

AN APPRAISAL OF THE INNOVATIONS AND IMPEDIMENTS OF THE ENFORCEMENT OF FUNDAMENTAL RIGHTS IN NIGERIA

Musa Alkali Lawan* Baba Isa Sanda Benisheikh** Yahaya Alhaji Dunoma *** Umar Abatcha*

ABSTRACT

This paper seeks to appraise the innovations and impediments to the enforcement of fundamental human rights in Nigeria. Fundamental human rights enforcement in Nigeria and indeed in the African continent has more impediments than innovations despite the coming into force of the 2009 Rules, which seems to be more liberal than the 1979 Rules. The innovations brought in by the 2009 Rules are novel and has curtailed most of the impediments to litigants, lawyers, human rights activists and even persons who know nothing about their rights, sought to enforce their rights through the 2009 Rules. However, the 2009 Rules, come as a sign of relief for the effective and smooth enforcement of fundamental rights in Nigeria notwithstanding the impediments inherent.

1. Introduction.

The procedural rules for the commencement of an action for the enforcement of fundamental human rights in Nigeria is guided by the Fundamental Rights (Enforcement Procedure) Rules, 2009 made pursuant to Section 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (equivalent of Section 42 of the 1979 Constitution) which provides as follows:

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

* Lecturers, Department of Civil Law, Mohammed Goni College of Legal and Islamic Studies, Maiduguri.

** Lecturer, Department of Private Law, University of Maiduguri.

*** Lecturer, Department of Languages and Liberal Studies, Ramat Polytechnic Maiduguri.

- (3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purpose of this section.

Pursuance to Section 42 (3) of the 1979 Constitution, the then Chief Justice of Nigeria, Justice Fatayi Williams, on the 5th of December, 1979 in a supplement of official gazette No. 64 Volume 66 made what is today known as the Fundamental Rights (Enforcement Procedure) Rules.¹ The Fundamental Rights (Enforcement Procedure) Rules 1979 which came into force on January 1, 1980 had a number of shortcomings which was maximally exploited by violators of human rights to justify their actions.² In the process, many applications alleging serious human rights violations were dismissed by courts on account of technical deficiencies.³ The 1979 Rules required the bringing up of fundamental rights enforcement to be within specified period from the occurrence of the breach as well as leave of court for the commencement of the action. Issue of *Locus Standi* was also a mandatory requirement for the commencement of fundamental rights enforcement. In order to address the shortcomings in the 1979 Fundamental Rights (Enforcement Procedure) Rules, the then Chief Justice of Nigeria, Justice Idris Legbo Kutigi enacted the Fundamental Rights (Enforcement Procedure) Rules, 2009 which came into effect on the 17th November, 2009.⁴ The salient amendments in the Rules include the abolition of the application for leave to secure the enforcement of fundamental rights, the doctrine of *Locus Standi* and statute of limitation, filing of verifying affidavit and affidavit of service by the applicant and introduced new innovations for easier enforcement of fundamental rights both for litigants and lawyers. The innovations are as follows: the imperativeness of public interest litigation, liberation from *Locus Standi*, the express re-enforcement of the imperativeness of the comparative jurisprudence, accorded pre-eminence to expansive and purposeful interpretation in human rights litigation. The Rules had also rendered the statute of limitation inapplicable in human rights litigation, accorded priority to human rights cases in the general

¹ Osita, N. O., *Procedure for the Enforcement of Human Rights in Nigeria. Human Rights Law and Practice in Nigeria* Vol. 1. Published by Chenglo Limited. Enugu Nigeria, (2005) p. 325.

² Falana, F., *Fundamental Rights Procedure in Nigeria (2nd Ed)* Published by Legal Text Publishing Company Limited, Ojodu, Lagos. (2010) P. xi.

³ *Ibid*

⁴ *Ibid*

scheme of litigation through frontloading and dispensing the requirement of leave in the commencement of fundamental rights proceedings.⁵

However, as beautiful as the innovations introduced by the 2009 Fundamental Rights (Enforcement Procedure) Rules, there are still many impediments to the realization of the enforcement of fundamental rights in Nigeria. Some of these impediments are: illiteracy, poverty, lack of independence in the judiciary, attitude of some state agencies and the Non Justiciability of Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The paper is divided into three parts. Part One contains the innovations introduced by the 2009 Fundamental Rights (Enforcement Procedure) Rules. Part Two dwells on some of the impediments to the realization of the enforcement of human rights and Part Three proffer recommendations to the impediments and finally concluded the paper.

2. Innovations Introduced by the 2009 Rules on the Enforcement of Fundamental Human Rights in Nigeria.

The following are the innovations brought in by the 2009 Rules, for the easier enforcement of fundamental rights for litigants, lawyers and human rights activists.

a. The Imperativeness of Public Interest Litigation.

Public interest litigation has been defined as:

“the public character to which the litigation relates, evidenced by properly bringing proceedings to advance a public interest that proceedings contribute to the proper understanding of the law in question, and having involved on private gain.”⁶

It has also been described as a litigation in which the High Court allows volunteers like lawyers, activists, non-Governmental Organizations or citizen petitioners to bring a case on behalf of some victimized group without sufficient means or access to legal service.⁷

⁵ Dakas, C. J. D., “Judicial Reform of the Legal Framework for Human Rights Litigation in Nigeria: Novelities and Perplexities”. Being a paper delivered at a Training Organized by the National Secretariat of the Nigerian Bar Association (NBA). At Osogbo, Osun State, on 21st February, 2012.

⁶ *Oshalack v Richmond River Council* (1997) 152 ALR 83

⁷ Modhurima, D., *Public interest litigation for labour: How Indian Supreme Court Protects the Rights of India's most Disadvantage Workers*, Contemporary South Asia, (2008) Vol. 16 No 2 P. 160

The crucial factor in public interest litigation is that the effect of the decision, whether the action is instituted by an individual, organization or a class action even if the remedy favours the applicant directly, will still benefit the public at large. Specifically, public interest litigation stems from the standing rule developed by United Kingdom Court and adopted by many jurisdictions. It involves individuals, corporations or group purporting to represent the public interest, and not necessarily the interest of any identified or identifiable individuals.⁸ Public interest litigation provides effective judicial protection for weaker sections of the community, ensures access to justice, protects and sustains democratic governance and the rule of law, and makes officialdom accountable.⁹

In accordance with their socio-political situations, the rule of standing public interest litigation has been adopted in many jurisdictions with varying degrees.¹⁰ However, as plausible as adoption of this principle is, the 1979 Fundamental Rights (Enforcement Procedure) Rules, did not take into consideration the application of public interest litigation in the enforcement of human rights where such rights do not affect an individual but the public in general. The first case that tested the public interest litigation is the case of *Olawoyin v A. G. Northern Region*.¹¹ Here, the applicant challenged the constitutionality of an Act¹² prohibit political activities by juveniles and prescribed penalties on juveniles and others who are parties to certain specified offences. The applicant contended that he wished to give political education to his children but if the Act was enforced his rights and rights of other people of similar mind relating to freedom of conscience and freedom of expression will be infringed. The Federal Supreme Court held that it is only a person who is in imminent danger of coming into conflict with a law, or whose normal business or other activities have been directly interfered with by or under the law, that has sufficient interest of sustaining a claim for the infringement of his rights. The decision and the reasoning of the Federal Supreme Court in the above case was of *Adesanya v President of the Federal Republic of Nigeria*.¹³ In this case, the appellant challenged the constitutionality of the

⁸ Salman, R. K. & Oniekoro, F. J., *Op cit* P. 122

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ (1961) 1 N.S.C.C 165

¹² Children and Young Persons Law, 1958 (Northern Region No 28 of 1958)

¹³ (1981) 2 NCLR 358

appointment of a serving judge as chairman of the Federal Electoral Commission by the President of the Federal Republic of Nigeria. The Court by a majority was of the view that an individual plaintiff cannot institute public interest litigation except he is personally and directly affected by the act complained of or the infringed rights.

However, the 2009 Rules moved away from the traditional denial of public interest litigation and adopt its concept in totality. For example, the Rules advocate proactive pursuit of enhanced access to justice for all class of litigants. The class of litigants in this respect include the poor, the illiterate, the uniformed, the vulnerable, the incarcerated and the unrepresented.¹⁴ The Rules went further to welcome and encourage public interest litigation in the human rights field and state that, No human rights case may be dismissed or struck out for want of *locus standi*. With this preamble, the coast is clear for advocates, human rights activists and non-governmental organizations to institute human rights applications on behalf of any potential applicant who may be handicapped from instituting same by himself. Proactively, the rules classify an applicant to include anyone acting in his own capacity, anyone acting on behalf of another person, anyone acting as a member of, or in the interest of a group or class of persons, anyone acting in public interest, and an association acting in the interest of its members or other individuals or groups.¹⁵

b. The Liberation of *Locus Standi*

Locus Standi is one of the English Common law concepts which were incorporated into Nigerian law during the colonial rule of the country. Nigerian courts still take the restrictive common law approach to standing.¹⁶ Decided cases have followed this position and courts have consistently held that an applicant must have ‘sufficient interest’ in a matter before he or she could be accorded standing to sue. This is in line with Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 1979, which provided that: Any person who alleges that any of the fundamental rights provided for in the Constitution and to which he is entitled, has been, is being or likely

¹⁴ The Courts are enjoined to ensure that fundamental rights of the disadvantaged segment of the society are secured and enforced.

¹⁵ See Paragraph 3 (e) of the Preamble to 2009 Rules.

¹⁶ Elijah, A. T., Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A need for a more Liberal Provision. *African Human Rights Law Journal* (2009) 9 P. 552

to be infringed may apply to the court in the state where the infringement occurs or is likely to occur, for redress.

In line with the above rule it has been held in a plethora of cases¹⁷ that the person whose fundamental rights have been, are being or are likely to be contravened can challenge such violation. The first significant case on *locus standi* in Nigeria is the case of *Olawoyin v A. G. Western Region of Nigeria*.¹⁸ In this case, the appellant applied to the High Court for redress, alleging that the provisions of the Children and Young Persons' Law, 1958, of Northern Nigeria, which prohibited political activities by juveniles and prescribed penalties for juveniles and others who may be parties to the offences specified therein were unconstitutional. He maintained that he was a father of children whom he wished to educate politically, and that there was therefore a danger his right being infringed if the law were enforced, even though no action of any kind had been taken against him under it. The Northern High Court dismissed the action and held that, since no rights of the appellant were alleged to have been infringed, a declaration cannot be made *in vacua*. The Court held further that only a person whose rights had been affected by a statute may challenge its constitutional validity and that the person's rights must be directly or immediately threatened. The judgment was affirmed by the Federal Supreme Court. This also the position of the Supreme Court in the case of *Adesanya v The President of the Federal Republic of Nigeria*.¹⁹ Similarly, in the case of *Iteogu v LPDC*²⁰ the Supreme Court held that *locus standi* means standing to sue, thus Courts of law do not intervene unless one of the parties to the dispute having necessary *locus standi* to do so, involves their judicial power. Under the 1979 Rules, the competent person who can validly institute action for the enforcement of fundamental rights is the person whose rights has been infringed or likely to be violated otherwise the jurisdiction of the Court would not be properly invoked.²¹ It should be noted that Courts had departed from the restrictive approach of *locus standi* as held in several cases to wit:

¹⁷ *Abraham Adesanya v The President of the Federal Republic of Nigeria* (1981) 2 NCLR 358; *University of Illorin v Oluwadare* (2003) 3 NWLR (Pt. 806) 557; *Governor of Ebonyi State v Isuama* (2003) 8 WRN 123.

¹⁸ (1961) All NLR 269

¹⁹ (1981) 2 NCLR 358.

²⁰ (2009) 17 NWLR (Pt. 117) 614.

²¹ Joshua, E. A., *Exposition and Notable Principles on Fundamental Rights Enforcement Rules, 2009*. Diamond Real Resources Consult Law Books Publication Department, Abuja, (2010) P. 8

Abraham v The President,²² *Thomas v Olufosoye*,²³ *A. G. Kaduna State v Hassan*²⁴ in the preamble 3 (e) of the 2009 Rules, it has abolished the issue of *locus standi* in the enforcement of fundamental rights which provided that: “no human rights cases may be dismissed or struck out for want of *locus standi*”²⁵. Thus, any wife, husband, brother, friend or a relative who has personal knowledge concerning an infringement can apply to enforce the rights of the applicant. Not only that, unlike in the past, such wife or husband or relative of the applicant can dispose to an affidavit on behalf of the applicant stating among other facts, that the applicant is unable to personally dispose to an affidavit.²⁶ This is one of the far reaching innovation introduced by the 2009 Rules.

c. Dispenses with the Requirement of Leave in the Commencement of Fundamental Rights Proceeding.

The 2009 Rules abolished the mandatory requirement for applying and obtaining leave of Court for the purpose of enforcement of fundamental rights. In nutshell, the Rules have jettisoned the mandatory requirement of leave in its entirety. Order II Rule 2 of the 2009 Rules provided that: “An application for the enforcement of the Fundamental Rights may be made by any Originating Process accepted by Court which shall, subject to the provisions of these Rules, lie without leave of Court”

This indeed is a great departure from the mandatory requirement of leave *Ex parte Motion*. The Court has construed the requirement of leave under the 1979 Rules as condition precedent before the matter will be ripe for hearing. The rationale for the requirement of leave was explained by Justice Uwais of the Supreme Court (as he then was) in the case of *Fawehinmi v Col. Halilu Akilu*²⁷ as follows:

“it seems to me the purpose of the *ex- parte* application is to determine preliminary matters such as whether *prima facie* a ground exists on which it can be assumed that the applicant’s right has been violated and as such to put the prospective respondent on notice so that the court, after hearing both sides to the dispute, can consider in detail the complaint of the applicant. It is not therefore necessary or proper for the court to comprehensively examine the applicant’s complaint at the first stage in order to decide whether to grant the *ex- parte* application. A mere suspicious or inkling that a dispute or controversy exists is enough for the judge to

²² (1981) 2 NCLR.

²³ (1986) 1 NWLR (Pt.18) 669.

²⁴ (1985) 2 NWLR 483.

²⁵ Fundamental Rights (Enforcement Procedure) Rules, 2009.

²⁶ See Order II Rule 4 Fundamental Rights (Enforcement Procedure) Rules, 2009.

²⁷ (1987) 4 NWLR (Pt.67) 797.

grant the *ex-parte* application. It is sufficient if the judge satisfied the application *ex-parte* is not frivolous, vexatious or an abuse of the process of the Court.”

The application for leave must be made *ex-parte* and must be supported by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and also an affidavit verifying the facts relied on.²⁸

In the case of *Oyawale v Shehu*²⁹ an application for leave for the enforcement of fundamental rights was accompanied by a statement and a supporting affidavit. There was no verifying affidavit. The facts were contained in the supporting affidavit instead of the statement. In upholding the refusal of leave, the Court of Appeal held that an affidavit verifying the facts relied upon is a condition precedent to granting leave to enforce fundamental rights. Conventionally, under the 1979 Rules the court must enter applicant Motion or Summons for hearing within 14 days from the date the leave was granted.³⁰ In the case of *Ezechukwu v Maduka*³¹ the Court held that:

“An applicant whose 14 days period has run out has not together lost the right to enforce the alleged violation of his fundamental rights. The expiration of the 14 days period simply means that the *ex-parte* leave earlier granted to the applicant has expired by efflux ion of time. The applicant thereafter should revive the leave, not by seeking and obtaining extension of time but by a fresh leave. In other words, he must commence his application *de novo*. The life of the leave granted having completely expired; he must first obtain a fresh leave by another *ex-parte* where, in obedience to Order 2 Rule 1 (2) of the Fundamental Rights (Enforcement Procedure) Rules, he must enter his Motion or Summons for hearing within 14 days of the grant of such leave.”

However, Order II Rule 2 of the 2009 Rules dispenses with the prior requirement that an application for the enforcement of fundamental rights must commence with leave of Court. Under the new Rules, such applications shall lie without leave of Court. This will hopefully save valuable time and also redirect the Court’s attention to the merit of the application.

d. Renders Statute of Limitation Inapplicable in Human Rights Litigation.

The application of fundamental rights enforcement under the 1979 Rules must be brought within 12 months from the date of happening of the event, matter or act complained of, or such other period as may be prescribed by an enactment, or except

²⁸ Osita, N. O., *Op cit*, P. 325.

²⁹ (1995) 8 NWLR (Pt.414) 484.

³⁰ See Order I Rule 2 (2) and Order II Rule 1 (1) of the 1979 Rules.

³¹ (1997) 8 NWLR Pt. (518) 635 P.671.

where a period is so prescribed, the delay is accounted for to the satisfaction of the Court or judge to whom the application for leave is made. In the case of *Akanbi v Gnagnatumi & Ors*³² an application for leave under the Rules was dismissed on the ground that it was made over 14 months after the event complained of. The Court went on to make the unfortunate statement that it is only where other period is prescribed that accounting for the delay to the satisfaction of the Court or judge will arise.³³ This means that the High Court has no power to extend the time for applying where no other specific period is prescribed.³⁴ The above decision of the Court is in line with provision of Order I Rule 3 (1) of the 1979 Rules, which provided that:

An application for the enforcement of fundamental rights must be made within twelve months from the date of the happening of the even, made, or act complaint of, or such other period as may be prescribed, by any enactment or, except where a period is so prescribed, the delay is accounted for the satisfaction of the Court or judge to whom the application ...is made.

A closer look at Order 1 Rule 3 (1) reveals that, it is only where some other specific period is stated that the Court's jurisdiction to extend time is excluded.³⁵ In the later case of *Tafida v Abubakar*,³⁶ it was stated that the Court has jurisdiction by virtue of Order 1 Rule 3 (1) of the Rules to enlarge time within which to commence the action after the prescribed twelve months period has expired. The Court of Appeal in the case of *Abia State University v Anyaibe*³⁷ held that Fundamental Rights (Enforcement Procedure) Rules made pursuant to the Constitution has constitutional force and therefore will override any other enactment envisaged by Order 1 Rule 3 (1) of the Rule. In effect, any limitation period in any statute, which is less than 12 months will not affect the 12 months limit stipulated under the Rules.

Where the alleged wrong is a continuous one, an action can be brought outside the 12 months limitation period, at any time during the continuation of the wrong.³⁸ The stage at which a decision is to be taken as to whether an application is statute –barred or not is when the application for leave was presented before the Court.³⁹ Where the event,

³² (1995) 6 NWLR (Pt.399) 36, CA.

³³ Osita, A. O., *Op cit* P. 337.

³⁴ Ibid

³⁵ Ibid

³⁶ (1992) 3 NWLR 230, 511, 512.

³⁷ (1996) 3 NWLR (Pt.439)

³⁸ *Uzoukwu v Ezeonu II* (1991) 6 NWLR (Pt. 200)708, C.A.

³⁹ *Anigboro v Sea Trucks (Nig) Ltd* (1995) 6 NWLR (Pt. 339) 35.

matter, or act complained of arose out of a proceeding which is subject to appeal and a time is limited by law for bringing of the appeal, the Court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.⁴⁰

However, a remarkable innovation has been made under the 2009 Rules, which renders the statute of limitation inapplicable to action on fundamental rights. Order III of the 2009 Rules expressly provided to the effect that: An application for the enforcement of Fundamental Rights shall not be affected by any limitation of statute whatsoever. The provisions in Order III of the 2009 Rules as to the non-applicability of limitation of statute is a welcomed development when juxtaposed with 1979 Rules and the case law.

e. The Express Reinforcement of the Imperativeness of the Comparative Jurisprudence.

Paragraph 3 (b) of the preamble to the 2009 Rules, provided that, for the purpose of advancing but never for the purpose of restricting an applicant's rights, Court with jurisdiction over human rights cases "shall respect municipal, regional and international bills of rights." Concomitantly, while the determinations/decisions of foreign, regional and international human rights institutions and mechanisms are not binding on Nigerian Courts in every situation, the respect language entails that, absent a compelling imperative, the latter should give effect to those determinations/decisions.⁴¹ In other words, these foreign determinations should not be ignored while looking at matters related to fundamental human rights.

3. Impediments to the Enforcement of Fundamental Human Rights in Nigeria.

Despite the innovations brought in by the 2009 Rules, there are still many impediments to the realization of enforcement of fundamental rights in Nigeria especially by the ordinary poor citizenry. The followings are some of the impediments to the enforcement of fundamental rights in Nigeria:

a. Illiteracy.

The inability to read, write and understand constitute serious impediment to the enforcement of fundamental human rights in Nigeria. Nigeria is buffeted with grave proportion of illiteracy, because, a good number of the people in Nigeria are illiterate

⁴⁰ Osita, A. O., *Op cit* P.338.

⁴¹ Dakas, C. J. D., *Op cit*. P.

who cannot understand and appreciate what rights they have.⁴² Many are wallowing seemingly irredeemable ignorance of their rights despite the *Jomtiem*⁴³ Declaration of Education for All by the year 2000. Commenting on this issue Ake, observed that, freedom of speech and freedom of the press do not mean much for a largely illiterate rural community completely absorbed in the daily rigors of the struggle for survival.⁴⁴ Leading his opinion on this problem or impediment Oputa observed that:

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

- i. The Court cannot adjudicate upon and effectuate his rights unless there is a suit complaining about the breach or threatened breach of these rights filed in Court.
- ii. People especially the illiterate masses of our country do not even know what they are. They therefore do not even know when those rights have been or are being infringed.
- iii. 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.
- iv. Where there is an awareness of the rights and the knowledge or realization of its breach or threatened breach and the courage to prosecute the claim, the prospective litigant may be too poor to embark on the luxury of a costly and prolong litigation up to the Supreme Court⁴⁵

The above factors enumerated by the learned justice had seriously undermined the smooth and effective enforcement of fundamental rights in Nigeria. Especially in this

⁴² Chiroma, M. G., *Challenges of Enforcement of Fundamental Human Rights under the Constitution of the Federal Republic of Nigeria, 1999*. Unpublished Postgraduate Diploma in Legislative Drafting Long Essay Submitted to Nigerian Institute of Advance Legal Studies, University of Lagos, Akoka, Lagos (2010) P. 11.

⁴³ The World Conference on Education for All, which took place on March 5-9 1990 at Jomtiem, Thailand, declared inter-alia that “education is indispensable for human progress and empowerment,” and as such that all must be educated by the year 2000. Nigeria committed itself to the realization of this version, as one of the countries which attended the Conference. Thereafter, there was a re-affirmation of the goal of the Conference by Nigeria.

⁴⁴ Ake, C., the African Context of Human Rights, 35 *African Today Magazine*, (1987) P.5, 6.

⁴⁵ Oputa, C. A., ‘Access to Justice’ Law and Practice (1988), *Journal of the Nigeria Bar Association LP Vol. 1 No. 1* August, P.3.

situation where the country itself is facing economic recession, let alone a poor Nigerian or the uninformed citizenry.

b. Poverty

Poverty is one of the greatest impediment to the enforcement of fundamental rights in Nigeria. Poverty, denial of accessed to justice and human rights violations are rampant in Nigeria due to pervasive corruption and impunity among those who exercise public and judicial powers.⁴⁶ The poor in Nigeria constitute about 80% of the total population but have access to less than 20% of the resources of the land.⁴⁷ On a daily basis, they suffer severe deprivations of economic, social and civil rights.⁴⁸ This is further exacerbated by the global economic meltdown that has increased the rank of poor in Nigeria as they are severely feeling the heat of hardship and deprivation in all aspects of human endeavour.⁴⁹ Similarly, the poor are usually ignored or mistreated by bureaucrats. They are most vulnerable to being left the skills and resources to necessary to empower them with the economic, political and social rights to fight their way of destitute by petty corruption, and are least likely to have out of extreme poverty.⁵⁰ According to Anderson, these factors are not just symptoms of poverty but they are part of its cause and a most fundamental aspect of its manifestation.⁵¹ Poverty has been traditionally been regarded as a phenomenon best understood in terms of income and productivity. It has more recently been recognized that poverty is a multi-dimensional problem, extending beyond low income to include physical vulnerability and powerlessness within existing political and social structure.⁵²

Poverty as an impediment to the realization of enforcement of fundamental rights in Nigeria cannot be overemphasised. It is often stated that the judiciary or the Court are

⁴⁶ Us Department of State Diplomacy in Action, Bureau of Democracy, Human Rights, and Labour, Country Reports on Human Rights Practices, Human Rights Reports: Nigeria, 2009 accessed from <<http://www.state.gov/drl/r/s/hrrtp/2009/af/135970>> on 20/October/2017 at 1: 20 pm.

⁴⁷ Kola, O. and Sola, A., Poverty, human rights and access to justice: Reflections from Nigeria (2012) *African Journal of Business Management* Vol.6 23 P.6754.

⁴⁸ Ibid

⁴⁹ Zoellick, R., Meltdown may expose 100 Million people to poverty. World Bank CEO/President, *the Guardian News Papers*, 2009.

⁵⁰ United Nations, 7th Global Forum on Reinventing Government Building Trust in Government, Vienna, Austria government for the millennium development goals: Core issues and Good Practices. 26-29 June, 2007.

⁵¹ Anderson, M., Making Legal Institutions Responsive to poor People. Paper for Discussion at WDR meeting 2009. Accessed from <<http://siteresources.worldbank.org/intpoverty/Resources/wdr/dfid-project-papers/Anderson.pdf>> on 20th October, 2017 at 12: 45 pm.

⁵² Smith and Chin, E., Literature, Leadership and Citizenship Issues of Modern Nigeria, 2009. Accessed from [http://www.Africaresearch.org/papers/jo5/Bds 1.pdf](http://www.Africaresearch.org/papers/jo5/Bds%201.pdf) 20th October, 2017 at 4: 30 pm.

the last hope of the common man but in reality going to Court has always remained a mission impossible for the majority of citizens. Justice Oputa, in a scholarly presentation stated that: in his search for justice and redress resulting in the effectuation of his rights, the ordinary citizen of Nigeria is caught in the mess of a rather vicious circle: access to the Courts is a necessary adjunct of the Rule of law and the effectuation of his rights by the citizen. He further emphasizes that justice should not be the privilege of the few who are rich but should be available to all the citizens of our country. But access to the Courts implies the payment of Summons fees, the payment of lawyers' fees, and the payment for record of proceedings in the case of an appeal. All these are far beyond the reach of the poor and the unemployed who finding justice too expensive gladly resign themselves to denial of it...⁵³

In theory, our Constitution in its preamble talks nobly of "promoting the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice."⁵⁴ But in actual practice one sees that it is the powerful, the rich and the dominant class that seem to have all the rights while the only right left to the poor, the weak and the down-trodden seems to be their right to suffer in silence, to be patient and wait for their reward in heaven (if they are believers).⁵⁵

However, because of our colonial heritage, we now operate an adversarial system of adjudication where the contending parties bring their own evidence and present their arguments. The role of the judge in the scheme of things is to sit and listen attentively like the impartial umpire. At the end of the exercise, he then decides the case on the basis of the evidence presented and arguments proffered on both sides. If therefore, there is difficulty in gathering evidence that will definitely affect the judgment. That may also lead to injustice as the poor who cannot easily gather their evidence start off with an obvious disadvantage.⁵⁶ From the above, it is clear that institutional framework through which the poor can realize the enforcement of his fundamental rights is tilted against him from the onset. This was agreed by Uchegbu when he said that the right to life presupposes as a right to food, shelter, health and education.⁵⁷ Of what benefit is

⁵³ Oputa, C. A., *Op cit PP.* 65-66.

⁵⁴ *Ibid*

⁵⁵ *Ibid*

⁵⁶ *Ibid*

⁵⁷ Uchegbu, A., *The Concept of Right to Life under Nigerian Constitution*, an Essay in Honour of Judge T. O., Elias ed. J. A., Omotola, University of Lagos, Nigeria. (1985). P. 153.

the right in Nigeria? Aguda seems to have the answer when addressing the issue of the right to life in a lecture at Kuru. He commented thus:

“... This means much to me and those of you here who have some assurance as to how we can feed ourselves and other members of our family. But this is only an empty right from the point of view to those citizens of ours who do not know where or how they and other members of their families will get their next meal... what does the right to life mean to a man when indeed he feels he will be happier if that very life is taken away from him. It does not matter to him whether he lives or not...”⁵⁸

The right to the dignity of human persons is not enhanced where able-bodied citizens are unemployed. Aguda here again seems to appreciate the issue when he observed that:

“Can we imagine a greater torture for an able-bodied man or woman than to wake up in the morning and not have the smallest clue as to how or where he is going to find a meal to eat the whole of that day, not to talk of the day after? I take it as most inhuman and degrading for an able-bodied man or woman willing and able to work to find himself or herself a victim of unabated and frustrating prolonged unemployment. Such a situation leads progressively from optimism to pessimism and from pessimism to fatalism accompanied by a dreadful feeling of insecurity of complete economic helplessness and failure. When that stage of economic helplessness and failure is reached that surely must be a stage of torture.”⁵⁹

The right to personal liberty envisages the right not be subjected to imprisonment, arrest and any other physical coercion in any manner without legal justification.⁶⁰ From the above view, it is clear that the poor are actually imprisoned by their poverty; it is any wonder then that Oputa should describe poverty as being another modern form of slavery.⁶¹ The right to fair hearing in the Constitution implies two important aspects, judicial independence and equality before the law.⁶² There is serious doubt about the realization of the above right in the case of the poor. Oputa had asked in a paper: “what is the value of fair hearing to a poor man who cannot pay summons fees let alone afford the services of counsel? Aguda’s question was more pointed when he asked:

“What fair hearing can a poor person have when he cannot even boast of a square meal a day? If he is cheated of his right, he would certainly prefer to leave the matter in the hands of God than risk death through starvation as a result of investing all

⁵⁸ Aguda, T. A., *A New Perspective in Law and Justice in Nigeria*, National Institute for Policy and Strategic Studies, Kuru. Distinguished Lecture Series 25 October, 1985 P. 8

⁵⁹ *Ibid*

⁶⁰ *Ibid*

⁶¹ Oputa, C. A., *Op cit.* P. 94.

⁶² *Ibid*

that he and his family can boast of as the total of their worldly possession in trying to assert an illusionary right to fair hearing of his grievance by the Court.⁶³

At the end of the above presentation, he mused:

“To think that a very poor person can have a meaningful day in Court in the pursuit of his right, real or imaginary is to live in a fool’s paradise. The practical actualization of most of the fundamental rights cannot be achieved in a country like ours where millions are living below starvation ...in the circumstances enshrined in the Constitution are nothing but meaningless jargons to all those of our people living below or just at starvation level.”⁶⁴

This clearly shows that right to fair hearing has no any benefit to the poor person who struggle day and night to get a means of livelihood.

c. Weak Institutional Infrastructure.

One of the major deficiencies in the development of human rights in Nigeria is enforcement. Since the enforcement of human rights largely depends on the domestic machinery of national governments,⁶⁵ Nigeria has created firm institutional infrastructure to safeguard human rights in the country. The institutional infrastructure includes the Judiciary,⁶⁶ the National Human Rights Commission,⁶⁷ the Legal Aid Council⁶⁸ and the Public Complaints Commission.⁶⁹ Regrettably, the various institutional mechanisms are not strong enough or capable of providing adequate and effective platforms for meaningful human rights promotion and protection. This is especially, because many of these institutional mechanisms are not independent and do not have the financial and logistic capability to meaningful function as they ought to. For instance one of the enduring and indeed imperishable attributes of the common law is the notion of judicial independence,⁷⁰ this right is so important that the notion has become entrenched not only in the English system, but in most judicial systems across the globe. The term judicial independence, does not lend itself to a generally accepted

⁶³ Aguda, T. A., *Op cit* P. 8

⁶⁴ *Ibid*

⁶⁵ Muhammed, M. M., The Judiciary and the Challenges of Justice, <<http://www.scribd.com>>mobile>doc> accessed on 21st October, 2017 at 10: 30 am.

⁶⁶ Established under Section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁶⁷ Established pursuant to the National Human Rights Commission Act, (2004) Cap 46 LFN.

⁶⁸ Established pursuant to the Legal Aid Act, (2004) Cap L.9 LFN.

⁶⁹ Established by the Public Complaint Commission Act, (2004) Cap 37 LFN

⁷⁰ See *Garba & Ors v University of Maiduguri* (1986) 1 NWLR 550.

definition. Consequently, an examination of some attempts which have been made to define it will suffice. According to Oyeyipo:

“Judicial independence postulates that no judicial officer should directly or indirectly, however remote be put to pressure by any person whatsoever, be it government, corporate body or an individual to decide any case in a particular way. He should be free to make binding orders which must be respected by the legislature, the executive and the citizens, whatever their status...”⁷¹

From the above description, it can be safely concluded that judicial independence is not yet a reality but a mere aspiration in Nigeria today. The appointment and removal of judges are not insulated or isolated from politics, ethnicity, favoritism and other primordial considerations.⁷² Apart from the problem of appointment and removal, the judiciary is faced with formidable problems which inevitably compromise its independence and impartiality. The Nigeria judiciary lacks financial autonomy in the real sense of the word, even though under the present Constitutional dispensation a measure of financial autonomy is sought to be enthroned.⁷³ Besides, the remuneration of judicial officers is not adequate. The implication of this is that judicial officers are exposed to avoidable temptations of being corrupt such that their judgments are not the result of legal rule, forensic argument of counsel, precedent and cold facts of the case, but are rather dictated by extraneous considerations.⁷⁴ From the above, the challenge posed by the lack of independence of judiciary is formidable. Similarly, its implications for enforcement of fundamental rights are no less daunting. The extra-judicial bodies are in a more precarious position. Being controlled, directly or indirectly by the government through funding, composition of membership and provision of operational guidelines, among others, government interference or influence becomes not a mere possibility but a reality. For instance, it is widely believed that the redeployment of Kihinde Ajoni, the erstwhile Executive Secretary of the National Human Rights Commission (NHRC), was a result of the scathing human rights report she presented at

⁷¹ Dada, A. D., Impediments to Human Rights Protection in Nigeria, *Annual Survey of INTE'L & COMP Law Vol. XVII* 2014.

⁷² *Ibid*

⁷³ The Constitution of the Federal Republic of Nigeria 1999, empowers the National Judicial Council to “collect, control and disburse all moneys, capital and recurrent, for the Judiciary” Constitution Third Schedule, part 1/21 (c) 1999 (as amended) respectively.

⁷⁴ Dada, A. D., *Op cit* P. 11.

the 9th Session of the United Nations Human Rights Council⁷⁵ held in Geneva, Switzerland on Monday February 9, 2009.

d. Abuse of Power by the Executive.

The greatest challenge to enforcement of fundamental rights in Nigeria is the notorious problem of disobedience to Court orders. Undoubtedly, it is one thing for a court to grant a remedy but quite another for the successful litigant to reap the fruits of the judgment. This is because judgments and orders are not self-executing and the judiciary does not have its own means of enforcing its judgments.⁷⁶ The implication of this is that the judiciary inevitably depends on the executive for the enforcement of its judgments. The executive branch, without doubt, is the greatest violator of human rights.⁷⁷ It is the major “predator” from which judicial protection is often sought.⁷⁸ This being the case, there is little assurance that any order made against the executive branch will be obeyed. On the contrary, the unfortunate and regrettable experience has been regular disobedience by the executive of lawful courts orders.⁷⁹ Also the recent circumstances in which late Justice Sambo former Chairman of Code of Conduct Bureau was ejected from his house in disrespect to Court Order by the then Minister of Federal Capital Territory Abuja, Nasiru El Rufai now Kaduna State Governor. Also, the Federal High Court Division of Abuja on the 2nd December, 2016 declared in its judgment that, the decision of the Federal Government to hold El Zakzaky (the Applicant) for so long in detention amount to violations of his rights, the Court ordered the government to release the Applicant within 45 days and his family to the police, who shall within 24 hours escort him to a safe place and also ordered the State Security Service to pay a fine 25 Million Naira each to El Zakzaky and his wife, making 50 Million Naira.⁸⁰ Unfortunately, the Federal Government is yet to comply with the said order of the Court. Furthermore, on the 10th December, 2016 the Economic Community for West African States (ECOWAS) declared the arrest and continued detention of Sambo

⁷⁵ Adejuwon, S., On Death Row, *Tell Magazine* (Nigeria), 20 April, 2009 at P. 20-22.

⁷⁶ Under the Constitution, 1999 (as amended) it is the responsibility of the executive branch to enforce laws and judicial decisions.

⁷⁷ Jacob, A. D., *Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal*, (2013). *Journal of Law, Policy and Globalization*, Vol. 10.

⁷⁸ *Ibid*

⁷⁹ This is exemplified by the case of *Military Governor of Lagos State v Chief Emeka O. Ojukwu* (1986) 1 NWLR 62.

⁸⁰ www.premiumtimeng.com/headlines, accessed on 23rd October, 2017 at 4: 20 pm.

Dasuki a former National Security Adviser to former President Goodluck Jonathern as illegal, unlawful and arbitrary.⁸¹ The Regional Court found the Federal Government guilty of violating the Plaintiff/Applicant's fundamental human rights, saying the action of Nigerian government was in contravention of both national and international laws on the rights of persons and citizens to freedom of liberty.⁸² The Court awarded 15 Million Naira against Federal Government, as compensatory damages the applicant for the deprivation of his right under Articles 5 and 6 of the African Charter on Peoples' and Persons' Rights to freedom of liberty. The Court maintained that action of the Nigerian government in subjecting the Plaintiff/ Applicant to indefinite detention without trial was "condemnable" since he was yet to be convicted before any court of law. The Court further held that, it was wrong for the Federal Government to continue to detain the applicant, even though he had been granted bail by three different trial courts. However, the order of the Regional Court has not been complied with by the Federal Government. Often, government chooses the orders to obey, it obeys those it is comfortable with and disobeys those in conflict with its interest, without regard to the individuals whose rights have been violated. The Attorney General of the Federation and State are not helping matters in that respect.

d. Non -Justiciability of Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 as Amended.

The rights as found in Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), are second and third generation rights. These rights do not find expression under the Constitution as justiciable rights; instead they form the basis of Chapter II titled "Fundamental Objective and Directive Principles of State Policy."⁸³ These include Economic, Social, Cultural and Foreign Policy Objectives and Directive Principles.⁸⁴ A policy is a guide to the achievement of an objective. By Constitutional policy, it means the principles and objectives set out in the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which act as a guide to achieving government

⁸¹ www.vanguardngr.com News, accessed on 23rd October, 2017 at 4: 30 pm.

⁸² *Ibid*

⁸³ Chiroma, M. G., *Op cit P.* 94.

⁸⁴ *Ibid*

objectives. Section 16 of the Constitution reveals interesting formulations which are as follows:

1. The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution.
 - a. Harness the resources of the Nation and promote National Prosperity and an efficient, dynamic and self-reliant economy.
 - b. Control the National Economy in such a manner as to secure the maximum welfare and happiness of every citizen on the basis of social justice and equality of status opportunity.
2. The State direct its policy towards ensuring
 - a. The provisions of a planned and balanced economic development.
 - b. That the material resources of the Nation are harnessed and distributed as the best as possible to serve the common good.
 - c. That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or groups; and
 - d. That suitable and adequate food, reasonable National minimum living wage, old age care and pensions, and unemployment, sick benefit and welfare of the disable are provided for all citizen.

With regard to the above provisions, it is clear that a government without a guide is like an aircraft without a compass. In the word of Oguntade JSC, the Constitution is the very foundation and structure upon which the existence of all organs of government is hinged.⁸⁵ The arms of government have a valid Constitutional legitimacy when they are not only recognized by a Constitution but are duly regulated by the Constitution in terms of the structure, scope of their powers and matters relating to the office holders qualification, election, selection or tenure. It is to be noted that, the Constitution has generally prescribed principles which are binding on all organs of government and these principles constitute the policy of government in Nigeria.⁸⁶ In line with the above, the Constitution provided that:

⁸⁵ *Governor of Kwara State & anor v Alhaji Issa Ojibara & 6 Ors* (2006) NSCQR Vol. 28. 101.

⁸⁶ See Sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

“It shall be the duty and responsibility of all organs of government and all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Constitution.”⁸⁷

The duty of every arm of government in Nigeria in relation to Chapter II of the Constitution which deals with the Constitutional policy of government is limited to conformity with, observance and application of the policies in administrative, legislative and judicial circles. However, it is doubtful whether the phrase, the “duty and responsibility of all organs of government” truly intend to make all organs of government to bear the responsibility of failing to comply, observe or apply the provisions of Chapter II of the Constitution. The premise on which this assertion is based is the principle of non-justiciability of the Chapter.⁸⁸ A government that cannot be held responsible for any form of failure to perform its Constitutional obligations cannot be said to bear any responsibility in relation to its obligation to the people.⁸⁹ In the case of *A. G. Ondo State v A. G. Federation*,⁹⁰ the Supreme Court held inter-alia that Courts cannot enforce any of the provisions of Chapter II of the Constitution until the National Assembly has enacted specific laws for their enforcement as has been done in respect of Section 15 (5) of the Constitution of Federal Republic of Nigeria, 1999 (as amended). According to the Supreme Court, those objectives and principles of governance remain mere declarations which cannot be seen as a failure of duty and responsibility of state organs if they acted in clear disregard of them. The Court went further to maintain that Directive Principles (or some of them) can be made justiciable legislation. That subject of economic policy after the generality of the Nigeria public. A closer look at the aforementioned provisions in comparison with practical experience undoubtedly indicates that this policy is observed more in breach than in compliance. Government Economic Policy has continued to benefit the same group of persons who revolve from one office to another as though they enjoy monopoly of knowledge. Section 17 of the Constitution, talks of freedom of equality, and justice, employment, health. Equal pay for equal work, and securing adequate means of livelihood. The question is how many unemployed youths are rooming on Nigerian streets? How many people have died because they cannot afford hospital bills, and how many died in

⁸⁷ Section 13 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁸⁸ See Section 13 of the 1999 Constitution (as amended).

⁸⁹ See Section 6 (6) of the 1999 Constitution (as amended).

⁹⁰ (2009) 9 NWLR (Pt. 772) 222.

Nigeria because of diseases which are ordinarily preventable? Section 18 of the Constitution talks of education opportunities for all at levels, but how many of our children can afford to go to school today? How many of the children of Governors, Deputy Governors, Special Advisers and even Local Government Chairmen are schooling in Nigeria? Yet one cannot go to Court and get redress or ask why Mr. President and Governors Etc. children schooling in America or England? while, his child cannot get admission into a Nigerian University even where he is having better qualification than the children of all those persons, and yet the Constitution has this prohibition.

e. Attitude of Some State Agencies.

In spite of the existence of Fundamental Human Rights provisions in our Constitution, Police, Military and other law enforcement agencies are still detaining people longer period of time without charging them to Court for trials. This can be seen with the continued detention of Al. Zakzaky the leader of the Islamic Movement of Nigeria (IMN) by the Nigerian Army for an alleged attack on the convoy of the Chief of Army Staff, General Tukur Yusuf Buratai.⁹¹ Also in 2009, hundreds of people accused of having links to Boko Haram were detained by the Joint Task Force (JTF), Military, Police and State Security Services (SSS). Over 200 people are believed to have been detained at Giwa Barracks, 21 Armored Brigade, in Maiduguri; over 100 in the Special Anti-Robbery Squad (SARS) police station (commonly known as the abattoir) in Abuja; and dozens at SSS headquarters in Abuja. Others are detained in similar facilities around the country.⁹² According to Amnesty International's report, many have been denied access to the outside world, including lawyers, families and courts, and are held outside the protection of the law.⁹³ Detainees suspected or accused of being members of Boko Haram are usually not informed of why they have been arrested; their families are not told why they are being held; and they are generally denied access to lawyer.⁹⁴ The Nigerian Government and its agencies are known for notoriously violations of human rights as can be seen in the aforementioned incidents. Court orders

⁹¹ <<http://www.Relief-wed-in-report-Nigeria-army-attack-shai-unjustified>> accessed on 21st October, 2017 at 11: 15 am.

⁹² Nigeria: *Trapped in the Circle of Violence*, Amnesty International. (2012). P. 35.

⁹³ *Ibid*

⁹⁴ *Ibid*

are disregarded by the authority with impunity, pressmen were harassed and intimidated.

4. Conclusion and recommendations.

Despite the innovations introduced under the Fundamental Rights (Enforcement Procedure) Rules, 2009, there are still many impediments to the realization to the enforcement of fundamental rights contained under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which requires immediate address of such impediments for the smooth and effective promotion and enforcement of the said rights for the betterment of our nascent democratic government in Nigeria. The following recommendations if adopted it would go a long way in curtailing the impediments:

1. Government should formulate and execute policies and programs aimed at eradicating poverty from the society. More so, the Non-Governmental Organizations, human rights activists should help in documentation of human rights abuses and also assist the poor victims of human rights abuses in seeking redress in courts and other institutions of justice.
2. Human rights education should be incorporated into civic education and should be taught at the tertiary institutions in order to create awareness over human rights related matters. Also, the Non-Governmental Organizations, human rights activists and other related agencies of government should do more to enlighten the people over human rights issues.
3. The provisions of Chapter II of the Constitution of the Federal Republic of Nigeria 1999 as amended, which is entitled as “Non-Justiciable Rights” should be made justiciable. In view of this, there is the need for the amendment of the provision of Sections 6 (6) (c) and 12 (1) (a) of the Constitution, which may serve as obstacles to the enforcement of provisions of Chapter II of the Constitution and direct application of the international treaties in Nigeria without any need for local domestication.
4. The judiciary should be independent and be more pro-active and courageous in determination of human rights cases brought before it. The Legal Aid should be made more beneficial to the people by locating the office at least in all the Local Government

Areas of Nigeria. The National Human Rights Commission (NHRCN), which is crucial to effective human rights enforcement, should have the ability to operate independent of state control.

5. Police, Military, State Security Services and other law enforcement agencies excesses should be closely checked to prevent human rights abuse. The Government as the custodian of the rules of law should safeguard and protect the fundamental rights of its citizenry and not to infringe or violate such rights through the disobedience to court orders.