of human rights in Nigeria through the study of the existing legal writings on the subject matter with a view to strengthening the institution in the final analysis. The sources of information relied upon were relevant books, articles in Journals publication, judicial authorities, statutes, conferences and internet materials. In the course of the research it was found among others that the judicial remedies which are in place to redress human rights violations are not adequate as a result of non-respect for the judiciary, corruption and political influence which leads to the non-enforcement of judgments and orders of the Court. Against this backdrop, this dissertation concluded by recommending amongst others that the current strive against corruption by the government should not be confined to the Judiciary but to the society at large in other to chastise and strengthen the institution to be able to make for the best means of protecting human rights in Nigeria.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

The protection and enforcement of human rights, should be the core concern of very human as they are rights that one is entitled to by just being a human and it is a universal right. These rights are not rights created by virtue of legislations alone rather, they are inherent. Although, Nigeria has seriously improved in its constitutional provisions regarding human rights, however, there are areas where improvements needs to be made just as the American Human Rights Reports of 2012[1] pointed out, these areas includes; several killings by Boko Haram, abuses and killings by Nigerian forces, absence of equality and problems of freedom of speech. Unfortunately, Africa as a continent has been denoted as the land of unsuccessful, uneven and ill administered conflict that is poverty-ridden.

Also, there appear to be a high level of corruption in the judiciary and the government itself, it is evident by the hounding of corrupt judges by the present President Buhari's administration, which lifted the veil of judges for the entire nation to see how the temple of justice has been destroyed because of corruption.[2]

The judiciary plays a significant role in the promotion and protection of human rights in any country, because it is the last hope of the common man. It is pertinent to note that human rights can be adequately protected by the judiciary if the powers and role of judiciary is preserved and devoid of injustice and corruption.

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[1]US Department of State. Human Rights reports 2012.<https://www.state gov/j/drl/rls/hrrpt/2012humanrights report/index.htm#wrapper>accessed 10/2/2017.

[2]Odebode, N. *et al*. 'DSS Arrest of Judges: Rivers C.P to be sanctioned for 'Aiding' Governor Wike.' The Punch (Lagos, 10 October 2016) pp.10 &36.

According to Fahed Abul-Ethem[3],'The greatest value of human life is best represented in the recognition of human right and where people are allowed to enjoy and practice these God-given rights without any fear of impunity and to the extent that their civil liberty and humanity is preserved.'

The judiciary is the power house of justice and they are empowered to determine civil rights and duties of everyone where there are controversies brought before them by the proceedings established and recognized by law.

According to Nwabueze,[4] the judiciary is empowered to do the following;

a. Compulsorily assume jurisdiction at the instance of a party and inquire into the matter in dispute.
b. Authoritatively and conclusively determine the facts in dispute.
c. Authoritatively decide the law relevant to the fact in dispute.
d. Competently give a decision on the application of the relevant law to the facts and also dispose of the fact in dispute.
e. Arrive at a binding decision on the parties to the dispute.
f. Authoritatively enforce compliance with the decision readied.

The High Courts, both the Federal and State have jurisdiction to hear and entertain cases of human right violation by virtue of section 46 (1) of the 1999 Constitution which is a replica of section 42 (1) of the 1999 Constitution. Hence by virtue of the provisions of the Constitution, the protection of human rights is the responsibility of the judiciary as it categorically stated in section 46(1) 'that any person who alleges that any of the provisions in this chapter, has been, is

[3]Abul-Ethem, F. (2003) The Role of the Judiciary in the Protection of Human Rights and Development: a Middle Eastern Perspective. *Fordham International Law Journal.* Vol. 26, p.761.
[4]Nwabueze, B.O. (1977) *Judiciarlism in Common Wealth Africa*. Haurst & Co. pp. 1-2.

being or likely to be contracted in any state in relation to him may apply to a High Court in that state for redress.'

The rights are entrenched in Chapter Four and Chapter Two of the 1999 Constitution respectively, even though the rights in Chapter Two are expressed to be non-justiciable. The role which the judiciary plays in the protection of human rights can never be over emphasized. In this research work, the problems and prospects of protection of human rights by the judiciary are adequately dealt with. Human rights are so highly placed in every democratic society as such; its importance was expressed by the Court of Appeal in the case of *Fawehinmi vs Abacha.*[5] The Courts are open to entertain and decide on the issue of fundamental rights at any time without any restrictions and it is never affected by the statute of limitation. This is a shift from the 1979 Enforcement of Fundamental Rules and it is a significant innovation brought in by the 2009 Enforcement Procedure Rules. This work purports to analyse the issues and challenges of judicial protection of human rights in Nigeria.

1.2 Statement of the Problem

The issues of human right have not only become a universal issue but a significant one and its targeted at the protection and promotion of universal observance and respect for human rights which has obviously been seen as core at both the international and municipal levels. It is the reason for the promulgation and adoption of the Universal Declaration of Human Rights and the formation of the United Nations Organisations and even the African Union which provides the foundation for the development and internationalization of human rights.

[5] (1996) N.W.L.R. pt.475, 710

In this regard, Haleem[6] argues that 'the quest for human rights and human dignity is a phenomenon of contemporary life of universal dimensions and much importance.' The problem now is; has there been adequate protection of human right by the judiciary? Despite the delay in the enforcement of human rights and other lackadaisical attitudes of the judiciary especially the Magistrate Courts where suspects who have been detained by the police for more than the required time of 24 to 48 hours are being arraigned before the Magistrate and are not even given the opportunity to be properly represented as they are thrown into the prison custody just like that, and this has posed a threat to the survival of human rights in Nigeria as the Nigerian Police Force now takes advantage of the situation claiming that it as a result of decongesting their cells.

Secondly, the role which the judiciary plays in the protection and promotion of human rights in Nigeria need to be identified to ensure that there are really measures by which the judiciary uses to ensure adequate protection and promotion of these rights. The Nigerian Constitution has conferred on the judiciary the authority of interpretation, enforcement of laws and prescribing punishment for the violation of laws.

Thirdly, the judiciary which is often referred to as the hope of the common man cannot allow itself to be clouded with situations which poses threat to the sustenance of human rights based on the fact that it acted so significantly in the military regime, and despite the harshness of the military, it could still defend the course of the common man, this was observed in the case of *Fawehinmi vs Abacha.*[7] The role of the judiciary in the protection of human rights in Nigeria in this Democratic era where there are incessant violation of human rights especially by some Islamic religious sect known as Boko Haram, several killings and massacre based on religious and tribal sentiments; the brutality of the government force, where citizens are being shot at

[6]Haleen, J. (1988) *The Domestic Application of International Human Rights Norms*. Common Wealth Secretariat. p. 93.
[7] Ibid.

anyhow either because of money collected on the road by the Police Force in the name of "roger" or the man-handling of citizens by these same force men.

The above problems are what the researcher has observed and they form the basic purpose for this research work. Infringement of fundamental rights can lead to the insecurity of lives and properties. Since the executive arm of government has not been fully able to fight the challenges of infringement of human right, the judiciary, which is the temple of justice can salvage the executive as it is written in the Holy Bible,[8] that 'if the foundation is destroyed what can the righteous do?' So, if the judiciary fails to protect human rights what can the common man do? Hence, prospects of the judiciary in the protection of Human Rights in Nigeria has been completely analysed in this work.

1.3 Justification of the Research

It is observed that the judiciary is surrounded with much challenges which hamper the distribution of its Constitutional duty to ensure adequate protection of the rights of citizens in Nigeria, it is obvious that the judiciary as an arm of the government lacks the independence which the other two arms enjoy and this has made the judiciary to resemble an agency of the executive arm of government. The dispensation of justice is the principal role of the judiciary, but it appears that some of the officers in the temple of justice got carried away at some point due to self-gratification and corruption this was why sometime in October 2016, most of the judges had their house raided on the allegations of corruption.

According to Justice Onnoghen in *A.G Abia State vs A.G Federation*[9]

[8]Psalm 11 vs 3, King James Version.
[9] (2006) 16 N.W.L.R. pt.1005, p.265, pp. 420-421.

> I hold the view that though we may continue to say that our democracy is at its infancy, we cannot lose sight of the fact that ours is a Constitutional democracy based on the rule of law; if then our democracy is based on the rule of law and Constitutionalism how come the judiciary is left to remain perpetually dependent on the executive arm rather than assuming its powers as vested in it by the Constitution which created it.

For the judiciary to adequately perform its functions as enshrined in the Constitution, which includes the promotion of the rule of law and protection of human rights, then separation of powers, judicial review and democracy, must be clearly followed as this will ensure the protection of human rights by the Courts and the other arms of government.

This research work will not only foster a better understanding and analysis of the judicial protection of human rights, it will also show the need for the strengthening of the political order toward a more responsive approach to the violation of human rights.

This research work also shows the importance of cultivating the right attitude towards the respect for human right and its promotion. It espouses the bound and ties between human rights and the judiciary in Nigeria. This research also analyses and examined the extent of the protection and enforcement of human rights in Nigeria.

1.4 Aim and Objectives of the Study

This research work is aimed at examining and analysing the development and roles of the judiciary in the protection of human rights. This research highlights the mechanisms for the protection of human rights, by the judiciary, their flaws and strengths.

The objectives of this research are as follows:

1. To examine the effectiveness of the judiciary in discharging its duty in the enforcement of human rights by highlighting the short comings and progress of the judiciary in the protection and promotion of human rights in Nigeria.

3. To examine the purport of international instruments in the protection of human rights in Nigeria.

4. To analyse and recommend practices that will assist and strengthen not only the protection of human rights, but the strengthening, development and growth of the judiciary in Nigeria.

5. To make significant contribution to the discourse on the judicial protection of human rights in Nigeria after having examined its prospects and challenges in Nigeria.

1.5 Research Methodology

The research methodologies employed in the course of this research is the doctrinal and analytical methods of research respectively. The analytical method of research is adopted for the review of the various literatures used in the course of the work and also the various analyses presented in the entire work. The analytical research method affords the researcher the opportunity to evaluate various data from the Courts and scholars, which enabled the researcher to identify certain gaps in the existing literature and also to proffer recommendations and also contributions to the existing literature.

The researcher also made use of the doctrinal research method thereby making use of books, statutes, case laws and other related authority to draw up its conclusion. As the doctrinal method of research asks questions as to; what are the existing laws? Are there gaps which need

to be filled? and what remedies are there to fill up such gaps. This research also made use of primary and secondary sources of authority.

1.6 Scope and Limitation of the Research

This research work investigates into the practices and duties of the judiciary in Nigeria as it relates to the protection of fundamental rights. The study emphasizes on the role of the enforcement, protection and promotion of human rights which is a care feature of justice in any democratic society.

While chapter iv of the 1999 Constitution is the ultimate focus of the research, other instruments on human rights like the Universal Declaration of Human Rights and the African Charter on Human and People Rights will also be discussed in the course of this work. For the purpose of this work, this research will not extend more than the scope stated in this work and will be limited to the challenges and prospects of judicial protection of human rights in Nigeria.

1.7 Literature Review

In understanding the subject matter of this research work, a review of the existing literatures employed to enrich this work will be made. So much works have been written by scholars on the issue of judicial protection of human rights and the role of the judiciary in the protection of human rights, but the various authors have failed to identify or discuss the challenges and prospects of the protection of human rights by the judiciary. The subject matter of this discourse: 'An Analysis of the Judicial Protection of Human Rights in Nigeria: Issues and Challenges' is based on the idea and study of the researcher. However, the contributions made by the various literatures gathered are very relevant to the development of this research and it is the researcher's

aim to fill up the gaps which were left out by these literatures and also make significant contributions to knowledge.

Human right is a concept which cuts across all disciplines both science and arts, it roots deep into history and philosophy and this is evident through the early history of human right which evolved through the existence of mankind. Human rights developed over time from its early stage to its modern state, and have more rights which can be codified added to it, such as the third-generation rights.[10]Terms such as rights, duty and others should not be defined but rather read as sentences, however as its watchword, the French Revolutionists sees it as 'liberty, equity and fraternity'.

According to Danladi,[11] the concept of human right is closely linked to the state or organised society to government. It referred to the relationship between the individuals and the state or government; their rights to political participation and other rights that the individuals should enjoy and their claims as regards to the state.

Vasak[12] went further to divide human rights into three generations of rights, these are: The right to life, equality before the law of freedom of speech, the right to a fair trial, freedom of religion and voting right. These generations of rights serve as a negative protection of individuals from excesses of the state and are often referred to as "blue rights".

The first generation of rights were first enshrined at the global level and given international status by right of articles 3 to 21 of the Universal Declaration of Human Rights

[10] Which are more of a group and collective right such as right to natural Resources

[11]Danladi, K.M(2016) *Introduction to Human Rights Law and Practiced.* Ahmadu Bello University Press Limited, Zaria, p.27

[12] Karel V. Human Rights: A Thirty Year Struggle: The Sustained Efforts to give Force of Law to the Universal Declaration of Human Rights; UNESCO Courier 30:11 Paris: United Nations Educational, Scientific, and Cultural Organization, November 1977.

(1948) and later in the International Covenant on Civil and Political Rights (1966). They are based on liberty and political participation.

The second generations of rights are economic, social and cultural in nature. They guarantee citizens equal treatments and conditions in life. They are equality related and gave full credence after the Second World War. They include; the right to be employed in a just and favourable condition, rights to food, housing and health care, social security and unemployment benefits.[13] They were enslaved and recognized internationally by right of articles 22 to 28 of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights as such Nigeria has ratified this international instrument and has enacted some of these rights into its municipal laws such as the right to organise and bargain collectively[14] and workers' compensation and they are also called the 'red rights'.[15]

The third generation of rights include; group and collective right; right to self-determination, right to economic and social development, right to a healthy environment, right to natural resources, right to communication and communication rights; rights to participate in cultural heritage; rights to intergenerational equity and sustainability.

These rights are more difficult to enact with local laws and legally binding instruments as they supersede those of civil and social rights as stated earlier which are contained in most international documents and laws.[16]

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[13]Ibid.

[14] Section 9, The Labour Act, Cap L1, *Laws of the Federation of Nigeria,* 2004,

[15]Karelvasak, Human Rights: A Thirty Year Struggle: The Sustained Efforts to give Force of Law to the Universal Declaration of Human Rights; UNESCO Courier 30:11 Paris: United Nations Educational, Scientific, and Cultural Organization, November 1977.

[16] Such as the 1972 Stockham Declaration of the United Nations Conference on the Human Environment and the 1992 Rio Declaration on Environment and Development

Although the African Charter on Human and Peoples Rights embodied most of these rights such as the right to self-determination, right to development, right to natural resources and the right to satisfactory environment,[17] these right have been discussed by most scholars.[18] The concept of human rights goes further to include the concept that 'all men are equal.' According to the Vienna Declaration and Programme of Action: 'all human rights are universal, indivisible, and interdependent and inter related.'[19] Nigeria has made so much improvements in human rights under the 1999 Constitution although, the American Human Rights Report of 2012 shows areas where more improvement, are needed such as; abuses by Boko Haram, killings by governmental forces, lack of social equality and issues with freedom of speech;[20]

Human rights are at the form of human existence without it, life would be meaningless and living would be a horror. According to Cranston 'human rights are not the particular privileges of the citizens of a state, but something to which every human being everywhere is entitled.'[21] Therefore, Human Rights are rights which are universal and commits to all human beings alike.

The natural rights proponents such as F.A Hayek and Maurice Cranston believes that human rights are not a mere creation or privilege given by some special states against others.

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[17] Charles kesler, 'charleskesler on the grand liberal project, uncommon knowledge (May 28, 2009); Cranston, Maurice, human rights; real and supposed, in political theory and the rights of man, related by D.D. Raphael (Bloomington. Indian university press, 1967), pp. 43-51; Bastiatclaude –Frederic, 'selected essays on political economy. (Irvington –on- Hudson NY: the foundation for economic education, inc 1995) www.econlib.org/library/bastiat/basess2. html> accessed 20/2/2017; Jeremy Waldm, Liberal Right: Collected Papers (1993) p.7; Karal POLANYI Origins of our Time:Non. Beacon press united states of America 2001. Hazlett Thomas W. 'the road from serfdom: an interview with F.A. Hayak; foreseeing the fall: (July 1992 issue) <www.reason.com/archives/1992/07/01/the -road-from-serfdom/47> accessed 20/2/2017

[18] Articles 20,21,22 and 24, Africa Charter on Human and People's Rights.

[19] Part 1, paragraph 5, Vienna declaration and programme of action. >https://en.wikipedia.org/wiki/vienna_declarationandprogramme_of_action>20/2/2017.

[20] US Department of State. Human Rights reports 2012.<https://www.state gov/j/drl/rls/hrrpt/2012humanrights report/index.htm#wrapper>accessed 10/2/2017.

[21] Section 46 (1), Constitution of the Federal Republic of Nigeria, 1999.

According to Koffi Anan, 'Human rights are foreign to no culture and native to all nations; they are universal.'[22]

The protection of human rights by the judiciary in Nigeria, is a core duty of the judiciary, as the judiciary has been seen to be the last resort of the common man. The Constitution refers every citizen to the judiciary if any of their rights is violated or infringed upon[23]. The judiciary has an enormous role to play in the protection of human rights as it is bestowed with the duty to interpret laws and enforce same.

The Court has the exclusive jurisdiction to hear and entertain allegations of human rights violations.[24] Therefore, the Constitution makes the Court the power house for the protection of human rights. It is clearly stated in subsection 2 of section 46 that the High Court is vested with an original jurisdiction to entertain matters relating to human rights.[25]

Hence, a person needs not wait until he is completely brutalised before he can seek redress in the High Court.[26] Nikki Tobi also went further to state that: "The law is an equal dispenser of justice and leaves none without a remedy for his right. It is thus a basic and elementary principle of common law that whenever there is a wrong, legal wrong or injury, there ought to be a remedy to redress the wrong."[27]

[22] Maurice, Cranston. *Ibid.*
[23] Section 46 (1), Constitution of the Federal Republic of Nigeria, 1999.
[24] Ibid.
[25] The High Court refers to both the State and Federal High Court.
[26]Niki, T. (1999) *Fundamental Rights Enforcement and Procedure. Rules and Speedy Trials.* 1999 Judicial lectures, MIJ, Professional Publishers Ltd, Lagos, p.77.
[27]Ibid.

According to Musa and Paul,[28] human rights violation is one of the reasons for Nigeria's socio-economic predicament. The problem associated with the judicial protection of human right has to do with the rule of law. According to Kabo,[29] the rule of law is not limited to the executive corridors alone, but extends to the judiciary which is supposed to be independent.

Kabo focused on the violation of Court orders by the government and the image of the protection of human right, but failed to highlight ways the judiciary as an independent arm can cure the issue in the flagrant disobedience of its order by the other arms of government.[30]

Following the various thoughts of scholars who had written on the judicial protection of human right in Nigeria, there is one thing that is evidently clear; human right is the right that is inherent in an individual by virtue of his being a human being and belonging to a society. These rights are immutable and predate written laws.

Various writers have written on the role of the judiciary; the violation of human rights and the protection of human rights in Nigeria. However, these literatures have not discussed the challenges, issues and prospects of judicial protection of human rights in Nigeria. It is on this foundation that this study finds its relevance.

1.8. Organizational Layout

This dissertation is divided into five chapters;

Chapter one organizes the entire research work into organizational context. It sets out the introductory context of the work, which includes the background to the study, the statement of

[28]Musa A. and Izah, P. (2014) Element of Nigeria's Socio- Economic Crises; A Case of Human Rights Violations. *Human Rights Review International Human Rights Journal*. Vol. 4, p.54.
[29]Kabo, S.E. (2014) Rule by Law: Appreciating the Activities of Boko Haram in the Determination of Human Rights in Nigeria. *Human Rights Review International Human Rights Journal* Vol. 4, p.115.
[30] Ibid.

the problem which was investigated in the course of the research, the justification and reason for the research, it explains the aim and objectives of the study, the methodology which was employed in the research, the scope and limitation of the research and reviews many of the existing secondary literatures.

Chapter two discusses the historical development of the judiciary in Nigeria. It traces the history of the Nigerian Court system from the pre-colonial era to the present day Nigeria. It also makes an analysis of the judiciary in Nigeria discussing the various Courts including the superior Courts of record and the inferior Courts.

Chapter three looked at the various rights which are enshrined in the Constitution and the projection of these rights by the judiciary. It captures the provision of the rights and the Fundamental Rights (Enforcement Procedures) Rules, 2009. Chapter three also discusses the restrictions and degradations from these rights enshrined in the Constitution. It further discusses the provisions of section 46 of the 1999 Constitution which provides for resort to the Court as a remedy where one's right is being or have been violated.

Chapter four discusses the various issues, challenges and prospects of the judiciary in the protection of human rights. Institutions such as the Security Agencies, National Human Rights Commission will be highlighted and discussions on the prospects and protection of human right by the judiciary will be engaged.

Chapter five which is the concluding chapter of this research makes summary and discusses the various findings and the researcher's recommendations on how best the judicial protection of human rights in Nigeria can be achieved.

CHAPTER TWO

HISTORICAL DEVELOPMENT OF NIGERIAN JUDICIAL SYSTEM AND ANALYTICAL DISCOURSE

2.1 Introduction

The territories that made-up Nigeria had a very rich political and judicial system even though some were less formal like the Hausa/Fulani's Emirate system while others were not formal like the Igbo's and Yoruba's. These judicial systems have helped through the process and the eventual development of what seem to be the judiciary in present day Nigeria. Although, through the history of the various traditional judicial systems, the roles of the executive and the judicial arm were interwoven, as it is the executive that exercises judicial control and he is seen a supreme in the chiefly territories like in the case of the Yoruba pre-colonial system.

However, these systems were structured in such a way that dispute settlement and orders were served with justice. Eventually, the colonial masters imported the British ways into these territories as a means of consolidating and legitimising colonial rule in Nigeria.[1] When these colonialists came into these territories, they set up their own judicial system so as to have firm control of the territories and final judicial decisions were reached by the Judicial Committee of Privy Council in England. These new structures were in place alongside the Native Courts system which was modified and the warrant Chiefs could now appoint judges and members of the Native Courts. They remained so until Nigeria attained her independence in 1960 and also became a Federation in 1963.

[1]Nkum, K.J.(2015)'Evolution and Achievements of the Judiciary' <https://www.linkedin.com/pulse/evolution-achievements-judiciary-king-james-nkum> accessed 29/10/2016.

One spectacular development which took place in 1960 was the drafting of a Constitution, even though it was made after the West Minster model and this now gave the Nigerian Judiciary its independence from the Executive and also, recognised it as a distinct arm of government. Although, appeals from the Federal Supreme Court still went to the Judicial Committee of the Privy Council for final decisions until 1963 when Nigerian finally became a Federal Republic. One cannot forget to mention the historic case of *Akintola v Aderemi* which brought about the turnaround in the judiciary and finally in 1963 Nigeria amended its Constitution thereby removing the position of a final appeal to the Privy Council and subsequently the principle of stare decisis. Nevertheless, the Judges still reflected the colonial history until Justice Adetokunbo Ademola was appointed being the first indigenous Chief Justice and this brought about a new dawn in that, indigenous judges were now appointed. This development progressed until the various military interventions which occurred in the country at different periods in the history of the country. Nigeria endured eight (8) military coups having the first one in 1966, during these periods, the Constitutions were variously suspended and the independence of the judiciary were undermined,[2] as the Military Juntas were both Executives and Legislature, this caused an incessant executive lawlessness hence they promulgated decrees which ousted the powers and jurisdiction of the Court.

It does appear that this period caused a huge decay in the judiciary as some of the Judges got so corrupt and bowed to the pressures of the Military governments while the ones who were courageous stood still and went out of their way to preserve the Judicial sanctity and observance of the rule of law and also ensured the respect and upholding of the fundamental rights of all

[2] Ibid

Nigerians.[3] Despite all these hindrances, the judiciary has thrived in the development of justice and has continued to live up to its Constitutional and historic role as the citadel of democracy and fundamental rights.

2.2 Historical Development of Nigerian Judiciary

The historical development of Nigeria Judiciary will be divided and discussed as thus:

i. History of the judiciary prior to colonialism

ii. History of the judiciary during Colonial period

iii. Post colonial period history

2.2.1 History of the Judiciary Prior to Colonialism

Before the advent of colonialism there seem to be nothing which existed as "Nigeria" as it was a large geographical area which covered areas such as the plains and seas of the territories now known as Nigeria. Nigeria in its current form is a combination of over 350 ethnic groups and 500 dialects.[4] These various ethnic groups had their different legal and justice systems even though some were informal while others semi-formal. The era marked a period where the people in different territories and geographical locations governed themselves by their traditional means and these systems varied from one region to another due to their linguistic and ethnic differences.[5] Although, some of the administrative systems were centralized or chiefly such as the Yoruba and the Hausa/Fulani whereas the others were decentralized or chief less and

[3]Ibid.
[4]National Open University of Nigeria, 'Nigerian Legal System II' (Law 212, 2011) <http://www.nou.edu.ng/uploads/NOUN_OCL/pdf/Laws/Law%20212%20Nigerian%20Legal%20System%20II.pdf> accessed 16/10/2016.
[5]Oyediji O.B, (2014) 'Nigeria Before Colonialism: re-Colonial Administration in Nigeria' <https://profseunoyediji.wordpress.com/2014/03/16/Nigeria-before-colonialism-pre-colonial-administration-in-Nigeria/> accessed 17/10/2016.

stateless such as the Igbo.[6] Broadly speaking, the traditional political systems prevalent in these regions prior to colonialism were in different categories:

(i) Those ruled by strong men whether Emirs, Paramount Chiefs, Chiefs and Elders like the Hausa/Fulani and the Yoruba because in this political arrangement power was centralized in either individuals or ruling groups.

(ii) Regions where power was concentrated in any individual of which the people govern themselves like a mini-republic, a typical example of this is the Igbo clan system. Their mode of leadership made them appear more democratic.

(iii) A mixture of chiefdoms and republican system. Here power was sometimes concentrated and sometimes dispersed.[7]

The history of the judiciary will be discussed in three divisions viz:

(i) The Northern Nigeria Judicial System;

(ii) The Igbo Judicial System;

(iii)The Yoruba Judicial System.

(i) The Northern Nigeria Judicial System

The administrative structure which was dominant in Northern Nigeria (the Hausa/Fulani) was the Emirate System.[8] Although, some areas like the Tiv areas who were more of a minority group were not ruled by the Emir as they were not Islamic converts.

The Emirate system was introduced in the 19th century by Usman Dan Fodio who was a Fulani. The Fulani's were pastoral people who resided in the North and other parts of Africa,

[6]Ibid.
[7] Leo Dave and Anthony Oyewole,(1983)*A' Level Government Text Book for West Africa,* Oribonoje Press and Book Industries Nig. Limited, p. 66.
[8]Ibid.

they were generally herdsmen and were into cattle rearing. They would travel distances in search for water and grazing land, hence, they get into contact with other ethnic groups.[9] In ancient times judicial duties were carried out by "Maudo Laawol Pulaaku" (Guardian of the Fulani way) who exercised judicial control over the clan. The "Fulani Way" consisted of a few major principles:

(a) The right conduct which is essentially the practice of family virtues, and;

(b) Fulfillment of duties towards elders, wives which enables smooth operation of the family and linage as economic and corporative units.[10] The Guardian of the Fulani Way was the judge and he had the power of banishing anyone who disobeys the Fulani Way.[11]

Following the Fulani Way, Usman Dan-Fodio who was a Fulani migrated to the Hausa Region to spread Islam, as the Hausa's were the more powerful ethnic groups and also dominated the Fulani. Usman Dan Fodio then waged a Holy war (Jihad) against the Hausa and conquered them and he established his empire therein.[12] The empire was shared among his two sons: The Sokoto Empire (East) and the Gwandu Empire (West) and subsequently other emirates were created and new emirs appointed by either the Sokoto or Gwandu Emirs. During this period until the advent of colonialism the Supreme law of the Emirate was the Islamic or Sharia Law (Laws of God). Where the laws are clear, they are enforced but where Islamic Law was silent, the Emir could make laws to ensure peace, order and good governance.[13]

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[9]Ayittey, G.N. (2012) 'STATELESS SOCIETIES: The Igbo, The Fulani, The Somalia' <https://seunfakze.wordpress.com/2012/02/21/stateless-societies-the-igbo-the-fulani-the-somali-by-prof-g-n-ayittey/> accessed 17/10/2016.

[10]Carlston, K. S. (1968) *Social Theory and African Tribal Organisation*. University of Chicago Press, p. 151.

[11] Ibid.

[12]Leo D. and Anthony O. (1983) *A' Level Government Text Book for West Africa*. Onibonoje Press and Book Industries Nig. Limited, p. 67.

[13]Ibid.

The Emir was also a religious leader hence, he interpreted the Islamic laws to his people together with those laws as circumstances arose.[14] The judicial system in the Emirate was special, in that, its laws were Islamic religious laws including those enacted by the Emir and its interpretation could only be made by persons who are specially trained for that purpose and as such, those who were educated in Islamic Laws and principles were called "Alkalis" (for they interpreted Islamic or Sharia Laws).[15]

The Alkali Courts were set up in every Emirate with the purpose of performing judicial functions and interpreting Sharia Laws, they punished offenders according to Islamic/Sharia Laws. Although, in some circumstances, the Emir would sit in Court to settle land disputes or other issues not covered by Sharia Laws.[16] The Alkalis sit to hear and decide matters including matrimonial causes, inheritance, theft, debt, slander while the Emir tries such heinous crimes such as murder in his Court and the Emir's Court is the Supreme Court.

(ii) The Igbo Judicial System

Although, the origin of the Igbo still proves to be uncertain and open to research. The Igbo still had a very rich form of governance and conflict management despite its egalitarian nature. However, there existed different institutions tagged with judicial functions in pre-colonial Igbo places. The Igbo judicial system was practiced in land matters, inheritance issues and sundry issues.[17] The Igbo's had an "Informal Adjudicatory System", their justice system was at different cadres; the Court having original jurisdiction in the Igbo land was the family Court also known

[14] Ibid.
[15] Ibid.,p. 68.
[16] Ibid.
[17] Oreagbunam, I.K.E. (2009) 'The Principle and Practice of Justice in Traditional Igbo Jurisprudence' (6) (1) *OGIRISI: A New Journal of African Studies,* <file:///C:/Users/Udodirim/Downloads/52335-80363-1-PB.pdf> accessed 18/10/2016.

as the 'Court of the father (husband) or household Court[18]. In the family, the father being the head of the family adjudicates on matters arising from within his family including acts or omissions done by his wife(s) or children. The children are taught from birth on the way of life and the dos and don'ts in the village and family. The father would convene a hearing on the matters arising in the family having the children and wives listen to his judgment and the person accused would call witnesses from within or outside the immediate family. Punishments were meted on them if found guilty such as denial of food, a slap on the cheek, rubbing of pepper in the eye, a knock on the head as this depends on how serious the offence was, the father's authority was never questioned.[19]

Also, there was the Council of Elders or Ndi Amala, they adjudicated on certain matters which were beyond the family. In the Igbo places, each village was united by ties of consanguinity.[20] The Elders in Council sat to hear and decide matters which were inter-family and it could be civil or criminal. Where the matter was civil, the Council of Elders would mediate on it and make sure it settled it peacefully but where it had to do with a criminal offence, there are serious penalties attached to them, examples of such are; for issues involving theft and burglary, the culprit would be made to repay the victim by restoring back what he has stolen from the victim or compensate the victim; where it involves robbery and other like offences, the culprit would be made to dance naked in the village square and he would be beating seriously in the presence of the entire villagers then he would be allowed to go home.[21] The Council of Elders usually conducts the trials in the village square and it is usually open to all the villagers

[18] Chris, D. 'POLITICS: Using any Pre-Colonial African System, Discuss the Interplay between Politics and Law' (Politics: Contemporary Political Issues Updates, 3/3/2015) <http://www.chrisdonasco.blogspot.com.ng/2015/03/using-any-pre-colonial-african-system.html?m=1> accessed 18/10/2016.
[19] Ibid.
[20] Ibid.
[21] Ibid.

both young and old. Also, where it involves serious offences such as murder, manslaughter and other serious offences, the guilty person and his family may be permanently expelled from the village or be sent on exile for a period of time after wards they will return to the village or they could even be ostracized in the community as they would be required to buy from no one and no one would buy from them, neither would they be spoken to, either ways, their properties could be collected from them or be razed down by the youths as a means of appeasing the gods of the land.[22] Where there were issues of doubt and facts to be proved, the diviner or priest may be sought so as to ascertain the truth or identify the offender afterwards, the diviner would either use trial by ordeal to reach his conclusions or deliver the guilty person back to the hands of the elders in council.[23] The highest order of justice was the Oracle, where persons who have been adjudged by the Council of Elders who were not satisfied with the judgment, they could move to the Oracle, as the Oracle was believed to have supernatural powers which transcends to the supernatural realms to get answers to questions.[24] Sometimes, the Council of Elders could summon its accused before the Oracle for justice. The most famous Oracles before the coming of the colonial masters was the Long Juju (Ibini-Ukpabi) of Arochukwu.[25]

(iii) The Yoruba Judicial System

The Yoruba's had more organized system although it was not strictly formal but they had structures put up to settle their civil and criminal issues and these informal Court systems were used appropriately.[26] Although, it would be difficult to summarise the entire Yoruba System as

[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] Onadeko, T. (2008) *Yoruba Traditional Adjudicatory Systems.* African Study Monographs, pp. 15-28.

they vary from group to group, even though they all claim their origin from Oduduwa.[27] It would worthy of note that before the coming of the colonialists Yoruba had a highly structured form of government consisting of the Executive, Legislature and Judiciary. The Oba was the highest in authority and serves as the executive, he was seen as a direct representative of Olodumare (God Almighty) and he is called Kabiyesi (who should we challenge or question?). He is the Supreme and he administers with his Chiefs in Council. They collectively promulgate laws and these laws are approved by their deities (Imale) and their ancestors (Osi)[28] and these laws were widely accepted and obeyed by the people and thus given divine sanctions. Hence, anyone who flouts these laws were punished. Nevertheless, the enforcement of the laid rules was not solely done by the Oba and his Council of Chiefs, the Chiefs of various grades in specific towns and villages enforced these laws as well.[29]

The Yoruba hierarchy was recorded as forming from the Oba and his Igbimo (Council Chiefs) to the Adugbo (quarters) which was headed by the Olori Adugbo or Olori Itun, then the Agbo-Ile (extended family compound) headed by the Olori Ebi (head of the extended family) then the nuclear family headed by Baba (father) because the family makes up the administrative unit in traditional Yoruba, it is also a judicial branch of the Yoruba Traditional Society.[30] As a matter of fact, contentious matters were referred to the head of the family and where he could not settle the dispute, the matter would be taken to the Agbo-Ile and where the parties are dissatisfied with the outcome or there seem to be no solution, it would be taken up to the Oba.[31]

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[27] *Ibid.*
[28] Ibid
[29] *Ibid.*
[30] *Ibid.*
[31] Ali, Y. (2001)The Evolution of Ideal Nigerian Judiciary in the New Millennium. *Nigerian Bar Journal.* Vol. 1, pp. 39 – 56. <http://www.yusufali.net/articles/THE_EVOLUTION_OF_IDEAL_NIGERIAN_JUDICIARY_IN_THE_NEW_MILLENNIUM.pdf> accessed 21/10/2016.

The traditional Court system which existed among pre-colonial Yoruba society could be divided into:

The first being the Court presided over by the father of the household. He settles disputes among his family members and maintained orderliness in the family. He would give his judgement after listening to both parties because the Yoruba's do not believe in apportioning blames on any individual rather to settle the matter amicably, based on this he would not declare anyone guilty and the other innocent.[32] But in civil matters, he would identify the wrong person and ask him to apologise to the other or he would tell the two of them to desist from bad behaviours, but where the parties are not satisfied with his judgement, they could move higher to the Olori Ebi's Court and this is done by reporting the matter to the Olori Ebi.

The second which is the Olori Ebi's Court, usually, the Olori Ebi is the oldest man in an extended family and the Oba does not influence his position or appointment. The Olori Ebi's Court functioned as today's Court of Appeal to the Father's (Baba) Court.[33]The Olori Ebi would allow the accuser or appellant to state his case and witnesses and also the accused to witnesses. The Olori Ebi usually hears all the parties and would then give his judgment based on the contributions of all the persons present. He has jurisdiction to hear and determine civil cases.[34]

The third is the Olori Adugbo's Court, cases which involves members of two or more extended families would be transferred to his Court. The Adugbo is a combination of several compounds (Adugbo meaning Quarter) whether they are related or not by blood or marriage. The Olori Adugbo served as a representative of his ward in the Oba's Council of Chiefs. He has the

[32]Onadeko, T. (2008) *Yoruba Traditional Adjudicatory Systems.* African Study Monographs. pp. 15-28.
[33]Ibid.
[34]Ibid.

right to conduct preliminary investigations in criminal cases and he also has the approval and recognition of the Oba.[35]

The Olori Adugbo has jurisdiction to entertain mild criminal offences ranging from theft, adultery and witchcraft and also all appeals from the Olori Ebi's Court.[36] He gives judgment in conjunction with other Olori Adugbos whose members were not parties to the case at hand. Before judgment is passed every adult present, both male and female had the right to question or cross examine the both parties and their witnesses and these contributions are then summarised by the Olori Adugbos (quarter Heads) and of cause the matter would be settled amicably and the Yoruba's would say 'Enu agba lobi ti ri gbo' (Elders have the final say).[37] He would also place fines on the parties or punish the one having more guilt.

The fourth is the Oba's Court, appeals from the Olori Adugbo goes to the Oba for final verdict. The Olori Adugbo is also a member of the Oba's cabinet but on appeal he would have to allow the other chiefs to make judgements on the matter since it is from his quarter but he would be the one to introduce the parties concerned.[38] After the Oba would have listened to the parties and the opinions of the Chiefs he would then give his judgement which is usually final and binding.[39]

(a) The Ogboni Cult as Judicial Organ in Pre-Colonial Yoruba

The Ogboni cult which was headed by the Oluwo is also responsible for judicial administration in some Yoruba places. The Ogboni Cult is a powerful secret society which was highly feared

[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Ibid.

and revered because of its secret nature. It was made up of political and religious leaders and special priests.[40] They were also made up of elderly or senior citizens as the name goes (eni-ogbo or eni-agba) and they worshipped the 'earth spirit' and their main function was judicial.[41] They had unlimited power to impose fines on criminals and to sanction any member who errs or reveals its secrets or procedures to others.[42]

2.2.2 History during Colonial Period

It has been stated in the course of this research that the territories that made up the country Nigeria had their various administrative and judicial structures even though some were purely informal while others were partly formal, but these systems were developed by the colonialists who laid the foundations for a contemporary adjudicatory system in Nigeria. These traditional Courts have now culminated into the modern Court systems that we have today. These traditional adjudicatory systems posed problems for these aliens when they came, as they were not used to the ways of life of these territories neither were they happy with being subject to the panels presided over by these natives, as a result, they introduced the 'Consul Courts' overseen by the British government who appointed consuls to adjudicate on issues pertaining the indigenes and aliens.[43] The British government left the traditional Courts to settle disputes involving only indigenes while the consular Courts were to oversee treaties and control the

[40] Yorupedia, Yoruba Culture: Political Culture,<http://yorupedia.com/subjects/yoruba-culture/political-culture/> accessed 21/10/2016.
[41] Settling of disputes which are grave especially where it involves the shedding of blood on earth.
[42]Yorupedia, Yoruba Culture: Political Culture, op.cit.
[43]Ojomo, E. (2012) *History of the Nigerian Judicial System: Introduction to Law (JIL 001)*. University of Lagos, 5<http://www.yararena.org/uploads/Topic%20Two%20%20History%20of%20the%20Nigerian%20Judicial%20System.pdf> accessed 21/10/2016.

British subjects in those territories.[44] However, after the cession of Lagos to the British Crown in 1861 by King Dosemu, the Europeans set up these counts of which some were by statutory provisions while the others by administrative arrangements.[45]Between 1843-1913, the British government, using the Foreign Jurisdiction Act of 1843 and 1893 respectively in the southern protectorate of Nigeria, promulgated laws establishing the Courts of Equity in 1854.[46] The main functions of the Courts of Equity was to administer commercial transactions between British subjects and non-British subjects and among the British subjects themselves, they were different from the Consular Courts as they were less technical and administer trade activities, while the Consular Courts administer justice and governance.[47] Prior to the amalgamation of the Southern and Northern Protectorates with the Colony of Lagos, the Supreme Court Ordinance of 1863 created the Supreme Court in the territory of Lagos but it was later replaced with the Court of Civil and Criminal Justice, which became the highest Court in the land, of which appeals from it goes to the West African Court of Appeal (WACA) seated in Sierra Leone and from which appeals further went up to the Judicial Committee of the Privy Council.[48] Subsequently, the British government established the Gold Coast Colony which comprised of Lagos and the Gold Coast and also established a Supreme Court for the Colony by the Supreme Court Ordinance of 1876. This Court applied the Common Law, the Doctrines of Equity and the Statutes of General Application which came into Force on July 24, 1874. There was a three-tier hierarchy in the

[44] These consular Courts were frantically modeled after the British system.
[45] Duru, O.W.C. (2012) The Role and Historical Development of the Judiciary in Nigeria. <https://www.academia.edu/5185440/THE_ROLE_AND_HISTORICAL_DEVELOPMENT_OF_THE_JUDICIARY_IN_NIGERIA> accessed 21/10/2016.
[46] Ibid.
[47] Ojomo, E. *Op.cit.*
[48]Duru, O.W.C. The Role and Historical Development of the Judiciary in Nigeria (2012) 4 <https://www.academia.edu/5185440/The_Role_and_Historical_Development_of_the_Judiciary_in_Nigeria> accessed 21/10/2016.

Court system comprising of the District Commissioner's Court, the Divisional Court and the Full Court and appeals went up in this order.[49]

In 1886 Lagos was removed from the Colony of the Gold Coast and there was the Colony and Protectorate of Lagos having surrounding territories added to it and a new Supreme Court was established for them with similar provisions with that of 1876.[50] As a result of the dominance of the colonialists in trade activities which also resulted in political domination, the Royal Niger Company which was formally the National African Company and which carried on business in the territories along the River Niger through the Royal Charter guaranteed in 1886, was given the power to establish Courts to administer justice and govern its territories in cause of its operations, this lasted until the Charter was removed in 1899.[51] It is worthy of note that despite these Courts' creation, traditional African Courts still adjudicated on matters involving their indigenes even though, some of the indigenes had adopted the British ways of life and they were allowed to function so long as their activities were not repugnant to natural justice equity and good consciousness.

As a matter of fact, the difference between the Courts established in Lagos and that of the Northern and Southern protectorates was that in these protectorates, proclamations were introduced to establish Courts to administer English Laws while Natural Laws were administered by Native Courts which were established by separate proclamations. Nevertheless, both English and Native Courts were established and administered under the English law, apart from the

[49] Ojomo, E.*Op .cit.* p.5
[50] Op.cit.
[51] Duru, O.W.C. Op.cit. p.4

native Courts in Lagos which was allowed to function without the interference or influence of English law.[52]

Also, the Supreme Court of Lagos had both civil and criminal jurisdiction, while the Supreme Court for the Southern Protectorate exercised the same authority and jurisdictions vested in Her Majesty High Court of Justice in England.[53] Nevertheless, in 1906, both the Colony and Protectorate of Lagos and the Protectorate of Southern Nigeria were unified and the Native Court System was established in Lagos by virtue of the Native Courts Ordinance of 1906, they exercised both civil and criminal Jurisdiction. Although the non-existence of the native control in the Southern Protectorate lessened the efficacy of the Native Court System, whereas the Emirs in the Northern Protectorate were in charge and appointed members of the Native Courts and this strengthened the system.[54] But a combination of all the territories (the Northern and Southern Protectorate was done in 1914 and this ended the old era and there were also established a Supreme Court, a Provincial Court and Native Court through proclamations. These Native Courts were given the authority to administer civil and criminal matters involving Natives, with the exemption of some classes of natives who were subjected to the Native Court's Jurisdiction only if they or their residents concedes to it and it is usually in terms of civil matters or where it involves criminal matters if they or the lieutenant Governor consents to it.[55]

These persons would include: (a.) Government Servants (b.) Natives who are not necessarily subject to the Courts' authority and who were residing permanently in the territories

[52] Ibid.
[53] Obilade, A.O., (1979) *Nigerian Legal System*. Sweet and Maxwell. p. 27. This period covers the period between 1863 and 1900.
[54] Ibid.
[55] Ibid.

under the Courts authority.[56] Subsequently, in 1933 the Provincial was repealed and replaced with the Protectorate Courts Ordinance of 1933 which now established a High Court and Magistrate Courts while the Supreme Courts still remained for the colony. These Courts had original and appellate jurisdiction in matters which relates to English law.[57]

Appeals from the Native Courts went to the Magistrate Court or High Court while appeals from the Magistrate Court went to the High Courts and appeals from the High Court went to the Supreme Court and that of the Supreme Court went to the West African Court of Appeal (WACA) and appeals from the West African Court of Appeal went to the Privy Council[58]. However, the sub-division still existed between the Native Courts and English Courts system and as such certain matters especially those relating to customary law, the English Courts did not administer[59]. But there were changes by 1943 and Magistrate Courts were created in all parts of the Country and the Court systems in all parts of the Country were unified. The British government now created a Supreme Court of Nigeria to administer the entire country.[60] Nevertheless, the Native Courts continued to exercise exclusive jurisdiction over matters such as marriage, family status, custody of children, inheritance and estate administration.[61]

In 1945, the Federal Supreme Court now presided over by the Chief Justice of the Federation was created and there were established High Courts for Lagos and for the three regions and also Magistrate Courts for the different parts of the nation. The High Courts were presided over by a Chief Judge respectively. Appeals lay from the Regional Courts to the Federal Supreme Court while appeals from the Native Court Grade A in the North and Customary Court

[56] Ibid.
[57] Ibid.
[58] There were Native Court Ordinances and West African Court of Appeal Ordinance of 1933 respectively.
[59] Obilade, A. O. (1979) *Nigerian Legal System*. Sweet and Maxwell, pp. 29 - 31.
[60] Ibid.
[61] Ibid., p. 32.

in the South went to the Regional High Courts.[62] Also there were established the Sharia Court of Appeal to administer Islamic Laws and appeals went from the Native Courts to the Sharia Court of Appeal and in the event where conflict arises between the High Court and the Sharia Court of Appeal, a Court of Resolution was created by virtue of the Court of Resolution Law (No. 17) 1960 to resolve the conflict.[63]

2.2.3 Post-Colonial Period History

Nigeria gained its independence in 1960 after its Nationalist struggle and this gave rise to structural change in the administration of affairs but the structures laid down by the colonialist remained. However, each region had its own High Court, Magistrate Courts and Customary or Native Courts while there was a Federal Supreme Court which administered the entire country, although the Judicial Committee of the Privy Council still remained the highest Court. Subsequently, there was enacted a Constitution (Independence Constitution 1960) and it abolished the criminal jurisdiction under customary law and it stipulates that no one shall be convicted of any offence which is not contained in any written law except for contempt of Court, and this still remains the current position in Nigeria.[64]

Thus in 1963, Nigeria became a Republic and was completely liberated from the claws of England, and as such a new Constitution was enacted[65] and this Constitution now made the Supreme Court of Nigeria, the highest Court in Nigeria, hence, the Mid-Western Region which was created from the old Western Region came into existence and then the Native Courts in the

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[62] The Native Courts in the North and Customary Courts in the South administered Customary law while the Regional Courts applied English Laws and the Native Courts were established by laws enacted by the various regions.
[63] Obilade, Op.cit., p. 35.
[64] Ojomo, E. *History of the Nigerian Judicial System: Introduction to Law (JIL 001)* (University of Lagos, 2012)8<http://www.yararena.org/uploads/Topic%20Two%20%20History%20of%20the%20Nigerian%20Judicial%20System.pdf> accessed 21/10/2016.
[65] The new Constitution enacted was the 1963 Constitution.

Northern Region were changed to "Area Courts".[66] After these periods, the whole structures were affected by Military coups in January and July 1966 respectively.[67]

Hence in 1967, Nigeria became a Federation of 12 states with each having its own judiciary, under the States (Creation and Transitional Provisions) Decree No. 17 of 1967. And by virtue of the Court of Appeal Edict No. 15 of 1969, the Western States created a Regional Court of Appeal. Also by the Federal Revenue Court Decree No. 13 of 1973 the Federal Revenue Court was established to administer cases resulting from the Federal Government Revenue all over the country.[68]

2.2.4. Judiciary under the 1999 Nigerian Constitution

The 1999 Constitution of the Federal Republic of Nigeria ushered in a new era in the dispensation of justice in Nigeria. The 1999 Constitution of Nigeria, provides for the Judiciary and defined what we have now as Judiciary in Section 6 and Sections 230-296 (Chapter VII) respectively.

The Constitution placed on the Judiciary the duty and function of administering justice in Nigeria and it is also one of the three arms of government alongside the Executive and Legislature. The Constitution provides in section 6 thus:

(1) The judicial powers of the Federation shall be vested in the Courts to which this Section relates, being Courts established for the Federation.

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[66] Ojomo, E. *Op.Cit.* p.5
[67] Ibid.
[68] Duru, O.W.C. (2012) The Role and Historical Development of the Judiciary in Nigeria. 5 <https://www.academia.edu/5185440/The_Role_and_Historical_Development_of_the_Judiciary_in_Nigeria> accessed 21/10/2016.

(2) The judicial powers of a state shall be vested in the Courts to which this section relates, being Courts established, subject as provided by this Constitution, for a State.

(3) The Courts to which this section relates, established by this Constitution for the Federation and for the States, specified in subsection (5) (a) - (i) of this Section shall be the only superior Courts of record in Nigeria; and same as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each Court shall have all the powers of a superior Court or record.

(4) Nothing in the foregoing provisions of this section shall be constrained as precluding:

(a) The National Assembly or any House of Assembly from establishing Courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court.

(b) The National Assembly, which does not require it, from abolishing any Court which it has power to establish or which it has brought into being.

(5) This section relates to-

(a) The Supreme Court of Nigeria

(b) The Court of Appeal

(c) The Federal High Court

(d) The High Court of the Federal Capital Territory, Abuja

(e) A High Court of a state

(f) The Sharia Court of Appeal of the Federal Capital Territory, Abuja

(g) A Sharia Court of Appeal of a State.

(h) The Customary Court of Appeal of the Federal Capital Territory, Abuja

(i) A Customary Court of Appeal of a State

(j) Such other Courts as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which House of Assembly may make laws; and

(k) Such other Courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

(6) The judicial powers vested in accordance with the foregoing provisions of this section-

(a) Shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a Court of law.

(b) Shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating there to, for the determination of any question as to the civil rights and obligations of that person.

(c) Shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directives Principles of State Policy set out in Chapter II of this Constitution.

(d) Shall not, as from the date when this Section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for

determining any issue or question as to the competence of any authority or person to make any such laws.

Section 6(6) of the Constitution therefore stipulates the extent of the judicial powers of the Courts and these powers were further explained in *Ladejobi vs Oguntayo*[69] Therefore, under the 1999 Constitution, the Courts recognised as making up the Nigerian Judiciary are the Courts as mentioned in the Constitution, but it is noteworthy that the establishment of a Sharia Court of Appeal or a Customary Court of Appeal by a State is optional.[70]

Although, the 1999 Constitution was modeled after its predecessor, the 1979 Constitution which was short lived, the 1999 Constitution provides for the establishment of the National Judicial Council which recommends Justice and Judges for appointment by the Executive, the Council also recommends the removal of these Judicial Officers from office and exercise disciplinary authority over them. It also collects, manages, disburse money, capital and revenues for the Nigerian judiciary.[71] There is also the Federal Judicial Service Commission, they act as advisers to the National Judicial council in the nomination of Judicial Officers and also recommend the removal of these officers from office. It appoints, dismisses and disciplines the Chief Registrars and Deputy Chief Registrars of the Supreme Court, Court of Appeal and the Federal High Court and there is also the State Judicial Service Commission.[72]

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[69] (2001) F.W.L.R. pt.45, 793

[70] Ali, Y. 'The Evolution of Ideal Nigerian Judiciary in the New Millennium' (2001) (1) (1) *Nigerian Bar Journal*,6<http://Www.Yusufali.Net/Articles/The_Evolution_of_Ideal_Nigerian_Judiciary_in_the_New_MillenniuM.pdf> accessed 21/10/2016.

[71] Sections 153 (1) i and Sections 162(1) a, and the Third Schedule Part 1, Paragraph 20, Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[72] Sections 153(1) (e) and 197 (1) (c), and the Third Schedule, Part 1, Paragraph 12. Constitution of the Federal Republic of Nigeria, 1999 (as amended) See also, A M Sani, 'The Nigerian Judiciary Trends since Independence' (2009) (5)*The University of Ilorin Law Journal*<https://www.unilorin.edu.ng/ejournals/index.php/uilj/article/view/998/553>

2.3 An Overview of Nigerian Courts

The Nigerian Judiciary so far has thrived tremendously in its administration and development. It does appear that Nigerian Judiciary has grown to its state of independence under the 1999 Constitution (as amended) but this has not fully been attained.

The regular Court System comprises of the Federal and State Courts, and as a result, the Court of first instance includes the Magistrate or District Courts, Customary or Traditional Courts, Sharia Courts and some other Special Courts for specified cases.[73] While the Legislature is responsible for making laws and the Executive responsible for the implementation of these laws, the Judiciary is charged with the responsibility of interpreting these laws in line with the provisions of the Constitution, following the doctrine of separation of powers, which stands as the foundation of every democracy. The Constitution guarantees the independence of the Nigerian Judiciary and prohibits the promulgation of any laws that would oust its powers.[74]

The Constitution provides for the establishment of Federal Courts and State Courts as well as Election Tribunals and other Courts.

1. The Federal Courts include:

(a) The Supreme Court

(b) The Court of Appeal

(c) The Federal High Court

(d) High Court of the Federal Capital Territory, Abuja

[73] Section 6 (a – k) Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[74] Ibid. Section 4 (8)

(e) The Sharia Court of Appeal of the Federal Capital Territory Abuja

(f) The Customary Court of Appeal of the Federal Capital Territory Abuja

2. The State Courts comprise of:

(a) The High Court of the 36 States of the Federation

(b) The Customary Court of Appeal

(c) Sharia Court of Appeal

3. The Election Tribunals

4. Other Courts could include:

(a) Magistrate Courts

(b) Area Courts

(c) Sharia Courts

(d) Customary Courts

The President appoints with the recommendation of the National Judicial Council and subject to the confirmation of the National Assembly, the following Officers: The Chief Justice of Nigeria, the President of the Court of Appeal, the Chief Judge of the Federal High Court and the Chief Judge of the High Court of the Federal Capital Territory Abuja, the Grand Khadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and the President of the

Customary Court of Appeal of the Federal Capital Territory Abuja and all other Judicial appointments into the Federal Courts.[75]

While the various State Governors appoints with the recommendations of the National Judicial Council and the confirmation of State House of Assembly, the President of the customary of Appeal the Grand Khadi of the Sharia Court of Appeal of their states, (where applicable) and all other Judicial appointments in the state.[76]

2.3.1 The Federal Courts

In the hierarchy of courts in Nigeria, the Federal Courts are well established and have major roles to play in the actualization of the protection of Human rights in Nigeria. The Federal Courts include the Supreme Court of Nigeria, Court of Appeal, Federal High Courts, Sharia Court of Appeal and Customary Court of Appeal. These courts will be discussed below with the view to look into their history and present day functionality as regards the protection of human rights.

(i) The Supreme Court of Nigeria

The Supreme Court of Nigeria is the Apex Court and the highest Court of the land. It has both original and appellate jurisdictions. The Supreme Court has exclusive original jurisdiction in any dispute between the Federal and a State Government or a State Government and another State Government. It has exclusive jurisdiction to hear and determine appeals from the Court of Appeal and it is properly constituted by five (5) Justices of the Supreme Court to hear and decide a matter, or when exercising its original jurisdiction, seven (7) Justices shall constitute the Court. It is located in the central district Abuja.

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[75]Efevwerhan D. I. (2007). *Principles of Civil Procedure in Nigeria*. Enugu: Chenglo Limited. p. 62

[76] Ibid.

a) Brief History of the Supreme Court

The Supreme Court of Nigeria came into being in 1963 and over the years 90 Judges have sat on the Nigerian Supreme Court bench and 14 Chief Justices have presided over the Court all in the past and the Supreme Court is currently made up of the Chief Justice of the Federation and 14 other Judges.[77] Usually, as it customarily done in Nigeria, appointment to Supreme Court is done by way of elevation from the Court of Appeal and this is done on a quota system of Geopolitical representation.[78]

b) Brief History of the Supreme Court

The name Supreme Court was used first by the then Colonial Administration in 1863, following the enactment of the Supreme Court Ordinance No. 2 which established the Supreme Court with its civil and criminal jurisdiction.[79]

Although it was not the Apex Court at the time because appeals from the Supreme Court went to the Judicial Committee of the Privy Council. Thus, in 1963, following the Proclamation of the Federal Republic of Nigeria and the Constitution which came into force on the 1st of October, 1963 Section 111 of the Constitution established the Supreme Court and abolished Section 120 which provided for appellate Jurisdiction of the Judicial Committee of the Privy Council which was the highest Court at the time.[80] The Act also made it the highest Court in the judicial hierarchy and in 1960, the independence Constitution vested in it the Jurisdiction of the

[77] Supreme Court of Nigeria, 'Past Justices of Supreme Court of Nigeria (in Ranking Order)' <http://supremeCourt.gov.ng/About/history> accessed 22/10/2016
[78] Section 231 (3) Chapter VII, part 1 (A), Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[79] Supreme Court of Nigeria, 'About Us: History of the Supreme Court of Nigeria' <http://supremeCourt.gov.ng/About/history> accessed 22/10/2016.
[80] Ibid.

Federal Supreme Court thereafter, the 1979 Constitution in Section 210(1) clearly gave it the name Supreme Court of Nigeria. The Court is therefore the highest Court in Nigeria.

The Supreme Court is composed of the Chief Justice of Nigeria and not more than twenty-one Judges appointed by the president through the recommendation of the National Judicial Council subject to the confirmation of the National Assembly and such persons must have been qualified to practice law in Nigeria for a period not less than fifteen (15) years and the Judges are required to retire after a mandatory service age of seventy (70).[81] The Supreme Court was shaped to its current form by the Supreme Court Act of 1990 and by Chapter VII of the 1999 Constitution of Nigeria (as amended).

Hence, under the 1999 Constitution (as amended), the Supreme Court has both original and appellate Jurisdictions. It has sole authority and Jurisdiction over appeals from the Court of Appeal and has an appellate jurisdiction over all lower Federal Courts and highest State Courts. Its decisions are binding on all Courts in Nigeria except the Supreme Court itself.[82]

(ii) The Court of Appeal

The Court of Appeal is established in Nigeria for the entire Federation by virtue of the Nigerian Constitution.[83] It has both original and appellate jurisdiction. The original jurisdiction of the Court of Appeal is to the exclusion of any other Court in Nigeria, to hear and determine any question as relating to election matters to the office of the President or Vice-President.[84] The

[81]Supreme Court of Nigeria, 'About Us: History of the Supreme Court of Nigeria' <http://supremeCourt.gov.ng/About/history> accessed 22/10/2016.
[82]Sections 230-235, Chapter VII, part 1 (A), Constitution of the Federal Republic of Nigeria, 1999 (as amended) <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>
[83]Court of Appeal Nigeria, 'About the Court: Brief History of Court of Appeal' <http://www.Courtofappeal.com.ng/index.php?option=com_content&view=article&id=110&Itemid=544> accessed22/10/2016.
[84]Ibid.

Court of Appeal also hears and determines appeals from the Courts of the thirty-six (36) States of the Federation, the Federal Capital Territory and other Courts of the Federation.

An appeal from the Court of Appeal goes to the Supreme Court but the Court of Appeal has a final appellate jurisdiction to the exclusion of the Supreme Court, over appeals resulting from election petitions with regards to:

(a) whether any person has been validly elected as a member of the National Assembly of a State under the Constitution or

(b) Any person has been validly elected to the office of the Governor or Deputy Governor.

The Court of Appeal is headed by the President of the Court of Appeal and it currently maintains about 10 Judicial Divisions in ten (10) cities of Nigeria to service specific States of Nigeria. Its President is statutorily designated as equal to the position of a Justice of the Supreme Court.[85]

a) History of the Court of Appeal

The Court of Appeal evolved from the 1963 Constitution of the Federal Republic of Nigeria,[86] although the Constitution did not provide for a central Court of Appeal at the Federal level, but the Constitutions of the various Regions made provisions for same and by virtue of these Constitutions it became an intermediate Court.[87]

Although, while it awaited the establishment of the regional Court of appeal, the 1963 Constitution in section 115, 117, and 127 provided for the right of appeal from the High Court to

[85] Ibid.
[86] No. 20 of 1963
[87] Section 54, Constitution of Eastern Nigeria, No. 8, 1963; Section 56, Constitution of Northern Nigeria, No. 33, 1963; Section 52, Constitution of Western Nigeria, No. 26, 1963.

the Regional Court of Appeal. But the regions could not establish the Court of Appeal before the 1963 Constitution was suspended as a result of the military takeover.[88] In spite of the military takeover, the western District set up a State Court of Appeal in 1967 by virtue of the Court of Appeal Edict of 1967. The creation of the Court was highly acknowledged by the Constitution (Miscellaneous Provisions) Decree, (No.2) 1967. By virtue of Section 3 of the Decree the authority and jurisdiction of the Supreme Court to hear and determine appeals in any manner from the High Court of the State was abolished.[89]

As a result of the technical issues which faced the Courts, there were some debates in favour and against the creation of Federal Court of Appeal and in response to these debates, a special task force was set up on the Judiciary by the 'Udoji Commission' with the recommendation that the existing Supreme Court be reconstituted as the National Court of Appeal.[90] The Constitution Drafting Committee formed in September 1975, made recommendations through its sub-committee on the judicial system, for the creation of a Federal Court of Appeal to help lighten the burden of the Supreme Court. Following its recommendation, the Federal Court of Appeal was established by virtue of the 1976 Constitution (Amendment) (No.2). Although there were military interceptions which halted the efforts, but in 1979, by virtue of Section 217 (1) of the 1979 Constitution of the Federal Republic of Nigeria the Federal Court of Appeal was formally created. Although this name was changed by virtue of the

[88] Oluwadayisi, A. 'The History, Powers and Jurisdiction of Court of Appeal in the Resolution of Election Petition in Nigeria' <https://www.academia.edu/6898155/THE_HISTORY_POWERS_AND_JURISDICTION_OF_COURT_OF_APPEAL_IN_NIGERIA> accessed 22/10/2016.
[89] Ibid.
[90] Ibid.

promulgation of the Constitution (Suspension and Modification) Decree, 1984. It's nature was changed from Federal Court of Appeal to the Court of Appeal.[91]

The structures remained as it were, similarly, by virtue of Section 237 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Court of Appeal was established.[92] The Court of Appeal has had six presidents since its establishment.[93]

(iii) The Federal High Court

The Federal High Court which was formerly known and established as the Federal Revenue Court. It came into being by virtue of the Federal Revenue Act 1973.[94] It was renamed the Federal High Court by virtue of section 228 (1) and 230 (2) of the 1979 Constitution of the Federal Republic of Nigeria. This was as a result of the Constitutional Conference which led to Nigeria's Independence. There arose the need for a High Court to determine matters within the Exclusive Legislature list, but no step was taken as to that regards until the Federal Revenue Court Decree was promulgated in 1973. The then Federal Revenue Court started with a President of the Court and four other Judges.[95] Subsequently, due to issues and controversies as to jurisdiction which was addressed by the enactment of Section 230 (1) of the 1979 Constitution and as such, section 231 of the 1979 Constitution was reproduced in the Federal High Court Decree (Amendment) 1991 which amended Section 7 of the Federal High Court Act (1973) and

[91] Section 213, Constitution of the Federal Republic of Nigeria, 1979 was amended by Schedule 2, Decree (No. 1), 1984.
[92] This Provision applies side by side with the Court of Appeal Act 1976 which has also been amended by the Court of Appeal (Amendment) Decree No. 65 of 1993, No. 23 of 2005 respectively.
[93] Oluwadayisi, A. 'The History, Powers and Jurisdiction of Court of Appeal in the Resolution of Election Petition in Nigeria' <https://www.academia.edu/6898155/THE_HISTORY_POWERS_AND_JURISDICTION_OF_COURT_OF_APPEAL_IN_NIGERIA> accessed 22/10/2016.
[94] No. 13 of 1973.
[95] Federal High Court, 'History of the Federal High Court' <http://www.fhc-ng.com/about.htm> accessed 22/102016.

it conferred exclusive jurisdiction on the Federal High Court in relation to the subject matters covered by Section 7 of the Act (as amended).[96] The Federal High Court has concurrent jurisdiction with the High Court of Federal Capital Territory and State High Court in respect of Fundamental Right matters by virtue of Section 46 (1) of the 1999 Constitution (as amended).[97] Currently, the Federal High Court is made up of sixty-nine (69) Judges.[98]

(iv) The High Court of the Federal Capital Territory Abuja

This Court was established by virtue of Section 255 of the Constitution.[99] The Court consists of a Chief Judge and other Judges as the Act of the National shall prescribe. The President appoints the Chief Judge and the other Judges on the recommendation of the National Judicial Council and subject to the confirmation of the National Assembly.[100] For any person to be appointed as a Judge or a Chief judge, such a person must have been qualified to practice as a legal practitioner in Nigeria and must have been so qualified for a period not less than ten years. The High Court of the Federal Capital Territory has similar jurisdiction in the Federal Capital Territory Abuja with the State High Court in a State and it is duly constituted by a single Judge seating in Court.[101]

The Chief Judge who is also the Chairman of the Federal Capital Territory Judicial Service Commission is the head of the Court and the Court is made up of High Courts, Magistrate Courts and the Abuja Multi-Door Court House (Alternative Dispute Resolution

[96]Ibid.
[97]Ibid.
[98]Ibid.
[99]Section 255 – 259 Chapter VII (part 1) (D), Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[100]High Court of the Federal Capital Territory, Abuja, Nigeria <http://www.fcthighCourt.gov.ng> accessed 23/10/2016.
[101] Online Nigeria, 'The Judiciary' <http://www.onlinenigeria.com/government/?blurb=141> accessed 23/10/2016.

Center).[102] The Court currently has thirty-seven Judges including the Chief Judge and about seventeen past Judges since its inception, and it has a total number of 69 Magistrates.[103]

(v) The Sharia Court of Appeal

The Sharia Court of Appeal was first established in 1954 by the Colonial Government to hear appeals from the Native Courts. It later replaced the Muslim Court of Appeal in 1960. The Court rose again during the 1979 and 1989 Constitution respectively.[104]

The Sharia Court of Appeal of the Federal Capital Territory Abuja, came into limelight again under the 1999 Constitution.[105] The Sharia Court of Appeal consists of the Grand Khadi of the Sharia Court of Appeal and other Khadi as the Act of the National Assembly may prescribe.[106] The appointment of the Grand Khadi and other Khadi is made by the President on the recommendation of the National Judicial Council. The persons to be appointed must have knowledge of Sharia law and must be qualified to practice as a legal practitioner in Nigeria for a period not less than ten years and must have obtained a qualification in Islamic law from a recognised University. The Sharia Court of Appeal of the Federal Capital Territory Abuja is provided for in Section 260-264 of the 1999 Constitution and its jurisdiction is provided for therein as such it administers issues on Islamic Personal Law. The Court is duly constituted if it consists of at least three Khadi of the Court.[107]

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[102] Ibid.
[103] Ibid.
[104] Oba, A.A. 'The Sharia Court of Appeal in Northern Nigeria: The Continuing Crises of Jurisdiction' (2004) (52) (4) *The American Journal of Comparative Law* 859-900 <http://www.jstor.org/stable/4144468> accessed 23/10/2016.
[105] Chapter VII (part 1) (E), Constitution of the Federal Republic of Nigeria 1999 (as amended).
[106] Ibid.
[107] Ibid.

(v) The Customary Court of Appeal of the Federal Capital Territory Abuja

The Customary Court of Appeal of the Federal Capital Territory Abuja was established by Section 265 of the 1999 Constitution.[108] The Court is made up of the President of the Court and a number of Judges as may be prescribed by the Act of the National Assembly.[109]

The president appoints the President and the other Judges based on the recommendation of the National Judicial Council and such persons to be appointed must have been so qualified to practice as legal practitioners in Nigeria for a period not less than ten years and must possess a considerable knowledge and experience in the practice of Customary Law.[110] It is duly constituted if it consists of at least three Judges of the Court and it exercises an appellate and supervisory jurisdiction in civil proceedings, involving questions of Customary Law.[111]

2.3.2 The State Courts

Having stated the history of Court system in Nigeria, it will be necessary to discuss here the status and establishment of the various State Courts in Nigeria.

(i) The High Court

The Court of Resolution Northern Nigeria was eventually created by the Court of Resolution Law, 1960, to resolve conflicts of jurisdiction among the State High Court and the Sharia Court of Appeal, hence, the decision of the Resolution Court was final and there was no further appeal.[112]

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[108] Chapter VII (part 1) (f), Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[109] Section 265 (2), Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[110] Ibid. Section 266 (3) (a) – (b),
[111] Section 267 – 268, Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[112] Northern Nigeria Law Report, (1960) (94); Court of Resolution Law, 1963.

Nevertheless, the 1954 Federal Constitution gave the regional legislatures the power to create Courts for their regions and this resulted in the establishment of a High Court, Magistrate Courts, Native and Customary Courts in 1955.[113] As soon as the States were divided into thirty states, all States were further given the power to create its own Courts in line with the Constitution. The High Court of each state is a superior Court of record and it has original and appellate jurisdiction.

The High Court for each State of the Federation is established by virtue of Section 280 of the Constitution.[114] The High Court consists of the Chief Judge of the State and other Judges as the law of the State House of Assembly shall prescribe.[115] The appointment of the Chief Judge and Judges is done by the Governor of the State acting on the recommendation of the National Judicial Council.[116]

The High Court of a State is provided for in Section 270-274 of the 1999 Constitution. Persons appointed to the State High Court must be persons who are qualified to so practice as legal practitioners in Nigeria for a period of not less than ten years. The High Court has both an appellate and supervisory jurisdiction to entertain appeals from lower Courts. It has both civil and criminal jurisdiction to entertain matters as stated in the Constitution.[117] The Court is duly constituted if it consists of at least one Judge of that Court, and the Chief Judge is allowed to make rules regulating the practice and procedure of the High Court of the State.

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[113] Obi N I Ebbe, 'World Factbook OF Criminal Justice Systems: Nigeria' <https://www.bjs.gov/content/pub/ascii/WFBCJNIG.TXT> accessed 23/10/2016.
[114] Chapter VII Part II (A), Constitution of the Federal republic of Nigeria, 1999 (as amended).
[115] Ibid. Section 270 (2) (a) – (b)
[116] Ibid.Section 271 (1)
[117] Ibid. Section 272

(ii) Sharia Court of Appeal of a State

The Sharia Court of Appeal was established in the Northern States in 1960 for the purpose of hearing and determining appeals from Native Courts (Sharia Courts) where Islamic personal laws were involved. Appeals from the Sharia Court of Appeal, goes to the Supreme Court, on issues involving interpretation and application of the provisions of the Constitution which has to do with Fundamental Rights.[118]

However, Section 275 of the Constitution provides for the establishment of a Sharia Court of Appeal for any State that requires it.[119] The Sharia Court of Appeal shall consist of a Grand Khadi and other Khadi as may be prescribed by the House of Assembly of such State.[120]

The Governor shall appoint the Grand Khadi on the recommendation of the National Judicial Council subject to confirmation of such appointment by the State House of Assembly.[121] While the appointment of the Khadi is done only on the recommendation of the National Judicial Council.[122] The Constitution confers on the Court the appellate and supervisory jurisdiction to hear and entertain matters relating to questions on Islamic personal law as stated in the Constitution and it is duly constituted if it consists of at least three Khadi of the Court.[123]

(iii) Customary Court of Appeal

The establishment of the Customary Court of a State is provided in the section 280 of the Constitution and it consists of a President of the Customary Court of Appeal and such other

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[118] Ebbe, O.N.I. 'World Factbook OF Criminal Justice Systems: Nigeria' <https://www.bjs.gov/content/pub/ascii/WFBCJNIG.TXT> accessed 23/10/2016.
[119] Section 275.
[120] Ibid.,Section 275 (2) (a) – (b),
[121] Ibid.,Section 276,
[122] Ibid.,Section 276 (2).
[123] Ibid.,Section 277

number of the Judges as many be prescribed by the law of the National Assembly of the State.[124] The Governor of the State on the recommendation of the National Judicial council subject to confirmation of the State House of Assembly shall appoint the President of the Customary Court of Appeal and the other Judges.[125] Persons appointed as Judges must be so qualified to practice in Nigeria as legal practitioners for a period not less than ten years and must be knowledgeable in Customary Law.[126] The Court shall exercise appellate and supervisory jurisdiction in civil proceedings pertaining to questions of Customary Law and as may be prescribed by the House of Assembly of the State. The Court shall be duly constituted by at least three Judges sitting in that Court.[127]

2.3.3 Other Courts and Tribunals

(i) Election Tribunals

The Nigerian Constitution in Section 285 provides for the establishment of the National Assembly Election Tribunal and it confers on it an exclusive and original jurisdiction to hear and determine petitions originating as a result of elections pertaining to the National Assembly.[128] The Constitution also established in each State of the Federation one or more election tribunals for the Governorship and Legislative Houses. The Tribunals shall have an exclusive and original jurisdiction to hear and determine petitions involving the elections of Governors, Deputy Governors or members of any Legislative Houses. The quorum of the Tribunal shall be the chairman and two other Members.[129]

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[124] Ibid.,Section 280 (2) (a) – (b)
[125] Ibid.,Section 281.
[126] Section 281 (3) (a) – (b), Constitution of the Federal republic of Nigeria, 1999 (as amended).
[127] *Ibid.,*Section 282
[128] *Ibid.,*Section 285(1)(9) Chapter VII,
[129] *Ibid.,*Section 285 (2) -(4)

(ii) National Industrial Court

The National Industrial Court (NIC) was created pursuant to the Trade Disputes Decree No. 7 of 1976, but it came into operation in 1978, two years after it was established. In the past, Nigeria emulated the British model of non-interventionism and voluntary model of industrial relations and practice. The means of settling industrial disputes was contained in the Trade Disputes (Arbitration and Enquiry) Act.[130] The Act empowered the Minister of Labour to intervene through conciliation, formal inquiry and arbitration where negotiation had broken down.[131]

As a result of hostilities between the Biafra and Nigeria, which ushered in a new era in the scheme of settling of trade disputes, it became very necessary to make transitional provisions for the settlement of trade dispute during that period, hence, the Trade Disputes (Emergency Provisions) Act No. 21 of 1968 was enacted and it suspended the Trade Disputes (Arbitration and Inquiry) Act and gave the Minister of Labour the power of compulsory intervention in trade disputes while retaining the additional authority of conciliation, formal inquiry and arbitration. Thus, the 1992 Trade Disputes (Amendment) Act which repealed the trade Disputes Act 1976 and the 1990 Trade Dispute Act. The Act made it a Superior Court of Appeal, but the Constitution of 1979 and 1999 respectively did not include it. The president of the Court is appointed by President upon the recommendation of the Federal Judicial Commission while other members of the Court are appointed by the president on the recommendation of the Minister of Labour.

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[130] Ibid., Section 285 (2) -(4)

[131] Adeumo, B.A. (2011) 'The National Industrial Court of Nigeria: past, Present and Future' (National Industrial Court of Nigeria) <http://www.nicn.gov.ng/nji.php> 23/10/2016.

The Court was re-established as a superior Court by the National Industrial Court Act 2006.[132] The 2006 Act separated the National Industrial Court from the Trade Disputes Act and also changed the process of appointment of its Judges. It made the National Judicial Council the recommendation body.[133]

In 2011, the President of the Federal Republic of Nigeria, assented to the Constitution (Third Alteration) Bill, 2010, which amended the 1999 Constitution and the National Industrial Court by Virtue of the new section 254A which was included in the Constitution, as the section provides thus:

254A (1) There shall be a National Industrial Court of Nigeria.

(2) The National Industrial Court shall consist of:

(a) President of the National Industrial Court; and

(b) Such number of Judges of the National Industrial Court as may be prescribed by an Act of the National Assembly.

By virtue of section 254 A (1) & (2) the former National Industrial Court was replaced with the National Industrial Court of Nigeria.[134] The amendment of section 6 of the 1999 Constitution now lists the National Industrial Court of Nigeria among the superior Courts of Record.[135] Its jurisdiction as provided for in Section 254 C (1) of the Constitution is exclusive to

[132] Came into force on 14thJune, 2006.
[133] Adeumo, B.A. (2011) 'The National Industrial Court of Nigeria: past, Present and Future' (National Industrial Court of Nigeria) <http://www.nicn.gov.ng/nji.php> 23/10/2016.
[134]Adeumo, B.A. Op.cit.
[135]Sections 84 (4), 240, 243, 287, 292, 294, 295, 316,318, the Third schedule to the Constitution and the Seventh schedule were altered to reflect the inclusion of the National Industrial Court of Nigeria like the other Courts in Nigeria.

hear and entertain industrial and employment matters and as such, others as provided for in the Constitution.[136]

(iii) Investment and Securities Tribunal

The Investment and Securities Tribunal is a special judicial body in Nigeria. It was originally created under Section 274 of the Investment and Securities Act No.29 of 2007. Its jurisdiction is both original and appellate to interpret and adjudicate on all capital market and investment civil causes as provided for in the Act.[137] The Investment Securities Tribunal interprets and adjudicates on disputes and controversies in capital market transactions. The Investment Securities Tribunal is the first and only of such tribunals in Africa.[138]

2.3.4 Courts Established by State

(i) Magistrate Courts

The Magistrate Courts have different grades and they are controlled and managed by the High Court of the State where it is established.

(ii) Customary/Area Courts

The Customary Court in Nigeria are Native and Area Courts and they have different grades such as upper Area Court grade II and Area Court grade III. The Chief Judge of the State establishes the Area Courts subject to the Approval of the Governor. Appeals move from the Area Court grade I to II and III to the Upper Area Court and to Sharia Court of Appeal in matters relating to

[136] Adeumo, B.A. Op.cit., 134.
[137] Investment and Securities Tribunal, 'History of IST' <http://www.ist.gov.ng/?page_id=9674> accessed 23/10/2016.
[138] Ibid.

Islamic personal law, for other cases, appeals from the Area Court are sent to High Court.[139] The Customary Court is established by the State Chief Judge subject to the approval of the Governor. The Customary Court is an informal Court and there are also informal Courts of Elders and Council of Elders under the Customary Court.

(iii) Juvenile Courts

After the Second World War, the Colonial Government introduced the Juvenile Courts in the Eastern, Western and Northern regions. Although, before the end of the Second World War in the 1940s the only Juvenile Courts was located in the city of Lagos. It was composed by a Magistrate, A Lay Man, and Lay Woman.[140] Juvenile Courts are now established by the High Courts of a State.

In conclusion, the Nigerian Judiciary having thrived so tremendously in its development through the decades remains the last resort and hope of the common man. Even though it seems that it suffers from the root of corruption, it still stands as the defender of the rights of Nigerians.

It is obviously stated that the Nigerian judicial system has over time developed through various structures and political systems and that before colonialism the territories which made up Nigeria had their own adjudicatory systems which soothed their societies and whereas much effective in the realisation of justice in those territories. Nevertheless, the advent of colonialism also led to the development of Nigerian judicial systems and this laid the foundation for the judiciary we have today. The history and development of the Nigerian judicial system has been extensively traced from the pre-colonial era to the present Nigerian judicial times.

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[139] Ebbe, O.N.I. 'World Factbook of Criminal Justice Systems: Nigeria' <https://www.bjs.gov/content/pub/ascii/WFBCJNIG.TXT> accessed 23/10/2016.
[140] Ibid.

CHAPTER THREE

RIGHTS AND THEIR PROTECTION BY THE JUDICIARY IN NIGERIA

3.1 Introduction

The theory of human rights has a long and mixed history traceable to the beginning of the existence of mankind.[1] Different opinions have been expressed over the years by different schools of thought on the concept, nature, legality and philosophy of human rights.[2] Human rights are available for human beings who are part of the society and its origin is traceable to the creation of man, where the right to life was accorded to man.[3] Violation of human rights is condemnable; though it does not diminish their status since the rights are supposed to be claims invariably supported by ethics and so should be by law, made on the individuals or groups on the basis of their humanity.

The theory of human rights has a long and mixed history traceable to the beginning of the existence of mankind. Different opinions have been expressed over the years by different schools of thought on the concept, nature, legality and philosophy of human rights. Human rights are available for human beings who are part of the society and its origin is traceable to the creation of man, where the right to life was accorded to man.

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[1] Idowu, A. A. Human Rights, Democracy and Development: The Nigerian Experience, The Role of the Judiciary in Nigeria Democratic Process: Essay in Honour of Justice Iche N. Ndu, Vox Nigeria Limited, Nigeria (2008). P.186

[2] Dembour, M. (2006) *Who Believes in Human Rights? Reflections on the European Convention*. Cambridge University Press, England, 1st Monograph.These schools include; the Deliberative School, Protest School, Natural School and Discourse School.

[3] Idowu, A. A. Op.cit

In Nigeria, provisions of human rights were first introduced into the Independence Constitution of 1960[4] as a result of the report submitted by Henry Willink's Minorities Commission to the effect that such Constitutional provisions would assist in dispelling the fear of minority groups in Nigeria, human rights appeared again in 1963 Republican Constitution,[5] the 1979 Constitution[6] and also contained in Chapter IV of the 1999 Constitution[7]. One thing that is abundantly clear in the Nigerian legal system is its relationship with the common law of England and this has greatly influenced legislations and judicial function of statutory interpretations. Whenever the question of human right arises, there is always a great deal of terminological inconsistency with a number of terms frequently used[8] such as: human rights, civil liberty, fundamental rights and they are often referring to the same thing[9]. For the purpose of this research work, human rights according to Bradley and Ewing are in two forms: one is social and economic rights which are concerned with the welfare and utility of every citizen and the second one is civil and political rights;[10] right to liberty of persons, right to freedom of association, right to freedom of conscience, religion and freedom of expression. In Nigeria, these fundamental rights[11] are contained in Chapter IV of the 1999 Constitution. Though it has been argued by Aguda that the issues of individual rights are enormous and therefore cannot be fully contained in the Constitution and that the question of whether persons are entitled to the protection of these rights remains a difficult one[12]. Aguda also stated;

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[4] Chapter III of the 1960 Constitution made provisions against Deprivation of Life; Inhuman Treatment; Slavery and Forced Labour, among others.
[5] Sections 18 –33, Chapter VI, Law No. 20 of 1963.
[6] Chapter IV, Sections 30 -39.
[7] Idowu, A. A. *Ibid.*
[8] Bradley, A. W. and Ewing, K. D. (2007) *Constitutional and Administrative Law*. Pearson Education Limited, England, 14thedn, p. 419.
[9] Ibid.
[10] Ibid.
[11]Constitution of the Federal Republic of Nigeria, 1999 (as amended) CapC23 *Laws of the Federation of Nigeria*, 2004.
[12]Aguda, O. (2000)*Understanding Nigeria Constitution of 1999*. MIJ Professional Publishers Limited, Nigeria,p. 190.

> It is not all the protections that a person enjoys or to which he is entitled to enjoy that are contained in the Constitution, that while many of them are contained in general law, there are large area of individual rights that are not protected or adequately protected, whether in the Constitution or in the laws.[13]

This is tenable in law and logic because there are rights such as religious and customary rights of individuals that are unknown to statutes or our Constitution. Before dealing with the provisions of fundamental rights as contained in Chapter IV of the 1999 Constitution, it is imperative to find out how common law took care of these rights before they were incorporated into legislative framework.

Under the common law, political liberty was adequately protected.[14] The common law also guaranteed a wide measure of individual liberty through the principle that citizens are at the liberty to do as they like, unless expressly prohibited by law.[15] Therefore, people were enjoying freedom of religion, freedom of expression and freedom of assembly and these rights could only be prohibited in the presence of clear statutory enactment or common law principle. Thus, in the case of *Entick vs. Carrington*,[16]the secretary of state issued a search warrant against the premises of Mr. Entick, to search and seize any seditious literature. When the exercise of such power was challenged, the secretary of state put up 'interest of the state' as a defence, however, the Court held that there was no authority in the common law or statute that authorized him to issue a warrant in that manner. This authority is a clear manifestation of the breach of the right to privacy of Mr. Entick by the authority of state, and such attempt was resisted by the judiciary through the application of common law and statute.

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[13] Ibid.
[14]Idowu, A. A. Op.Cit.
[15] Ibid.
[16] (1765) E.W.H.C K.B J98.

3.2 Rights Under Chapter Four of the 1999 Constitution

The 1999 Constitution of Nigeria provides for certain rights under Chapter IV from sections 33 to 44. These rights provided for, are referred to as fundamental or core rights because they are fundamental. The various Nigerian Constitutions from the 1960 Independence Constitution to the present 1999 Constitution (as amended) has always given deep care to the issues involving human rights and also made provisions which protect human rights. As a result, the present Constitution dedicated two chapters with twenty-six sections to human rights.[17]

According to the Preamble of the 1999 Constitution,[18] the Constitution is set out to promote good governance and welfare of all persons based on the principles of freedom, equality and justice. In the light of Section 13 of Chapter II of the 1999 Constitution (as amended), it is the duty and responsibility of all organs of government and of all authorities and persons exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of the Fundamental Objectives and Directive Principle of State Policy of the Country.

Chapter IV of the Constitution provides for and protects certain rights which are the bedrock of most international instruments. These rights are fundamental because they protect and secure the citizens, whether alone or as a group against the abuse of power especially by political authority.[19] The various rights enshrined in Chapter IV of the 1999 Constitution will be discussed seriatim.

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[17] Chapter II and IV respectively, even though the provisions of Chapter II are non-justiciable and they only serve as an aid to the interpretation of the other sections.

[18] Constitution of the Federal Republic of Nigeria, 1999, Cap C. 23 *Laws of the Federation of Nigeria*, 2004.

[19] Vasak, K. *A 30-Year Struggle; the Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights.* Cited in Dada, J.A. (2012). Human Rights under the Nigerian Constitution: Issues and Problems. *International Journal of Humanities and Social Science,* 2 (12):33-43, at 37.

3.2.1 Right to Life

This is one of the rights recognised and protected under Chapter IV of the 1999 Constitution.[20] This right may well be seen as the most essential right among other rights contained in Chapter Four as fundamental rights.

Section 33 of the Constitution provides: 33(1)[21]'every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a Court in respect of criminal offence of which he has been found guilty in Nigeria'. The Constitution further provides that:

> A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such forces as is reasonably necessary:
>
> a) For the defence of any person from unlawful violence or for the defence of property;
>
> b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
>
> c) For the purpose of suppressing a riot, insurrection or mutiny.

Having carefully itemised this section in a sequential order, the question now is, how far has Nigerian government and its citizens strived in the protection of right to life? Before attempting to answer this question, it is imperative to carefully analyse the subsections and paragraphs of this section in order to arrive at an acceptable conclusion of the implication and applicability of this section, considering the sanctity of life. The sanctity of life itself is

[20] Constitution of the Federal Republic of Nigeria 1999, Cap C. 23 *Laws of the Federation of Nigeria*, 2004.
[21] Ibid

recognised by the natural law theorists, and it is also stated in the Holy Bible; 'thou shall not kill'.[22] This Biblical injunction is unarguably meant to protect the right to life of every person.

Under the fundamental rights provision; S.33 (1) guarantees everyone the right to life and prohibits the intentional deprivation of right to life without the due process of the law,[23] with respect to the execution of a valid Court sentence, after criminal conviction. It is not every criminal conviction that leads to the deprivation of the life of the convict. However, the offences that attract death penalty under Nigerian criminal jurisprudence are murder,[24]treason,[25] presiding at a trial by ordeal resulting death and armed robbery[26]. Where death results from any terrorist act, the penalty shall be death sentence[27].

Another important point to note is that, under this subsection, accidental death is exempted from the act of deprivation of right to life, this is sequel to the use of "intentional deprivation" of life, and there is no intention in any act that occurs accidentally. However, there is no contravention to the right to life, if a person dies as a result of the use, to such extent and in such circumstances as are permitted by the law, of such force as is reasonably necessary for the defence of any person from unlawful violence; or defence of property to effect a lawful arrest; or to prevent the escape of a person lawfully detained; or purpose of suppressing a riot, or purpose of suppressing insurrection purpose of suppressing mutiny.[28] These are conditions upon which the individual right to life may be deprived in Nigeria. Though the provision of S. 33 is geared

[22] Deuteronomy 5:7, The Holy Bible (King James Version)
[23] Malemi, E. (2007) *The Nigerian Constitutional Law*. Princetop Publishing Co. Nigeria, 1st Edition, p. 221.
[24] Section 319Criminal Code Act, Cap C. 38 *Laws of the Federation of Nigeria*, 2004.
[25] Ibid.,Section 37
[26] Section. 1 (2) (b) Robbery and Firearms (Special Provision) Act, Cap. R11 *Laws of the Federation of Nigeria*, 2004.
[27] Section 4(2) Terrorism (Prevention) Act, 2011.
[28] Section. 33(2) Constitution of the Federal Republic of Nigeria 1999, Cap. C23 *Laws of the Federation of Nigeria*, 2004.

towards the protection of the right to life, in Nigeria, there have been several instances where individuals' right to life have been deprived by government agencies and private person.

Thus, The killing of a large number of members of the Islamic Movement of Nigeria Shias in December, 2015 by the military after demolishing their worship centre known as "Hussainiya" they proceeded to the house of their spiritual leader Shiekh Ibrahim El-Zakzaky and killed his sons, brutalized him and took him and his wife captive. In other to hide the scale of their heinous and unprofessional misconduct, the perpetrators of the mass killings in conjunction with Kaduna State Government transported persons whom they had illegally killed to Kaduna in the night and proceeded to conduct a mass burial for them.[29]

Despite the fact that the Kaduna State Government formed a committee of inquiry to inquire into the happenings of December 12th and 13th, 2015 in Zaria. The committee recommended prosecution of soldiers that used disproportionate and unaccountable force on Shias in Zaria. The committee also admitted that they indeed buried over 300 Shias that were killed by soldiers in Zaria on that day. Despite the committee's report and the condemnation by global bodies that those behind this heinous crime should be made to face the wrath of the law, nothing significant has been done.[30]

Thus, in *Bello vs A.G Oyo State*,[31] this action was brought by dependants of a defendant in criminal prosecution who was convicted by the trial Court and sentenced to death, while the appeal against his conviction was pending at the Court of Appeal, he was executed. When the

[29] Danfulani, F. (2017) http://saharareporters.com/2017/01/20/negative-implications-human-rights-violations-nigerias-democratic-system-john-danfulani Accessed on 29th April, 2017.
[30] Ibid.
[31] (1986) 12 S.C. 1.

appeal got to the Supreme Court, it was held that his life was unlawfully deprived by the Government of Oyo State. **Aniagolu, JSC**[32], while concurring on the lead judgment observed:

> This is the first case in this country, of which I am aware, in which a legitimate Government of this country – past or present; colonial or indigenous hastily and illegally snuffed off the life of an Appellant whose appeal had vested and was in being with no order of Court upon the appeal, and with a reckless disregard for the life and liberty of the subject and the principles of Rule of Law. The brutal incident has rubbed the face of Oyo State Government with the paintbrush of shame.

The Supreme Court also held that the right to life of an individual belongs to him even after conviction to exercise his Constitutional right to appeal such conviction. Considering the importance of right to life, it does appear that it is the basis for other human rights any person can enjoy, since one needs to be alive before one can talk about the existence of other rights.

3.2.2 Rights to Dignity of Human Person

This right is provided for, under section 34[33]

> S. 34(1) 'every individual is entitled to the respect for the dignity of his person and accordingly: -
>
> a) No person shall be subjected to torture or to inhuman or degrading treatment
> b) No person shall be held in slavery or servitude; and
> c) No person shall be required to perform forced or compulsory labour.
>
> S. 34(2) for the purposes of subsection 1 (c) of this section, 'forced or compulsory labour'[34] does not include:
>
> a) Any labour required in consequence of the sentence or order of a Court;

[32] (1986) 12 S.C. 1.
[33] Constitution, Federal Republic of Nigeria, Op.cit
[34] Ojuya vs Nzeogwu (1996) IN.W.L.R. pt.452, 713

> b) Any labour required of any member of the armed forces of the Federation or the Nigerian Police Force in pursuance of their duties as such.
>
> c) In the case of a person who has conscientious objections to service in the Armed Forces of the Federation, any labour required instead of such service.
>
> d) Any labour required, which is reasonably necessary in event of any emergency or calamity threatening the life or wellbeing of the community; or
>
> e) Any labour or service that forms part of;
>
> i) Normal communal or other civic obligations for the wellbeing of the community,
>
> ii) such compulsory National service in the armed forces of the Federation as may be prescribed by an Act of National Assembly, or
>
> iii) Such compulsory National service which forms part of the education and training of citizens of Nigeria, as may be prescribed by an Act of National Assembly.

The Constitution has by this provision[35] prohibited torture and inhuman or degrading treatment, thus in *Falobi vs Falobi*[36] the Court held that the Constitutional prohibition of torture or any inhuman treatment is absolute. Aguda, also argued that the prohibition of slavery is absolute whereas that of forced labour is not.[37] The view is logical and requires no dispute on the provision of subsection 2 of section 34 which carefully provided for the exceptions to subsection 1. The consequence is therefore that apart from the above exceptions, any form of acts of indignity to any person breaches the right to human dignity in Nigeria.[38] Though the Constitution did not define torture, inhuman and degrading treatment, however, the Court defined the terms in

[35] Sections 34(1) Constitution of the Federal Republic of Nigeria, 1999 Cap. 23 *Laws of the Federation of Nigeria*, 2004.
[36] (1976) 9-10 S.C.
[37] Aguda, O. *Understanding Nigeria Constitution of 1999*. MIJ Professional Publishers Limited, Nigeria, (2000) p. 66.
[38] Oraegbunam, I. K. E. (2012) Penal Jurisprudence under Islamic Criminal Justice: Implications for the Right of Human Dignity in Nigeria. *The Journal of Jurisprudence and Contemporary Issues,* 6 (2).

the case of *Uzoukwu vs Ezeonu*[39]**.** Torture is defined to include mental harassment as well as physical brutalisation. Torture implies putting a person to some kind of pain or anguish which could be extreme or excessive. In the same manner "inhuman treatment" characterises any act without feeling for the suffering of others. It means a 'barbarous, uncouth and cruel treatment which has no human feeling on the part of the person inflicting the barbarity or the cruelty.'[40]

Degrading treatment on the other hand was articulated as the element of lowering societal status, character value or position of a person. The question of inhumanity or otherwise, of the Muslim practice of stoning or amputating the hand or limb of a person who commits a crime is within the purview of inhuman treatment. Such practice does appear inhuman by virtue of the principle of right to dignity of person. In order to buttress this position, the Convention against Torture and Other Cruel, inhuman or degrading treatment or punishment[41]pursuant to Article 27(1) defined "torture" to mean … any act by which the severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third party information or confession, punishing him for an act he or the third party has committed or is suspected of having committed, or intimidating or concerning him or a third party, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanction.

[39] (1991) 6 N.W.L.R.pt. 200, p. 708at 778.
[40] Ibid
[41] Article 1, The United Nations Convention against Torture, which was adopted and signed and ratified by the UN General Assembly on 4th February, 1985 and entered into force on 26th June, 1987.

Following the importance attached to the right to dignity of human persons globally, what comes to mind is how has this right fared in Nigeria especially in the prison? The suspect awaiting trial in the prison is undeniably entitled to his right to dignity of person, but one wonder whether such right is respected in the Nigerian prisons and police cells.

The United States of America demonstrated the need for the right to dignity of person to be respected in prison, in the case of *Palmigiano vs Garrahy*,[42] the facts of this case arose as a result of the condition in Rhode Island Correctional Institutions, where the plumbing was leaking and lighting was inadequate for reading (for prisoners), heating and ventilation system were poor, there were numerous fire hazards and poor and inadequate maintenance system. The Court held inter alias that:

> …the lack of sanitation, lighting, heating and ventilation and the noise, idleness, fear and violence and the absence of inadequacy of programmes of classification, education, physical exercise, vocational training or other constructive activity, create a total environment where debilitation is inevitable and which is unfit for human habitation and shocking to the conscience of a reasonably civilized person.

The principle in this decision is that prisoners are entitled to their right to personal dignity. However, the Nigerian Prison System embodies all inadequacies described. The philosophy of prisoners' rights is a complete negation of established traditions in the Nigerian Prison System.

Therefore, the disrespect for the dignity of a prisoner's person manifests itself in several aspects of prison life and notably the pattern of housing the prisoners. In Nigerian prisons,

[42] (1977) D.R.I .443 F. Supp. 956

convicted prisoners and suspects awaiting trials are lumped together in the same prison house,[43] in total disregard to Rule 8(b)[44] of the United Nations Standard Minimum Rules for the treatment of Prisoners, the rule provides that 'Untried prisoners shall be kept separate from convicted prisoners.' It is unfortunate that Nigerian Prison Authority does not observe this United Nations Minimum Standard Rules which Nigeria is a signatory to.

Apart from inhuman condition of our prisons, in Nigeria another aspect where the fundamental of dignity of human person is fragrantly breached is in the police cell, by the activities of police officers. Violence and torture are intrinsic to the way the Nigerian Police Force conducts its work and are found at every point of contact between the public and police from routine checks through arrest, interrogation and detention and the violence has been described as institutional and routine[45]. The average police officer in Nigerian street is armed with a horse whip and many of them are showing enthusiasm in using it on innocent passerby without provocation[46]. After the killing of the gruesome killing of the Shias on December 12th 2017, Sheikh Zakzaky and his wife were taken and held. They instituted a matter based on the infringement of their fundamental human right in an Abuja High Court challenging their unjust detention without trial by Nigerian authorities. Justice Gabriel Kolawole of the Federal High Court in Abuja ruled that the Sheikh and wife be released, and a house provided to them, he further held that fifty million Naira compensation be paid to the Sheikh and his family, and a 24/7security cover be given to them. In his wisdom the Abuja High Court Judge gave the

[43] Oraegbunam, I. K. E. (2012) Penal Jurisprudence under Islamic Criminal Justice: Implications for the Right of Human Dignity in Nigeria. *The Journal of Jurisprudence and Contemporary Issues,* 6 (2).
[44] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 30 August 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
[45] Berry, D. *et al*. Criminal Force, Torture, Abuse, and Extrajudicial killing by the Nigeria Police force. Open Society Institute, (2010) p. 65 <https://www.opensocietyfoundations.org/sites/default/files/criminal-force-20100519.pdf> accessed on 27/2/2017.
[46] Ibid.

government a maximum of forty five days to comply with his orders. The deadline expired on January 16, 2017, without government obeying the court decision even though they were properly served.[47]

Also, in the case of *Ifeanyi Anyanor vs C.O.P Delta State & 3 others*[48]a trader in automobiles, his brother and aged mother were arrested by the police on a complaint by a customer with whom the plaintiff had a civil dispute. The arrested persons were taken to the state police headquarters in Asaba, Delta State where the investigating police officer sergeant Henry Emefiele assaulted the applicant with horse whip and with a clenched fist, inflicted blows on the applicant's eye causing him injuries which resulted in redness of eye. The officer returned him to the police cell with hand-cuff and chained him overnight. The Court described the conduct of the police as a deliberate disregard of the law…cruel, outrageous and malicious conduct.

The Nigerian Police remains the worst violator of individual right to dignity of person in Nigeria. It does appear that in Nigeria, the Nigerian police subject suspects to;[49]

1. beatings, which are often severe in nature and may be directed at certain parts of the body such as the head or genitals, and which may involve several officers even if the suspect is not resisting;
2. beating and other cruel treatments administered by fellow detainees, often as ordered by the police officers;
3. forced gymnastics including frog jumping, prolonged standing, and forced stress positions aimed at humiliating or physically exhausting the victim;

[47] Danfulani, F. (2017) http://saharareporters.com/2017/01/20/negative-implications-human-rights-violations-nigerias-democratic-system-john-danfulani Accessed on 29th April, 2017.
[48] Suit No. A/M/82/2005 High Court Delta State, Unreported judgment of Z.A. Smith of May 30, 2007) 6.
[49] Berry, D. *et al*,(2010)Criminal Force, Torture, Abuse, and Extrajudicial killing by the Nigeria Police force. Open Society Institute. p. 65 <https://www.opensocietyfoundations.org/sites/default/files/criminal-force-20100519.pdf> accessed on 27/2/2017.

4. tear gas or pepper spray which may be directed at the eyes and nose or in female detainees, at the genitals;
5. clubbing of the soles of the feet and/or the ankles;
6. slapping of one or both ears with a cupped hand, which can rupture the victim's eardrums;
7. banging the victim's head against the wall or floor;
8. burning the victim with cigarettes, hot irons or flame;
9. squeezing or crushing of fingers, ripping out finger or toe nails or inserting sharp objects under the nail;
10. suspending the victim off the floor by the wrists or ankles, usually supplemented with flogging;
11. exposing the victim to climatic stress, including cold, damp cells or brutally hot ones;
12. exposing the victim to mosquitoes, flies, roaches, spiders, rats and snakes, knowing that these can induce a phobia in many people;
13. asphyxiating the victim through submersion in water;
14. sexual torture through rape, including sexual violation using objects such as bottle and broom sticks;
15. mental torture, including threats made to the detainee or his loved ones and mock executions;
16. non-therapeutic administration of drugs including pain-inducing drugs or threatening injection with dangerous drugs or HIV; psychological manipulation, including promising to end the torture if the victim cooperates, or offering drinks and cigarettes, better prison conditions or the removal of handcuffs where applicable;

17. sleep deprivation

18. denial of needed medical treatment starvation and/or deprivation of water;

19. constant interrogation,

20. shooting both legs known as the 'VIP treatment.'

The police officers commit torture for several reasons among which, is the desire to break the spirit of the detainee. The Nigerian Police Force lacks the capacity to conduct evidence based investigations, instead relying on confessions that are obtained through torture.[50]

3.2.3 Right to Personal Liberty

This right is contained in Section 35 of Chapter IV of the Constitution.[51]S. 35(1**)** every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with the procedure permitted by law:

a) In execution of the sentence or order of a Court in respect of a criminal offence of which he has been found guilty.[52]

b) by reason of his failure to comply with the order of a Court or in order to secure the fulfillment of any obligation imposed upon him by law

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

d) In the case of a person who has not attained the age of eighteen years, for the purpose of his education and welfare.[53]

[50]Berry, D. *et al*. (2010) Criminal Force, Torture, Abuse, and Extrajudicial killing by the Nigeria Police force. Open Society Institute, p. 65 <https://www.opensocietyfoundations.org/sites/default/files/criminal-force-20100519.pdf> accessed on 27/2/2017.
[51]Constitution of the Federal Republic of Nigeria, 1999 Cap 23*, Laws of the Federation of Nigeria*, 2004.
[52] The Court of Appeal affirmed this provision in the case of *Udeh vs. FRN* (2001) 5 N.W.L.R.pt.706, 312

e) In the case of person suffering from infections or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community.[54]

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

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

> S.35 (2) any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of this own choice.[55]
>
> S.35 (3) any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands of the facts and grounds for his arrest or detention)
>
> S.35 (4) any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a Court of law within a reasonable time, and if he is not tried within a period of;
>
> (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
>
> (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

[53]Section 371, Administration of criminal justice Act 2015, The Court shall have regard to the provisions of the Child Rights Act.
[54]Loke vs. State (1985) 1 N.W.L.R. pt. 1, SC.
[55]Babalola vs. State (1989)4 N.W.L.R. pt. 115, 264 SC, Uteh vs. State (1992)2 N.W.L.R. pt. 223, 257 SC

> S.35 (5) in subsection (4) of this section, the expression 'reasonable time' means
>
> a) in the case of an arrest or detention in any place where there is a Court of competent jurisdiction within a radius of forty kilometres, a period of one day; and
>
> b) in any other case, a period of two days or such longer period as in the circumstances maybe considered by the Court to be reasonable.
>
> S.35(6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or persons specified by law.
>
> S.35 (7) nothing in this section shall be construed;
>
> (a) in relation to subsection (4) of this section, as applying in the case of person arrested or detained upon reasonable suspicion of having committed a capital offence; and
>
> (b) as invalidating any law by reason only that it authorises the detention for a period not exceeding three months of a member of the armed forces of the Federation or a member of Nigerian Police Force in execution of a sentence imposed by an office of the armed forces of the Federation or of the Nigeria Police Force, in respect of an offence punishable by such detention of which he has been found guilty.

Under the Nigerian Constitution, every person is entitled to his or her personal liberty. What then is personal liberty? Personal liberty is the freedom of a person to carry out his or her resolve freely except for those limits imposed by law to protect the physical, moral, political, and economic welfare of others.

Lord Denning said, 'Let me first define my terms. By personal freedom I mean the freedom of every law-abiding citizen to think what he will, to say what he will, and to go where he will on his lawful occasions without limit or hindrance from any other persons.'[56]

[56]Denning, A. (1949) *Freedom under the Law*. Stevens & Sons Limited, London, p.5.

Malami, defined personal liberty as the right to freedom from wrongful or false imprisonment, arrest, or any physical restraint whether in any common prison, or even in the open street without legal justification.[57] Justice Adaremi in the case of *Eyu vs State*[58]stated:

> Freedom is no doubt the greatest gift or heritage of man. Omnipotence created man and accorded him with the divine freedom. Men are born free with liberty to think what he will, to say what he will and go to where he likes, all in a lawful manner, without any hindrance from any other person, private or governmental authorities. It therefore follows that, generally, detention of a man by a fellow man is a violation of the law of God and man. I am not oblivious of the fact that there are checks and balances to the series of freedom given to man. To the extent to which a man must not do his things in a way calculated to injure or adversely affect the exercise of the freedom of another man, his own freedom is limited.

The African Charter on Human and People's Rights makes similar provisions that take care of rights to personal liberty, it provide that 'every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.'[59]

Other rights are; right to silence; right to be informed within twenty-four hours of the facts and grounds of arrest and detention,[60] right to be arraigned within a reasonable time and right to compensation and public apology. The deprivation of personal liberty is unlawful except

[57] Malemi, E. (2007) *The Nigerian Constitutional Law*. Princetop Publishing Co. Nigeria ,1st Edition. p. 221.
[58] (1988)2 N.W.L.R pt. 78, 602
[59] Article VI In Nigeria, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 LFN 2004, takes care of the provisions the Charter base on its ratification and incorporation as a domestic law
[60]Section 6(1), Administration of Criminal Justice Act 2015, except when the suspect is in the actual course of the Commission of an offence or is pursued immediately after the Commission of the offence or has escaped from lawful custody, the police officer or other persons making the arrest shall inform the suspect immediately of the reason for the arrest.

in cases authorised by the law. With the approval of the law enacted by the legislature, five types of detention are permitted under the Constitutional guarantee of personal liberty, namely: protective/corrective custody, detention ordered by a Court for non-compliance with a Court order, detention in connection with the commission of a criminal offence, preventive detention and detention pursuant to conviction and sentence by a Court for a criminal offence.[61]

Detention is constitutional when it is permitted by law in the case of a person reasonably suspected of having committed a criminal offence, but the detainee must be brought before a Court of competent jurisdiction, within a reasonable time. The idea of holding charge by the Magistrate was displaced by the decision of the Court of Appeal in *Lufadeju & Anor vs Bayo Johnson.*[62]The appellant and others were remanded by a Chief Magistrate when it had no jurisdiction to determine the offence of conspiracy to commit treason and treasonable felony brought against the appellant and eleven others. The appellants made application for bail and it was refused at the Magistrate Court and they made subsequent application to the High Court which was refused, the appellant appealed to the Court of Appeal. In determining the issues raised, section 78(b) and 236(3) (a) (b) (c) of the Criminal Procedure Law of Lagos State, Section 32 (1) (c) of 1978 now (S. 35 (1) (c) 1999) and Article 7(1) (d) of the African Charter on Human and Peoples' Rights were considered and the Court of Appeal held that the holding charge is unconstitutional.

Therefore, the Court of Appeal's decision in this case stands as the true reflection of the constitutional provision on the right to personal liberty of persons because on appeal to the Supreme Court, the Supreme Court upheld the decision of the Court of Appeal.

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[61] Ibid

[62] (2007) 8 N.W.L.R. pt.1037, p.535 SC.

3.2.4 Right to Private and Family Life

The right to private and family life is provided under Section 37 of the Constitution and it provides: 'The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.'

By this provision every person has the right to privacy of his home, correspondence telephone conversation, telegraphic and other forms of communication must not be invaded without lawful justification.[63]Right to privacy is a notion that is closely related to issues that might be encountered in the law of tort (trespass), equity (breach of confidence), intellectual property (copyright)[64] also freedom from interference by the State.[65] Privacy is also important as a way of reinforcing other constitutional liberties, especially the right to freedom of association and assembly. One of the cardinal means of violating the liberty of those persons or organisations who support unpopular cause is to monitor them, keep them under surveillance to maintain record of their activities and members and to circulate information about them to provide the fuel of oppression and discrimination against them.[66]

Alobo[67]argued that, family life was regarded from time immemorial in human historic, cultural, sociological and anthropological development, it was duly recognised that a man requires privacy for him to be happy, resourceful and satisfied. The right to privacy and family life is irrespective of a man's socio-economic class to which he belongs. A man has the right to live the way he likes within the ambit of the law and acceptable practice of a civilized society.[68]

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[63] Malemi, E. (2007) *The Nigerian Constitutional Law*. Princetop Publishing Co. Nigeria, 1st Edition, p. 34
[64] Bradley, A. W. and Ewing, K. D. (2007) *Constitutional and Administrative Law.* Pearson Education Ltd, 14th Edition, p. 513.
[65] Ibid*.,* p.513
[66] Ibid
[67] Alobo, J. E. (2010), *Exposition and Notable Principles on Fundamental Rights (Enforcement procedure) Rules 2009 in Honour of James O. Obebe JSC.* DRCLB Publication, Nigeria, p. 113.
[68] Ibid

Unless a person's life is beneficial to the society or a matter of substantial public interest, a person's private life (past and present) should not be the subject of discussion in public especially when it is intended to impugn his reputation.[69] Privacy is a restrain on freedom of expression and as such gives rise to concerns when relied on by public officials who have something to hide, and who wish to prevent the disclosure of information which may expose hypocrisy or worse.[70]

According to the Freedom of Information Act, making demands on information from a public official with regards to public records do not amount to an evasion of his right to privacy. Thus "public records" in this context mean: 'a record in any form having been prepared, or having been or being used, received, possessed or under the control of any public or private bodies relating to matters of public interest'[71]

Though the intendment of the Act is not to derogate the principle and Constitutional right to privacy, but to make public records and information freely available, provide for access to public record and information, protect public record and information to the extent which is consistent with personal privacy, protect Serving Public Officers from adverse consequences for disclosing certain official information and establish procedures for the achievement of those purposes and related purposes thereof.[72] However, the Act in section 14 exempts many categories of information from disclosure, which includes files and personal information

[69] Ibid.
[70] Bradley, A. W. and Ewing, K. D. (2007), *Constitutional and Administrative Law.* Pearson Education Ltd, 14thEdn, p.514.
[71] Section 1, Freedom of Information Act 2011.
[72] Long Title, Freedom of Information Act 2011.

maintained with respect to clients, patients, residents, students or other individuals receiving medical care.[73]

3.2.5 Right to Freedom of Thought, Conscience and Religion

> S.38 (1) Every person shall be entitled to freedom of thought, conscience and religion including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching practice and observance.
>
> S.38(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion, other than his own, or a religion not approved by his parents or guardian.
>
> S.38(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.
>
> S.38(4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.[74]

Article 8[75] provides that freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may subject to any law and order or be submitted to measure restricting the exercise of these freedoms.

Whenever freedom of thought conscience and religion is talked about, it guarantees an individual the right to receive and indoctrinate religions teaching and principle to people of their faith and those intending to change their belief. The 1999 Constitution[76]has made it clear that the Government of the Federation or of State shall not adopt any religion as State religion. This is the position of the law in Nigeria. Similarly, Article 8 of the African Charter on Human and

[73] Ibid. S.14.
[74] Section 38, Constitution Federal Republic of Nigeria, Op.cit
[75] African Charter on Human and Peoples' Rights.
[76] Section 10, Constitution of the Federal Republic of Nigeria, Op.cit

Peoples' Right which Nigeria has domesticated and ratified as an Act of National Assembly supports the idea of freedom of religion. The question is: can people practice their religion in a violence free manner in Nigeria? Religious violence is a reoccurring decimal in Nigeria today. Christians have been subject of attack in some states in the Northern part of Nigeria in the name of committing blasphemy against Islam.[77] Whereas, in a multi-religious society or country such as Nigeria, blasphemy is not an offence.[78]

There will be no religious violence if religious clerics preach peace and religious harmony to their followers. Freedom of religion has been guaranteed by the Constitution but extremisms in religious practices or the commission of offences in the name of religion by adherents is not permissible under the law and it is therefore a crime and an act of terrorism.

In the case of *Onwo vs. Oko & Ors*[79] the appellant, a Christian was forcefully locked up in a room in accordance with the tradition of their community for mourning the dead, the appellant filed a suit to enforce her fundamental right at a High Court which was dismissed, at the Court of Appeal, it was held that the protection of individuals within the state against excesses of fellow citizen is necessary. Also in *Ojonye vs. Adegbudu*,[80]where the appellant, a Christian was compelled by her husband's brother to buy goat for the burial of her husband, she refused on the ground that her religion prohibits her from offering sacrifice to the dead, the deceased husband's brother bought the goat and later filed an action at a Grade II Area Court in Adoka, Benue State, against the appellant for the refund of forty naira (N40.00) being the purchase price of the goat, the Court ruled against the appellant, hence the appeal at the High

[77] Odebode, N. *et al* 'CAN calls emergency meeting over Zamfara Kaduna Killings' The Punch (Lagos, August 24, 2016) p. 7.
[78] Ibid.
[79] (1996)6 N.W.LR. pt. 456, p. 584.
[80] (1983) 4 N.C.L.R.

Court, and the appeal was upheld, the Court held that the Constitution guarantees a clear term freedom of religion and the Adoka custom which compels the appellant to do what is not the practice of her religion violates section 35(1) of the Constitution (now section 38(1)) and it is therefore void. The Court also held that, no Court, authority or person has the right to compel anybody to practice what is not recognised or allowed by his religion so long as that practice is generally known not to be allowed by his religion.

The right to freedom of thought, conscience or religion has limitation for the sake of state security. According to Ayoola JSC,[81] the right to freedom of thought, conscience or religion implies a right not to be prevented without lawful justification from choosing one's life which is fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious belief. The limits of this freedom in all cases are where they infringe on the right of others or where they put the welfare of society or public health in jeopardy. The right of privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary. The decision of a patient not to submit to blood transfusion or medical treatment on religious grounds is to be taken on the grounds of public interest or recognised interest of others, such as dependent minor child.

Also in the case of *Ezeuko vs State,*[82] the appellant, the General Overseer of Christian Praying Assembly with headquarters in Ajao Estate Lagos known as Rev. Dr. King was arraigned on six counts charges of attempted murder, murder and other charges. The facts were that the appellant, as the spiritual leader of his ministry, in a bid to punish the surviving victims

[81] Medical and Dental Practitioners Disciplinary Tribunal vs. Okonkwo (2001) F.W.L.R. pt.44, p.542.
[82] (2016) ALL F.W.L.R. pt.831, 152 SC (2016) p. 10 WRN 1 SC.

and the deceased person of immoral behaviour, he knelt them down, beat them with various objects and douse them with fuel and burnt them, five of the victims escaped with various injuries, and one died. At the High Court the appellant was tried, convicted and sentenced to death by hanging, when he appealed, his conviction was upheld by the Court of Appeal, he subsequently appealed to the Supreme Court being dissatisfied with the decision of the Court of Appeal. While upholding the conviction, the Supreme Court per Ngwuta JSC condemned the over zealousness of religious leaders and held thus:

> My Lords, we need to be warned that the bitch that gave birth to the monster maybe in the heat again. Extremism in politics or religion results in disaster, when Hitler the Austrian house painter lunatic snatched power and led Nazi party in Germany, one of his motive forces was the maintenance of the purity of the Aryan race for which he slaughtered about six million Jews and people of other races. His is a mere mortal, who has arrogated to himself the power and functions of his maker to punish them for their real and perceived offences, he had his so-called God-sons and God-daughters douse with petrol and set ablaze at the peak of his smouldering anger. He brought the hell fire from heaven unto his victims…when a man-made god, a tin god with clay legs leads people in whom he has installed extreme fear of the unknown, the words are put in abeyance and mundane and brought to the front burner. Human life, even that of a sinner is sacred to God. Religious freedom, freedom of association does not in any way derogate from the sanctity of life. Activities of these religious bodies should be scrutinised before their crazy leaders embark on mass murder of their followers or lead them to mass suicide.[83]

The Supreme Court of Nigeria upheld the decision of the Court of Appeal in the case of *AMORC vs. Awoniyi*[84] which declared the appellant as a secret society with satanic practices. This decision is in line with the provision of S.38(4) of the 1999 Constitution which prohibits person from taking part in activities or being member of secret society in guise of religious practices.

[83] (2016) ALL F.W.L.R. pt.831, 1539 - 1541
[84] (1994)7-8 S.C.N.J. 390

3.2.6 Right of Peaceful Assembly and Association

S.40[85] Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interest. Provided that the provision of this section shall not derogate from the power conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that commission does not accord recognition.

The purport of this provision is that, people are free to associate and assemble to the extent that their conduct is not otherwise unlawful.[86]Okene has argued that, following the principle that people may do whatever they wish as long as they do not harm others, individuals should be free to join an organization and to act in associations with others as long as no harm is caused.[87] In labour relations, the concept of freedom of association entails that workers can form, join or belong to a trade union and engage in collective bargaining.[88] Under international law, the Universal Declaration of Human Rights adopted by the United Nation General Assembly in 1948 provides that "Everyone has the right of freedom of peaceful assembly and association". Everyone has the right to form and to join trade unions for the protection of his interest.[89] The international labour organization sees freedom of association as a fundamental principle in several documents.[90] Also in Nigeria, the Supreme Court, in the case of *AG Federation vs Abubakar*[91] held that pursuant to section 40 of the 1999 Constitution, it will operate illegality, injustice and unconstitutionality to refuse or deny a citizen of this country to opt or join, belong

[85] Constitution Federal Republic of Nigeria 1999. Op.cit
[86] Bradley, A. W. and Ewing, K. D. (2007), *Constitutional and Administrative Law* Pearson Education Ltd,14th Edition. p. 572.
[87] Okene, O. V. C. Curbing State Interference in Workers' Freedom of Association in Nigeria. *The International Journal of Not-for-profit law* 8 (1).
[88] Ibid.
[89] Article 23(4), Universal Declaration on Human Rights, 1948.
[90] Convention No.87 of 1948 Article 1-6 freedom of Association and protection of the right to organize.
[91] (2008) 2 C.C.L.R.

to any political party, trade union or any other organization for the protection of his interest, except where in the case of political parties…the right to participate in politics is inherent in the freedom of assembly and association.[92] The right to freedom of assembly and association has limitation inherent in it. Thus, in Nigeria, a person below 18 years old is disenfranchised[93] and therefore has no business in being a member of a political party. People are free to determine whom they will associate with. An organisation cannot be compelled to associate with a person or accept into membership or to retain individuals whose memberships are no longer needed.[94]

Bradley and Ewing identified two broad categories of restriction in addition to various restrictions imposed on associations such as trade union, clarities and political parties by the State.[95]

i. Public Processions & Assembly

At common law a procession in the streets is prima facie lawful, being no more than the collective exercise of public right to use the high way for its primary purpose. This does not mean that it would be a reasonable use of the high way for a dozen demonstrators to link arms and proceed down a street so as to interfere with the right of others to use the highway or for a large group of demonstrators to decide to obstruct a street a procession would become nuisance 'if the right was exercised unreasonably or with reckless regard of the rights of others.[96] In the case of *IGP vs ANPP*[97], the question for determination was the validity or constitutionality of

[92] Alobo, J. E. (2010),*Exposition and Notable Principles on Fundamental Rights (Enforcement procedure) Rules 2009 in Honour of James O. Obebe JSC.* DRCLB Publication, Nigeria, p.128.
[93] Section 77(2) Constitution Federal Republic of Nigeria.
[94] Alobo, J. E. (2010) Op.cit. p. 573.
[95] Ibid.
[96] Ibid. p.576.
[97] (2007)18 N.W.L.R. pt.1066, p. 457 CA.

sections, 1, 2, 3 and 4 of the Public Order Act (Voided)[98] by virtue of sections 1 and 40 of the Constitution Federal Republic of Nigeria 1999 as amended.

The public Order Act (Voided), in the above sections provides that, the Governor of a state has the power to direct the conduct of all assemblies, meeting and procession on public roads or places of public resort in the state and prescribe the route by which and the times at what any procession may pass. Section 2 of the Act also gives the police officer of the rank of inspector the power to stop any assembly, meeting or procession for which no licence has been issued, and also, section 3 of the Act states that any assembly, meeting or procession without licence is unlawful. Members of political parties, who embarked on procession to protest the rigging of 2003 election were interrupted by the police, in determining the constitutionality or otherwise of the provisions of the Act, the Court of Appeal, while affirming the decision of the Federal High Court, declared sections 1,2,3 and 4 of the Public Order Act unconstitutional, null and void as they are inconsistent with the provision of section 40 of the Constitution, and by virtue of that, section 1 (1) and (3) they are void.

However, irrespective of the decision of the Court of Appeal in the above case, the Nigerian security agents have continued with impunity in carrying out their duties. Recently the Amnesty International accused the Nigerian Security agents of using live ammunition and deadly force against Pro-Biafra protesters who were campaigning for an independent state in the South-East, which resulted in the killing of over 150 protesters.[99]

[98] Cap. P42 L.F.N. 2004.
[99] British Broadcasting Corporation (BBC) News. Nigeria security forces 'killed 150 peaceful pro-Biafra protesters.' (BBC, 24th November, 2016) <http://www.bbc.com/news/world-africa-38087836> accessed on 26/1/2017.

Also, the warning that was issued by the Kano state government to its civil servant ordering the police to deal with any civil servants that protest their unpaid salaries, security forces were ordered to deal ruthlessly with any civil servant that engage in illegal protest. The government said that aggrieved workers should direct their complaints to the proper channel and never engage in protest despite the fact that trade unions and labour unions have the right to stage a peaceful protest, make their demands as well as relay their grievances.[100]

It is therefore a condemnable act of executive recklessness for the security agents under the strict control of the executive arm of government to continue insisting on police permit for procession and demonstration to be carried out by citizens against any unpopular actions of the government.

3.2.7 Right to Freedom of Movement

The Fundamental Right to freedom of Movement is constitutionally guaranteed under Section 41 (1) Every citizen of Nigeria is entitled to move freely in Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit there from.

> S.41(2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society.
>
> a) imposing restriction on residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria.
>
> b) providing for the removal of any person from Nigeria to any other country to:
>
> i) be tried outside Nigeria for any criminal offence, or

[100] Akintola, L. (2016) http://venturesafrica.com/nigerias-shocking-boldness-in-abusing-the-civilhuman-rights-of-its-citizens/ accessed on 29th April, 2017.

ii) undergo imprisonment outside Nigeria in execution of the sentence of the Court of law in respect of any criminal offence of which he has been found guilty.

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter. Also, the African Charter of Human and People's Rights provided thus: 'Every individual shall have the right to freedom of movement and resident within the borders of a state provided he abides by law.'[101]

The Courts in Nigeria have demonstrated commendable efforts in the protection of the right of freedom of movement in the country. The Constitutional right of every Nigerian to reside in any part of Nigeria is within the contemplation of the Constitution.

Thus, in *Shugaba vs Minister of International Affairs and Others,*[102] the applicant was deported by the Nigerian authority on the ground that his father is not a Nigerian, though the real fact behind the deportation was on political ground. The Court held that his deportation was unconstitutional and a breach of his fundamental rights as enshrined in the Constitution. This decision is in line with S.41(1) of the Constitution that prohibits the deportation or expulsion of any Nigeria citizen. In *Arowolo vs Akapo,*[103] the Court of Appeal held that by the provisions of the Constitution of the Federal Republic of Nigeria 1999, every citizen of Nigeria has the right to reside wherever he wishes…the right does not confer right of indigene-ship on the place he resides, unless he wishes.

[101] Article xii (2)
[102] (1982) 3 N.C.L.R 915.
[103] (2003) 8 N.W.L.R. pt.823, 451

Also with regard to imposition of restriction on residence as provided for in s.41(2) (a), the Court in the case *Williams vs Majekodunmi,*[104] stated:

> This is an action for the declaration that the Emergency Power (Restriction Orders) Regulations is ultra vires, null and void to the extent that it restricts the plaintiff to Abeokuta and it breaches the fundamental right of the plaintiff. It was also the contention of the plaintiff that as at the time the emergency power was made, there was no emergency… If parliament can make a law, to restrict movement, which has effect at all times, it can make such law during emergency period.

This means, a law that restricts freedom of movement of persons could only be justified in emergency situations such as war or any act that is likely to cause disorderliness in the society and whenever such law is made in the absence these circumstances, it interferes with the fundamental rights of freedom of movement of citizens.

3.2.8 Right to Freedom from Discrimination

Under the framework of the rule of law, equality of individuals before the law is emphasized. The constitution frowns on both discriminatory and preferential treatment of one citizen to the other. The provision of Section 42 (1) (a) states that:

> a)A citizen of Nigeria of a particular community, ethnic group, place of origin, sex religion or political opinion shall not, by reason only that he is such a person.
>
> b) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups places of origin, sex religions or political opinions are not made subject; or
>
> c) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not

[104] (1962)2 N.S.C.C 268

> accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions.
>
> S.42(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of circumstances of his birth.
>
> S.42(3)Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the state or as a member of the armed forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.

According to the United Nations Universal declaration of Human Rights.[105]

> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Having cited these relevant laws that prohibit discrimination, the question is what then is discrimination? Discrimination is any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, National or social origin, property birth or other status and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedom.[106]

Courts have always protected the right not to be discriminated against, for instance in the case of *Brown vs Board of Education*[107] the Supreme Court held that, the provision of separate educational institution for different races was discriminatory and unconstitutional.

[105]Article vii, Universal Declaration on Human Rights, 1948.
[106]Shaw, M.N. (2008), *International Law*. Cambridge University Press, 6th Edition, p. 318
[107]163 US 537 (1954)

In Nigeria, especially in the South-Eastern zone there is high level discrimination on the ground of sex. Women are discriminated against. They are seen as properties that could be inherited by their husband's brother upon the death of their husband.[108] Discrimination and violence against widows stream from the violation of women by society which is deep-rooted in custom, culture and the likes.[109]

These prejudice and subjugation of women have eaten deep into the structure of the society. Tony-Sampson contended that there is a structural bias against the women, the widows, in all ramifications and ultimately to structural injustice and being bias negates the important roles women play in the families and societies as a whole.[110] Though, the erudite jurist may have been persuaded to arrive at her conclusion based on what is obtainable in most of the customary and religious practices in Nigeria. However, it is not in all circumstances women are discriminated upon. In most of the public institutions in Nigeria today, women are saddled with higher responsibilities, politically and administratively, therefore it might not be to true position to assert that there is structural bias against women in all ramifications.

The Nigerian Courts have made commendable efforts in their constitutional duty of ensuring justice in the society, by declaring certain custom and practices that are discriminatory null and void. In the case of *Theresa Onwa vs Nwafor,*[111]the customary practice of forcefully shaving the hair of a widow in guise of mourning the deceased husband was declared unconstitutional. The Supreme Court also held in the case of *Chinwe vs Masi*[112] that since a family is made up of a man, his wife or wives and children born to the man by his wife or wives,

[108] Tony-Sampson, R. A. (2016)Widowhood Right in Nigeria: A critical Appraisal under Igbo Customary Law. *Port Harcourt Journal of Business Law* (4) 2:p. 337.
[109] Ibid.
[110] Ibid. p. 304.
[111] (1996)6 N.W.L.R. pt.456, p.584.
[112] (1989)1 N.W.L.R. pt.97, p. 254.

therefore to deny a widow her right of inheritance on the ground that she is not a family member is outrageous.

Another discriminatory practice in Igbo land is the Osu caste practice. They believe that certain persons were dedicated to the gods at birth and therefore should be isolated. The practice has been described as the one of the most obnoxious, outrageous and devastating traditions in Igbo land.[113] This discriminatory practice is a clear breach or violation of Section 42(2) which prohibit subjection of any citizen to disability or deprivation merely by circumstances of his birth. It is therefore submitted that, citizens of Nigeria must not subject fellow citizen to any form of disability, as a result of circumstances of his birth.

Also, in the sad but interesting case of Badejo vs Minister of Education, an 11year old primary school pupil sued the Federal Government through her Father for discriminating against her in the common entrance examination to unity school due to different cut-off marks for various states in the country. She claimed that she was denied admission while some students who scored less marks but were in some so called educationally disadvantaged states were given admission. The high court wrongly held that she had no *locus standi* to institute the action. However, on appeal, the court of appeal ruled in her favour stating that she had *locus standi* to bring the suit even though the subject matter of the case had been over taken and studies resumed.[114]

[113] The leader assumpta.com/2016/11/20/05 accessed on 26/1/2017.
[114] (1996) 8 NWLR, pt 464, p.15.

3.2.9 Right to Acquire and Own Immovable Property Anywhere in Nigeria/Compulsory Acquisition of Property

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

This Constitutional provision has been given international backing by virtue of Article 14 of the African Charter on Human and Peoples' Rights. It states that 'The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws'. The right to property and interests in it is very important to everyone. In *Adeyemi vs AG Oyo State*,[115] Obaseki JSC observed: "The importance of the property rights and interest in land has never been in doubt by the Constitution of the Federation. Whenever there is any dispute as to ownership of these rights and interests, the proper forum for resolution of such dispute is the Court of law"

Omaka[116]opined that right to own property has a wide scope, which includes the right to own moveable and immovable property such as animals, plants, building etc. He argued that the citizen's right to own these properties could be windswept should the environment be misused. He made a very tenable argument. However, he did not consider the issue of volcanic eruption that may not be as a result of human activity. It is true that human activities may to a greater extent lead to the destruction of the environment which would definitely affect rights or interests in property. The Court in the case of *George Ihenkar and Ors vs SPDC*[117], awarded damages

[115] (1984)1 S.C.N.L.R., p.525.
[116]Omaka, A.(2012) *Municipal and International Environmental Law.* Lions Unique Concepts, p. 144.
[117](Unreported) suit No. A/173/92 Judgment Delivered in 1995

against the defendant for negligently causing damage to the economic trees, shrines and other property in the course of ecological and seismic survey activities.

i. Compulsory Acquisition of Property

The constitution of the Federal Republic of Nigeria guarantees individual ownership of property. In section 44 (1), it states that:

> S.44(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by law that, among other things:
>
> a) requires the prompt payment of compensation therefore; and
>
> b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a Court of law or tribunal or body having jurisdiction in that part of Nigeria.
>
> Nothing in subsection (1) of this section shall be construed as affecting any general law.
>
> a) for the imposition or enforcement of any tax, rate or duty
>
> b) for the imposition of penalties or for features for the breach of any law, whether under civil process or after conviction for an offence;
>
> c) relating to leases, tenancies mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;
>
> d) relating to the vesting and administration of property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of being wound up;
>
> e) relating to the execution of judgments or orders of Court;

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

g) relating to trusts and trustees

h) relating to limitation of actions

i) relating to property vested in bodies corporate directly established by any law enforce in Nigeria.

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

k) providing for the carry out of work on land for the purpose of soil conservation; or

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

3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the exclusive economic zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as maybe prescribed by the National Assembly.

This section of the Constitution prohibits the compulsory acquisition of properties of individuals or interests in immovable properties by the State authority in any part of the Country, without prompt payment of compensation. Whereas the position of the law in paragraph (b) gives the person claiming such compensation the right of access to Court for the determination of his interest in the property and amount of the compensation. The position of the law here is to forestall self-help by anyone whose interest is affected on the compulsory acquisition of property

or interest thereon. Thus, in *Governor of Lagos State vs Ojukwu*[118] Obaseki JSC observed that, 'in the area where rule of law operates, the rule of self-help by force is abandoned.'

The right to compensation is also provided for in the case of revocation of the right of occupancy by the Governor for the overriding public interest.[119] It appears that the right not to compulsorily acquire property of persons without compensation is limited by the exemptions provided for, under subsection 2 of section 44 of the Constitution. These limitations are to the effect that, the right of the owner of the property could be affected if he fails to fulfil certain obligations imposed on him by law, with respect to his ownership of the property. These include payments of tax, rate, duty, breach of any law and also lease charges or mortgages etc. are some of the circumstances that will affect the interest of the property owner with respect to compulsory acquisition and payment of compensation. That is to say, if a property is acquired on any of the above ground, compensation is not payable to anyone whose interest is affected.

The effect of subsection 3 of S. 44 is that, the Constitution confers on the Government of the Federation the exclusive right, ownership and control of petroleum, minerals, mineral oils and natural gas in any part of the country, both in the land, territorial water and exclusive zone. This subsection is further amplified by the Petroleum Act,[120] which also confers the exclusive ownership and control of all petroleum, in, under or upon any land in Nigeria or under the territorial waters of Nigeria or which forms part of the continental shelf or exclusive economic zone of Nigeria in the state. The use of the word "state" within the meaning of section 1 of the petroleum Act, refers to the Federal Government.[121] Thus, in the case of *NNPC vs Famfa Oil*

[118] (1986)1 N.W.L.R. pt.18, 621 SC
[119] Section 29, Land Use Act, 2004
[120] Section 1, Petroleum Act 1969
[121] Adangor, Z.(2016) Enhancing State Control of the Oil and Gas sector in Nigeria: Development of Indigenous Technology as an option. *Port Harcourt Journal of Business Law*(4) 2, p. 96

Limited[122]the Supreme Court held that minerals, minerals oil and natural gas anywhere in Nigeria are vested in the Federal Government. The vesting of ownership of petroleum to the Federal Government is total and complete as it combines both proprietary right with power of control; management and governance of petroleum resources.

3.3 Rights Under African Charter on Human and People's Right

The Human and People's right is traceable to the eighteenth conference of state and Government of the organization of African Unity (now African Union) in June 1981 at Nairobi, Kenya.[123] The Charter contains a wide range of rights, including the traditional and civil rights, economic and cultural rights and various people's rights.[124] It was adopted by the organization of African Unity in 1981 and came into force in 1986.[125] The Charter amongst other things tries to ensure the protection of human rights in member states, considering the importance of these rights to persons across the globe.

The fundamental rights in this Charter are provided for under chapter 1 of part 1 of the Charter. It is also important to note that, the African Charter on Human and People's Right has been domesticated and ratified in Nigeria as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[126] The ratification is made pursuant to section 12(1) of 1999 Constitution, which provides for the enactment of any treaty entered into by the Federation Government any other country into law by the National Assembly, for such treaty to have the force of law. The domestication of the Charter has made it possible for the existence of two similar legislations for the protection of human rights in Nigeria.

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[122] (2012)17 N.W.L.R. pt.1328, 148
[123] Olakami, O. (2007), *Handbook on Human Right.* Law Lord Publications, Nigeria, p. 27
[124] Shaw, M. M. (2008) *International Law.* Cambridge University Press, 6th Edition, p. 391
[125] Ibid. p. 391
[126] Cap A9, LFN 2004

The African Charter on Human and People's Right provides as follows:

Article I

The member states of the organization of African Unity, parties to the present Charter, shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

Article II

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without dysfunction of any kind such as race, ethnic group/colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article III

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law

Article IV

Human beings are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of this right.

Article V

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of particularly slavery, slave trade, torture, cruel, inhuman or punishment and treatment shall be prohibited.

Article VI

Every individual has the right to liberty and to the security of his person. No one maybe deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one maybe arbitrarily arrested or detained.

Article VII

1. Every individual shall have the right to have his cause heard.
    a) The right to an appeal to competent National Organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.
    b) The right to be presumed innocent until proved guilty by a competent Court or tribunal
    c) The right to defence, including the right to be defended by counsel of his choice
    d) The right to be tried within a reasonable time by an impartial Court or tribunal
2. No one maybe condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. Punishment is personal and can be imposed on the offender.

Article VIII

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to the law and order, be submitted to measures restricting the exercise of these freedoms.

Article IX

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinion within the law.

Article X

1. Every individual shall have the right to free association, provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in article 29 no one maybe compelled to join an association.

Article XI

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular, those enacted in the interest of National security, the safety, health, and rights and freedoms of others.

Article XII

1. Every individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. The right may only be subject to restrictions provided of National security, law and order, public health or morality
3. Every individual shall have the right when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.

Article XIV

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

As earlier observed, the Charter contains many other rights, ranging from economical, political and civil rights. Other rights include right to access to property, public office and participation in government. The fundamental human rights contained in the Charter covers a wider scope than the rights contained in chapter IV of the 1999 Constitution of the Federal Republic of Nigeria, however, the intendment of the Charter and the Constitution are geared towards the protection of human rights in Africa and Nigeria[127] in particular. The protection of these rights is important to human beings in Nigeria and Africa in general, the question is, how often are African Union member states willing to implement these ideal rights provided in Charter and those human rights contained in their domestic laws? It is therefore submitted that member states should give priority attention to the protection of these rights in their respective states.

3.4 Derogation of Rights under the 1999 Constitution and African Charter

The word 'derogation' means an occasion when a rule or law is allowed to be ignored.[128] It also can be seen as a restriction or limitation to the application of any law. The rights contained in chapter IV of the 1999 Constitution likewise other previous Constitutions are derogated by the Constitution itself, which has supremacy over all other laws in Nigeria.

[127] Chapter IV, Constitution Federal Republic of Nigeria, 1999
[128] Hornby, A. S. (2010), *Oxford Advanced Learner's Dictionary of Current English*. Oxford University Press, 8th Edition, p. 394

Under the Constitution, the derogation of fundamental rights is in two categories. The first set of derogation is the one set out in the relevant sections that make provision for the fundamental right itself and the second category is the derogation that is contained in section 45 of the Constitution.[129]

Section 45(1) of the 1999 Constitution gives the legislative arm the power to make laws which derogate from the fundamental rights guaranteed to all citizens of Nigeria under sections 37, 38, 39, 40 and 41 of the 1999 Constitution, provided it is reasonably justifiable in a democratic society, in the interest of defence, public safety, public order, public morality or public health or (b) for the purpose of protecting the rights and freedoms of other persons. Abuza argued that, it is quite disappointing that, the provision of S.45(1) of the Constitution has been a platform for law making authorities to make laws that affect the fundamental rights of persons for their selfish and vested interest.[130]

The law-making authority went beyond acceptable democratic principle when the public Order Act was enacted. The Act restricted or prohibited freedom of Assembly and procession, unless the Governor of a state where the procession is to be held gives approval for such activity. The absence of the Governor's approval makes any procession or Assembly unlawful.[131] This law is bedevilled with bad faith on the part of the law-making body and state authority since it stripes off the right of individuals to express their displeasure through peaceful demonstrations against any state policy that the message would be unfavourable to. It is quite impossible to seek and obtain the Governor's approval to protest against any actions of the state government that

[129] Abuza, A. E. (2016) Constitutional Law: Derogation from Fundamental Rights in Nigeria – Analysis of the Issues involve. PJBL (2) 1, p. 497
[130] Ibid., p. 498
[131] Section 1,2,&3, Public Order Act

offends the interest of the people in that state. Some of the provisions of the Act are inconsistent with section 40 of the 1999 Constitution, which guarantees freedom of Association and Assembly. The Court of Appeal in *IGP vs ANPP & Ors*[132]declared Sections 1,2,3,4 and 5 null and void.

The researcher noted that under the interpretative section, the 1999 Constitution does not contain the interpretations of defence, public order, public health and public morality, which are the basis for the enactment of any legislation for the derogation of the fundamental rights.[133]

Thus, S.45 of the 1999 Constitution provides as follows:

1) Nothing in Sections 37, 38, 39, 40 and 41 shall invalidate any law that is reasonably justifiable in a democratic society.

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

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

It is worthy to note that restriction on and derogation of fundamental rights is a necessary evil for the powers of the state to harmonize the rights of person with the overriding interest of the state. Derogation of fundamental rights also form part of the African Charter on Human[134] and Peoples Rights of 1981 and United Nation Declaration of Human Rights.[135] Derogation of right perhaps, makes the right bearer understand the limitation of his rights in the society. Thus,

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[132] (2007)18 N.W.L.R. pt.1066, 457

[133] Abuza, A. E. Op.cit.

[134]**Article xiv** provide that the right to property may only be encroached upon in the interest of public need or in the interest of the community and in accordance with the provisions of appropriate laws and **Article xii(2)** every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of National security, law and order, public health or morality.

[135]**Article xxix (2)** which provides thus; in the exercise of his rights and freedoms, everyone shall be subject to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting, the just requirements of morality, public order and general welfare in a democratic state.

the right to own moveable property does not include illegal and unauthorised possession of firearm, prohibited under the part I and part II of Firearm Act LFN 2004.

3.4.1 Derogation Right to Freedom of Movement

Under this fundamental right, the Court in the case of *FRA Williams vs MA Majekodunmi*[136] upheld the fundamental right of the plaintiff to freedom of residence and movement as guaranteed under S.26(1) of 1960 Constitution (now S.4(1) of 1999 Constitution Federal Republic of Nigeria). The Court also set aside the Restriction Order of 29th May 1962, made ordering the plaintiff to be and remain within a distance of three miles from number 193 Abeokuta Road in the township of Abeokuta on the ground that it was not reasonably justifiable in a democratic society in the interest of public order. This decision is the right one, in the sense that, if the excesses of the executive arm are not checkmated by the Judicial organ of the government, it will continuously act arbitrarily on issues of fundamental rights.

3.4.2 Derogation of Peaceful Assembly and Association

In the case of *Erasmus Osawe vs Registrar of Trade Union*[137]the appellant who was the plaintiff in the action, applied to the Registrar of Trade Unions for registration of the union called the Nigerian United Teaching Services Workers Union, otherwise called, the Nigeria Administrative Staff Union of Primary and Post primary school in 1980. The Registrar, while meeting the just requirements of morality, public order and general welfare in a democratic state denied them the right to be registered as a trade union on the ground that their interest is sufficiently protected by an existing trade union. The refusal was made pursuant to section 5(5). Trade Union Act 1973 and S.3(2) of the Trade Union Act 1973 as amended by the Trade Union Amendment Decree

[136](1962) ALL N.L.R. 410,426-427
[137] (1985)1N.W.L.R. pt.4, 755-763

1978. At the Supreme Court, it was held that, it was not disputed that the fundamental right enshrined under section 37 of 1979 Constitution (now S.40 of 1999 Constitution) for freedom of association as trade unions was subject to the derogation set out in the Constitution. The Supreme Court also in the case of *The Registered Trustees of National Association of Community Health Practitioners of Nigeria & Ors vs Medical and Health Workers Union of Nigeria*[138] held that the freedom of association guaranteed under the Nigerian Constitutions is no absolute but a qualified right which can be derogated in accordance with section 45 of the 1999 Constitution.

The major reason offered by the Court in upholding the refusal of the Registrar of Trade Union, to register prospective trade unions is that where there is in existence, a trade union that protects the interest of those category of workers who intend to register a union registering the new union would lead to the proliferation of trade union.

However, it is doubtful whether the prohibition of proliferation of trade union by law is justifiable in a democratic society in the interest of defence, public safety, public morality and public health, since the trade union's main objective is the protection of the welfare of its members and its operational base is specifically at the work place. There is no way registering prospective trade union will jeopardize the interest of public morality, defence, and health. Therefore, S. 3(2) of Trade Union Act placed a serious restriction on the registration of union as trade union, though that section of the Act has not been declared null and void, but it is submitted here that, it is a serious challenge to the right of individual workers to unionise.

As earlier stated, the case of *IGP vs ANPP* is quite instructive in the powers of the Court to review the legislative powers of the legislature in enacting laws pursuant to the provision of

[138] (2008)2 N.W.L.R. pt.1072, 575

S.41(1) of the 1999 Constitution. The declaration of section 1, 2, 3 and 4 of the Public Order Act null and void on the ground that they breached fundamental rights to freedom of Assembly and procession is a welcome development.

In the case of *Awolowo vs The Honorable Mallam Usman Sarkin & Ors*[139] the Court held that the right of the appellant to a legal practitioner of his choice was limited to lawyers who could enter Nigeria as of right. Also in *Brian Anderson vs Federal Minister of Internal Affairs*[140]the applicant, a British Citizen resident in Nigeria, alleged the infringement of his right to personal liberty. In the application for the enforcement of his fundamental right, he sought an order restringing the respondent from expelling him from Nigeria. In dismissing the application, the Court held that the right to personal liberty could not be invoked to prevent the lawful expulsion of an alien from Nigeria. This decision has been criticized by Falana, who described the deportation of an alien from the country as been arbitrarily carried out, since no person can be deprived of the right to personal liberty except in accordance with a procedure permitted by law.[141] He argued that since every person is also entitled to the right to fair hearing, no alien who has entered or residing in Nigeria can be expelled without being afforded the opportunity to make representation to the Minister or defend an extradition proceeding which may have been instituted by the Government against him.

[139] (1966)ALL N.L.R. 171
[140] (1984)F.H.C.L.R. 29 at 34
[141] Falana, F. (2004) *Fundamental Rights Enforcement.* Legal Text Publishing Co. Nigeria, 1st Edition, p. 8

3.4.3 Fundamental Rights (Enforcement Procedure) Rules 2009

Fundamental human rights occupy a special position in Nigerian Constitutional Jurisprudence. The rights are contained in Chapter IV of the 1999 Constitution.[142]

The importance of these rights is demonstrated in section 46(1) which provides thus:

> Any person who alleges that any of the provision of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress
> (2) subject to the provisions in this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such order, issue such writs and give such direction as it may consider appropriate for the purpose of enforcing or securing the enforcement within that state of any right to which the person who makes the application may be entitled under this chapter.

The provision of section 46(2) cited above has been expanded by O. II r I of the Fundamental Rights (enforcement procedure) Rule 2009, to include those contained in the African Charter on Human and Peoples' Rights (ratification and enforcement) Act,[143] and it provides as follows;

Any person who alleges that any of the fundamental rights provided for in the Constitution or African Charter on Human and People's Right (Ratification and enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the state where the infringement occurs or is likely to occur, for redress.

It is clear that by the combined effect of S.46(2) and Order II Rule I of the 1999 Constitution and Fundamental Rights (Enforcement Procedure) Rule 2009; persons entitled to

[142] Okogbule, N. S. (2008) 'An Appraisal of the procedure for the Enforcement of Fundamental Rights in Nigeria. *R/S UJPL* (2), p. 43

[143] Efevwerhan, D. I. (2013) *Principle of Civil Procedure in Nigeria*. Snaap Press Ltd, Nigeria, 2nd Edition,p. 466

make application for the enforcement of their rights contained in chapter IV of the Constitution are those whose rights have been, are being or likely to be infringed upon.

There has been a paradigm shift on who has the locus to apply for the enforcement of human rights in Nigeria, by virtue of the preamble of the 2009 Rules, which was the position of the law under the 1979 Rules, the categories of person who can apply for redress are;

a) Anyone acting in his own interest

b) Anyone acting on behalf of another person

c) Anyone acting as a member of, or in the interest of a group or class of persons

d) Anyone acting in the public interest; and

e) Association acting in the interest of its members or other individuals or groups.[144]

This is a clear departure from 1977 Rules and a radical expansion of *locus standi* of enforcement of the human rights contemplated by the provision of S.46(1) of 1999 Constitution. Since the expansion of the *locus standi* for the enforcement of fundamental rights existed in the 2009 Rule and has not been incorporated into the Constitution, the question of its constitutionality or otherwise has been settled by the Court of Appeal decision in *Abia State University Uturu vs Anyaibe,*[145] where it was held that Fundamental Right (enforcement procedure) Rules made pursuant to the Constitution, have the force of law as the Constitution itself; and overrides the provision of any other enactment to the contrary.

[144]Fundamental Rights (Enforcement Procedure) Rules, 2009.
[145] (1996)3 N.W.L.R. pt.439, p. 646 at 661

The Fundamental Rights (Enforcement Procedure) Rules is made by the Chief Justice of Nigeria pursuant to S.46(3), with respect to the practice and procedure of a High Court for the purposes of enforcing the rights under discussion.[146]

The inclusion of interest groups as having the *locus* to bring actions for the enforcement of rights of its members or others is a laudable progress in the protection of human right since some persons whose rights are frequently infringed upon do not have the capacity to go for redress in the Court of law. Eferwerhan has also argued that the inclusion of interest groups in the categories of applicants would dissuade power drunk bodies or individuals from flagrantly violating the rights of the less privilege in the society.[147]

On the issue of public interest litigation, the researcher opined that, litigants were to show that they suffered above others in order to have the locus to bring an action. However, with the interpretation of S.6(6)(b) of the Constitution by the Court of Appeal in *Fawehinmi vs President Federal Republic of Nigeria*[148]and *Bewai vs Obasanjo,*[149] there is hope for a more liberal approach in the application of the principle of *locus standi* to be adopted by the Courts so that public interest violation will not go unaddressed.[150] This view is as a result of lawlessness of majority of the Nigerian ruling class and in relation to the protection of the constitutionally guaranteed fundamental rights.

[146] Efevwerhan, D. I. (2013) *Principle of Civil Procedure in Nigeria*. Snaap Press Ltd, Nigeria, 2nd Edition, p. 466
[147] Ibid.
[148] (2007)14 N.W.L.R. pt.1054, 275 at 334
[149] (2008)9 N.W.L.R.pt.1093, 540 at 582
[150] Efevwerhan, D. I. (2013) *Principle of Civil Procedure in Nigeria*. Snaap Press Ltd, Nigeria, 2nd Edition, pp. 467-468

a) Actions That May Be Brought Under Fundamental Rights Enforcement Procedure

The actions that may be brought under Fundamental Rights Enforcement Procedure are rights contained in chapter IV of the Constitution and fundamental rights contained in the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act.[151] The inclusion of the United Nations Universal Declaration of Human Rights and other protocols is doubtful, this is predicated by virtue of S.12(1) of the 1999 Constitution which provides for the enactment of international treaties into law by the National Assembly for it to have the force of law, the Universal Declaration of Human Rights have not been enacted into Nigerian Law by the National Assembly and it is humbly submitted that it cannot form part of the fundamental right enforcement actions that may be brought.

b) Courts with Jurisdiction

Section 46(1) of the Constitution provides that 'Any person who alleges that any of the provisions of chapter IV has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress.

Order II Rule I of the Fundamental Right (Enforcement Procedure) Rules made similar provision, it however did not mention "High Court" but "Court" and offered the meaning of 'Court' in its interpretative order (Order I Rule II) to mean Federal High Court or the state High Court or the High Court of the Federal Capital Territory Abuja.[152] Therefore, it is the Federal High Court, High Court of States and Federal Capital Territory Abuja that have jurisdiction on the enforcement of fundamental right.[153] It is also important to note that, by virtue of section 254

[151] See Preamble of Fundamental Rights (Enforcement Procedure) Rules, 2009
[152] *Uwa v Akpan* (2010)47 W.R.N.pt. 85 at 87
[153] *Omosowan & Ors vs Chidozie* (1998)9 N.W.L.R. pt.566, p. 477

c (1) (d) of the 1999 Constitution, the National Industrial Court have jurisdiction to the exclusion of any other Court in civil cases and matters relating to or connected with any dispute over the interpretation and application of the provisions 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 Court has jurisdiction to hear and determine.

It is salutary to state that, the question of jurisdiction of Courts with respect to the interpretation of the provisions of chapter IV of the Constitution is determined by the subject matter. Any subject matter that relates to S.251 of 1999 Constitution with respect to individual fundamental rights as enshrined in chapter IV, it is the Federal High Court that have jurisdiction.[154]

c) Procedure for Enforcement of Fundamental Rights

An application for the enforcement of fundamental rights may be made by any originating process accepted by the Court, which shall subject to the provisions of the Rules, lie without leave of the Court.

An application under the 2009 Rules shall be supported by;

a) a statement setting out the name and description of the applicant, the relief sought, the ground upon which the reliefs are sought; and supported by

b) an affidavit setting out the facts upon which the application is made.

[154] Efevwerhan, D. I. (2013) *Principle of Civil Procedure in Nigeria.* Snaap Press Ltd, Nigeria, 2nd Edition, p. 478.

The applicant shall make the affidavit, but where the affidavit cannot be made by the applicant by reason of his in incarceration, any person armed with the facts of the matter can make the affidavit, stating that the applicant is unable to depose to the affidavit personally.

The applicant shall support his statements with a written address, which shall argue the grounds upon which the application is made. This was not part of the 1979 rules. Where the defendant intends to oppose same, he shall file respondent written address on the point of law, within 5 days of being served, and may accompany with a further affidavit.[155]

d) Time within which to Apply for Enforcement

There is no time bar/limit under the 2009 Rules, within which the applicant can apply for the enforcement of his rights. The rules provide that no fundamental right enforcement application shall be affected by any limitation statute whatsoever,[156] unlike the 1979 rules that provided for a period of 12 month.[157] Under the hitherto rules, at the expiration of 12-month period, the applicant can no longer enforce his fundamental rights, even application for leave to enforce his fundamental rights with not avail him.[158]

e) Persons that May Apply for Enforcement of Fundamental Rights

Generally fundamental rights may be enforced against the state or any of its agencies, since it is widely believed that Government is the greatest violator of fundamental rights.[159] In the case of

[155] Order 11 Rule 7
[156] Order 111 Rule 1
[157] Order I Rule 3 of 1979 Rules, Oguegbe vs IGP (1999)1 F.H.C.L.R. 59
[158] *Fred Egbe vs Hon. Justice Adefarasin* (1985)1 N.W.L.R. pt.3, 549, *Agboola vs Saibu & Anor* (1991)2 N.W.L.R. pt.175, 566, *Michael Obiefuna vs Okoye* (1961)ALL N.L.R. 357
[159] Falana, F. Op.cit. p. 29.

Minister of Internal Affairs vs Shugaba,[160] the Court of Appeal held that fundamental right could only be enforced against the state. This however, is no longer the position of the law as the same Court over ruled itself in *Uzoukwu vs Ezeonu II &Ors*[161]and *Theresa Onwu vs Nwafor Oko*[162]that fundamental right could be enforced against private person in Nigeria.

Persons that may apply for fundamental rights enforcement are;

1. Non-Natural person – These are corporate and unincorporated bodies. They may sue to enforce their fundamental rights and be sued. See *Concord Press (Nig) Ltd vs AG Fed.*[163]
2. Enforcement proceeding on behalf of a deceased person. It is trite law that a dead person cannot enforce his fundamental rights because he is not alive to enforce same.[164] It has been held that the right to life is only available to a living person, and that the right ends when the owner is dead.[165] However, in *Bello vs AG Oyo State*[166]the Supreme Court upturned the Court of Appeal decision, and upheld the appeal by stating that the plaintiff who had an interest in the continuance of life of the deceased, suffered damages as a result of his unlawful killing, and the plaintiffs were claiming for the injury done to them and not the deceased.

f) Orders the Court May Make

The orders the Court may make after hearing the application for fundamental rights enforcement include;

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160 (1982)3 N.C.L.R. 915
161 (1991)6 N.W.L.R. pt.200,708 at 763-764
162 (1996)6 N.W.L.R. pt.456 584 at 612
163 (1994) F.H.C.R. 144
164 Efevwerhan, D. I. Op.cit. p. 494.
165 *Ezechukwu vs Maduka* (1997)4 N.W.L.R. (N518) 635
166 Ibid.

1. Prerogative writs and orders like Habeas Corpus, Mandamus prohibitions etc.
2. injunctions and declarations
3. release
4. production
5. access to medication
6. damages

Anytime any of these orders is issued, it must be obeyed by the authority the order is issued against, and failure to obey it is contemptuous.

Conclusively, this chapter, has to a greater extent discussed some of the rights contained in chapter IV of the 1999 Constitution of the Federal Republic of Nigeria. Fundamental rights are generally regarded as those aspects of human rights which have been recognized and entrenched in the Constitution of a country.[167] They are specifically provided for, to enhance human dignity and liberty in every modern state and in Nigeria, the terms human rights and fundamental rights are inter changeably used.[168]

Having also analysed these fundamental rights and their importance to human beings, it is worthy to note that derogation from the fundamental rights is a necessary legal concept since it affords the authorities of the state the opportunity to balance the enjoyment of the fundamental rights with the overriding state's interest, which centered on the security and welfare of the people of Nigeria as its primary purpose. Also, the African Charter on Human and Peoples' Rights which has been ratified and domesticated into our municipal law also makes sufficient provisions for the protection of the rights of individuals in Nigeria. It is submitted that for

[167] Falana, F. (2004) *Fundamental Right Enforcement*. Legal Text Publishing Co. Ltd, Nigeria, 1st Edition, p. 4.
[168] Ibid.

Nigerians to enjoy these rights contained therein, it is important that the judiciary be ready to play its interpretative roles in upholding the sanctity of human rights. [169]

[169] *Ibid.*

CHAPTER FOUR

ISSUES, CHALLENGES & PROSPECTS OF NIGERIA JUDICIARY IN PROTECTION OF HUMAN RIGHTS

4.1 Introduction

In Nigeria, there are so many challenges which the judiciary is faced with in the protection of human rights, which includes, the notorious activities of security agents; the National Human Rights Commission's roles in the protection of human rights; the challenges confronting the Commission in discharging its functions as well as challenges of human rights protection under the African Charter and fundamental rights enforcement rules by the judiciary.

The judiciary is conferred with the powers to determine any question as to the civil rights and obligations and disputes between the government or its authorities and any person in any state in Nigeria.[1] The function of the judiciary is to provide judicial justice,[2] which is only a particular part of justice, and the area an individual expects justice from the state is very wide in scope. It has also been said that the judiciary is the last hope of the common man in the society, based on this notion, upholding its confidence by the bench remains an important duty that Judges owe to the citizens of the Country.

The judiciary has been described by Nwabueze as:

> The guardian of the law, and is in the unique position to create among the people, the rulers and the ruled, an attitude of respect for the Constitution and human rights, a habit of order and regularity in the conduct of public affairs, and a commitment of legality and stability generally.[3]

[1] Section 6(b) Constitution Federal Republic of Nigeria 1999.
[2] Aguda, O. (2000), *Understanding the Nigerian Constitution of 1999*. MIJ Professional Publishers Ltd, Nigeria,p. 190
[3] Nwabueze, B. O. (2007) *The second Justice Kayode Eso Lecture: The Judiciary as the third Estate of Realm*. Gold Press Ltd, Nigeria, p. 3.

The chapter also considered the prospects and protection of human rights by the judiciary in Nigeria.

4.2 Issues and Challenges

The judiciary in Nigeria is bedeviled with many challenges which impede the delivery of the constitutional role it is expected to play for the protection of the rights of Nigerians, apart from the challenges in the judiciary as an institution or arm of government in the administration of justice, there are other external factors seriously affecting the actualization of the protection of human rights in Nigeria.

Generally, the issues or challenges the judiciary as an institution or arm of government in the administration of justice are faced with are as follows;

1) Corruption in the judiciary and allegation of bias
2) Executive lawlessness and independence of judiciary in Nigeria.

1) Corruption in the Judiciary and Allegation of Bias

The dispensation of justice is the core function of the judiciary as an arm of the government. When justice is made the bedrock of every other activity in the society, there will be peace and security in the society.

Corruption is like the decay of an object, it is the process of decency to rottenness, the loss of utilitarian value.[4] It is the process that breaks down systems and renders them dysfunctional and incapable of performing their social functions in the society. It occurs through different ways that are undesirable, such as bribe offering and taking, undue gratifications, self-

[4] Wokocha, R. A. (2008), Corruption and the Administration of Justice in Nigeria: A critical Appraisal. (2) *R/SU JPL.* p.133.

gratification and self-enrichment at the expense of public interest.[5]In October 2016, the houses of some judges, Justices of Court of Appeal and the Supreme Court of Nigeria were raided on the suspicion of corrupt practices.[6] Though the action of the DSS has been condemned by some Nigerians on the manner upon which the arrest was carried, since the matter is still in Court, it is better to avoid any detailed discussion on the subject matter. The National Judicial Council (NJC) as a result of the gravity of the allegation has suspended the affected judicial officers, pending the determination of their matter before the Court.[7]

Corruption in the temple of justice is self-demeaning. The level of corruption as witnessed in the judiciary in the recent years is unprecedented in the histories of the country especially as regards election petition cases brought before the Court for adjudication.[8] Judicial corruption prevents justice and erodes confidence in the legal system. The offering and acceptance of gratification under the Independent Corrupt Practices and other Related Offences Act is an offence.[9]

Judicial corruption could manifest through the grant of frivolous Exparte and interlocutory injunctions.[10] Justice Stanley Nnaji of the High Court of Enugu State ordered the removal of the former Governor of Anambra State, Dr. Chris Ngige, through an exparte injunction[11] which Dr. Chris Ngige saw as bias.

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[5] Ibid.
[6] Odebode, N. *et al.* 'DSS Arrest of Judges: Rivers C.P to Be sanctioned for 'Aiding' Governor Wike.' The Punch (Lagos, 10 October 2016) pp. 10 and 36
[7] Nnochiri, I. 'NJC Bows to pressure, asks arrested judges to step aside' Vanguard (Lagos 4 November, 2016), pp. 9 and 12
[8] Kolawale, A. (2008) 'Judicial Officers and Allegations of Bais and Corruption in Nigeria' The Role of the Judiciary in Nigerian Democratic Process: Essay in Honour of: Justice IcheNdu, Vox Nigeria. p. 145.
[9] Section 8 and 9, Independent Corrupt Practices and other related offences Act
[10] *Okechukwu vs Okechukwu* (1989)3 N.W.L.R. pt.108, 234 p. 24
[11] Kolawale, A. p.145. Op.cit.

A charge of bias against a judge is a very serious issue.[12]In the case of *ARCON vs Fassasi*[13] FRA Williams asked the Supreme Court to give a guarantee that it would not be partial in the proceeding. The Supreme Court rejected such a request and emphasized the impartiality of the Court. Justice Eso Stated: 'To charge a Court with bias is very serious thing indeed. To ask for a Court assurance is more serious still'.

Bias allegation may arise as a result of primary interest in the litigation, where the presiding judge has taken bribe or has been corrupted in other ways, such as business, professional, vocational relationship with any of the parties or from blood, filial or any other form of relationship with one of the parties.

2) Executive Lawlessness and Independence of the Judiciary

Executive lawlessness means the discharge of executive function in a manner that is inconsistent with the law of the land. It could also arise where the executive engages in the abuse of cardinal principles of rule of law, or acts in excess of the minimum norms of governance acceptable in a civilized society. It also occurs where a Court order is disrespected with impurity. The case of *Military Governor of Lagos State vs Ojukwu*[14]is a clear instance of executive lawlessness where the Supreme Court stated that "Executive Lawlessness is tantamount to a deliberate violation of the Constitution. The essence of the rule of law is that it should never operate under the rule of force or fear. To use force to effect an act and while under the Marshal of that force, seek the Courts equity, is an attempt to infuse timidity into the Court and operate a sabotage of the cherished rule of law. Where the Government treats Court orders with levity and contempt, the confidence of citizens in the Court will be seriously eroded and the effect of that will be the

[12] Mba vs Mba (1999) 10 N.W.L.R. pt.82, p. 316
[13] (1987)3 N.W.L.R. pt.59, p. 1
[14] (1986)2 S.C.p. 177

beginning of anarchy in replacement of the rule of law. The execution of Bello by the Oyo State Government when his appeal against his conviction by a High Court was pending in the Court of Appeal is a breach of his fundamental right to life.[15] And this amounts to executive lawlessness.

In 2016, the National Security Adviser to the former President Goodluck Jonathan was granted bail by two different Courts in Nigeria, the Federal Government refused to obey the order. The ECOWAS Court also declared his arrest and detention as unlawful and arbitrary. The Court also held that the further arrest of Dasuki by the Nigerian Court on November 4th 2016, after he was granted bail by a Court of law amounts to mockery of democracy and rule of law.[16] The ugly trend also occurred during the administration of President Olusegun Obasanjo, when he disobeyed an order of the Court of Appeal ordering him to restore all the privileges attached to the office of Vice President Atiku Abubakar, pending the determination of the substantive suit in the Court.[17]

On another hand, independence of the judiciary is very crucial to the protection of human rights in Nigeria. It means the right and protection given to the members of the judiciary under the law to enable the judges decide cases before them without fear or favour.[18] The independence of the judiciary is seriously threatened by the powers of the executive to appoint, promote, remunerate and dismiss judicial officers. The incessant intimidation of judges whenever they give verdict that runs contrary to the Government's interest is worrisome. This to a greater extent affects the protection of human right in Nigeria.

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[15] Bello vs AG Oyo State (1986)6 NWLR pt.45, 826

[16] Okakwu, E. "ECOWAS Court orders Dasuki's release, imposed N15 million fine on Nigerian Government" Premium Times (Lagos 4th October 2016) www.premiumtimesng.com/newsheading accessed on 8/2/2017@8:am

[17] Nwabueze, B. O. (2007) How president Obasanjo subverted the Rule of Law and Democracy. Gold Press Ltd, Nigeria, p.152.

[18] Nwanze, J. (2013) Executive Lawlessness and Independence of the Judiciary in Nigeria. The Role of the Judiciary in Nigerian Democratic Process: Essay in Honour of Justice IcheNdu p.185.

3) Security Agents

The security agent in Nigeria that is very important in the administration of criminal justice and enforcement of Court order is the Nigeria Police force under the leadership of Inspector General of Police and the Nigerian Prison services. The police Force as an institution is fraught with many challenges in the discharge of its functions in the protection of human right in Nigeria. The police force is a creation of the Constitution; thus section 214(1) established the Nigerian Police Force for the Federation. Subsection 2(a) of the section conferred on the National Assembly to make law for the organization and administration of the police force.

As an agency of the Government the police force is saddled with the responsibilities of prevention and detection of crime, apprehension of offenders, the preservation of law and order. The protection of life and property and the due enforcement of all laws and regulations with which they are directly charged with.[19]

The question is, have the police been discharging their functions in a corrupt free manner? There have been several allegations of gross abuse of the core functions of the police by its officers. The Nigerian Police officers are notorious for torture. Torture is a crime against humanity, which has been criminalised by the Universal Declaration of Human Rights.[20] Torture violates the fundamental human right to freedom from torture and other cruel, in human or degrading treatment or punishment.[21] The art of torture is not an ideal way of extracting confessional statement from an accused person, however, it is the only means frequently adopted by the Nigerian police officers because of their poor investigative skills. The law states that

[19] Section 4, Police Act, Cap. 349, Laws of the Federation, 1990.
[20] Article v, Universal Declaration of Human Rights, 1948.
[21] Gbadamosi, O. (2006) 'Prohibition on Torture under International and National Law" The role of the Judiciary in Nigerian Democratic Process. All Nations Press, Benin. pp. 88-89.

confessional statement made involuntarily is not admissible in evidence. Another problem with the judicial protection of human rights is the extra-judicial killing of Nigerians by security agents especially the police via unlawful arrest and detention, extortion, rape and other forms of brutality.[22]

The use of violence is an important aspect of the self-image of the police. Police officers see themselves as agents of violence and consider the application of violence and force on the slightest provocation as fulfillment of their social essence. The activity of the officers attached to the special Anti-Robbery Squad unit of the Nigerian Police is an eyesore.

The use of live weapon on unarmed demonstrators and agitators by the Nigeria police is barbaric. In April 2016, police shot and killed one late Peter Ofurum, a student of University of Port Harcourt, who participated in the students protest against alleged hike in fees.[23]

Also on 20th of January 2017, security operative used live weapon on Pro-Biafra protesters on a solidarity match in support of the swearing in of President Donald J Trump of United States of America, in Port Harcourt, killed 15 persons and arrested 70 others.[24] The use of live weapon on unarmed demonstrators is criminal and unwarranted. It is on record that the police force has never singled out any of the officers that are responsible for the unlawful killings, for prosecution, in order to restore the confidence of Nigerians in the police force. These are parts of the challenges faced by Nigerian Judiciary in the protection of Human Rights.

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[22] David Berry *et al.* (2010) Criminal Force Torture, Abuse and Extra Judiciary Killings by the Nigerian Police Force (Open Society Institute, p.21

[23] Onoyume, J."Uniport Undergraduate killed by mystery bullet was a first class student – Colleagues" Vanguard (Lagos 17 April 2016) www.vanguardngr.com? Home>more>alart accessed on 9/2/2017.

[24] Davies Iheanachor "Security Operatives Dispersed Pro-Biafran Protesters, shot 5, Arrested 70" Vanguard (Lagos, 21 January, 2017) www.vanguardngr.com>Home>news accessed on 9/2/2017

i. Lack of Enforcement of Court Orders by Police

The police are also empowered by law[25] to enforce the Court orders as the judiciary has no independent force of its own. It relies on the coercive powers of the state to enforce or carry out its sanctions and decisions, which powers are controlled by the executive,[26] the executive sometimes refuse to carry out the decision of the Court, the reasons for such refusal can range from the fact that the decision is against the government or its officials to the rather mundane and politically infertile one that the executive wants to assert its superiority or supremacy as the case maybe. The police pledge their loyalty to the executive because of so many reasons. For instance, the president appoints the inspector General of police,[27] and the president or minister may give such lawful direction to the IGP with respect to the maintenance and security of public safety and public order as maybe considered necessary, and the Nigerian police are under the command of the Inspector General of Police.[28]

The question of enforcement of Court decision is very crucial to the protection of human rights, especially when the police violate the fundamental rights of an individual and the Court gives decision in favour of the individual. It is always difficult to enforce the decision of the Court, since the culprit is the enforcer of the decision. Whenever Court decision is against the Federal Government, it is always difficult for the police to enforce the Court order. Prof. Ben Nwabueze has argued that there is always the inability of the police to enforce Court order when it does not go down well with the interest of the Federal Government. In the case of former Governor of Oyo State, Rashidi Ladoja, where his impeachment was declared unconstitutional, the IGP promised to restore his security details, based on the fact that an appeal does not serve as

[25] Section 24, Police Act, Cap P19, Laws of the Federation of Nigeria.
[26] Bolaji Owasanoye and Seye Kosoko, (1991) "Enforcement of Judicial Decision" *Justice: A Journal of Contemporary Legal Problems*. Vol. 2. p. 13.
[27] Section 215 (1) Constitution Federal Republic of Nigeria 1999
[28] Ibid., Section 215 (3)

a stay of execution, but when the AG Federation ordered for the judgment not to be enforced pending the determination of the appeal at the Supreme Court, the IGP refused to enforce the Order. In Peter Obi's case, the IGP refused to enforce the Court Order that nullified the impeachment of Former Governor Peter Obi of Anambra State.[29] Therefore, for the judiciary to effectively perform its role in human rights protection, the security agents must be willing to discharge their lawful responsibilities. Where the security agents fail to apply the common principle of modesty expected of them by the public, in the discharge of their core constitutional mandate, it becomes a serious issue on human rights protection.

4) Under the African Charter

The challenges of human rights protection under African Charter on Human and People's Right is traceable to lack of enforcement mechanism adopted by the Charter. The African Charter established African Commission on Human and People's Rights, to promote human and people's rights and ensure their protection in Africa.[30] The powers or functions conferred on the Commission by the Charter are to:

a) undertake studies and researches on African problems in the field of human rights, organise seminars, symposiums and conferences, disseminate information, encourage National and local institutions concerned with human and peoples' rights, give views and also make recommendation.
b) To formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Government may base their legislations.

[29] Nwabueze, B. (2007), *How President Obasanjo Subverted the rule of Law and Democracy.* Gold Press Ltd, pp. 153-154
[30] Article xxx, Universal Declaration of Human Rights, 1948.

c) To co-operate with other African and International Institutions concerned with the protection and promotion of human and peoples' rights.

d) Ensure the protection of human and peoples' rights under conditions laid down by the Charter.

e) Interpret all the provisions of the Charter at request of a state party, an institution of OAU (now AU) or an African Organisation recognized by O.A.U

f) Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

The Charter remains a very good international legal instrument for human rights protection in Africa, however, there are serious problems confronting the Charter in the field of human rights protection and promotion. Based on the powers conferred on it by the Charter, the African Commission on Human rights is the institution that ensures the protection of human right sequel to its mandates.

The Commission has the following challenges in the protection of:

i. Non-bindingness of its decisions

The Commission makes investigations on human rights abuse, however its findings are not legally binding and states are consequently not obliged to abide by them.[31] For instance some of the member states have argued that whenever the Commission acts in a judicial role in promoting on the validity of domestic laws and interpreting various provision of the Charter. The decision of the Commission consist of three parts: In an introductory part, the procedural history and progress of the proceedings as well as the

[31]Frans Viljoen and Lirette Loun (2004) "The status of the findings of the African Commission: from moral persuasion to legal obligation" *Journal of African Law*. Vol. 1, p.48.

factual background are set out. The Commission's reasoning then follows, dealing separately with admissibility and merit, where relevant facts are stated and legal principles are identified and applied to the facts, culminating in a conclusion.[32] The Commission disposes of the case by making its finding. The finding of the Commission contains the summary of the rights violated and remedies recommended. In law, a decision is binding if consequences will follow as a result of non-compliance, under international law, a state maybe sanctioned if it fails to respect the decision of an institution of Commission of the International Organization to which the state belongs.

However, the Commission does not give any binding decisions on the communications (complaints) brought before it, and this is a major challenge in human right protection under the Charter.

ii. Lack of competence to decide individual communication (complaints)

The African Charter does not define the jurisdiction to receive complaints, thus, article 58(1) provides that when it appears after deliberation of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violation of human and peoples' rights, the Commission shall draw the attention of the Assembly of Head of State and Government to these special cases.

It therefore follows that; the Commission's jurisdiction could only be invoked where there are special cases of human and peoples' right violation.

It must also be a serious or massive human right violation before the Commission will have jurisdiction to inquire and make recommendations. The Commission cannot investigate an

[32] Ibid.

individual communication (complaint) where the human right of such an individual has been violated. This depicts that the Commission is not allowed to act beyond the provisions of African Charter.[33]

However, the Commission developed its roles of procedure in such a way as to enable it from its third session to accept communications from individuals alleging human right violations by state parties.[34] It is also important to note that individual access to the Commission is further restricted by the provision of article 56 of the African Charter, which allows the Commission to hear individual complaint only if such complaint is not 'written in a disparaging or insulting language' against the state concerned, its institution or AU and it is not incompatible with the African Charter and the communication (compliant) was not disseminated through mass media.[35] Under article 56(5)the affected individuals must have exhausted the internal or local remedy if any, for redress, unless the procedure is unduly prolonged. It is also the position of the law under the Charter that the African Heads of States and Government have complete discretionary power in determining the validity of complaints submitted under the Charter,[36] and that requirement is not only too rigid, but also intend to defeat the basis of the Charter[37] in human right protection in Africa. The effect is that, communications take more than two years before they are determined by the Commission.[38]

[33] Yerima, T.F. (2012)"African Commission on Human and Peoples' Rights as an institution for conflict resolution in Africa: Flying or fledging. *Journal of Contemporary Law*. Vol. 1, p. 10
[34] Ibid., p. 5
[35] Ibid., p. 15
[36] Rule 113, Rule of Procedure of the African Commission on Human Rights.
[37] Yerima, F. T. Op.cit. p. 15
[38] Ibid

iii. Lack of enforcement power and provision for remedy

The Commission does not have the powers under the Charter to implement its findings even though it has the power, it is very weak; since its decisions are not binding, but mere recommendations, which the state against which the decisions are given is not bound to obey.[39] After its finding, the Commission can only make recommendations to the African Heads of State who have the final say. T. F. Yerima has argued that it is predicated on this lack of enforcement power of the African Commission that made it to be given various embarrassing phrases such as toothless bulldog, look helpless and abandoned, paper tiger etc.[40] The Commission in the case of *Malawi African Association vs Mauritania*[41]admitted that it has no powers to enforce its decisions, but to merely make pronouncement on allegations of violation of human rights protected by the African Charter. This lack of power of enforcement of specific human and peoples' rights abuses is a fundamental flaw which renders its decisions worthless and ineffective.

Lack of remedies for the violation of the rights of people enshrined in the Charter is one of the Commission's substantive and structural impediments. It has made victims to find themselves without remedy. This is against the known legal maxim of *ubi jus ibi* remedies. With lack of remedies for the violation of human rights under the Charter, individuals may definitely be reluctant to submit their petitions to the Commission even if they are in a financial position to pursue their cases before the Commission, after exhaustion of local remedy. The absence of remedy led to a serious issue between Nigeria Government and the African Commission in 1995, when the Commission made a recommendation ordering the annulment of decrees found to be in

[39] Ibid. p. 18
[40] Ibid., p. 19
[41] Comm. Nos. 54/91,98/93, 210/980 1999 - 2000

violation of the Charter, and Nigeria questioned the competence of the African Commission to issue remedies.[42]

The African Charter especially those relating to the African Commission including provision on confidentiality, none-binding decisions, absence of effective remedies and enormous power given to the General Assembly over affairs and decisions of the Commission have relegated the Commission to a research centre.[43]

5) Under Enforcement of Fundamental Rights Rule 2009

The 2009 Rules made vigorous efforts in ensuring that the challenges that bedeviled the hitherto Rules no longer exist. However, there are factors militating against the effective actualization of human rights in Nigeria generally. They include:

1. Under Order ix of the Fundamental Rights Enforcement Rules 'where at any stage in the course of or in connection with any proceedings there has by any reason of anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to;

i) mode of commencement of the application

ii) the subject matter is not within chapter iv of the Constitution or the African Charter on Human and Peoples' Rights (ratification and enforcement) Act.

[42]Frans Viljoen and Livetter Louw, (2004) "The Status of findings of the African Commission: from Moral persuasion to legal obligation"*Journal of African Law*. Vol. 48, p.10.
[43]Yerima, T.Y. New Trends in the African Human Rights System: Prospects of African Regional Human Rights Courts, *Ahmadu Bello University Journal of Private and Comparative Law* (2010- 2011), Vol. 4 & 5, p. 95.

This implies that the enforcement of the applicant's rights may be affected in the proceeding if the mode of commencement of the action fails to comply with the rules. The Court might not as it was, see it as a mere irregularity. Where the right to be enforced is not provided for in chapter ivof the 1999 Constitution or the African Charter, the action would fail and the applicant will suffer without remedy.

Apart from the issues arising from the rules, the following issues have been identified.

1. **Illiteracy:** There is high level of illiteracy in Nigeria, and majority of Nigerians lack the capacity to know the existence of their fundamental rights as contained in chapter iv of the 1999 Constitution and African Charter.

2. **Poverty:** Another obstacle to the enforcement of human right is poverty.[44] For one to pursue his matter in the appropriate Court of law, huge finance would be expended with. An individual who is indigent cannot afford the services of legal practitioner of his own choice who would prosecute his case in the Court.

4.3 Prospects of Protection of Human Rights by Judiciary in Nigeria

The prospect of Human rights in Nigeria is largely on the arm of the Judiciary. The Judiciary is the major part of a country's government that is responsible for its legal system as it is the mechanism for the resolution of disputes and balancing conflicts of interest. It is therefore pertinent to discuss human right as a global concept and the role of the judiciary in the protection of human rights in Nigeria.

[44] Ibrahim, T. O. (1999) Reflection on Fundamental Human Rights Under 1999 Constitution. *Property and Contemporary Law Journal.* Vol. 5, p. 84

4.3.1 Human Rights as a Global Concept

The concept of human right protection is globally recognized, and international organizations such as the African Union, United Nations, European Union, have over the years adopted measures for the prevention of human rights abuses. The United Nations Universal Declaration of Human right is a very commendable human right protection instrument. Another one is the African Charter on human and peoples' rights. These International Legal frameworks for the protection of human rights have shaped the perception of member state towards human rights. For instance, Nigeria as a country and a member of the AU domesticated and ratified the African Charter on Peoples' and Human Rights. The Court of Appeal in *Fawehinmi vs Abacha,*[45]described the enforcement of fundamental rights as matters of extreme public interest of citizens. The Courts accord priority to the enforcement of human rights in Nigeria. Thus, an application for the enforcement of fundamental rights in Nigeria is not affected by a limitation statute whatsoever,[46] and this is a major breakthrough introduced by the 2009 Rules unlike the 1979 Rules that provided for a period of 12 months' time limit for the enforcement of fundamental rights where it has been infringed upon.

4.3.2 Enforcement of Court Order

The role of the judiciary in the guardianship and enforcement of human rights provisions in Nigeria is crucial. The judiciary as the guardian of the law is in a unique position to create among people, the ruler and the ruled an attitude of respect for the Constitution and human rights, a habit of order and regularity in the conduct of public affairs and a commitment of

[45] (1996) N.W.L.R. pt.475, 710
[46] Fundamental Rights (Enforcement Procedure) Rules, 2009

legality.[47] A vexed question is as to whether enforcement appertains to judicial power. Ordinarily, a body which has power to give a binding and authoritative decision ought to possess the powers of enforcement of the decisions. In a modern Constitutional State, each of the three arms of government has an inherent right to the use of the force for the maintenance of its authority and the enforcement of its decision, a right in no way dependent upon the approval of another arm.[48]

Nwabueze argued that, since the right is an inherent characteristic of the institutional state system, it amounts to a subversion of the system for one arm to stop the use of force by another arm for the maintenance of its authority or the enforcement of decision.[49] It is important to state that the Constitution makes the judicial powers to extend, notwithstanding anything to the contrary in the Constitution to all inherent powers and sanction of a Court of law.[50] Irrespective of this constituently provisions, Court orders are treated with levity by the executive arm of government in Nigeria, and this portends great danger to human rights protection in Nigeria. This is predicated on the executive control of the police force, which has the responsibility of enforcement of Court orders. The judiciary of course has no independent force of its own. It relies on the coercive powers of the state to enforce or carry out its sanctions and decision, which powers are controlled by the executive.[51] Where the rights of an individual are violated by the agents of the government, it is usually difficult for the Court order to be enforced if such order is against the state. The case of *Military Governor of Lagos State vs Ojukwu* is a very good example of this. Therefore, for the advancement of human rights protection in Nigeria, the

[47] Nwabueze, B.(2007)The Judiciary as the Third Estate of the Realm, The Second Justice Kayode Eso Lecture, Gold Press Ltd. p.3
[48] Ibid., p.102
[49] Ibid
[50] Section 6(6)(a) Constitution of the Federal Republic of Nigeria, Op.cit
[51] Owsanoye, B. and Kosoko, S., (1991) Enforcement of Judicial Decisions. *Journal of Contemporary Legal Problems*. Vol. 2, p. 13.

executive must be ready to respect and also use the coercive powers of the state to enforce Court orders and decisions in Nigeria, when this is not done, the human rights in Nigeria will not be protected by the judiciary

4.3.3 Corrupt Free Judiciary

The judiciary is the last hope of the common man in the society. It is the only arm of the government that protects the individuals from the abuse of their human rights by government or its agencies and private persons. Though some of the judges in Nigeria have demonstrated courage in the protection of human rights in Nigeria, especially on matters between private persons and the agencies of the government.[52] There are also some decisions where the Courts held private persons liable for the violation of human rights in Nigeria.[53] However, in the recent time, the credibility of the judiciary in Nigeria is an issue. In any legal system where the judges are accused of corrupt practices, the foundation of justice is threatened and people's confidence in the Courts would be eroded.

The judiciary must be made up of fearless and upright men, where this is lacking, the role of the judiciary in the protection of human right in Nigeria would not succeed. Most of the judges in the Nigerian judiciary lack the courage to invoke the inherent powers and sanctions of the Court, to commit person for contempt of the Court especially the authorities of agencies of the government who often disregard Court orders with impurity. The Court must maintain its respect and integrity which are intrinsic to its judicial powers. Stripped of these qualities, the

[52] *Ransom-Kuti & Ors vs A.G. Federal* (1985)2 N.W.L.R. (pt.6)211, *Military Governor of Lagos State vs Ojukwu* (1986)2 SC 177
[53] *Theresa Onwu vs Nwafor Oko* (1996)6 N.W.L.R. (pt.456)612,*Uzochukwu vs Ezeonu II* (1991)6 NWLR pt.200,708

Courts become merely shells and toothless bulldogs from whom there can be no solace or succour in the face of oppression.[54]

Therefore, the prospects of human rights protection in Nigeria partly depends on the ability of the judiciary to do what is right and expected of it by observing the qualities identified in this work. Also in the appointment of judicial officer, competence, credibility and merit are part of the qualities that must be considered by the authorities who are constitutionally empowered to appoint judges to the bench.

In conclusion, this chapter has dealt with the issues or challenges affecting the Nigerian judiciary in the protection of human rights. It has identified that corruption is one of the challenges of human rights protection by the judiciary in Nigeria. When the system is corrupt, confidence is destroyed and justice will be an exclusive preserve of the rich and influential in the society.

The concept of human right transcends class stratification and cannot be exclusive preserve of the rich who can procure justice with their wealth. There is the need to clean the judiciary of corrupt elements, it is also submitted that there are corrupt free judges in the judiciary who have demonstrated same through some landmark decisions on human rights protection in Nigeria. However, their efforts need to be supplemented with total entrenchment of the rule of law, where all other arms of the government and agencies of government will obey Court orders and decisions. The Nigerian police must prioritize public interest above the interest of the executive arm of government.

[54] Nwabueze, B. (2007) The Second Justice Kayode Eso Lecture: The Judiciary as the Third Estate of the Realm, Gold Press Ltd, p.18.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

This work carefully analysed judicial protection of human rights in Nigeria; it also considered the issues and challenges. The provisions of Chapter IV of the 1999 Constitution which embodied the principles of fundamental human rights has been discussed in this essay. It is not in doubt that human rights have acquired international flavour, as the second half of the twentieth century saw the development of a rich body of international human rights law.[1]

Chapter three captures the analysis of the right to life, dignity of human persons, personal liberty and private and family life. The right to freedom of thought, conscience and religion which is very important to Nigerian religious communities, was discussed extensively and it is submitted that everyone's religion is protected by the Constitution to the extent that, no Nigerian is allowed to interfere with the rights of others in the guise of practicing his religion. Therefore, the right to religion does not exist without restriction.

The freedom of movement as enshrined in S.41 of the 1999 Constitution forms the substantial parts of the chapter where imposition of unjustifiable restriction of movement by authorities of the state against an individual in the state amount to an infringement of the right to freedom of movement. Other fundamental rights discussed are rights to peaceful assembly and association, rights to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria. It is also important to note that the full enjoyment of right to own

[1] Salman, R. K. (2011) The United Nations Human Rights Commission: Evolution and the journey so far. *Nigerian Law and Practice Journal*. Vol. 10, p. 66.

immovable properties is subject to payments of rates and lawful levies imposed by the state laws, including sanitation laws. The rights under the African Charter on Human and Peoples' Rights also formed part of chapter three. The Charter as it were, having been incorporated into Nigerian domestic law cited as African Charter on Human and Peoples' Rights (Ratification and enforcement) Act, Cap A9 LFN 2004. The implication of its domestication as an Act of the National Assembly pursuant to S.12 of the Constitution of the Federal Republic of Nigeria is that it is applicable as a National Law.[2] The provisions of the Act is a replication of the fundamental rights provision contained in chapter IV of the Constitution of Nigeria 1999, though the Act made some provision that bothered on economic rights of individuals in the country which are conspicuously missing in Chapter IV of the Constitution.

Some of the rights under Chapter IV are derogated by section 45 of the Constitution for the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other people. This derogative section makes it easier for law making authorities to make draconic legislations since the Constitution did not offer the interpretation of the interest of defence, public safety, public order, public morality etc. The chapter also covered analysis on the fundamental rights enforcement procedure rules 2009. The great innovations in the 2009 rules are the total removal of *locus standi* as barrier for enforcement of human rights and the removal of limitation period of the enforcement of fundamental rights in Nigeria.

Under chapter four of this research work, the issues and challenges of Fundamental Human Rights were discussed. Corruption, executive recklessness and lack of professionalism on the part of the security agents were identified as part of the challenges encountered in the protection

[2] *Fawehinmi vs Abacha* (1996)9 N.W.L.R. pt.475, p.710

of human rights by the judiciary in Nigeria. Also the role of the National Human Rights Commission was highlighted, it was observed that the National Human Rights Commission only investigates human rights violation and reports to the Attorney General of the Federation or state for appropriate actions to be taken. The Commission is not a strong institution for the promotion of human rights and prevention of its violation. The research finally considered the prospects of human right protection in Nigeria and humbly argued that until the corrupt elements in the judiciary is removed, Court decision are obeyed and enforced, human rights protection in Nigeria by the judiciary would not be a success.

5.2 Findings

The researcher having thoroughly researched, thereafter, made the following important observations and findings:

1. The difficulties encountered in the enforcement of the decisions of the Court are as a result of the political control of the Police which makes the Police a plain instrument in the hands of the Executive. As specially highlighted in the research work, the Police are politically controlled and end up doing the unlawful to please the supposed politicians and the Executive to the detriment of the person or group of people whose human rights have been violated.
2. The Legal Aid Council lacks adequate funding and this makes it difficult for them to give adequate representation to indigent citizens in need of it. In the course of the research, it was noticed that the Legal Aid Council needs adequate funding for them to be efficient in carrying out their noble task of meeting the masses in the remote villages and towns.
3. There is no proper and comprehensive documentation of detainees who die while under the Police custody. Most detainees who die in Police Custody are not documented and

this leads to recklessness of the Police. Since they aren't charged to document the detainees who die in their custody, and the causes of their death, the Police Officers are non-challant as to the amount of torture that they make the detainees go through which eventually leads to their death.

4. The Judiciary is not as independent as the Executive while carrying out its functions as is provided for in the Constitution. Though, the Constitution has set out the functions of the Judiciary very clearly and they are meant to be wholly independent, this is far from the case as the Judiciary is still remotely controlled by the Executive arm of government.
5. Most victim of human rights violation in Nigeria do not report incidents of violations committed against them mostly because they lack trust in the judicial system and law enforcement agencies. With the recent happenings of the negative control of the Judiciary, the rise of victims of human rights violations keeping mute is on the rise. When they can see from the news and social media how straight forward cases of Victims of violation of human right by the Executive or the so called "touch not's" are "mishandled" by the judiciary, the hope and faith they have in the Judiciary is dwindling.
6. Many citizens are beginning to lose hope in Democracy and the Judiciary. It is evidenced in the rise of jungle justice and illegal self-help as they feel if government officials will not adhere to court orders then there is really no hope for common men like them therefore to resort to taking laws into their hands and further incurring more harm and violating on the Human rights of their victims.

5.3 Recommendations

Based on the findings highlighted, the following recommendations are suggested:

1. To be able to enforce Court decisions, the Nigerian police force must have greater autonomy from political control, coupled with greater internal control and external oversight. This is to say, S.214 of the Constitution which subjects the Inspector General of police to the control of the president or any of his ministers should be amended. And there should be a special prosecutorial unit to persecute the officers that commit crimes in the cause of their official duties. Especially, those officers who derive joy in violating the rights of citizens.
2. The Legal Aid Council should be reformed and sufficiently funded by Government to enable indigent people have access to justice when their rights are threatened. They should also strive to go around on a regular basis so that more people can have access to justice and get their human rights protected from violators.
3. There should be an establishment of public accessible National register or data base that contains all deaths of detainees in police custody and the cause of their deaths.
4. The Court must be willing to commit for contempt any person who flouts Court order or does anything to ridicule the order to decisions of Court especially with respect to Human Rights Matters. Where the Court of law has adjudicated on the rights of any person as against the government officials to ignore those rights or act in contravention of such rights amount to contempt of Court and the Court must treat it with all amount of seriousness.
5. The Judiciary should continue to strive towards full independence in practice as their independence is very vital to the protection of human right in Nigeria. If the judiciary can

perform its task with every form of independence, they can proceed to protect and enforce human rights with increased efficiency. The independence of the judiciary entails administrative and financial autonomy because where the judiciary solely depends on the other arms of the government for funding, its independence cannot be guaranteed.

6. The Judiciary should start by charging every government official that disrespected their orders with contempt because human rights crimes don't have a statute of limitation so redress can be sought at any time. This will go a long way to reassuring the masses that Justice can actually be gotten. Though, some category of people that trample on the rights of citizens have immunity, it is not a lifetime protection from prosecution. At some point the immunity they have will expire, therefore, they can be summoned to account for actions taken while they were in government.

5.4 Conclusion

The concept of human rights protection today is not just a National discussion but also an international discuss, where some international non-governmental organisations now play the role of watch dogs on human rights violation by state authorities around the globe.[3] It could be recalled that, Amnesty International is in the vanguard of human rights watch. According to its report between 2015/2016, the organisation indicted the Nigerian security forces of human rights violation.[4]Therefore, Nigerian Government as a signatory to several international human rights Charter, must ensure that the judiciary at all levels of government is given the necessary support it deserves to protect the rights of every Nigerian irrespective of his social status, religion or political opinion.

[3] A.W. Bradley and L.D. Ewing, (2007) *Constitutional and Administrative Law.* Pearson Longman, 14th Edition, p.420
[4] www.amnesty.org/./report-Nigeria/ accessed on 16/02/2017.

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