

AN APPRAISAL OF FUNDAMENTAL RIGHTS IN NIGERIA

BY

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CERTIFICATION

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DEDICATION

This research work is dedicated to the Glory of the Almighty God for His enabling grace, my beloved Mom Mrs. Lucy Benimo for her untiring effort both financially and morally towards the successful completion of my program.

ACKNOWLEDGEMENT


It will be very unfair on my part, if I fail to recognize and show appreciation to those who made my stay in school a success and contributed resourcefully to the completion of this research work. First, I wish to express my indebtedness to my supervisor Barr. Diepreye Thorn Okoro. Sir, I am indeed, grateful to have you as my supervisor. Despite your tight schedule find time for my work, I am most obliged.

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4. KALU V. STATE (1998) 12 SCNJ.
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7. JOSHUA V. THE STATE (2009) ALL FWLR
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17. CHUKWU V. STATE (2007) 13 NWLR (PT. 1052) PC 430 at 439 RATIO 9.

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19. ABACHA V. FANCHIRIM (2000) 6 NWLR (PT 660) Pg. 228
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ABSTRACT

The enforcement of rights in Nigeria is founded on the Natural Law Theory, which emphasizes that nature endowed man with certain rights which protect and preserve the sacredness of the human person as involved, equal to his fellow man, free and independent. Fortunately its provisions have continued to feature very prominently in the successive constitutions of the Federal Republic of Nigeria. The Human Rights are chosen to be protected not only by the constitution but also by the African Charter on Human and Peoples Rights. Whenever there are breaches of these rights, the law provides a procedure for their enforcement, which is the Fundamental Rights (Enforcement Procedure) Rules 2009. Despite all these, Human Rights abuse is on the increase in Nigeria. Therefore, the essay is aimed at analyzing the concept of Fundamental Rights and Enforcement of Rights in Nigeria. Chapter one begins with the analysis and development of rights in Nigeria. Chapter two evaluates the provisions and violation of Fundamental rights. Chapter three on the other hand, gives details on the enforceability of rights and challenges of these rights. The essay ends with a conclusion and recommendation.

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CHAPTER ONE

INTRODUCTION

It is no doubt that fundamental rights have been recognized and entrenched in our constitution and these rights have been commonly called different names at different times in history such as divine rights, natural rights, human rights, moral rights, contributorial rights and so forth. The Universal Declaration of Human Right (UDHR) 1948 also states the rights and freedom that belong to all of us. The African Charter on Human and Peoples' Rights which was adopted on the 27th of June, 1981 state thus;

"Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status."¹

EVOLUTION OF HUMAN RIGHTS IN NIGERIA

Human rights evolution in Nigeria is traceable to be attempt by the British Government to calm the fear expressed by the country ethnic minorities that the majority ethnic group in control of political power would oppress them after the termination of the British Colonial Government, It was therefore the fear of domination of minorities by the majorities that ultimately led to the adoption of the bill of right in Nigeria in its independence constitution of 1960.

Successive per-independence constitutional conference dating back to 1953 have often then only fix on the inclusion of certain fundamental rights in future Nigeria constitution.

1. Art. 2 Africa **Charter** on Human and Peoples Rights, 1981

This agitation led to the setting up of a Royal Commission of Enquiry in 1958. The commission investigated and recommended the incorporation of the fundamental rights provisions in the Nigeria constitution.

Following the report of Sir. Willink commission, human rights were entrenched in the chapter 3 of the 1960 constitution, the following are rights recognized in 1960 and corresponding section.

- Right to life and dignity of human person-Section 17
- Freedom from in human treatment-Section 18
- Freedom from slailery and forced labour-Section 19
- Right to personal liberty-Section 20
- Determination of rights-Section 21
- Rights to private life-Section 22
- Right to freedom of conscience-Section 23
- Right to peaceful assembly and association-Section 25
- Freedom from movement-Section 26
- Freedom from discrimination-Section 27
- Right to compensation for compulsory accusation of property-Section-30
- Freedom of expression-Section 24

These rights were repeated vibration in the 1963 Republican Constitution of Nigeria and with a little variation for amplification in the 1979 and the 1989 constitution which was not adopted.

Thus, inspite of the dramatic experience of the political crisis including the period of the civil war of 1967-1970, the rights have remained the same. That is, they have

not been extinguished by any military or civilian administration, but that does not mean that, they have not been assaulted or threatened.

In recent times there have been certain Human Rights of non-political nature which are not necessarily fundamentally enshrined in the constitution, they appeared first in the 1979 constitution. Example of these sets of rights are those to Education, to work and just remuneration, the Right to just or favourable condition of work, right to protection against unemployment, old age or disability. Under the 1999 Constitution, these set of rights are referred to as Fundamental Objectives and Directive Principles of State Policy and are contained in Chapter 2.

However, as clearly stated in Section 6(6)(c) of the Constitution, the Fundamental Objectives and Directive Principles of State Policies are not justiciable. That is to say, they cannot be enforced by our law courts. See also AG Borno State vs. Rev. J. J. Adamu

To aid our understanding of our various categories of Human Rights in Nigeria, the following classifications are also important, these include; a) **Personal Rights** - These include the Right to Life (Section 33 CFRN 1999), Right to Dignity of Human Person (Section 34), Right to Personal Liberty (Section 35), and the Right to Freedom of Movement (Section 41).³

3. Political and Moral Rights - The constitution declares the entitlement of every individual to freedom of expression, including the freedom to hold opinion and receive and impart ideas and information without interference, associated or closely related to the political freedom of expression (Section 39), Right to Peaceful Assembly and Association (Section 40), Right to Freedom of Thought, Conscience

and Religion (Section 38).

2. The 1960 Independence Constitution of Nigeria - Chapter III Sec, 17-30. Page

3. The 1999 Constitution of the Federal Republic of Nigeria (CFRN) as amended - Chapter iv Sec. 33-41. Page

4. Proprietary Right - The right to property is given substantial protection in that prompt and adequate compensation must be provided by any law which gave the power to compulsory acquire or take possession of property section 44 of the 1999 constitution. Also the right to privacy of correspondence and telephone conversation is expressly guaranteed in section 37. Thus personal and domestic privacy is protected to supplement common law protection derived from the law of trespass.

5. Procedural (Due Process Rights) - The principle of fair hearing is well developed at common law but this has been entrenched in the constitution in far greater detail than were before, it is declared in section 36 of the 1999 constitution that in the determination of civil rights and obligation, a person shall be entitled to fair hearing within a reasonable time by a court or other tribunal established by the law and constituted in such a manner as to secure its independence and impartiality.

6. Equality Rights - It emphasizes on the right of freedom from discrimination section 42 of the 1999 constitution, prohibits discrimination among citizens on the bases of sex, age, religion, race, nationality etc. It also intends to protect children born outside wedlock.

MEANING OF RIGHT

The word "Right" is an entitlement to have or do something conforming to the standard of truth and justice. According to the Black Law Dictionary 9th Edition at page 1436

defines Right as;

"Something that is due to a person by just claim, legal guarantee or moral principle.

A legally forceable claim that another will do or will not do a given act, a recognized and protected interest the violation of which is wrong".

CLASSIFICATION OF RIGHT

Right can be classified into three (3) categories namely;

a) Civil and political right

b) Economic, social and cultural right

c) Environment law

A. Civil and Political Right

These are right that are consecrated in the constitution. When so consecrated, they are normally referred to as fundamental right. They are fundamental because they have been guaranteed by the fundamental law of the country (constitution).

B. Economic, Social and Cultural Right.

They include the rights to education, gainful employment, right to shelter etc, these rights are contained in chapter two(2) of the constitution of the Federal Republic of Nigeria(CFRN) 1999 (as amended). However, they are not justifiable; this means that the enforcement of this right cannot be the subject of litigation in court. See section 6(6)(C) CFRN 1999, Archbishop Okogie **B**V. AG Lagos State (1980) FNR 445 at 455.

C. Environmental Right

The right appeared on the 1999 constitution under the fundamental objectives and directive principles of the state policy which is not enforceable (Section 20 of the same constitution). However the importance of this policy cannot be diffused because of the right to life and

survival. Without clean and uncontaminated water the environment will not be a healthy place for one to live in.⁴

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4. Human Right: Civil, political, economic and Cultural. The Nigerian Bar Journal Vol. 21. 3rd August, 1986. Page

DEFINITION OF FUNDAMENTAL RIGHTS

What is fundamental Human Rights?

Fundamental Human Rights is defined as entitlements that humans have by the fact of being human and that are neither created nor can be abrogated by any government.⁵ Justice ESO SSC, in *RANSOME KUTI V ATTORNEY GENERAL OF THE FEDERATION*(citation pis) stated;

"Fundamental Human Rights is a right which stand above the ordinary laws of the land which in fact is antecedent to the political society itself."⁶

According to the Black's Law Dictionary Nineth (9th) edition at page 744 defines fundamental human rights as:

"A right derived from natural or fundamental law. A significant component of liberty, encroachment of which are rigorously tested by courts to ascertain the soundness or purported governmental jurisdiction."

In Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) covers a whole range of right constitutionality guaranteed. Like most of the common wealth countries, the provision on fundamental right have been enstained and recognized in the constitution in consonance with the principles proclaimed by the United Nations in Article 10 of the Universal Declaration of

Human Rights in 1948 wherein it is stated thus - "It is essential, if a man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human right should be protected by the rule of law."

5. Black Law Dictionary 9th Edition.

6. Ransome Kuti V Attorney General of the Federation (1985) 5 NWLR (pt. 10) 211 at 229-230. Page

THE NATURE OF FUNDAMENTAL RIGHTS

The very idea of justice and of equality" necessarily presupposes the thesis that independent of any positive law, there exists certain natural right which are direct gift to man by God our creator. They have been there from the existence of mankind. Those rights are not to be taken away from non whimsically. A peep into the origin of American constitution shows that the founding fathers of that constitution fighting to free or liberate themselves from the harsh legalism of George, 111 of England to enthrone justice and dethrone the king's positive legalism conceived the idea of the inalienable right of man they sought for the basis of these rights found it and set it down in the second paragraph of the declaration of independence in the following terms:

"it is self-evident principle that the creator has endowed man with certain inalienable right of life, liberty and the pursuit of happiness." All countries in the world that adopt Federal system of Government have these rights well and clearly entrenched in their constitution, Nigeria is not an exception. The importance of the nature of a fundamental right was couches in a very illuminating language by Kayode Oso, JSC in the famous case of Chief Funmilayo Ransome-Kuti and Ors V. Attorney General of the Federation & Ors (citation pis) where he stated thus:

"But what is the nature of fundamental right? It is a right which stands above the ordinary law of the land, of the level which infact is antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution since independence starting with the independence constitution. That is the Nigeria Constitution Order-in Council, 1960, up to the present Constitution that is the Constitution of the Federal Republic of Nigeria 1979 the later does not infact apply to this case, (it is the 1963 constitution that applies) to have these right enshrined in the constitution so that the right could be immunity of the constitution itself.

CHAPTER TWO

THE PROVISIONS OF FUNDAMENTAL RIGHTS

The Fundamental Rights recognized under the in Nigeria are as follows;

1) **Right to Life (S.33 CFRN 1999)**

S.33 of the constitution grants every person the right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. See S. 3(1) of the 1999 constitution, in *KALU V STATE* (1998) 12 SCNJ it was contended on behalf of the appellatant that the death penalty provisions of S. 310 (1) criminal code law of Lagos state, as a penalty for murder offends S. 30(1) of the 1979 constitution of Federal Republic of Nigeria (non section 3(1) 1999 constitution of Federal Republic of Nigeria which guaranteed right to life.

The Supreme Court rejected this argument saying that the right to life
f
guaranteed under the constitution is clearly qualified.

- Sub section 2 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 extent and in such circumstances as are permitted by law, of such force as is reasonably necessary.

- a) for the defence of any person from unlawful violence or for the defence of property;
- b) for the purpose of suppressing a riot, insurrection or mutiny

In case of STATE V. JOHN (2013) I NWLR (Pt. 1368) p. 337. per RHODES-VIVOUR, J.S.C, "To succeed in a charge of culpable homicide under section 221 of the penal code, the prosecution must prove the following beyond reasonable doubt.

- a) That the person the accused person is charged of killing actually died;
- b) That the deceased died as a result of the act of the accused person;
- c) That the act of the accused person was intentionally and he know that death or bodily harm was its likely consequence.

The right to life is not only available to adult citizens but extends also to children. In this wise the Child's Rights Act 2004 in section 3(1) provides that: "*the provisions in chapter iv of the constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provision relating to fundamental rights, shall apply as if those provisions are expressly stated in this Act.*"

From the foregoing provision, therefore, it is clear that children like their adult counterparts are equally entitled to all the rights contained in chapter iv of the constitution, include the right to life.

In AJUNWA V THE STATE (SUPRA),⁷ the Supreme Court gave conditions the accused has to prove in order to free himself of the charges.

- a) That the accused must be free from fault in bringing about the encounter.

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- b) That there must be present an impending peril of life, either real or so

apparent as to create in honest belief of an existing

- c) That there must be no safe or reasonable mode of escape by retreat.
- d) That there must have been a necessity of taking life.

2) **Right to Dignity of Human Persons (S.34 CFRN 1999)**

By the virtue of Section 34 CFRN 1999 (as amended), every individual is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture or to in human or degrading treatment, any form of slavery or servitude and forced or compulsory labour.

7. [1988] NWLR (pt. 89) 380. Page

In *Joshua V The State*, Denton-West JCA stated thus "even though I share the sentiments of the Appellant in respect of these submission pertaining to the scrapping of the death sentence as arbitrary, in human and degrading and that no man except God in my view, has a right to take life; the Nigeria law is so clear on the issue and needs to be properly orchestrated in the right forum like the national assembly, judges conference, international federation of woman judges conference etc."⁸

- Subsection(2) of subsection(1) "forced or compulsory labour does not include any labour required of members of the armed forces of the Federation or the Nigeria police force in pursuance of their duties as such; any labour required in consequence of the sentence or order of a court.

3) **Right to Personal Liberty (S. 35 CFRN 1999)**

By the virtue of section 35(1) of the constitution of the Federal Republic of Nigeria (CFRN) 1999 provides that "Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law." Lord Denning observe that the right to personal liberty means "the freedom of every law abiding citizen to think what he will, to say what he will on his lawful occasions, without let or hindrance from any other person."

Under S.35 (1), paragraphs (a), (b), (c) are meant to preserve the sanctity of the judiciary and the Rule of Law. The second limb of paragraph (c) deals with the powers of the police and other security affects to arrest offenders or persons reasonably suspected to have committed offences.

8. (2009) ALL FNLRPage

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Under S. 35(2) any person arrested or defined shall have the right to remain silent or avoid answering any question until after consulting with legal practitioner or any other person of his own choice.

Under S. 35 (3) any person who is arrested or detained shall be informed in writing within twenty-four (24) hours (and in a language that he understands) of the facts and grounds for his arrest or detention.

Furthermore, section 35 (6) provides that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person. 4) Right to Fair Hearing (S.36 CFRN 1999)

Fair hearing is a right in man to have a fair and just treatment at the hands of the rulers of their agents. Even before it was guaranteed by the Nigerian

constitution, right to fair hearing was already in existence in administrative law under the doctrine of natural justice.

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In *KOTOYE V CBN and ORS.*⁹ the Supreme Court held that the concept of fair hearing as contained in the constitution encompasses natural justice in the narrow technical sense of the twin pillars of justice-*audi alterem partem* and *nemo judex in causa sua* as well as in the broad sense to mean what is right and fair to all concerned as seems to be so.

- *Audi Alterem Partem* - This principle means hear the other side too. It requires that in any matter for determination affecting right and liabilities of the parties such parties must be afforded the opportunity of the starting their case before any decision is made affecting their rights and liabilities.

9. (1989) inwlr [pt. 98] 419 at 44. Page

In *R V. UNIVERSITY OF CAMBRIDGE (1723)*, 1 Str. 557 the court observed that even God did not pass sentence upon of the Garden of Eden until he has given him the opportunity to make his defence.

- *Nemo Judex in Causa Sua* - This means that, no man shall be judge in his own cause. In order to maintain public confidence in the administration of justice, no man who is a party to the proceedings or as any direct pecuniary interest or who is favourably disposed to one of the parties is qualified to adjudicate in the proceedings.

Under section 36(1) of the CFRN states that, "in determination of his civil rights and

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

In *ATTORNEY GENERAL OF KWARA STATE V ABOLAJI* (2004), 7 NWLR (pt. 1139) 119 the court held that to be fair in hearing or opportunity to be heard must encompass a party's right -

- a) To be present all through the proceeding to hear all the evidence against him.
 - b) To cross examine or contradict all the witnesses that testified against him
 - c) To have read before him all the documents tendered in evidence at the hearing
 - d) To have disclosed to him the nature of all evidence against him or prejudicial to him.
 - e) To know the case he has to meet of the trial and have adequate opportunity to prepare for it.
- f) To give evidence by himself, call witnesses if he likes and make oral submission.¹⁰

By the provisions of S.36(3) the proceedings of a court or the proceedings of any tribunal relating to matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public. That's why the superior courts waste no time in annulling proceedings conducted in judges chambers. In addition, the constitution of the Federal Republic of Nigeria (1999) (as amended) also states that, person being charged with criminal offence shall be entitled to fair hearing in a court or tribunal provided he/she met the condition in S36 (4) para 1 a & b. The person being charged with criminal offence

shall be presume innocent until proven guilty by a competent court of jurisdiction. S36(5).

Also S. 36(6) para (a - e), (7) and (8) clearly provides that the person being accused is entitled to examine the witness that may testify against him/her in a court or tribunal. The accused person shall not be held to be guilty of offence(s) on account of any act or omission that did not, at the .time it took place constitute an offence. S. 36(9) and (10) equally provides that, a person who have been tried by a court or tribunal for an offence and either convicted, acquitted or pardoned shall not be tried again in account of that same criminal offence in a superiors court.

Moreso, section 36 (11) and (12) of the 1999 constitution of the Federal Republic of Nigeria (as amended), also highlights some of the rights and privileges on right to fair hearing.

10.(2004] 7 NWLR(pt 1139] 119.

11.Page

5) Right to Private and Family Life (S. 37 CFRN 1999)

As stipulated in section 37 of the constitution of the Federal Republic of Nigeria CFRN, "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected by the constitution.

See the case of J.S OLAWOYIN V. AG NORTHERN REGION (NIGERIA) "which is connected with private and family life. See also the case of

M.D.P.D.P.T.V Okonkwo,¹² the court held that the patients constitutional rights to object to medical treatment or particularly, as in this case to blood transfusion on religious grounds is founded on fundamental rights protected by the 1979 constitutions are the right to privacy S. 34 etc.

6) Right to Freedom of Thought, Conscience and Religion (S.38 CFRN 1999)

Section 38(1) of the CFRN states that "every individual of a country is 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."

However, the exception for this right is provided in section 38 (4) of the constitution of the Federal Republic of Nigeria CFRN restricts any person to form or take part in the activity or be a member of secret society.

7) Right to Freedom of Expression at the Press (S. 39 CFRN 1999)

It is pertinent to note as provide in section 39(1) of the CFRN, "every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impact ideas and information without interference.

12. (2001) FWLR (pt. 44) 542. Page

However, freedom of expression does not mean that one has to commit the fort of defamation. This means that one's criticism should be within the limits of the law, your right ends where another person's right begins.

8) Right to Peaceful Assembly and Association (S. 40 CFRN 1999)

By virtue of section 40 of the CFRN, every person shall be entitled to

assembly 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 he/she shall not derogate from the powers conferred by the constitution on the independent National Electoral Commission (INEC) with respect to political parties to which that commission does not accord recognition IGP V ANPP.

9) Right to Freedom of Movement (S.41 CFRN 1999)

As it is stipulated in section 41(1) of the CFRN, every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exist there from. Notwithstanding section 41(2)(a) criminal offense is restricted/prevented from leaving in country.

In the case of SHUGBA ABDULARAHAMAN DARMAN V. THE FEDERAL MINISTER OF INTERNAL AFFAIRS & ORS, it was held that SHUGBA as a Nigerian could not be deported from the country whether or not he was declared a security risk. In summary, his right to free movement cannot be restricted unless by law and the provisions of the constitution.¹³

13. [2007] 18 NWLR (pt 1066) 457. Page

10) RIGHT TO FREEDOM FROM DISCRIMINATION (S. 42 CFRN 1999)

By the virtue of section 42(1) of the CFRN, "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 subjected to

disabilities, restrictions or deprivation.

Under section 42(2) of the CFRN stipulate that, "no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth."

Nothing that by section 42(3), the law imposes restrictions with respect to the appointment of any person to any forces of the Federation or a member of the Nigerian Police Force or to an office in the service of a body corporate establishment directly by any law in force in Nigeria.

11) Right to Acquire and Own Immovable Property Anywhere in Nigeria (S.43 CFRN 1999)

Subject to the provision of section 43 of the CFRN, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

COMPULSORY ACQUISITION OF PROPERTY (S. 44 CFRN 1999)

By the provisions of S. 44(1) of CFRN, "no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law. However, any law that empowers the state to acquire property for public purposes must provide for: a) Prompt payment of compensation

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b) Give 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 constructed as affecting any general law.

- a) For the imposition or enforcement of any tax, rate or duty;
- b) For the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for any offence.

RESTRICTION AND DEROGATION FROM FUNDAMENTL RIGHTS (S. 45 CFRN 1999)

Though the provisions of our constitution guarantees Fundamental Rights on the one hand, and provides for restrictions and grounds on which it can take away, derogate or limit the exercise of fundamental right in interest such as defence, public safety, public order etc on the other hand.

SPECIAL JURISDICTION OF HIGH COURT AND LEGAL AID (S. 46 CFRN 1999)

By the provision of S.46(1) of the constitution of the Federal Republic of Nigeria, CFRN "it gives right to 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. Government is to act within the limits of its legal powers. In the words of Canido Ademola Johnson J. as he then was in TONY MOMOH V. SENATE (1989), 1 NCLR 105 @ 114-115 HC stated

"exceeds such powers or acts in contravention of it or in conflict with the provisions of the constitution, it would be the duty of the judiciary to put it to check at the instance of any aggrieved party."¹⁴

Under S. 46(4) (b) The National Assembly shall make provisions for ensuring that allegations of infringement of such rights are substantial and the

requirement or need for financial or legal aid is real.

VIOLATION OF FUNDAMENTAL RIGHTS IN NIGERIA

In Nigeria, human right violations are recorded daily and virtually in all human endeavors. Unlawful violation can be of civil, political and moral rights which can be through intimidation, undemocratic imposition of individual for political offices, the violation of civil, political and moral rights may include;

1. Abuse of Right to Life - this Human Right violation is mostly found in torture and extra-judicial killings by government security operatives. This victim rights are been violated and sometimes they don't get justice.
2. Abuse of Right to Freedom of Movement? - This worrisome physical human right abuse as even preponderant all over Nigeria today. Infringement of a person's freedom of movement is a way of violating his/her fundamental human rights. An individual has the right to move freely at his will as stipulated in section 41 of the constitution of the Federal Republic of Nigeria, CFRN 1999.
3. Abuse of Right to Freedom of Assembly - The Nigerian government is known to oppose anti-government protest and demonstration.

For instance, on 3rd January 2009, police in Okeagbe, Ondo state allegedly killed and wounded some youths who demonstrated against local police extortion. It is regrettable to note that the Nigerian government has continually failed to address this kind of human right abuses and punish the offenders.

4. Abuse of Right to Dignity of Human person - Article 1 of the Universal Declaration of Human Rights (UDHR) provides that "all human beings are born equal in dignity and rights."¹ Section 34 of the 1999 constitution also prohibits the degrading treatment or inhuman treatment of another

irrespective of their tribe, sex, colour, religion or nationality. However, the right to dignity of the human person is violated in a number of ways. Some of the violations occur in the social, cultural, religious, economic and legal spheres. In Nigeria today, violation of dignity are mostly suffered by individual who are subject to torture, unlawful arrest, rape amidst others.

5. Abuse of Right to Personal Liberty

This right is one of the most central human rights as it is connected to the rudiments of an individual's physical freedom. This right give the freedom to live as you choose without too many restrictions or constraints from the government or its agencies. Anyone who is been unlawfully' arrested and detain by the government or any of its agencies rights has been violated section 35(2) of the 1999 constitution states that "any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice." This right continues even beyond the period of arrest as the accused can choose to remain silent throughout the period of the trial. Inherent in this right to remain silent is the right to brief a counsel of the accused person's choice. The police however resort to torture to obtain information and extract confessional statement from accused persons in violation of their right to remain silent.

6. Abuse of Right to Fair Hearing - The right to fair hearing is guarantee under the section 36 of the 1999 constitution. The right of fair hearing was denied in the case of CHUKWU V. STATE (2007) 13 NWLR (Pt.1052) 430 at 439 RATIO 9, where the court of Appeal state thus;

"Denial of fair hearing tantamount to a denial of justice and denial of justice is bad and outrageous because the denial of justice invariably inflicts grief, suffering, pain and untold hardship on those who place their hope and aspiration on an impartial administration of justice."

The fundamental nature of right to fair hearing and its inextricability from the personality of every human being must be respected in all civil societies.

7. Abuse of Right to Freedom from Discrimination - discrimination have many different causes and may affect people of different race, ethnic, national and people belonging to different castes. A person with disability is prone to face discrimination in the society today. People have the right to be treated equally, regardless of their sexual orientation, age or other status, yet they suffer cruelty from those in position or privilege or power.

8. Abuse of Right to Private and Family Life - the unlawful searches of homes, officers, phones without a warrant and seizure of a suspect's property by the police in order to obtain evidence is a dorlation to their private life. This right is connect to dignity as it derives from the right to be left alone without interference.

CHAPTER THREE

ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS

Human rights that are enforceable in law are those rights which are recognized by law as fundamental rights as distinguished from mere aspirations or individuals ideas of rights. These fundamental rights are now embodied in Chapter IV of the Nigerian Constitution of 1999 from section 33 to 46 and the African Charter on Human and People Rights, which was ratified and re-enacted as a municipal law by the National Assembly on the 17th March 1983. The charter became part of Nigerian Law by virtue of the African Charter on Human and Peoples Rights (Application and Enforcement) Act cap 10 laws of Federation 1990. The rights as provided by the constitution are as follows: Right to life-section 33, Right to dignity of human person-section 34, right to personal liberty-section 35, right to fair hearing-section 36, right to private and family life-section 37, right to freedom of thought, conscience and religion-section 38, right to freedom of expression and the press-section 39, right to peaceful assembly and association-section 40, right to freedom of movement-section 41, right to freedom from discrimination-section 42, right to acquire and own immovable property anywhere in Nigeria-section 43, compulsory acquisition of property-section 44, restriction on derogation from fundamental rights-section 45.¹⁵ The rights as enumerated above are rights in the first generation rights context.

In Nigeria, the process of protection and enforcement of the rights may be classified as conventional and unconventional, and orthodox and unorthodox ways. The orthodox ways are the procedures provided by the law.¹⁶

15. Section 33 - 46 of the 1999 Constitution of the Federal Republic of Nigeria. See also Fundamental Human Rights (Enforcement Preceded Rules 2009).

16. Nigerian Social Insurance Trust Fund Management Board V. Adebisi (1999) 13 NWLR, pt. 633 pp.16, see Atide 3-23 of the African Charter on Human and Peoples Rights.

They are regularly adopted in seeking relief against an alleged infringement of right. These include invocation of judicial powers and the resources to police enforcement. Mediation can be classified as an unorthodox procedure. Mediation is a process by which an impartial person, the mediator facilitates communication between the parties to a dispute to promote reconciliation, settlement and understanding. It is private, voluntary and informal process of a mutually accepted agreements. The mediator is not concerned with the issue of rights and wrong. His primary interest is to assist the parties in reaching an amicable, acceptable and satisfactory resolution of their dispute. In mediation parties listen actively to each other and try to understand each other's point of view. They recognize as legitimate the needs and interest of other people. They improve and build on their relationship if possible, discuss purposefully, systematically and rationally. They look for joint solutions, new options, ideas and ways to make decisions easy for each other. They keep difficult problems in perspectives, not permitting the problems to prevent agreement. On other issues and breaking them into smaller component parts so that they may be addressed separately. Where all else fails, they seek specific area of agreement, providing for some sort of relationship in the future and allowing for review of the situation.¹⁷

The key feature of mediation is that it allows parties to decide the outcome of their dispute. This is why the outcome is called agreement, and not an award as in arbitration or a judgment as in litigation.¹⁸

17. Olagunpa J. Conflict Management, the Mediatory Approach (KadunaiKal Print and Publish for

Corporate Mediators 1999} at 12 - 13.

18. Ibid at 14

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The constitution provides in section 46(3) "that the Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this for section" that is, the constitution empowers that Chief Justice of Nigeria the power to make rules with the respect to practice and procedure of a High Court for the purposes of enforcing the fundamental rights of a person contravened being or likely to be contravened in any state in Nigeria.

Thus, pursuant to this provision, we have the Fundamental Rights (Enforcement Procedure) Rules 2009 made by the then Chief Justice of Nigeria Hon. JUSTICE IDRIS CEGBO KUTIGI, which became effective from December 1, 2009.

The Chief Justice of Nigeria, Hon. Idris Legbo Kutigi made the following rules:

Preamble:

- 1) The court shall constantly and conscientiously seek to give effect to the overriding objectives of these rules at every stage of human rights actions, especially whenever it exercises any power given it by these rules or any other law and whenever it applies or interprets any rule.
- 2) Parties and their legal representatives shall help the court to further the overriding objectives of these rules.
- 3) The overriding objectives of these rules are as follows.
 - a) The constitution, especially chapter iv, as well as the African charter, shall be expansively and purposely interpreted and applied, with-view to advancing and realizing the rights and freedoms contained in then and affording the protections intended by them.
 - b) For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the court shall respect municipal, regional and international bills of rights cited to it or brought to its

attention or of which the court is aware, whether these bills constitute

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instruments in themselves or form parts of large documents like constitutions.

PROCEDURE FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS

The fundamental rights enforcement procedure is designed for summary mode of dispute resolution which renders it unsuitable for contentions action laden with controversy. Consequently, suit hereunder are initiated by motion on notice or originating summons.¹⁹

Before the coming into force the 2009 fundamental rights (Enforcement Rules) on the 1st day of December 2009 procedure for the enforcement of Fundamental Human Rights in the High Court required the obtaining of leave of court by filling motion ex parte supported by an Affidavit, the statement of material facts and verifying affidavit within twelve months of the occurrence of the event complaint against.²⁰ When leave is granted a motion on notice is filed in the same manner as the motion exparte and served on the party complained against i.e the respondents. The party served must have at least eight days to respond before the hearing which must be within fourteen (14) days of the granting of the leave.²¹

The demanding procedures as I have earlier noted will certainly task ingenuity of a lawyer. Many lawyers have commenced proceedings only to have them struck out for non compliance with these procedural requirements. The same procedure was adopted for the enforcement of the provisions of the African charter on Human and peoples right.²²

19. Order 1 Rule 2 of the Fundamental Rights Rules 1979.

20. Ibid Order II Rule 1 & 2.

21. Abacha V. Fawchirimi [2000] 6 NWLR pt. 660 pg. 228.

22. Ibid Order II Rule 1 & 2Page

The meaning of these rules is certainly beyond the comprehension of laymen. The implications is that litigants must employ the services, of a lawyer in order to seek redress for an infringement of his fundamental rights. In a vastly poor society such as ours, only a few can afford such luzury. The impleasant consequences of these hiccups is that various acts of infringement of constitution rights do not get to the courts.

However with the new procedure rules which was signed on the 11th day of November 2009 by the immediate past Chief Justice of Nigeria, CJN Justice Idris Legbo Kutigi, brought new innovations into the rules that will make the procedure easier for lawyer and litigants.

Under the New Rules order II

- Rule 2: An application for the enforcement of fundamental right may be made by originating process accepted by the court which shall subject to the provisions of these rules lie without leave of the court.
- Rule 3: An application shall be supported by a statement setting out the name and description of the applicant, the reliefs sought, the grounds upon which the reliefs are sought, and supported by an affidavit setting out the facts upon which the application is made.
- Rule 4: The Affidavit shall be made by the Applicant, but where the Affidavit shall be made by a person who has personal knowledge of the facts or by a person who has been informed of the facts by the Applicant, stating that the Applicant in unable to dispose personally to the Affidavit.
- Rule 5: Every Applicant shall be accompanied by a written address which shall be succinct argument in support of the grounds of

the application EG. Where the respondent intends to oppose the application, he shall file his written address within 5 days of the

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service on him of such application and may accompany it with a court Affidavit.

Rule 6: Where the Respondent intends to oppose the application, he shall file his written address within five days of the service on him of such application and may accompany it with counter Affidavit.

Rule 7: The Applicant may or being served with the respondent written address file and serve on address on point of law within 5 days of being served and may accompany it with counter Affidavit.

IN NWACHUKWU V. NWACHUKWU (2018) 17 NWLR (PT. 1648) PAGE 357 AT RATIO 1, supreme court of Nigeria stated thus; "before fundamental human rights can be enforced, it must be the main/substantive claim before the court and not on ancillary claim."

CHALLENGES AND LIMITATIONS TO THE ENFORCEMENT OF THE FUNDAMENTAL HUMAN RIGHTS

The procedural rule for the commencement of an action for the enforcement of fundamental Human Rights is guided by the Fundamental Rights (Enforcement procedure) rules 2009 made pursuant to section 46 (3) of the 1999 constitution of the Federal Republic of Nigeria by the Chief Justice of Nigeria.

Before the 2009 Rules, the procedure for the enforcement of fundamental rights in the High Courts required bringing up the actions within a specified period of time from the occurrence of the breach of such rights, but under the 2009 rules the limitation of the period of time has been done away with.²³

Equally under 1979 Rule, leave of court was a requirement for the enforcement of the Right under chapter iv of the constitution but under the 2009 rules, no leave is longer required²⁴ thus the era of inhibition on issue of locus stand is gone. The new rule unlike the previous one allow lawyers or litigants to file their brief, even if the Applicant is denied.

However as beautiful as the new rules are there are still so many challenges for the enforcement of the fundamental Human Rights. They challenges are as follows:

1. Court Jurisdiction: By section 251 of the 1999 constitution of the Federal Republic of Nigeria, the Federal High Court has exclusive jurisdiction on matters affecting the Federal Government or any of the Agencies. As a result, the hitherto unlimited jurisdiction 'of state High Court to entertain matters involving an infringement on fundamental rights of citizens was circumscribed. An action for the enforcement of fundamental rights cannot be maintained against the Federal Government or any of its agencies in the state high court.²⁵ identifying the party to be sued is now very important consideration which may determine the court where the action is to be instituted.

The inherent problem with this requirement is that Federal High courts are very sparsely spread across the states of the Federation, various states do not even have Federal High courts litigants will have to travels for distances at enormous expenses to institute action in nearest Federal High Court, covering their locality. Even where the action can be filed in state High Court, most cases High courts are rooted in the cities, very few of the 774 local governments.

24. Ibid Order II Rule 2.
25. Futech Yola V. Muas Sani Fululas (2005] 12 NWLR pt. 938. Page*

Headquarters in the country can boast of a high court, and against most are within the cities, so that litigants must bear the financial burden not only of the transportation and legal fees of their solicitors, but themselves to the nearest court to enforce their rights. The result is that various cases of infringement of rights do not get to the courts at all. One of the primary aims of the fundamental rights procedure rules is to expedite disposal of fundamental right cases, what is the essence of speedy disposal of a suit it adverse economic factors prevent prospective litigants from seeking redress for infringement of their rights. Although there is a constitutional provision for legal aid as an obligation of the Government that is rarely provided and only in criminal cases. Redress for breaches of fundamental rights in most cases, if not all, take the form of civil wrongs.

2. ISSUE OF PRINCIPAL OR ANCILLARY RELIEF

The issue of principal claim or ancillary relief is one of the major headaches by the litigants or applicants. The court have in some decided cases on fundamental human rights increased restriction on the scope of the applications for the enforcement of fundamental human rights cases. Indeed, applications alleging serious human rights violation are routinely struck out or dismissed on the ground that they were mere ancillary reliefs.²⁶ The right of workers to belong to trade unions for the protection of their interest is guaranteed by the trade union Act, the constitution and African charter on human and peoples rights. But in clear breath of such rights trade union are either prescribed or derecognized by employer of labour. For some in explicable reasons violation of the fundamental rights of workers to freedom of association is viewed as an ancillary relief which cannot be enforced under the fundamental rights (enforcement procedure) rules.

3. ILLITERACY

The inability to read and write constitutes a serious challenge to the enforcement of fundamental right in Nigeria. A good number of the people in Nigeria are illiterate who cannot appreciate or understand what rights they have. Freedom of expression makes very little meaning. With loss of their freedom of expression goes their right to participate meaningful in the government. Ake argued that freedom of press donolo mean much for a largely illiterate community absolved in eking a living out of an and mortar of subsistence. In the same vein Oputa observed:

"in this search for justice and redress resulting in the effectuation of his rights the ordinary citizens of Nigeria is caught in a mess of a rather vicious circle.

- a) The court can adjudicate upon and effectuate his rights unless there is a suit complaining about the breach or threatened breach of these rights filled in court.
- b) People especially the illiterate masses of our country do not even know what their rights are. They may therefore not even know when those rights have been or are being infringed.
- c) Even if the ordinary citizen knows of his rights and knows that they are being infringed he may be too afraid to sue the powers that be. It does require considerable courage to drag Chief Executive or functionaries of the government to court and very few of our people have that courage,.
- d) Where there is an awareness of right and the knowledge or realization of its breach or threatened breach and the courage to persecute the claim, the prospective litigant may be too poor to embark on the luxury of a costly and prolonged litigation up to the supreme court.²⁷

4. POVERTY

Poverty is one of the greatest challenges to the enforcement of fundamental rights in Nigeria especially under the present dispensation. Poverty has the following characteristics.

- i) Inability for one to have the means to satisfy the necessities of life
- ii) Undernourishment or malnutrition, and
- iii) Wretched and degrading shelter, shabby clothing and lack of any kind of luxury.

It is very different to claim that majority of our people cannot be categorized as poor, in the present setting, when people are living below poverty level of & 1 per day, despite the huge resources our dear country have had since the inception of this democratic experiment over ten years ago.

the practical actualization of most of the fundamental rights cannot be achieved in a country like ours where millions are? living below starvation...in circumstances of this nature fundamental rights provision enshrined in the constitution are nothing but meaningless jargon to all those of our people living below or just at starvation level.

5. ATTITUDE OF SOME STATE FUNCTIONARIES OR SECURITY AGENTS

In spite of the existence of fundamental human rights provisions in our constitution police are still detaining people for long periods of time without charging them to court for trials. A visit to the cells of special unit-fraud unit of the Nigerian police Lagos will confirm the story of human rights abuse by the police. The officials of the department of customs and exercise raiding markets with guns, horse-whip and tear poses for the seizure of banned imported items without any warrant from court when it was due to their inability to guard our borders that led to the presence of banned imported

items in the first place. Have we forgotten the circumstances in which late

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Justice Samb former chairman of code of conduct bureau was ejected from his house in blattered disrespect to court order by the then minister of Federal Capital Territory, Nasiru El-Rufai not to eject him?

The Attorney General of Federation and states are not helping matters. Whose fault can it be said to be responsible for the abuse of right of major Al-Mustapha and others held for the past 13 years without bail at just trail courts when they are skilled presumed innocent? All these constitute big challenges to the realization of fundamental human right by citizen.

CHAPTER FOUR

CONCLUSION

The constitution of the Federal Republic of Nigeria, 1999 (as amended) provides in its preamble that the constitution is for the purpose of, or promoting the good government and the welfare of all persons in our country on the principles of freedom, equality and Justice". How do we promote the welfare of all persons including the poor in Nigeria on the principles of freedom, quality and Justice? When the poor cannot access the court because of the high cost of litigation coupled with delays in determination of cases occasioned by our laws. Human rights are inalienable rights that accrue to every citizen of a country and one that deserves the maximum protection possible and unhindered protection from infringement. This is so because human beings are said to be naturally brutish and selfish and yet cannot exhibit these conducts in democratic society.

Above all, the citizens should not only help the government to protect their rights but they should also live responsibly to protect the rights of others at all levels of human relationship ranging from the family to the global arena. Hence, citizens should be more patriotic, have respect for the law, assist the law enforcement agencies and co-operate with international organizations on human rights issues.

The Nigerian government should take more proactive campaign against corruption and strengthen the countries anti-corruption institutions. This is because corruption serves to promote criminal and extremist activity by creating barriers to legitimate socio-political and economic endeavours. By attacking corruption, Nigeria will send a clear signal that the country is indeed committed

to good government, to the security of its citizens and to its rightful place as a significant actor on the global stage.

RECOMMENDATION

Before we can say with any degree of confidence that fundamental human rights provisions will be realizable in this country, the following must as a necessity be tackled.

- 1) There must be a transformation of our rural areas by the provisions of basic infrastructures because this is where majority of Nigerians are living and will continue to live. Hygienic water supply, adequate means of communication and electricity should no longer be seen as a luxury only enjoyable by those in the urban Areas. This is because, what is the essence of right to life if the water we take will cause cholera which will eventually lead to death.
- 2) There must be independent, fearless and efficient judiciary, because what would be the essence to right to fair hearing if there is no independent judiciary.
- 3) Mass literacy, this is inevitable because for the realization of freedom of express and association, the level of education of the majority has to be raised. This will enable them to take more active part in government.
- 4) Mediation process should be institutionalized in the settlement of human rights matters. Mediation is a process by which an impartial person, the mediator, facilitates communication between the parties to a dispute to promote reconciliation, settlement and understanding. It is a private, voluntary and informal process of dispute resolution where a neutral party assists the disputing parties to reach a mutually acceptable agreement.
- 5) All other obstacles to the fundamental human rights as we have identified in

this study must be removed so that there could be a Nigerian society that has at its lowest ebb human rights abuse. The provision of chapter II of the Federal Republic of Nigeria constitution 1999 (as amended) must be made justiciable of human rights is meant to be attained in Nigeria.

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