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## STRUCTURAL DEFECT IN THE PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA\*

**Abstract**

*Human rights freedom are enshrined in chapter IV of the 1999 constitution of the federal republic of Nigeria as amended including the right to life, the right to personal liberty, the right to a fair trial, freedom of expression and of the press, freedom of religion and the right to dignity of the person. The protection of human rights in its comprehensive has been too far from reality in Nigeria. This is because of some defects in some provisions in our laws that clog the enforcement of the guaranteed rights. The defects are either from possible oversight by our craftsmen or a conscious act by the government to violate the rights of citizens in order to perpetrate their political power. The author examined these defect and how it has affected the protection of some rights of the citizens and suggested some panacea.*

**Keywords:** Structural defect, Protection and enforcement of human rights, Nigeria

**1. Introduction**

It has become universally recognized concept that citizens of any nation are guaranteed certain definite political, civil, economic and social rights which governments have the duty and responsibility of protecting and enforcing such rights.<sup>1</sup> Human rights are non-transferable fundamental rights protected by law to which a person is inherently entitled because he is a human being. Human rights are thus conceived as universal and egalitarian, human rights are the inalienable fundamental rights to which a person is entitled to and are applicable everywhere and for everyone. The recognition of individual freedom by the state implies that the state should do its best to provide the social and economic conditions in which people can exercise choice and pursue their chosen ends and values. The universal validity of human rights has always been called into question especially in the developing countries.<sup>2</sup> Nigeria is not an exception. The concept of human rights in Nigeria has not been viewed in the light of its inherent, inalienable, inviolable and imprescriptible nature neither has it been suited to the traditional values of the people. Rather, it has been a product of compelling and supervening circumstances.<sup>3</sup> Human right provisions in Nigeria are not native products of the people but constitute our colonial inheritance. Since the adoption of the universal declaration of human right and the regional conventions, it has become fashionable for most countries to enshrine human rights in their various constitutions. This is strengthened by the obligation of member countries of the United Nations to respect and protect human rights in their domains.<sup>4</sup>

As part of ensuring the protection of human rights Nigeria has established oversight mechanism, which aims to promote and protect human rights. There are also provisions in the Nigeria laws that are aimed at promoting and protecting human rights.<sup>5</sup> At the preparation of Nigeria independence, human rights were not viewed as the intrinsic and inalienable attribute of a person. They were also not seen as an underlying element for the regime of egalitarianism to thrive, neither were they seen as a tonic and precondition for development. This is against the proper perception of human rights as an international general condition and the responsibility of every government to foster good governance in its civil society.<sup>6</sup>

**2. Protection of Human Right under Nigeria Laws**

Human right entrenchment in Nigeria made a debut in the independence constitution of 1960. The fundamental rights provisions have been transmitted to the successive constitutions, the 1963 republican constitution, the 1979 constitution and presently, the 1999 constitution. The rights feature in chapter IV of the 1999 constitution of the federal republic of Nigeria as amended. These rights are:

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<sup>1</sup>Most countries constitution protects human rights of its citizens.

<sup>2</sup>The observatory frontline: Nigeria: Defending Human Rights: Not everywhere not every right. International fact-finding mission report 2010 [http://www.omct.org/files/2010/05/20688/Nigeria\\_mission\\_report.pdf](http://www.omct.org/files/2010/05/20688/Nigeria_mission_report.pdf) 17 accessed 10 September 2018.

<sup>3</sup>A. Udu *Human Rights in Africa* (2011) Mbeyi& Associates (Nig.) Limited131.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

### **Right to life**

The most fundamental right of every human is the right to life. Every human right instrument guarantees this right. Section 33(1) of the 1999 constitution guarantees this right, it states. ‘Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of criminal offence of which he has been found guilty in Nigeria.’

A person shall not be regarded as having been deprived of his life in contravention of section 33(1) of the constitution of the Federal Republic of Nigeria, if he dies as a result of the use of such force as is reasonably necessary for the defence of any person from unlawful violence or for the defence of property; in order to effect a lawful arrest or to prevent the escape of a lawfully detained, or for the purpose of suppressing a riot, insurrection or mutiny<sup>7</sup> from the above, the right to life is not absolute. In specific cases as stated above, it may be lawful to take a person’s life. The cases of *Kalu v the State*<sup>8</sup> and *Okoro v the State*,<sup>9</sup> are instructive. Here the Supreme Court held that the death penalty passed is not inconsistent with section 33(1) of the 1999 constitution. The Nigeria courts have maintained a posture in defence of the citizen’s right to life. However, the executive, arm of government has often desecrated this sacred right as in the case of *Bello V A.G of Oyo state*,<sup>10</sup> here, the accused had a pending appeal against his death sentence in the Federal court of Appeal. He was prematurely executed by the Oyo state government before the determination of his appeal. The appeal was supposed to operate as a stay of execution. In awarding damages against the state government, the court remarked that the action was a reckless disregard for the life and liberty of the subject. In the absence of an appeal, the death penalty would constitute a lawful limitation of the right to life.

### **Rights to dignity of human person**

The right to dignity of human person is guaranteed under section 34 of the 1999 constitution thus:

- I. No person shall be subjected to torture or to inhuman or degrading treatment;
- II. No person shall be held in slavery or servitude, and
- III. No person shall be required to perform forced or compulsory labour.

Despite this provision in the Nigerian constitution, the police, military and other security officers regularly beat protesters, criminals, suspects, detainees and convicted prisoners. In the case of *Mogaji v Board of customs and Excise*<sup>11</sup> the court held that to organize a raid using guns, horse whips and tear-gas on the merchants is a violation of the right to dignity of human person. In *Alaoh V Boyles and Anor*,<sup>12</sup> the court held that the pushing, beating and submersion of the applicant’s head into a pool of water constitute a degrading and inhuman treatment.

### **Right to personal liberty**

Section 35(1) of the 1999 constitution provide thus: ‘Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in... the execution of a lawful order of a court, for purposes of bringing a person before a court on reasonable suspicion of his having committed an offence, in the case of a minor, for purposes of his education or welfare, and for purposes of preventing unlawful entry into Nigeria of an unlawful alien’. Section 35(2)-(6) of the 1999 constitution further guarantees good treatment and prompt discharge when a person is denied his liberty for any of the above reasons. An arrested person has a right to remain silent and to consult a counsel of his choice. He is also entitled to be informed, in the language he understands, of the reason for his arrest, and shall be brought before a court of law within a reasonable time. Any person wrongfully arrested is entitled to compensation and public apology. This provision has been violated, especially in the military regime. The usual practice of the military government is to suspend the constitutional provision relating to personal liberty and replace same with draconian decrees.<sup>13</sup> An example is the state security (detention of persons) Acts (cap 414, laws of

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<sup>7</sup>Section 33(2) (a) – (c) of the 1999 constitution.

<sup>8</sup>(1998) 13 Nigerian weekly Law Report(NWLR) (pt 583) 531.

<sup>9</sup>(1998) 12 Supreme Court of Nigeria Judgment (SCNJ) 84.

<sup>10</sup>(1986) 5 NWLR (pt.45) 828. This is also the case of Ken Saro-Wiwa, who was convicted on 31 October 1995 by a tribunal in the southern port city for murder, and killed on 10 November 1995 without given the opportunity to appeal his sentence. See Frank Aigbogun ‘It took five attempts to hang Ken Saro-Wiwa’ the Independent newspaper of Monday 13 November 1995.

<sup>11</sup>(1982) 2 Nigerian Internet Law report (NILR) 552 561-662.

<sup>12</sup>(1984) 3 Nigeria Constitutional law report (NCLR) 830.

<sup>13</sup>Udu (Note 3 above) 142.

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the federation of Nigeria, 1990) that provided for detention without trial upon suspicion of involvement in the economic adversity of the nation or in the process of preparing for instigating such acts.

**Right to fair hearing**

The right to fair hearing is enshrined in section 36(1) of the 1999 constitution of the Federal Republic of Nigeria and provide thus: ‘... A person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.’ To protect an accused right to fair hearing, he is presumed innocent until he is proved guilty.<sup>14</sup> He is entitled to defend himself in person or by a legal practitioner of his choice.<sup>15</sup> The accused must be informed, in the language he understands, in detail, or the nature of the offence.<sup>16</sup>

**Right to private and family life**

Section 37 of the 1999 constitution of the Federal Republic of Nigeria provided thus: ‘The privacy of citizens, their house, correspondence, right to telephone conversations and telegraphic communications is hereby private and guaranteed and protected.’

**Right to freedom of thought, conscience and religion**

The provision of the constitution with respect to this is that every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom either alone or in community with others, and in public or in private, to manifest and propagate his religion or belief in worship teaching, practice and observance.<sup>17</sup>

**Right to freedom of expression and the press**

Section 39(1) of the 1999 Constitution provides that: ‘Every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and import ideas and information without interference.’ This is a vital tool for good governance in a democratic regime. It empowers the press in their role as watchdog of democracy, and gives the people the unrestricted freedom to comment on the activities of government.

**Right to peaceful assembly and association**

This right is provided for in section 40 of the 1999 constitution thus: ‘Every person shall be entitled to assembly freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests...’

**Right to freedom of movement**

Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.<sup>18</sup>

**Right to freedom from discrimination**

‘A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be discriminated against in any form.’<sup>19</sup>

**Right to own immovable property in Nigeria**

This right is guaranteed in section 43 of the 1999 constitution of the Federal Republic of Nigeria, which provides that: ‘every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.’ This section also provides for compulsory acquisition of a citizen’s property on the condition that the prompt compensation is paid, and that the claimer of such compensation has right to access the court or tribunal for the determination of his interest in the property and the amount of the compensation.<sup>20</sup>

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<sup>14</sup>Section 36(5) of the 1999 constitution.

<sup>15</sup>Section 36(6) (c) of the 1999 constitution.

<sup>16</sup>Section 36(6) (a) of the 1999 constitution.

<sup>17</sup>Section 38(1) of the 1999 constitution.

<sup>18</sup>Section 41(1) of the 1991 constitution.

<sup>19</sup>Section 42(1) of the 1999 constitution.

<sup>20</sup>Section 44(1) (a) (b) of the 1999 constitution.

### **3. Human Rights Domestic Oversight Mechanisms in Nigeria**

#### **National Human Rights Commission**

Nigeria established the National Human Rights Commission (NHRC) in 1995, in line with the resolution of the General Assembly of the United Nations, which enjoins all member States to establish Human Rights Institutions. It aims to promote and protect human rights. Its establishment is aimed at creating an enabling environment for extra-judicial recognition, promotion and protection and enforcement of human rights, treaty obligations and providing a forum for public enlightenment and dialogue on human rights issues thereby limiting controversy and confrontation.<sup>21</sup> The NHRC monitors respect for human rights, investigates alleged cases of abuse and reports on the status of human rights in the country. It also assists victims in seeking redress, monitors prisons, engages in human rights education and helps the Government formulate policies on human rights.<sup>22</sup> The Commission is headed by the Executive Secretary who is also the Chief Executive Officer (CEO). There are six departments in the administrative structure of the Commission namely: Admin, LID, Finance and Accounts, Public Affairs and Communications, Planning, Research and Statistics, and Monitoring and External Programmes. There are three units under the Executive Secretary's Office, namely, the Council Secretariat, Audit and Public Interest litigation Units. The Commission also has six zonal offices representing the six geo-political zones of the country, namely; North West Zone (Kano), North East Zone (Maiduguri), North Central (Jos), South West (Lagos), South East (Enugu) and South South (Port Harcourt).

The Governing Council consists of 16 members made up of a Chairman who shall be a retired Justice of the Supreme Court of Nigeria or the Court of Appeal or a retired Judge of the High Court of a State and an Executive Secretary.<sup>23</sup> The members of the Council are appointed by the President, Commander-In-Chief to represent a variety of interests as follows:

- (i) Ministry of Justice;
- (ii) Ministry of Foreign Affairs;
- (iii) Ministry of Interior.
- (iv) Three representatives of registered human rights organisations in Nigeria;
- (v) Two legal practitioners who shall not have less than ten years post qualification experience;
- (vi) Three representatives of the media, at least, two of whom shall be from the private sector; Three other persons to represent a variety of interests; and
- (vii) The Executive Secretary of the Commission.<sup>24</sup>

As regards its funding, the NHRC receives its funding mainly from the Government. It also gets funds from external funding organisations too for specific programmatic interventions.<sup>25</sup> The NHRC does not have sufficient institutional safeguards, investigative powers or authority to compel authorities to respond to its queries. It is also reported that, while its investigative mechanism looks effective, its functioning is compromised by a serious lack of capacity and resources. For example, the central investigative team has only one vehicle available to cover the entire territory. Also, while the NHRC has six provincial offices across the country, access to victims is very limited.<sup>26</sup>

#### **Directorate for Citizens' Rights**

At the State level, there are some oversight mechanisms. An example is the Directorates for Citizen's Rights, which have been established by a number of States. The mission delegation met with the Directorate for Citizens' Rights of Lagos State, established in 1999 as part of the State administration's policy to provide greater access to justice through Government-funded legal defense, advice, mediation and human rights education. The Directorate, of which members are civil servants, was established within the Ministry of Justice and its main mission is to protect citizens' fundamental rights. The Lagos State Directorate is particularly active on child rights and prisons monitoring, offers free legal advice, and its reports have a major role in securing the release of people illegally kept in police custody

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<sup>21</sup><http://www.nigeriarights.gov.ng/index.php/about-us/the-commission> assessed 24 January 2019.

<sup>22</sup>The observatory frontline (note 2 above) 17.

<sup>23</sup>Ibid.

<sup>24</sup>See <http://www.nigeriarights.gov.ng/index.php/about-us/the-governing-council> accessed 27 February 2019.

<sup>25</sup>Ibid.

<sup>26</sup>Ibid.

well beyond the legal terms. The Directorate is empowered to oversee implementation of regional and international human rights instruments that are ratified by the Federal Government.<sup>27</sup>

### **Human Rights Desks at Police Stations**

In recent years, the police have established human rights desks at some of their stations. Human rights desks are manned by police officers. The training they receive is from NGOs and development partners. There are no clear cut criteria for those posted to the desks. These desks are responsible for investigating complaints of police misconduct and non-compliance with established procedures including in relation to the length of police custody. However, defenders reported that human rights desks have not been created in as many police stations as claimed by the Government and that they are highly inefficient and corrupt.<sup>28</sup>

### **Public Complaints Commission**

The Public Complaints Commission is a constitutionally created and autonomous body, established in 1990, with the aim of protecting vulnerable individuals against administrative injustices. Furthermore, it provides an opportunity for Nigerians, particularly the less privileged, to seek and obtain redress for their grievances at no cost and with minimum delay. Its mandate includes getting complaints from members of the public, particularly complaints that are hinged on brutality to civilians by uniformed officers including the police.<sup>29</sup>

## **4. Defects in the Protection of Human Rights in Nigeria**

The protection of human rights in Nigeria has been far from reality. This is because of some defects in some provision in our laws that clog the enforcement of the right. These defects are either derived from oversight by the draftsmen or acts by the government to violate the human rights of citizens. Some of these defects are as follows:

**Ouster of Court's Jurisdiction:** Ouster clause is a provision in legislation excluding particular actions from judicial review.<sup>30</sup> The ouster of court's jurisdiction is common when the military overthrows the civilian government. The military regimes do not have respect for human rights, nor do they respect the independence of the judiciary. They use all the means at their disposal to evade, circumvent and pervert the legal procedures that ensured the rule of law.<sup>31</sup> The use of ouster clauses prevents aggrieved persons from seeking redress in the courts against the actions of the military government.

**Immunity of Special Persons from Legal Process:** certain persons are immune by virtue of their position. This means that any violation of the human rights of persons by these immune persons is swept under the carpet and this constitutes an affront to human rights protection. Section 308(1) (a)-(c) provides that:

No civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office; A person to whom this section applies shall not be arrested or imprisoned during that period either on pursuance of the process of any court or otherwise; and no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued...

Section 308(3) provides that: 'This section applies to person holding the office of President or vice President, Governor or Deputy Governor...' Therefore if a person in the above category tramples on the human rights of others in his private dealings, the rights cannot be enforced against him. Also, certain diplomats and their families are immune from suits and legal processes.<sup>32</sup> This means that if they infringe on the human rights of persons in any of their dealings, they would not be held liable.

**Lack of Judicial Independence:** The appointment of judges and justices of the federal superior courts of record is made by the president of the Federal Republic of Nigeria.<sup>33</sup> So also is the appointment of the state high court judges

<sup>27</sup>The observatory frontline (note 2 above) 18.

<sup>28</sup>Ibid, 19.

<sup>29</sup>Ibid.

<sup>30</sup>En.wikipedia. org/wiki/ouster-clause.

<sup>31</sup>A.A Oba 'The Africa charter on human and people right and ouster clauses under the military regimes in Nigeria: before and after September 11' (2004) 4 *AHRLD* 275.

<sup>32</sup>Diplomatic and privileged Act, 1962, cap D9, laws of the federation of Nigeria 2004, section 1-6

<sup>33</sup>Section 231(1) 238(1), 250(1), 261(1) and 266(1) of the 1999 constitution.

made by the Governor of the state.<sup>34</sup> By the nature of the appointment of judicial officer are predisposed to submit to the overriding will of the political masters who appointed them. In the event of breach of human rights of citizens by the government of the day, a judicial officer devoid of courage would most likely compromise the enforceability of such rights.

**Disobedience to Court's Order and Judgments:** Protection of the human rights of citizens will become illusory where court's decisions are disregarded. The traditional function of the executive arm of government is to maintain law and order, and to enforce the observance of the constitution and the decisions of the court. The executive have in many occasions treated the enforcement of courts decisions with levity. In the case of *Lagos state v Emeka Odumegwu Ojukwu*,<sup>35</sup> an interim injunction had earlier been granted by the court of appeal restraining the Lagos state government from ejecting the applicant out of his residence, pending the determination of a motion on notice with respect to a similar order. In stark disobedience and share neglect to the subsisting order of the court, the Lagos state government went ahead and forcefully ejected Chief Odumegwu Ojukwu from his residence.

**Corruption:** Nigeria judiciary has been riddled with corruption. Justice has become the highest bidder takes all. In a verdict contained in a report titled. 'Department of state's country reports on human rights practices for 2011',<sup>36</sup> the US said: 'Though the constitution provides for an independent judiciary, the Nigeria judiciary remained susceptible to pressure from the executive and legislative branches and the business sector.' It further state:

Official corruption and lack of will to implement court decision also interfered with due process. The law provides for access to the courts for redress of grievances, and courts can award damages and issue injunctions to prevent a human right violation. However, the decisions of civil courts were difficult to enforce.

**Discriminatory Human Rights Guarantee:** Some human rights provision in the Nigeria constitution is discriminatory some of the rights are guaranteed to Nigeria citizens only. For example, the right to private and family life under section 37 is evidently granted to Nigerian citizens only. Similarly, by sections 41 and 43 of the 1999 constitution, the right to freedom of movement and the right to acquire and own immovable property anywhere in Nigeria are respectively guaranteed to Nigerians only. These conflicts with Article 2 of the universal declaration of human right, 1948, which provides that: 'Everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status.'

**Derogation Clauses:** Provisions of section 33(2) (a)-(c) of the 1999 constitution of the Federal Republic of Nigeria excuses and justifies deprivation of life in defence of property, in order to effect lawful arrest, or to prevent the escape of a person from lawful custody or for the purpose of suppressing a riot, insurrection or mutiny. By this provision, a person who is accused of any offence no matter the nature may be lawfully killed in an attempt either to arrest him or prevent his escape from lawful custody. Similarly, a person may be justifiably killed in defence of property. Ascribing the value of property over and above that of human life is preposterous.

### **5. Conclusion and Recommendations**

In this paper, we have examined human rights provisions in the 1999 Constitution of Nigeria. The irresistible conclusion to draw is that human rights provisions in the Nigerian Constitution are to an extent not consistent with the contemporary conception, global goals and aspirations of human rights. It is important to note that the place of Nigerian constitution in human rights protection cannot be overemphasized; it is the ultimate responsibility of any country to effectively protect its citizens from human rights abuses.

In other to achieve a genuine respect for the entrenchment and enforcement of human right in Nigeria, the following recommendations are indispensable:

- 1) Government agencies such as the Nigerian prisons and the National Human Rights Commission, should be strengthened to enable them effectively perform their statutory responsibility, which include assistance to

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<sup>34</sup>Section 271(1) of the 1999 constitution.

<sup>35</sup>(1986) 1 N.W.L.R (pt.18) p. 621.

<sup>36</sup>Tokunbo Adedaja 'Nigerian judiciary corrupt with impunity' *This day newspaper* (May 25<sup>th</sup> 2012) [www.thisdaylive.com/articles/us-nigeria-judiciary-corrupt-with-impunity/116562](http://www.thisdaylive.com/articles/us-nigeria-judiciary-corrupt-with-impunity/116562).

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prison inmates. They also should be properly funded and adequately staffed for them to respond properly to human right abuse.

- 2) The use of torture by the police as a means of eliciting confessions should be relentlessly pursued as an illegal procedure with dire consequences.
- 3) Human Rights Education should be integrated into the curriculum of our schools, both in our secondary schools and tertiary institutions, to educate students of their right and to know when such rights has been abused and where to go for remedies.
- 4) The Judiciary must be independent, fearless and efficient. The Right to Fair Hearing cannot be attained if there is no independent Judiciary.
- 5) There should be an overhaul of the country's prison system, with priority given to the rebuilding and refurbishing of prison facilities. This will ensure the right to dignity of human person.
- 6) There must be efficient police force to guarantee the security of life and property of citizens. In the present dispensation, where is right to life, right to freedom of movement, right freedom of religion when the activities of the Militants, religion fanatical groups and Kidnappers are flourishing unabated?
- 7) The right to life presupposes the existence of the means to sustain that life closely interwoven with the means to sustain that right. Government should give all Nigerians the chance to participate meaningfully in the socio-economic activities of the nation. This way, Nigerians shall have access to decent shelter, food, clothing and social amenities.
- 8) There is the need to extend the jurisdiction of Court on Fundamental Rights Cases to Magistrate Courts, which are nearer to the grassroots. Due to the inaccessibility of the High Courts to people at the grassroots whose rights has been abused.
- 9) The immunity clause contained in section 308(1)(a)-(c) of the 1999 constitution should be removed.
- 10) Human right protection is universal; therefore, the rights of other nationals resident in Nigeria should also be protected.
- 11) The provisions of section 33(2)(a)-(c), of the 1999 constitution where a person may be justifiably killed in defence of property or to effect lawful arrest or to prevent escape from custody should be reviewed.