

THE LEGALESE OF HUMAN RIGHTS PROTECTION IN NIGERIA: SO MUCH ON PAPER

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ABSTRACT

The idea of human rights protection is meant to protect the humanity and dignity of individuals. Ordinarily, nations guarantee human rights to their citizens through legal instruments which could be international or domestic. Nigeria has succeeded in providing such documents at both the domestic level and via ratification of international treaties. Using doctrinal methodology, as well as secondary empirical results, this article examines such protections as guaranteed in these domestic and international instruments. It contrasts same with the realities of how Nigerians enjoy these rights. It finds that though the protections in these instruments are ideal, the actuality is the opposite as Nigerians languish under grave human rights violations, mostly by the government and its agencies with impunity.

Keywords:

“Human rights”, Nigeria, International, Domestic, protection, violation.

1.0 Introduction

Human rights represent the continued struggle by human beings over the years to attain that “human” status. This can be seen from the historical development of the concept itself, and the way it has been theorized from various perspectives. It is true that the concept of human rights is distinguishable from the legal rights of particular societies and from other desirable social objectives.¹ And that perhaps is why more emphasis has come to be placed on the legal rights, since “human rights” without solid legal basis may be mere aspirations devoid of vindication by the human self. Consequently, Nigeria as a nation has

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¹ Michael Freeman, *Human Rights* (Polity Press, Cambridge, 2006) 2.

strived, and indeed recorded some success in legalizing human rights at both the international and domestic planes. This can be seen in the myriad of international human rights instruments ratified by the governments since independence to date. It is also evident at the domestic plane as human rights have been guaranteed in all the constitutions the country has had since 1960 to date. The question however, is if these legal guarantees have actually translated into better human rights in the practical sense for the citizenry. Hence, the rhetorical support for human rights coexists with systematic abuse of these rights; consequently, the very meaning of human rights has become contested. This paper therefore, critically examines the legal regime for human rights in Nigeria alongside the practical reality as far as the ordinary citizen is concerned.

2.0 Human Rights

The notion of human rights implies that there exist rights that may be attributed to every member of the species, and that these rights are related to the very quality of being human, without distinction between members of the species and not extending beyond them.² The contemporary concept of human rights is intended to protect individuals from the abuse of power by governments. Thus, whether or not a society had a concept of rights, they certainly had the concept of power and its abuse.³ Rights are claims that have achieved a special kind of endorsement or success: legal rights by a legal system; human rights by wide spread sentiment or an international order.⁴

Claims presented as rights are claims that are regularly, conceivably typically, existing as having a superior genus of standing, intensity, universality, or validation that makes them more than disparate or simply idiosyncratic privileges. The realization of human rights is hooked upon endorsement by the authorities, and acceptance into the legal system which has power to grant and protect such rights.⁵ This is notwithstanding claims to a form of endorsement that rises above or pretends to transcend specific historical institutions and traditions,

² C Perelman, 'The Safeguarding and Foundation of Human Rights' *Law and Philosophy*, Vol. 1, No. 1 (Apr., 1982) 119-129.

³ Michael Freeman, n 2; 15-16.

⁴ David Sidorsky, 'Human Rights, People's Rights' In James Crawford (ed.) *The Rights of Peoples* (1988) 127.

⁵ *Ibid.* 128.

legal systems, governments, or national and even regional communities. Human rights languages are perhaps all that we have to interrogate the barbarism of power, even when these remain inadequate to fully humanize the practices of politics. So when this is taken away under the guise of subjectivity and selectivity of who is considered to be human enough to have his/her violations and sufferings reported, then the whole concept is in jeopardy.⁶

2.1 Brief History of Human Rights in Nigeria

The creation of the United Nations in 1945, the adoption of the UN Charter and subsequently the Universal Declaration of Human Rights brought to the fore the importance and overwhelming acceptance of the international human rights regime as a mechanism through which state actions may be objectively adjudged and checked.⁷ This therefore led to the development of various international and domestic instruments on human rights. Almost all nations now have one or more human rights instrument either domestic or international, to which their citizens are entitled and towards which they have pledged commitment. These instruments generally provide for certain rights which are spelled out in details and the extent to which people living within the territorial jurisdiction of these nations are entitled to the rights in question. The human rights instruments whether universal, regional, or national are all aimed at providing protection to human beings and where such rights are violated, compensation or other forms of remedy may be sought before the judiciary. Nigeria as a country has pledged commitment either by way of ratification at the international level or by way of enacting such human rights into law under domestic legislation or both.

To mark the importance which the Nigerian state attaches to the protection of human rights, constitutions from independence to date have all included provisions on fundamental human rights in a special chapter and made very stringent procedures for their alteration.⁸ There

⁶ Upendra Baxi, *The Future of Human Rights* (Oxford University Press, Oxford, 2003) xi.

⁷ See Mohammad Tawfiq Ladan, *Materials and Cases on Public International Law*, (Ahmadu Bello University Press Limited, Zaria, 2007) 169.

⁸ See for instance, Constitution of the Federal Republic of Nigeria 1999, s. (9) (3); Constitution of the Federal Republic of Nigeria 1963, s. 4.

has therefore, never been a successful attempt to alter any constitutional provision on human rights during civilian regimes.⁹

The historical origins of the fundamental rights provisions in our constitutions, especially the 1960 independence constitution and the 1963 Republican constitution are predominantly linked to the recommendations of the Willink Commission on minorities.¹⁰ Other views relate the inclusion of fundamental rights provisions in our constitutions to demands by early nationalists.¹¹

Markedly however, from the 1960 to the 1999 constitutions, only civil and political rights are enshrined as guaranteed and enforceable fundamental human rights in Nigerian constitutions. An exception is the 1995 draft constitution which never came into operation. The rights guaranteed under the 1963 constitution are however, mostly couched in negative language and may not so explicitly be said to have created a right so to say: typically, are provisions like “freedom from deprivation of personal liberty”. The couching of these provisions might therefore, have been deliberately done to avoid the granting of an express right to the people. This therefore, might have been responsible for the very poor performance of the judiciary in interpreting fundamental right provisions under the 1963 constitution.¹² In addition, the provisions were seen as being generally imprecise and vague coupled with wide and unqualified derogations which amounted to negating some of the rights and widening the extent to which the state could legitimately derogate from the rights guaranteed.¹³

Under the 1979 constitution, all the rights guaranteed under the 1963 constitution were also guaranteed under chapter four, and it is generally understood to have been more precise, neat, comprehensive, and more

⁹ James Nnamdi Aduba, ‘Inquiries on Human Rights Practice in Nigeria Past, Present and the Future’ Professorial inaugural lecture, UNIJOS inaugural lecture series 54, Friday, June 29, 2012.

¹⁰ Set up by the colonial administration at the heel of Nigeria’s independence to inquire into the fears expressed by the minorities in an independent Nigeria and to proffer ways of allaying their fears.

¹¹ Abiola Ojo, ‘Fundamental Human Rights in Nigeria: the 1963 and 1979 constitutional provisions’ *Nigerian Journal of Contemporary Law*, 1977-1980, 118.

¹² For a more detailed discussion on the judicial interpretation of the fundamental rights provisions under the 1963 constitution, see James Nnamdi Aduba, n 9, especially other materials referred to therein fn. 47 and 48.

¹³ Abiola Ojo, n 11.

committed to a body of positively guaranteed rights with less permissible derogations allowed for the state.¹⁴ Even though most of the rights guaranteed under the 1979 constitution were also guaranteed under the 1963 constitution, the language of the 1979 constitution were generally seen to be more innovative especially with reference to the rights to personal liberty and fair hearing.¹⁵ In addition to the rights guaranteed under the 1963 constitution however, the 1979 constitution provided certain rights mostly to expand the existing ones: in addition to the right to freedom of expression was the provision guaranteeing the right to own, establish, and operate any medium for the dissemination of information.¹⁶ So also, the right to freedom of movement was expanded to include the right of exit from Nigeria.¹⁷ The 1979 constitution is also innovative compared to the 1963 constitution in the area of discrimination on the grounds of the circumstances of one's birth¹⁸ and the provisions relating to legal aid to ensure that people whose rights have been or are likely to be violated are not incapacitated by reasons of penury from enforcing their rights.¹⁹ Even the judicial interpretations of the fundamental rights provisions under the 1979 constitution are generally considered to be more progressive and human rights accentuated than what obtained under the 1963 constitution.²⁰

As a starting point, the 1989 draft constitution in addition to the right to a legal practitioner provides that opportunities for justice shall not be denied to an indigent citizen.²¹ Even though the difference this provision makes is not so glaring, it surely would have provided the ground for challenging some of the intricately technical and expensive procedures in our justice system had the courts had an opportunity to interpret it. Also under the 1989 Draft constitution, the right to life²²

¹⁴ James Nnamdi Aduba, 'n 10, fn. 62.

¹⁵ Under s. 32 and 33 respectively.

¹⁶ Under s. 36 (2) of the 1979 constitution.

¹⁷ Under s. 38 (1) of the 1979 constitution.

¹⁸ Under s. 39 (2) of the 1979 constitution.

¹⁹ See s. 42 (4) of the 1979 constitution.

²⁰ See James Nnamdi Aduba, n 10, 17-24; Also seen in the cases decided under the 1979 constitution, especially those having to do with the federal and state governments like *Shugaba Darman V. Minister for Internal Affairs*, *Archbishop Okogie and Ors. V. Lagos state & Ors*, *State V. Nwankwo*, *State V. Ivory Trumpet*, etc.

²¹ s. 44 (4) of the 1989 Draft Constitution.

²² s.32 of the 1989 Draft Constitution.

had a new subsection added dealing with coroners' inquest as it relates to judicial inquiry.²³ And the right to private and family life as it was under the 1979 constitution was termed the right to private life under the 1989 constitution even though the substance of the provision remained the same.²⁴ Another development under the 1989 constitution was the provision dealing with juveniles emphasizing on their treatment and rehabilitation rather than punishment.²⁵ The section dealing with freedom from discrimination was considered more emphatic²⁶ under the 1989 than the 1979 constitution as it was mentioned severally.²⁷

Though the 1995 draft constitution never really saw the light of the day, it was considered the most innovative and more purposefully committed to citizens' rights. It was the only constitution even though draft, in our constitutional history, to have guaranteed some economic or social rights as enforceable human rights. These included the rights to medical consultation, the right to primary education, and the right to eradicate corrupt practices.²⁸

The 1999 constitution which is currently in force is a replica of the 1979 constitution and the chapter on fundamental human rights was also retained almost verbatim with very little variations both in terms of the wordings and substance of the provisions. Just like the 1979 constitution, fundamental human rights are contained in chapter IV under the 1999 constitution. The only right that appears under the 1999 constitution which was not under the 1979 constitution is the right to acquire and own immovable property anywhere in Nigeria.

2.2 The Legal Regime for Human Rights in Nigeria

The legal regime for human rights in Nigeria may be seen from two broad perspectives: the international legal instruments ratified by the country and the domestic legislations. The international legal instruments comprise of several instruments negotiated between

²³ s. 32 (3) of the 1989 Draft Constitution.

²⁴ See s. 36 of the 1989 Draft Constitution.

²⁵ See s. 34 (8) of the 1989 Draft Constitution.

²⁶ See generally James Nnamdi Aduba, n 9, p 15.

²⁷ See s. 41 of the 1989 Constitution as opposed to s. 39 (2) of the 1979 Constitution.

²⁸ See s. 43, 45, and 35 respectively, of the 1995 draft Constitution of the Federal Republic of Nigeria.

nations aimed at guaranteeing certain rights, or targeted at protecting certain individuals deemed vulnerable. The domestic laws on the other hand, comprise mostly of constitutional provisions and domesticated international instruments.

2.3 Nigeria's Human Rights Commitment at the International Plane

The international instruments are fundamental because of their perceived bearing on the domestic human rights regime and the fact that their application may be guaranteed to the average citizen only as they are reflected under domestic legislation. Notwithstanding, once ratified, the citizens become entitled to such rights, and the country has an obligation to ensure their enjoyment within its territory. Here, the major international legal instruments ratified by Nigeria are briefly analyzed.

2.3.1 The African Charter on Human and Peoples Right (the African Charter)

The African Charter seeks to guarantee human rights taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights: focusing at the same time on how to promote and protect human and people' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa.²⁹ The African charter may be said to be the most comprehensive of all the regional human rights instruments as it incorporates all the three generations of rights known to international human rights law (i.e. civil and political rights, economic social and cultural rights, and solidarity rights). Though critics³⁰ have casted doubts as to the real application of some of these

²⁹ See the Preamble to the African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

³⁰ See for instance, Dinah Shelton 'Human Rights and Environment Issues in Multilateral Treaties Adopted between 1991 and 2001' Background Paper No. 1 Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, Geneva: 14-16 January 2002. <http://www.unep.org> last accessed 10 December 2020.

rights, recent decisions have shown that the rights provided for under the African charter are certainly realistic.³¹

The following rights are specifically provided for and guaranteed under the African Charter: the right to equality before the law;³² the right to life,³³ the right to the respect of the dignity inherent in a human being;³⁴ the right to liberty and to the security of human person;³⁵ the right to fair hearing, including the right to appeal to competent national organs against acts of violation of fundamental rights.³⁶ Freedom of conscience, the profession and free practice of religion;³⁷ Right to freedom of expression;³⁸ The right to freedom of association³⁹ right to freedom of assembly;⁴⁰ right to freedom of movement and residence within the borders of a State including the right to seek for asylum and prohibition of mass expulsion of aliens;⁴¹ right to participate freely in the government;⁴² right to property⁴³ right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work;⁴⁴ the right to enjoy the best attainable state of physical and mental health;⁴⁵ right to education and to freely take part in the cultural life of his community;⁴⁶ right to protection and support of the family, women,

³¹ See Alan Boyle, 'Human Rights and the Environment: A Reassessment' (UNEP Paper Revised) <http://www.unep.org>, last accessed 14/1/2021.

³² The African Charter on Human and Peoples' Rights n 30, article 3.

³³ Article 4, even though the wordings of the article are somewhat ambiguous because unlike other documents, it did not unequivocally guarantee the right to life; instead it stated that 'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right'.

³⁴ Article 5; interestingly, this right under the African Charter includes the prohibition of All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.

³⁵ Article 6; it is however, subject to a claw back clause.

³⁶ Article 7.

³⁷ Article 8.

³⁸ Article 9; this right is also subject to a claw back clause which is arguably vague, as where the right in question has been made subject to the domestic laws of the states.

³⁹ Article 10: this right is also subject to the same claw back clause as in n 12 above.

⁴⁰ Article 11 which is also subject to law.

⁴¹ Article 12.

⁴² Article 13, subject to the provisions of the law.

⁴³ Article 14, interestingly, the claw back clause did not provide for the payment of compensation where the property is taken over for public use.

⁴⁴ Article 15.

⁴⁵ Article 16.

⁴⁶ Article 17.

children, and the aged;⁴⁷ right to equal and same rights and respect;⁴⁸ right to existence and self-determination;⁴⁹ the right to free disposal of wealth and natural resources;⁵⁰ right to economic, social and cultural development;⁵¹ right to national and international peace and security;⁵² and the right to a general satisfactory environment favorable to their development.⁵³

The African Charter contains several ‘claw-back’ clauses having the effect of curtailing the specific rights in question in normal circumstance for unspecified public reasons. For example, a number of civil and political rights are limited by terms such as “except for reasons and conditions previously laid down by law,”⁵⁴ “subject to law and order,”⁵⁵ or “within the law.”⁵⁶ These limitations subject guaranteed rights to domestic law, thus weakening their content and scope. The African Charter provides for peoples’ rights also referred to as collective or group rights. These rights are covered under articles 19-24 and have been among the most controversial provisions of the charter. The Charter did not provide a definition of the term people and has therefore been left to the commission to interpret. Consequently, the commission has interpreted the term ‘people’ as representing a specific group of the population within the boundaries of a country.⁵⁷

Of all the international human rights treaties ratified by Nigeria, only the African Charter has been domesticated. Interestingly however, not much can be seen in terms of enforcement with respect to the African charter especially in domestic courts. Whether this is out of ignorance

⁴⁷ Article 18; this article did not however, in strict legal terms provide for rights: rather, the state has the duty to support family life.

⁴⁸ Article 19.

⁴⁹ Article 20; it also includes the right to support from state parties in their liberation struggle against foreign domination.

⁵⁰ Article 21: from the wordings of the article, this right is more to be enjoyed by the state rather than individuals.

⁵¹ Article 22: these are peoples’ rights rather than individual right.

⁵² Article 23, this is also peoples’ right and not individual right.

⁵³ Article 24, another people’s right which has been tested before the African Commission on Human and Peoples’ Rights.

⁵⁴ See article 6.

⁵⁵ See article 8.

⁵⁶ See article 9 for instance.

⁵⁷ See the Mauritanian cases: *Malawi African Association and Others v. Mauritania*, African Commission on Human and Peoples’ Rights, Comm. Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98 (2000).

on the part of citizens in general and legal practitioners in particular, or due to a lack of confidence in the African Charter cannot be said. This position is notwithstanding the fact that the African Charter contains a wider range of rights than even chapter four of the constitution which is more often enforced in courts across the country.

2.3.2 The International Covenant on Civil and Political Rights⁵⁸ (ICCPR)

The ICCPR represents the foremost international human rights instruments initiated by the United Nations with the aim of providing a legal basis for the rights declared in the Universal Declaration on Human Rights. The Covenant is divided into six major Parts. Parts I and II set out a series of provisions generally applicable to all the rights described in the Covenant. Part III is the “backbone” of the Covenant, elaborating the substantive individual rights. The final Parts deal with the establishment of the Human Rights Committee, the Committee’s monitoring functions and a variety of technical matters.

The first two Parts, comprising articles 1 to 5, are an important set of what may best be described as provisions of an overarching or structural nature.⁵⁹ Part III is the heart of the Covenant.⁶⁰ Articles 6 to 11 set Specific prohibitions concerning torture, unauthorized medical experimentation, slavery and forced labor. The rights of a person in the context of deprivation of liberty, commonly by arrest, and in detention are also covered here; Articles 12 and 13 deal with movement into, out of and within a State, with particular rules applicable to the expulsion of aliens. Article 14 guarantees the right to a fair trial in both criminal and civil cases, Article 15 prohibits retrospective criminal punishment, while article 16 states simply that everyone has the right to be recognized as a person before the law. Article 17 addresses the right to privacy, article 18 freedom of thought and religion, article 19 freedom of opinion and expression (subject to the prohibitions in article 20 of

⁵⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entered into force 23 March 1976, in accordance with Article 49, Ratified by Nigeria on 29-7-1993.

⁵⁹ Civil and Political Rights: The Human Rights Committee Fact Sheet No. 15 (Rev.1) p 7 available at <http://www.ohchr.org>. Last visited 8/01/2013

⁶⁰ Civil and Political Rights: The Human Rights Committee Fact Sheet No. 15 note 2 p.9

advocacy of war or of national, racial or religious hatred), article 21 the right to peaceful assembly and article 22 freedom of association, including through trade unions. Articles 23 and 24 recognize the particular role of the family unit and address issues of marriage and the rights of children. Article 25 stands alone as the major right to political participation in the Covenant. Article 26 sets out the rights to equality before the law and to equal protection of the law. Part III of the Covenant concludes with article 27, which guarantees persons belonging to ethnic, religious or linguistic minorities the right, in community with other members of the group, to enjoy and practice their own culture, religion or language.

2.3.3 The International Covenant on Economic, Social and Cultural Rights:⁶¹ (ICESCR)

The ICESCR aims to ensure the protection of economic, social and cultural rights. One notable difference between the two Covenants (the ICCPR and the ICESCR) is the principle of progressive realization in part II of the International Covenant on Economic, Social and Cultural Rights. Its article 2 (1) specifies that a State party “undertakes to take steps, [...] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in [the Covenant]”. The principle of progressive realization acknowledges the financial constraints State parties may face. As such, no absolute obligation may be said to have been imposed on state parties as opposed to what is provided under article 2 of the ICCPR “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant...”

Economic, social and cultural rights have been seen as requiring high levels of investment, while civil and political rights are said simply to require the State to refrain from interfering with individual freedoms. It is true that many economic, social and cultural rights sometimes require high levels of investment—both financial and human—to ensure their full enjoyment. However, economic, social and cultural rights also require the State to refrain from interfering with individual

⁶¹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entered into force 3 January 1976, in accordance with article 27, Ratified by Nigeria on 29-7-1993.

freedoms. Similarly, civil and political rights, although comprising individual freedoms, also require investment for their full realization.⁶²

In order to clarify the meaning of States' obligations, they are sometimes put under three headings: **Respect**, (*Refrain* from interfering with the enjoyment of the right), **Protect**; (*Prevent* others from interfering with the enjoyment of the right), **Fulfill**; (*Adopt* appropriate measures towards the full realization of the right).⁶³ In general comment No. 15, the Committee on Economic, Social and Cultural Rights stressed that, under the Covenant, States have the obligation to achieve progressively the full realization of the right to water.⁶⁴

Both the ICCPR and the ICESCR provide in details, the human rights enshrined in the UDHR, but this time around in a binding document. The rights provided under the ICCPR are generally negative in character while those under the ICESCR are generally positive in nature reflecting the existing divide in the UN then. Because of the nature of the rights enshrined in the ICESCR, the obligation on states seemed to have been lessened and the implementation mechanism not so strict. This is not surprising bearing in mind the commitment and resources required for their implementation. The ICCPR on the other has clearer and binding obligations imposed on states and a more robust implementation mechanism as much of the rights enshrined there in are negative rights requiring on the most part, that states should refrain from doing something that affects the rights so provided.

2.3.4 The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment⁶⁵ (CAT)

The Torture Convention was the result of many years' work, initiated soon after the adoption of the Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or

⁶² See for example articles 7 and 8 of the ICESCR and article 14 of the ICCPR.

⁶³ Office of the United Nations High Commissioner for Human Rights Fact Sheet No.33 available at www.ohchr.org last visited 8/01/2021.

⁶⁴ Office of the United Nations High Commissioner for Human Rights Fact Sheet No.35 available at www.ohchr.org last visited 8/01/2021.

⁶⁵ Adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46): The Convention entered into force on 26 June 1987 after it had been ratified by 20 States; Ratified by Nigeria on 28 June, 2001.

Degrading Treatment or Punishment.⁶⁶ Under this Convention, each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture. The prohibition against torture shall be absolute and shall be upheld also in a state of war and in other exceptional circumstances.⁶⁷ It also prohibits the extradition or expelling of individuals to states where they may be tortured, and requires all state parties to criminalize torture.

2.4 Nigeria's Domestic Legal Framework for Human Rights Constitutional Provisions

All Nigerian constitutions since 1960 to 1999 have had a part dedicated to the protection of human rights. Hence, the 1999 constitution embodies this protection in its chapter four, shielding it with special position, requiring distinct amendment procedure. Under this chapter, the following rights are guaranteed: right to life, right to dignity of the human person, right to personal liberty, right to fair hearing, right to private life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to freedom of assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria, and the right to compensation on compulsory acquisition of immovable property.⁶⁸

To buttress the relevance of these provisions, the Chief Justice of the federation is empowered to make rules with respect to the practice and procedure of a High Court for the purposes of enforcing fundamental human rights.⁶⁹ Pursuant to this power, the fundamental rights enforcement procedure rules 1979 were made which remained in force until the year 2009 when a new set of rules were made by the Chief Justice of Nigeria.⁷⁰ The 2009 rules has been a huge progress compared to the 1979 rules. Among other things, the 2009 rules stands out for its peculiarity in areas like the abolishment of the issue of *locus standi* in

⁶⁶ The "Torture Declaration" by the General Assembly of the United Nations on 9 December 1975 (resolution 3452 (XXX)).

⁶⁷ article 2 of the CAT.

⁶⁸ See s. 33-44 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

⁶⁹ See Constitution of the Federal Republic of Nigeria 1999, (as amended) s. 46 (3).

⁷⁰ See the Fundamental Rights (enforcement procedure) Rules (FREPR)2009.

fundamental rights enforcement litigations⁷¹. It also addressed the issue of public interest litigations in human rights cases⁷², speedy and efficient enforcement of human rights suits⁷³, and it expressly incorporated the African Charter to be enforceable under the same procedure with the constitutionally guaranteed rights⁷⁴. The 2009 rules is also unique for its reference to other international and regional human rights instruments which may be cited before domestic courts for the purpose of the applicant's human rights.⁷⁵ These are in no small measure, milestones in the history of human rights enforcement in Nigeria as it has transformed the process with new and innovative developments which have so far enhanced the enforcement of human rights.

3.0 The Reality of Human Rights Protection in Nigeria

Human rights laws and instruments do not only provide for rights to be enjoyed by the people for the fun of it. The essence is to ensure the protection, promotion and respect of those rights by the state as an entity, and by the agents of state in their official capacity. It therefore, include the obligation to provide remedies incase such rights are violated either by governments, its agents, or even by a private individual. So where so ever there are allegations of violations of human rights, the next question that arises is that of remedies for such violations. The reality however, is such that the average Nigerian cannot genuinely feel that he has rights depicting his human nature capable of vindication before the legal system. First, these rights are trampled upon by the government and its agents, and in the few cases where attempts are made at exculpation, even where the courts hold it the victim's favour, enforcing such decisions become very difficult. Independents reports from Non-Governmental Organizations (NGO's) have over the years laid bare the violations experienced by ordinary Nigerians almost on a daily basis, mostly perpetrated by the government and its agents.⁷⁶

⁷¹ See preamble FREPR (note 91) paragraph (3) (e).

⁷² see preamble to the FREPR paragraph (3) (e).

⁷³ see preamble to the FREPR paragraph (3) (f).

⁷⁴ see preamble to the FREPR paragraph (3) (a) and (b) (i).

⁷⁵ See the preamble to the FREPR.

⁷⁶ See for instance, Amnesty international, "Nigeria: Trapped in a Cycle of Violence" 2012 Amnesty International's Periodic Report on the Situation of Human Rights in

While earlier reported cases of human rights violations were dismissed as counter terrorism measures at the peak of the Boko Haram crises, the trend has not changed with the relative progress made. Abuses by security forces has continued at an alarming level, so much so that one begins to wonder if Nigerians are seriously entitled to human rights protection at all. For Amnesty International reports with grim details, the abuse experienced by Nigerians, perpetrated by the same forces employed and paid to protect them.⁷⁷ In several instances, individuals were forced to move out of their homes to Camps, and as an incentive, their homes were destroyed. They complained that they ‘burnt down homes and opened fire at remaining residents indiscriminately’.⁷⁸ These amount to forced displacement, contrary to Nigeria’s human rights and humanitarian framework. Reminiscent of these practices, individuals were often separated from family members, arbitrarily detained, tortured, or other ill-treatments, especially women who reported being forced to remove their clothes and stand naked for “screenings” conducted in public.⁷⁹ These degrading and inhuman treatment of Nigerians by the security forces, especially the military continues undiminished to date.⁸⁰ Again, individuals are being confined to the IDP camps as if they were prisoners, and often starved.⁸¹

In similar vein, and indeed more distressing, ‘scores of women (and some men) described how soldiers and Civilian Joint Task Force (JTF) members commonly used force and threats to rape women and girls,

Nigeria, www.amnesty.org, 18, last visited, 28/11/2020; Human Rights Watch, ‘Spiraling Violence Boko Haram Attacks and Security Force Abuses in Nigeria’, 2012, available at <http://www.hrw.org>, last visited, 1/11/2013; The Baga incident and the situation in north-east Nigeria an interim assessment and report by the National human rights commission, Abuja, Nigeria, June 2013. @ www.nigeriarights.gov.ng, last visited 12/10/2019; BBC, Maiduguri: The Nigerian city gripped by insurgency, 13 March 2013, at <http://www.bbc.co.uk/news/world-africa-20166065>, last visited 17/7/2021.

⁷⁷ See Amnesty International, ‘They Betrayed Us’ Women Who Survived Boko Haram Raped, Starved and Detained in Nigeria, 2018, Amnesty International Ltd, Peter Benenson House, 1 Easton Street, London WC1X 0DW, UK, Index: AFR 44/8415/2018.

⁷⁸ Amnesty International, ‘They Betrayed Us’, 9.

⁷⁹ Amnesty International, ‘They Betrayed Us’, 10.

⁸⁰ This researcher also interviewed a number of women on 23 and 24 of October 2021, who complained of being forced to remove their coverings on their way to Maiduguri along Madagali-Bama road.

⁸¹ Amnesty International, ‘They Betrayed Us’, 10.

and took advantage of the conditions to coerce women into becoming their “girlfriends”, which involved being available for sex on an ongoing basis.⁸² All these reports, with all the detailed and often gruesome facts were presented to both the federal and state governments. Surprisingly however, nothing has been done by either government to forestall such happenings or to discipline the perpetrators.

The attitude of government though is not so surprising considering clear cases where the governments at the highest levels were either actively involved in violating individual rights, or were complacent in such activities.⁸³ Hence, after several frustrated attempts at ensuring governmental accountability, the human rights NGO’ had to resort to reporting to international organizations such as the International Criminal Court (ICC) for action.⁸⁴ Of recent, government security agencies have intensified action against individual citizens, mostly violating their right to freedom of expression and assembly.⁸⁵ The picture reflecting the state of human rights in Nigeria is gruesome and disturbing.

Again, citizens have been roundly assaulted, arrested, and often tortured for exercising their freedom of expression against actions of government such as what transpired during the ENDSARS protests across the country.⁸⁶ In short, ‘the civic space continues to shrink. Clear examples of this are the consistent attacks on freedom of information and expression as well as media freedom, which are all constituent

⁸² Amnesty International, ‘They Betrayed Us’, 11.

⁸³ See Amnesty International, Outcome UA: 157/20 Index: AFR 44/3850/2021 Nigeria, No Justice for Killing of #Endsars Protestors, 1 April 2021, <https://www.amnesty.org/en/documents/afr44/3254/2020/en/>, Accessed 30/10/2021.

⁸⁴ See Amnesty International, Open Letter to the OTP Requesting Immediate Action on the Situation in Nigeria, 13 February 2021 index number: AFR 44/3654/2021.

⁸⁵ See Amnesty International, Facing Trumped-Up Charges for Protesting Police Violence, December 2021

Index: AFR 44/4418/2021 English, <https://www.amnesty.org/en/documents/afr44/3254/2020/en/>, Accessed 30/10/2021; also, Amnesty International, Activists Jailed For Anti-President T-Shirts Freed, Outcome UA: 89/21 Index: AFR 44/4555/2021 Nigeria Date: 6 August 2021.

⁸⁶ These were series of protests against police brutality across Nigeria, see Amnesty International, No Justice for Killing of #Endsars Protestors, Outcome UA: 157/20 Index: AFR 44/3850/2021 Nigeria, 1 April 2021, <https://www.amnesty.org/en/documents/afr44/3254/2020/en/>, Accessed 30/10/2021.

parts of a country's civic space.⁸⁷ The reality is such that journalists have consistently been threatened or detained for publishing information that the government considers unfriendly. Again, it goes thus:

Since 2015, attack on journalists and media activists have continued unabated. ...These attacks take the form of verbal and physical assault, as well as indiscriminate arrest and detention by Nigerian authorities. These violations are mostly perpetrated by Nigeria's security forces - the Nigeria Police, the Nigerian Army and officials of the Department of State Service (DSS), and they occur when journalists and media practitioners seek access to information, share information or express critical views that could drive public opinion.⁸⁸

In all these cases of human rights violations, especially by agents of government, the trend has been for the government to turn a blind eye to these happenings and calls for action. This has succeeded in creating a feeling of impunity by government security forces. Amnesty international had cause to express serious concerns on this attitude of the federal government, where it said:

Amnesty International remains deeply concerned about pervasive violence against women, including rape of women and girls in internally displaced persons' camps,¹ as well as sexual violence against female detainees by police, sometimes in order to extract confessions.² These violations have continued, despite the passage of the Violence against Persons Prohibition (VAPP) Act in 2015. While welcoming Nigeria's acceptance of recommendations to intensify efforts to combat gender-based violence,³ the organization urges the government to ensure that victims throughout the Federation can seek legal redress for gender-based violations, in line with the provisions of the VAPP.⁸⁹

⁸⁷ Amnesty International, *Endangered Voices: Attack On Freedom of Expression In Nigeria*, Index: AFR 44/9504/2019, First published in 2019 by Amnesty International Ltd, Peter Benenson House, 1 Easton Street London WC1X 0DW, UK. p 5.

⁸⁸ Ibid.

⁸⁹ Amnesty International Public Statement, *Nigeria: Accountability for Human Rights Violations Remains Elusive*, 14 March 2019 Index number: AFR 44/0090/2019, www.amnesty.org Last visited 05/12/2021.

An equally disturbing trend remains the most difficult challenge so far, in human rights enforcement in Nigeria is the culture of impunity and disregard, or even contempt for court orders. It is a well-known fact among legal practitioners that orders issued by courts are gradually becoming no worthier than the sheets of papers on which they are written. In fundamental human rights enforcement cases, government agencies, especially the police force, the state security service (SSS), and now the military do not respect court orders- and that with impunity. As it is the case in the fight against terrorism, both victims, legal practitioners, and even the courts themselves are not eager to challenge executive actions because it will amount to an exercise in futility. Even before the current trend of violence and terror which some may perhaps see as justification for the contempt of court orders, the situation was not anymore better. In fact, it has been the case that legal practitioners, after obtaining court orders, have to lobby the police to get such orders respected. This situation if left unchecked will in time become the most serious challenge for human rights in Nigeria.

4.0 Conclusion

Civil liberties are our strength, not our weakness: as such, restrictions on freedom will be necessary only to protect lives and property, and not to deny basic liberties but to prevent their abuse. However, security agents in Nigeria have treated our Constitutional freedoms as weaknesses and have failed to strike an acceptable balance between individual rights and the needs of law enforcement. While the threat of terrorism demands some changes to the ways in which we conduct investigations, actions of security agents in recent years in the name of fighting terrorism lead us to question the wisdom of these changes. Clearly, the government must be empowered to detain and prosecute terrorists effectively. Nevertheless, the protections of lives, property, privacy, and due process embedded in our constitutional system must not be diminished for the sake of expedience.

5.0 Recommendations

Considering the situation of human rights in Nigeria and the bad name it gives the country at the international scene, it is recommended that the government take serious measures to bring an end to impunity by its agents. Security personnel must first be trained on human rights protection. They must be made aware that they are to enforce, and not make the laws – that their whims and caprices are not legal verdicts. All allegations of human rights violations by agents of government must be properly investigated and prosecuted, especially by the National Human Rights Commission. Where courts issue orders, government must learn to respect and implement them.