PUBLIC OFFICERS AND HUMAN RIGHTS PROTECTION IN NIGERIA, UNITED KINGDOM, AND SOUTH AFRICA: A COMPARATIVE ANALYSIS

Olusegun Victor, Akande [*] ***and Agbaovwe Emmanuel Oturuhoyi*** [**]

Abstract

Human Rights are no doubt universal norms and principles which are accorded recognition by various legal systems of democratic countries and entrenched in their relevant extant laws and constitutions. In a constitutional government, human rights of the citizens must be protected by the rules of law and institutions are therefore established for their enforcement and protection. On the other hand, these institutions are protected from the actions enforced by public officers whose roles impact on the effectiveness of human rights protection. This paper; using the doctrinal research methodology, did a comparably analysis the role of Public Officers in the protection and enforcement of human rights in Nigeria, the United Kingdom and South Africa. Part of the findings is that the precarious security situation in Nigeria is such that the rights provided and preserved by the Constitution, has almost been reduced to the pedestal of being regarded as mere privileges than the rights which they are in apposite to what is obtainable in the other jurisdiction in consideration. Even the public officers saddled with the responsibility to protect these rights are themselves sometimes guilty of violating and abusing them. The situation is worrisome and desperately needs an effective solution, based on lessons drawn from other jurisdictions, this paper thereafter made recommendations that can serve as a catalyst and improvement of the situation so that human right protection by public officers can be strengthened with adequate infrastructure, staff and resources necessary for their effective performance that will enable them improve on the preservation and protection of human rights and also bring them in conformity with international best standards.

Introduction

Human Right is a claim which every individual has, or should have, upon the society in which such individual resides. To call them Human (right) suggests that they are universal; they are due to every human being in every human society. They do not differ with geographical location, history, ideology, political or economic affiliation or stage of societal development, neither do they depend on gender, race, class or status.

Societies all over the world expand and develop continuously, as such human relationship and activities also expands. The result of dynamism of the growing population, and migration sometimes gives room for the violation of Human Rights. These societies therefore strive to establish and develop institutions that can ensure peace as well as security of lives and property of its citizenry and ensure the protection and enforcement of their Fundamental Human Rights. This is also true of the Nigerian state where the Nigerian Police Force and other Public Institutions and bodies are established and recognized by law and given the responsibility to protect the- citizens and ensure that the Human Rights of its citizens are preserved and protected, as well as to ensure peace and stability within the Nigerian polity.

[*] Olusegun Victor, Akande PhD is the Principal Partner in V.O.B Akande & Associates (De Bliss Chambers), Ikeja, Lagos. Nigeria. 08033250460, 08089133331, victorakande2015@gmail.com.

[**] Agbaovwe Emmanuel, Oturuhoyi, Ph.D, an Associate Lecturer in the Business Law Department, Faculty of Law, Lagos State University, Ojo, Lagos State. Nigeria. 08034086492, 08026876981, oturuhoyiae@gmail.com

However, several decades after the creation or formation of these institutions, the goal of achieving peace and security and the protection of the fundamental Human Rights of its citizenry through these bodies and Institutions still remains a fleeting illusion and are yet to be effectively realized.

To be precise and emphatic, the protection of Human Rights in Nigeria is not adequate as contemplated and provided for by the Constitution of the Federal Republic of Nigeria, 1999, as amended, the African chatter on Human Right, the Universal declaration of Human Right, amongst others. The activities of the Police and other public officers saddled with responsibility of protecting human rights have instead occasioned serious hatred and discontent arising from human right abuses amongst citizens which at a particular time gave ventilation to the End-Sars crises in Nigeria. During the End-Sars crises, abuse of human rights resulted in loss of lives, limbs, properties and economic activities. Several factors are said to be responsible for this failure of the Nigerian police and the others, in combating crime, preserving and protecting the fundamental Human Right, and ensuring peace and security. Some of these factors are related to poor funding, remuneration, corruption, lack of commitment, proper training and performance appraisals, to mention just a few. This paper examines critically the various impediments or obstacles that, collectively or independently affects effective Protection and Enforcement of Fundamental Human Right by public officers in Nigeria, and also suggest ways of overcoming these problems in order to have a society where the Human Rights of the citizen are adequately and jealously protected, enforced and guaranteed.

Human rights issues are no doubt very numerous, however; human rights issues in the context of this paper, is limited to the extent that they affects the role of Public Officers in Protection and the Protection of Human Rights in Nigeria, and how human right has been effectively protected in line with the provisions of the various extant laws and regulations in Nigeria.

Rights

The concept of right as intended in this paper is nuptial and tied to rights that are ascribable because one is a human being either naturally or as a creation of statute or law. One is either a human being or is not a human being, and it is only by being a human being within this context one has or does not have 'human rights'. One cannot lose these rights until one stops being a human being[1]. These rights exist and are automatically imbued on being human with or without correlative duties attached. These rights like human rights are universal, equal and inalienable. Human rights are owned by every person against the State and Society, that is, against the State and every other person. Every person is entitled to human rights and a person is empowered by human rights. Human rights are the foundation of democracy. They are the common ground on which racial, religious, ethnic diversity and all other human differences can exist and flourish. However, all over the world, religious intolerance, discrimination and persecution are a threat to human rights.

Every generation of people must seek to advance, improve on and extend prospects of human rights. Any country or society that respects and protects human rights will be freer, safer, peaceful, and more prosperous, and its citizen will live a freer, happier, productive, and live more fulfilling lives. Every country and society must therefore try to incorporate human rights into its laws, practices and lifestyle. Human rights are universal and every person has

[1] E. Malemi. *Administrative Law, Cases and Materials*. 2004, Grace Publishers Inc, Lagos. 125.

a duty and a share in the respect and protection of human rights. In the words of Roosevelt, chairperson of the United Nations Commission on Human Rights who drafted the United Nations Universal Declaration of Human Rights[2] and wife of the 32nd President[3] of America: *"The destiny of human rights is in the hands of all our citizens and all of our communities*."[4]

Human Rights

There is no generally acceptable definition of human rights, just like every concept that assumes the flavour of law; this is perhaps why scholars have different opinions about the concept. It is generally agreed however, that it is something which is owed to every human being simply because he is human. Human rights are the basic rights and freedoms to which all humans are considered entitled, they include the right to life, liberty, freedom of thought and expression, and equal treatment amongst men before the law, among other rights.

The traditional approach to human rights finds firm anchorage on natural law conceptions. Proponents of this synthesis, such as Thomas Hobbes an English philosopher suggested the existence of hypothetical social contract where a group of free individuals agree for the sake of the common good of all; to form institution to govern themselves,[5] give up some liberties in exchange for protection from the sovereign. This led to John Locke's theory that a failure of the government to secure rights is a failure which justifies the removal of the government, and was mirrored in later postulation by Jean Jacques Rousseau in his" *Du contract social*" (the social contract).[6]

Hobbes and Locke constructed a general scheme of rights which are common to mankind irrespective of nationality, creed or sex in line with *Lien* conception of human rights as: universal rights or enabling qualities of human beings attaching to the human being wherever he appears, without regard to time, place, colour, sex, creed, parentage or environment[7]. These rights are said to be *il alieno solo* (inalienable) with divine content and as it pertain to the individual. They are said to include the right to life; right to liberty; right to own property freedom of thought; conscience and religion; freedom of expression and the press amongst others.[8]

According to the United Nations Office of High Commissioner for Human Rights,[9] "human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status".[10]

The basic universal human rights, as identified by Pate[11], are:

a) right to life;
b) right to dignity of human beings;

2 Hereinafter referred to as *UDHR* 1948.

3 D. Roosevelt**,** a Democrat and 32nd President of America: www.en.m.wikipedia.org. accessed 22, November, 2022.

4 J, Humphery. *Introduction to Human Rights*, *USIA*, 1998. 90-01-30. Human Right Report. 1

5 O. Eze. *Human Rights in Africa* (Lagos: Nigeria Law Publications Ltd; 1988); M. Cranston, What are Human Rights? (New York; Taplinger, 1973) Chapter I; C. '*Oputa, Human Rights in the Legal and Political Culture of Nigeria Lagos'*: Nigerian Law Publication Ltd, 1988. 214.

6 A. Na'im and F. Deng (Eds), '*Human Rights in Africa – Cross cultural perspectives*' 1990. The Brooking Institution, Washington. 76.

7 A, Lien. *A fragment of thoughts concerning the nature and fulfilment of Human Rights.*1973 West Port Greenwood Press Publishers, 44-57

8 *Section* 33 – 39 *Constitution* of the Federal Republic of Nigeria, 1999 (as amended).

9 Hereinafter also referred to as UNOHCHR.

10 Global-issues/human-rights, <https://www.un.org/en/>accessed on the 27th June 2021

11 *Ibid.*

c) right to personal liberty;
d) right to fair hearing;
e) right to compensation from property compulsorily acquired;
f) right to private and family life;
g) right to freedom of thoughts, conscience and religion;
h) right to peaceful assembly and association;
i) right to freedom of movement;
j) right to freedom from torture;
k) right to freedom from discrimination on the grounds of ethnic group, place of origin, circumstance of birth, sex, religion or political opinion; and
l) right to freedom of expression.

The rights mentioned above, as argued by Pate can generally be categorized into civil, social, political, economic and cultural rights.[12]

Also, the International Human Rights Law lays down the obligations of governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.[13]

The United Nations Children's Fund[14] defines human rights as "standards that recognize and protect the dignity of all human beings". It went on to state that "human rights govern how individual human beings live in society and with each other, as well as their relationship with the State and the obligations that the State have towards them."[15]

Article 1, of the Universal Declaration on Human Rights stipulates that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[16]

Several schemes of classification of human rights have been adopted. Human rights have been classified into personal rights, political and moral rights, proprietary rights, procedural rights and equitable rights.[17] Personal rights includes right to life, dignity of human person, personal liberty, freedom of movement, *et cetera*. Political and Moral rights include the right to freedom of conscience and religion. Procedural (due process) rights includes the right to fair hearing and to have ones' cause heard by an independent and unbiased umpire. Equitable rights include the right to freedom from discrimination.[18]

Human right has also been classified according to the period they emerged or were recognized. The concept of human right is not static but dynamic and capable of evolving based on situation and circumstance, there are; so far, three marked stages in the development of human right, these stages are also referred to as "generations". Correspondingly, we have three "generations' of human rights". This notion of three generation of human rights was advanced by the jurist Vasak who stated same as;

---

12 A. Pate, '*The Press, Social Responsibility and the Coverage of Human Rights Issues in Nigeria During the Abacha's Regime*', (2011). in Oso, L and Pate, U. A. (Eds). Mass Media and Society in Nigeria. Ibadan: Malthouse Press.

13 *Ibid*.

14 Hereinafter also referred to *UNICEF*.

15 '*Child-rights-convention/what-are-human-rights'* https://www.unicef.org/ accessed 27th June 2021.

16 *Ibid* 1948.

17 J. Ihonubere, *Underdevelopment and human rights violation in Africa*.1990.New York, Greenwood Press, 56

18 C. Nweze, '*Human Rights and sustainable Development in the African Charter* – being a paper presented at a workshop on Human Right organized by the NBA Enugu Branch on the 17th September, 1997.

> The first generation of rights, the civil and political rights emerged from the ashes of the English, American and French revolutions. These generations of human rights often referred to as "blue" rights deals essentially with liberty and participation in political life. They are fundamentally civil and political in nature, as well as strongly individualistic, they serve negatively to protect the individual from excesses of the state. Included in this category of rights are the claim rights set out in Article 2 to 21 of the Universal Declaration of Human Rights. Also belonging this category are all the rights guaranteed under Chapter four (4) of the Constitution[19] of Nigeria. These rights are called negative rights because they; by large, entail negative obligations on government not to interfere with the exercise of these rights by individuals.[20]

However, not all the first generation rights correspond completely to the idea of 'negative' as opposed to positive rights. The right to life and the right to freedom of association; for instance, require some positive action on the part of government to ensure their realization. What is constant in this first generation conception is the notion of liberty, a shield that safeguard the individual alone and in association with others against the abuse and misuse of political authority.

The second generation of rights corresponds by and large to the economic, social and cultural rights. These rights are said to have emerged with the Russian revolution and were echoed in the welfare concept which developed in the West as a response to the uses and abuses of capitalism which tolerated the exploitation of the working class and colonial people. Historically, it is a counterpoint to the first generation of civil and political rights, with human rights conceived more in positive rights that the negative term.[21] This category of rights is predicated on the assertion that the attainment of a certain level of social and economic living standard is a necessary condition for the enjoyment of the negative rights. These rights therefore entail positive obligations on government to provide the living conditions without which the negatives rights cannot be enjoyed. This class of rights is contained in *Articles* Twenty-two to Twenty-Seven (22 – 27) of the United Nations on the Defense of Human Right, and *Chapter* Two[22] (2) of the 1999 Constitution.[23] *The African Charter on Human and People's Rights* also guarantees some second generation human right. And the *International Convention on Economic Social and Cultural Rights* is essentially concerned with this category of rights.

The third generation of solidarity rights is a response to the progressive unfolding phenomenon of global interdependence. They are products of the rise and decline of the nation-state in the last of the twentieth century. Foreshadowed in *Article* Twenty Eight (28) of the Universal Declaration of Human Rights which proclaims that "*everyone is entitled to a social and international order in which the rights set forth in this declaration can be fully realized*" some of these rights reflect the emergence of third-world nationalism and its demand for a global redistribution of power, wealth and other important values.[24] The rights in this

---

19 *CFRN* 1999 (as Amended) *ibid*.

20 Weston, quoted by E. Udeme, *The Nigerian Judiciary and Human Right Protection*, (1997) Vol. 2. 6.

21 *Ibid*. negative obligation is one by which a state is required to abstain from interference with, and thereby respect human rights. A positive obligation on the other hand is one whereby a state must take action to secure human rights and are generally associated with economic, social and cultural rights and commonly face financial implications. However, they can be imposed in respect of civil and political rights as the obligation to protect life by law, to provide prison conditions that are humane

22 Fundamental Objectives and Direct Principles of State Policies.

23 *Ibid*. *CFRN* 1999. (as amended).

24 *Ibid*.

category include the right to development; right to share in the common heritage of mankind; right to self-determination; right to share the common heritage of mankind; right to clean and healthy environment; and the right to international peace and security. These rights require international co-operation for their effective realization. The idea is that the economic development of underdeveloped countries is necessary for their social well-being and political stability without which they cannot ensure effectively the civil, political, economic, and cultural rights. The general concern felt in many countries and international organizations about the need for the protection of the environment, particularly against pollution generated by modern industrial societies has led to the contention that there is a human right to a clean and healthy environment. And because of the threat faced by mankind as a result of the stock piles of weapons of mass destruction, it is also contended that there is human right to share in the common heritage of mankind constituted by the unexplored natural resourced under the oceans which belong the no one country, and therefore held to be property of all mankind.[25]

There is however, controversy over the notion of the three generations of human rights. There is no general acceptance of the three categories of right. For instance, proponents of the first generation human right do not include the second and third generation rights in their definition of human right. They regard them to be; at the least, 'aspirations'. First generation proponents inspired by the natural law and laissez-faire tradition, are partisan to the view that human rights are inherently independent of the civil society and are individualistic. To them, liberty is conceived negatively as absence of restraint. The traditional conception of liberty is best illustrated with the definition of liberty by Blackstone when he wrote;

> The absolute rights of man, considered as a free agent, endowed with discernment to know good from evil, and with power of choosing those measures which appear to him to be desirable, are usually summed up in one general appellation and denomination, the natural liberty of mankind. This natural liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature.[26]

These proponents of the primacy of the negative rights contend that man is first and foremost a human being and only secondarily a social being. According to Professor Nwabueze, human (negative) rights constitute the intrinsic attributes of the human being, the essence of human personality, hence they are natural rights. For this reason, they are more basic and fundamental to human existence, than food, shelter, clothing et cetera. The later are also basic and fundamental, indeed indispensable, for a decent human existence, but they are only extrinsic support, serving to sustain the intrinsic attributes of body, mind and soul, and o enable them to be fully realized and developed.[27]

Some schools of thought have expressed the fear that emphasis on second generation rights might lead to the subordination of the first generation rights to the former. In the words of Browne;

> We realize that there is a school of thought stressing the primacy of economics, social and cultural rights over political and civil liberties. In many countries, this has been used as a rationale to suppress free expression and other civil liberties. While the United States Government recognizes the importance of

25 H. Robertson, '*Human Right in the World*'. 1982. Manchester Press.. 10.

26 W. Blackstone, *The Sovereignty of the Law*. Gareth Jones.1973. 3rd Edition. The Macmillan Press Ltd London, 59.

27 B. Nwabueze, *Military rule and constitutionalism*. 1990 Spectrum law publishing, Ibadan, 19.

> these aspirations, experience has sadly taught us that where civil liberties are held subordinate to economic aspiration has sadly taught us that where civil liberties are held subordinate to economic aspirations, a system is created where usually neither of these rights is delivered. Consequently our human right policy focuses on basic political freedom and civil liberties[28].

On the other hand, defenders of second and third generation rights contend that first generation human rights are indifferent to the material needs of man. To them, the basic necessaries of life such as food, shelter and clothing fall within the second generation of human rights. They do not suggest that first generation rights are outside the definition of human rights. They however assign such rights a low status and therefore treat them as long term goals that will come to pass only with fundamental economic and social transformations to ensure the welfare of all as Nyerere noted;

> What freedom has a subsistence farmer? He scratches a bare living from the soil provided the rains do not fall; his children work at his side without schooling, medical care, or even good feeding …. Certainly, he has the freedom to vote and to speak but these are meaningless.

Aguda also observed that;

> If a poor man is cheated of his legal right by the state or a member of the living upper class who can afford the luxury of litigation in our courts. He may have no alternative than to forgo that right and await justice from God …… if however, he is foolhardy enough to enter the temple of justice, he and his family may regret it for the rest of their lives. For in the process in his pursuit of what he considers to be justice, he may become bankrupt.[29]

The significance of the second generation rights was also underlined by Justice Bhagwati in an Indian case of ***Minerva Ltd v. Union of India***[30] where his Lordship said;

> The large majority of people who are living in almost sub-human existence in conditions of abject poverty and for whom life is one long unbroken story of want and destitution, notion of individuals freedom and liberation though representing some of the most cherished values of a free society would sound as empty words bandied about in the drawing rooms of the rich and the well-to-do and the only solution for making these rights meaningful to them was to re-make their material conditions and usher in a social order where socio-economic justice will inform all institutions of public life so that the preconditions of fundamental liberties for all may be secured.[31]

It has pertinently been remarked on that right to property is only relevant to a person who has property; right to privacy means nothing to a person who has no house and can be preyed upon by wild beast; right to life means little to a person who cannot afford the cost of medical care during sickness; and of what significance is right to personal dignity to a person who lives under the bridge? It is now almost generally agreed that all human rights are indivisible, interdependent, and mutually reinforcing. The council of Europe appears to have accepted this proposition. In its declaration on human rights, democracy and development, the Council Stated;

---

28 N. Osita, *Human Right Law and Practice in Nigeria*. 1992CIDJAP Press, Owerri.. 2.

29 *Ibid*.

30 AIR 1980 SC 1789.

31 1980. ALR SC.

> The European community and its member states draw particular attention to the universality and indivisibility of human rights and the obligation of all states to respect them. They stress the important role of development assistance in promoting economic, social and cultural rights as well as civil and political liberties by means of representative government.[32]

The controversy seem to be laid to rest by the Vienna Declaration adopted by the World Conference on Human Rights 1993 when it stated thus;
All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human right globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional peculiarities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedom.

Liberty is no longer confined to absence of restraint but includes freedom from want, ignorance and disease, the presence of which will render negative freedom patently spurious. Negative freedom in the face of poverty, ignorance and disease will only offer rights which cannot be exercised.

Fundamental Human Rights
Human rights are in some circles thought; but erroneously so, as being considered to be synonymous with constitutional rights. This; to some extent, might be because of the general conception that every right with a correlative duty attached is enforceable in law. The word 'right'; within this context, means that to which a person has a just and valid claim, whether it be land, a thing or the privilege of doing something. 'Human' pertains to having characteristics of, or the nature of mankind which in most cases are *in-alieno solo*. Human rights are thus rights which all people, everywhere, and at all times have, by virtue of being mortal and natural creature. They are inherent in every human creature by virtue of his humanity.

These rights embrace a wide spectrum of civil, political, Economic, social cultural, group solidarity and developmental claims which are considered indispensable to a meaningful human existence. The constitution on the other hand is the body of *laws* on the basic of which a state (Country) is governed by. In Nigeria, the *constitution* is the supreme law of the land on the basis of which the validity of other laws is determined and accepted. It is the beacon of the country's *corpus juris*.[33] Rights in the *constitution* are those which have correlative duties attached and as such enforceable in accordance with the provisions of the *constitutions* unlike general human rights some of which are not justiciable and constitute mere aspirational ideals.

In ***Kuti and others v. AG Federation***[34] Justice Oputa, emphasized that:

> Not every civil or legal right is fundamental right. The ideal and concept of fundamental rights both derive from the premise of the inalienable rights of man - life, liberty, and the pursuit of happiness. Emergent nations with written

32 O. Eze, *Study on the Right to adequate Housing in Nigeria*, Lagos shelter initiative. 1999.Spectrum Publisher, Lagos, 147.
33. *Section* 1 (3) *Constitution of Federal Republic of Nigeria* 1999 (as amended).
34 [1985] 8 NWLR (pt 6) 211.

> constitutions have enshrined in such constitution some of these basic human rights, each right that is thus considered fundamental is clearly spelt out.

Thus, in Nigeria, those rights that are considered fundamental to human beings are enshrined in Chapter *IV* of the 1999 Constitution of Federal Republic of Nigeria, as amended.[35]

According to Chukwumaeze[36], Fundamental Human Rights are the Rights which are recognized and enforceable with the aid of the Fundamental Rights (Enforcement Procedure). The rights contained in *Chapter IV* of the *Constitution* at *Sections 33* to *46*, and the *African Chapter on Human* and *People's Rights*, are rights that are enforceable in our Courts of Laws in Nigeria. These rights that are contained in *Chapter IV* are first generation rights[37] — right to life is in *Section 33*, right to dignity of human person, in *Section 34*, right to personal liberty, in *Section 35*, right to fair hearing, in *Section 36*, right to private and family life, in *Section 37*, right to freedom of thought, conscience and religion, in *Section 38*, right to freedom of expression and press, in *Section 39*, right to peaceful assembly and association, in *Section 40*, right to freedom of movement, in *Section 41*, right to freedom from discrimination, in *Section 42*, right to acquire and own immoveable property anywhere in Nigeria, in *Section 43*, compulsory acquisition of property, *Section 44*, restriction on and derogation from Fundamental Rights, which seemingly acts as a limitation and restriction, in *Section 45*, special jurisdiction of High Court and Legal Aid, in *Section 46* and *African Chartered on Human and People's Rights* which was ratified and re-enacted as municipal Law by the National Assembly on 17th of March, 1983 and came into force on the 21st of October, 1986.

Rules were made pursuant to *section 46(3)5* of the 1999 *Constitution* of Federal Republic of Nigeria, as amended[38] by the past Chief Justice of Nigeria, Justice Idris Legbo Kutigi with effective date of 1st December 2009 for their enforcement. The enforcement of these rights however, is not without challenges.

Therefore, it is some of the variation that arise in the Public officers' protection and enforcement of these rights, under the 1999 Constitution of the Federal Republic of Nigeria and other related laws, with those in the jurisdictions under comparative analysis that is the subject of this paper.

Theories of Duty

The concept of the existence of a duty automatically raises a presumption that there is a right to which it is correlative, either to protect from being breached, or to enforce the observance and preservation of, both locally and internationally, positively or negatively, and according to Freidman[39] nowhere is this tension more evident than in the recent string of cases brought by destitute asylum seekers whose right to basic social support was withdrawn because they had not applied for asylum at the port of entry into another Country. They therefore brought a claim; based on one of the most fundamental of human rights, the right not to be subjected

---

35 *Ibid*.

36 U. U. Chukwumaeze. *Enforcement of Fundamental Rights under the 1979 Rule, A Wrong Procedure*. Vol. IV, Issue 1, 2001 *LASU Law Journal*,. Faculty of Law, Lagos State University, Lagos. 96.

37 First generation rights largely represent Western liberal democratic ideas which, in the views of *Adamantia Pollis*, are anchored on a definition of a person as (an isolated, autonomous individual). It is a categorization of rights as they evolved and in accordance with their importance. See also O. Eze. *Human Right Law* No. 1 (Lagos: Helen – Roberts Limited, 1997) at 2 – 3.

38 *Ibid*.

39 S, Freidman. Human rights transformed: Positive duties and positive rights. 2006 Legal Research Paper Series Paper No 38. University of Oxford. 2

to inhuman or degrading treatment or punishment under Article Three (3) of the *European Convention on Human Right*. In *Limbuela*[40], the House of Lords unanimously held that in order to avoid a breach of Article Three (3)[41], the Secretary of State is obliged to provide support for them. Treatment which denies the most basic needs of any human being, to a seriously detriment extent, was held to be clearly inhuman and degrading and as such constitutes a breach which has a duty of being protected.

The recognition of positive duties and of the role of human rights within the welfare field coincides with a fundamental reshaping of the understanding of responsibility and its relationship to rights within the Welfare State itself. The State's responsibility is no longer conceived of solely in terms of a unidirectional provider of a package of benefits but instead, in terms of facilitation or empowerment of individuals. Correspondingly, the rights bearer is therefore not only characterized as an active agent instead of a passive recipient, nor does responsibility flow only between the State and the individual. Also brought into focus is the role of community, within which the responsibilities of individuals to each other are valued together with the individual's self-interest.

Negative and Positive Duties.

The distinction between negative and positive duties mirrors the traditional division between civil and political rights, which restrain the State from intruding; and socio-economic rights, which elicit protection by the State against want or need. These in turn reflect two distinct views of liberty: liberty as freedom from State interference; and liberty as freedom from want and fear. Yet, it has for long been recognized that the two sorts of freedom are inextricably intertwined, as President Roosevelt put it in 1941:[42] '*True individual freedom cannot exist without economic security and independence*.'[43]

The inter-relationship works in both directions: civil and political rights are equally crucial for the achievement of true freedom from want and fear. Thus, as Sen[44] demonstrated, countries with accountable leadership do not suffer famines because leaders know that if they are to remain in power, they must take action to protect the rights of the population. Moreover, he argued that 'political rights; including freedom of expression, association and discussion, are not only pivotal in inducing political responses to economic needs, they are also central to the conceptualization of economic needs themselves.'[45]

With the recognition of the unity of civil rights with socio-economic rights comes the acknowledgement that all rights, regardless of their nature, can give rise to positive as well as negative obligations on the State. Even a quintessential civil right such as the right to a fair trial requires the State to provide an adequate court system. It is therefore more helpful to focus on the nature of the obligation generated by different rights than on an attempt to categorize the rights themselves. As recent analysis has shown, both civil rights and socio-economic rights give rise to a cluster of obligations: the primary duty whereby the State should not interfere with individual activity; the secondary duty whereby the State should

40 *R v Secretary of State for the Home Department ex p Limbuela* [2005] UKHL 66 (HL) at 7

41 *ECHR*.

42 *Ibid*.

43 11th Annual Message to Congress (11 January 1944) in J Israel (Ed.), *The State of the Union Messages of the President.* 1966) Vol. 3, 2881Chelsea House Publishers, New York, cited in H Steiner and P Alston, *International Human Rights in Context* (2nd Edn, Oxford: OUP, 2000). 243.

44 Sen, '*Freedoms and Needs*', 1994, 31, 32, The New Republic, cited in Steiner and Alston. 269

45 *Ibid*.

protect individuals against other individuals; and the tertiary duty to facilitate or provide for individuals. Known as the duties to respect, protect and fulfill, these duties are now expressly enshrined in the Nigerian Constitution, the new South African Constitution, and the *International Covenant of Economic, Social and Cultural Rights*[46]

In *Limbuela*[47], the House of Lords recognized that it was unhelpful to attempt to analyze obligations arising under Article Three (3) as negative or positive. 'Time and again these are shown to be false dichotomies' Lord Brown[48] declared. Instead, the real issue is whether the State is 'properly to be regarded as responsible for the harm inflicted (or threatened) upon the victim.'[49] Although the State has not inflicted violence or punishment, it can still be regarded as responsible when the statutory regime it has established leaves individuals in a position of inevitable destitution. Here the State must be regarded as responsible for the destitution of late asylum seekers because it was the statutory regime which removed any source of social support while prohibiting them from supporting themselves through paid work.

A common frustration with human right instrument which as a matter of the declaration of the Fundamental Human Rights is that they do not clearly define who is obligated to ensure the implementation and enforcement of the rights they declare. This vagueness becomes particularly problematic with respect to the duties to protect from deprivation, and then to ensure availability of the rights as guaranteed.[50] The obligation that must exist if there are any welfare rights is the right to provide goods and services to particular persons at particular places. It would be absurd to claim that everyone has an obligation to provide a morsel of food or a fraction of an income to each deprived individual.[51] Not limited and unique to welfare rights, this problem applies equally to many duties that arise out of civil and political rights such as the duty to protect the right to peaceful assembly and association, freedom of movement *etcetera,* or the duty to provide fair trial to those accused of criminal offences. *Limbuela*[52] represents a crucial development in the developing momentum towards recognition of positive responsibilities. It takes forward the gathering pace of recognition by the *European Convention on Human Right*, which has held that the Convention, despite its avowed limitation to civil and political rights, gives rise to positive duties.

Unlike *Limbuela*, however, these duties manifest as the secondary duty, to protect individuals against other individuals, rather than the tertiary duty to provide. Thus the right to freedom of assembly in *Article* 11 *European Convention on Human Right* includes, not just the obligation to refrain from banning marches, but also the obligation to protect participants from disruption by a violent counter - demonstration.[53] Similarly, the right to life in *Article* Two (2) does more than restrain the State from taking life. It also imposes an express obligation on the State to put in place effective criminal law provisions to deter the commission of offences against the person.[54] It can even include a positive obligation on the authorities to take measures to protect an individual whose life is at risk from the criminal acts of another.[55]

46 Also referred to as *ICESCR*.
47 *Ibid*.
48 *Ibid*.
49 *Limbuela*[92] and see Lord Hope at [53]
50 J.W, Nikkel. '*How Human Rights Generate Duties to Protect and Provide'*. 15 Hum. Rts. Q. 77 (1993)
51 O, O'Neill. "*Hunger, Needs &Rights*". in S, Luper-Foy. Ed. Problems of International Justice
52 *Ibid*.
53 *Plattform 'Ärzte für das Leben' v Austria* Series A No 139 (1988) 13 EHRR. 204 at 32.
54 *Osman v UK* (1998) 29 EHRR 245 at 116.
55 *Ibid*.

Article Three (3), itself has been interpreted to give rise to positive duties to protect. Thus the State must take action to ensure that individuals are not subjected to degrading treatment inflicted by other individuals[56] such as corporal punishment[57] or child abuse by parents or other adults[58]. Even where suffering is due to illness, the State comes under a duty if its actions exacerbate the suffering, through detention or expulsion or other measures for which the State can be held responsible.[59]

However, the Strasbourg Court has been far more reticent in cases concerning the duty to make positive provision available. In *Chapman v United Kingdom*[60] the Court stated:

> 'It is important to recall that Article Eight (8) does not in terms give a right to be provided with a home. Nor does any of the jurisprudence of the court acknowledge such a right. While it is clearly desirable that every human being has a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the contracting states many persons who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political not judicial decision.'[61]

Other jurisdictions have similarly grappled with the distinction between positive duties to provide, and negative duties of restraint. Some constitutions deal with this expressly. One model, found in the Irish and Indian constitutions, and even the Nigerian Constitution, is to use 'directive principles'. This model provides that positive duties in the social policy field are constitutional requirements of the State, but that they are not judicially enforceable[62]. This contrasts with justiceable civil and political rights. Thus the Indian *Constitution* states that '*it shall be the duty of the State to apply these principles in making laws;*'[63] but that the principles 'shall not be enforced by any court'.

Duty

Duty is an important concept of appraisal in the quest to understand the concept of law and by implication the concept of human right. Law regulates and guide human behavior by binding people and prescribing certain expectations and thereby create expected legal duties. Any misconception of what it is to be under a duty is certain to result in misunderstanding of what and how law operates.[64] Thus, for instance, many people accept, though they do so in an inarticulate way, a sanction theory of duties, they think that a duty does not exist if no sanction is attached to punish a defaulter in the event of a non-compliance with the duty. It is clear that this is intimately related in their mind to a view of law according to which law operates mainly through directing how the coercive power of the state is to be used. As such the concepts of sanction theory of duty and the coercive conception of the law are related.[65]

It is also of essence to clarify ones idea about duties in order to understand what a right is. Everybody can see that the concept of duty and right are intimately related. What many fail to realize is that it is impossible to understand what is right without making reference to the

---

56 *Pretty v United Kingdom* 35 EHRR 1 50.
57 *A v. United Kingdom* (1998) 27 E.H.R.R. 611 (European Court of Human Rights)
58 *Z v. United Kingdom* 34 E.H.R.R. 3 (ECHR)
59 *Bensaid v. United Kingdom:* (2001) 33 E.H.R.R. 10 (European Court of Human Rights).
60 (2001) 33 EHRR, 18.
61 *Ibid*.
62 See *Section* 6(6) (c) of the *CFN* 1999, (as amended).
63 *Indian Constitution* (adopted 26 January 1950), *Article* 37.
64 J. Elegido, *'Jurisprudence'*. Spectrum books Limited, Ibadan. 2006. 143.
65 *Ibid*.

idea of duty, but not vice versa. In order words, the concept of duty is the more basic of the two, and unless and until they are clarified, it is not possible to have a proper understanding of rights.

There exist many types of duties; moral, legal, social, religious, et cetera. The duty to keep and fulfill ones mere promise is moral. The duty to drive on the right hand side of the road in Nigeria is a legal one. There is a social duty among many Nigeria group to offer food to a visitors or stranger who arrives at meal time. Catholics have a religious duty to attend Mass on Sundays just as the Muslim faithful are obliged to prayers five times a day and fellowship every Friday.

Duties within the context of this paper is that which is correlative and attached to rights as provided and protected by the constitution and other human right and fundamental human right enforcement institutions and individual. There are postulants who believe that public officers have greater duties to serve the public interest,[66] while others are of the opinion that the Public officer may also escape sanction if not properly exercising the powers to enforce.[67]

Privileges

According the Blacks Law Dictionary[68], privilege is a special right, exemption, or immunity granted to a person or class of persons; an exception to a duty. A privilege grants someone the legal freedom to do or not to do a given act. It immunizes conduct that, under normal and ordinary circumstances, would subject the actor to liability. It further states that an absolute privilege immunizes an actor from suits, no matter how wrongful the action might be, and even though it is done with an improper motive.[69]

Privileges and responsibilities are two sides of a coin. Allusions to the two words are made in particularly specific context, child formation, and social relationship issues bordering on justice and conflict management among others. The Oxford Advanced Learners' Dictionary and The English Language Companion present privilege as a peculiar benefit to a person, an advantage or favour, a right or immunity not enjoyed by everyone. It could also mean a special enjoyment of a good; a prerogative or advantage, a franchise, preferential treatment or exemption from an evil or burden. Fritz[70] sermonizes that people need to be told their responsibilities along with privileges so that they can assume ownership of the tasks they engage in to avoid wasting their opportunities.[71] In general, a privilege is a right or something to be expected by virtue of being in a particular situation or occupying a particular office, or by reason of your assumption of special public duties. It may be a human right that one has (or should have) along with every other human simply because they are human. Or it may be a civil rights that one has (or should have) because they are citizens of a community, State, Country, *et al*. Privileges should be the earned rights which are actually benefits accruing to persons when they have faithfully served in some capacity and fall to people because of the efforts they have made to fulfill responsibilities. As posited by Shanmugan[72] every

66 I. Bereson. *Public Lawyers, Public value, can, should and will Government Lawyers serve the public interest*? 41. (2000) B.C.L. Rev. 789. 790.

67 *Onogoruwa v I.G.P*. (1991) 5 NWLR. (Pt. 193) 593; *Egbe v Adefarasin* (1985) 1 NWLR. (Pt. 3) 549.

68 B. Garner, Ninth Edition. West Publishing Co. 1990. United States of America. 1316.

69 *Ibid* @ 55 above.

70 P, Fritz. *Balancing Privilege and Responsibility*.(2003). Retrieved 10 January, 2023 from <https://www.sermon central.com>.

71 *Ibid*.

72 P. Shanmugan, *Human Rights care with Responsibilities*. (2010). Retrieved 12th January, 2023 from <https://www. goodreads.com.>

responsibility well executed earns additional benefits or privileges such as rewards, commendation, and promotion, and so on which calls to mind Jesus' story about the servant who was faithful in little tasks and as a result earned a greater trust with responsibility and therefore, higher privileges.

Public Officer

A public officer; within the context of this paper, is an officer elected or appointed into office and who exercises governmental functions or generally any person who holds a public office in government public service. It also means any person employed by, or acting as an agent for the federal, state or local government authority.[73]

The Black Law Dictionary defines public officer as "*one who takes upon himself the duties of a public officer; he becomes not only responsible to the public for their faithful performance, but may be liable to individuals and citizens for any injury resulting from his act or omission in the performance of public service.*"[74]

In United Kingdom, public officers are referred to as "public authorities", and it is defined in *Section 6(3)(b)* of the *United Kingdom Public Authorities Protection Act*[75] as including any court or tribunal, and any person certain of whose functions are functions of a public nature.

Generally, a public officer is a person who is holding office in the government; public or civil office[76]. A public officer is a civil servant irrespective of his rank. Under the 1999 Constitution of the Federal Republic of Nigeria (as amended),[77] and the *Code of Conduct Bureau and Tribunal Act*[78] Public officers are;

1. the President of the Federation,
2. the Vice President of the Federation,
3. the President and Deputy President of the Senate, Speaker and Deputy Speaker of the House of Representative,
4. governors and Deputy Governors of States,
5. chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, all other judicial officers and all staff of courts of law,
6. attorney General of the Federation and Attorney General of each State,
7. ministers of the Governments of the Federation and Commissioners of the Government of the States,
8. chief of Defence Staff, Head of the Army, Navy, Air Force and all members of the Armed Forces of the Federation,
9. inspector General of Police, Deputy Inspector General of Police and all members of the Nigerian Police Force and other government security Forces established by law,
10. secretary to the Government, Head of the Civil Service, Permanent Secretaries or Director-General and all other persons in the civil service of the Federation or of the States,
11. ambassadors, High Commissioners and other officers of Nigerian Missions abroad,

---

73 H, Campbell. <https://www.lawinsider.com/dictionary/public-officers>

74 P, Clarke. *'The Black Law Dictionary'* Tenth Edition (West Publishing Company 2014) 1425.

75 *United Kingdom Public Authorities Protection Act*, 1893

76 *Okomu oil Palm Co. v Iserhienrhien* (2001) 6 NWLR. Pt 710. 600. SC. *Eze v Okechukwu* (2002) 18 NWLR. Pt 799. 348. SC.

77 Fifth schedule, *Constitution of the Federal Republic of Nigeria*1999 (as amended).

78 Second schedule, CAP.C 15, 2004.

12. chairmen and other members and staff of the Code of Conduct Bureau and Code of Conduct Tribunal,
13. chairmen and other members of staff of Local Government Councils,
14. chairmen and members of the Boards of other Government bodies and staff of statutory corporations and of companies in which the Federal or any State Government has controlling interest,
15. all staff of universities, colleges and institutions owned and financed by the Federal or State Governments or Local Government Councils, and
16. chairmen and other members and staff of permanent commissions or councils appointed on full time basis,

Protection

The *Public Officers Protection Act*,[79], is a law that seeks to protect public officers' actions or inactions in the course of their public duty. *Section 2(a)* of the said *Act* stipulates that the action, prosecution or proceedings shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of continuance of damages or injury, within three months next after the ceasing thereof.

The above *section*[80] has been used as a shield by public officers whenever they violate fundamental human rights and are being sued for it. And has been analyzed above, this shouldn't be the right course of things, as the law cannot be used as a weapon for degrading and dehumanizing citizens, rather it should stand as a protector and advocate of the people's fundamental rights. However, for *Section* 2 of the *Public Officers Protection Act*[81] to avail a public officer that has been sued, it must be established that his/her action relates to;

(i) an act done in pursuance or execution of any *Act* or *Law* or
(ii) the execution of any public duty or authority; and
(iii) an alleged neglect or default in the execution of any such *Act*, *Law*, duty or authority.

Also, there are circumstances where *Public Officers Protection Act* will not be available to public officers, these amongst others, include cases for breach of contract, recovery of land and where bad faith and/or abuse of office can be established against public officers. Additionally, *Section 308* of the *Constitution Federal Republic of Nigerian*[82], provides for Restriction on Legal Proceedings against "*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*". Notwithstanding, this *section* shall not apply to civil proceedings against a person to whom this *section* applies in his official capacity or to civil or criminal proceedings in which a person is only a nominal party. For example, in *Tinubu v. IMB Securities Plc*[83], the Court of Appeal took the view that a person to whom *section 308* applies could not; even as an appellant, pursue an appeal before the Court during the period of his office.

Nigeria should imbibe the attitude of other countries like United Kingdom and South Africa in their advancement of fundamental human right. There is need for a robust independence of the judiciary. This is because it is important for the judiciary to be impartial and independent of all external pressures so that those who appear before it will be confident that

79 *Public Officers Protection Act*, Cap P41, Laws of the Federation 2004.
80 *POPA. Section* 2(a)
81 *Ibid*
82 *Constitution of the Federal Republic of Nigeria* 1999 (as amended)
83 (2001) All N.L.R 264

their cases will be decided fairly and in accordance with the stipulations of the law, without giving consideration to public officers, institutions or authority.

The combined effect of *Public Officers Protection Act*[84], the provisions of *Section 6 (6) (C*) of the *Constitution*,[85] restriction on and derogation from Fundamental Human Rights, which seemingly acts as a limitation and restriction, in *Section 45*[86] is another impediment which provide a general cloak of protection for the public officer not to be held accountable for the constitution provisions which stipulates his duties and expectations in the period during which such public officer occupy the public office for the purpose of performing the public duties.[87]

Human Rights Protection in Nigeria.

The beauty and certainty of living; lies in the guarantee that the next morning, another person cannot distort your peaceful existence. Thus, in a strict guarantee of good living, nature avails avalanche of rights enjoyable by man. Man's insatiable disposition makes the infringement on another person's right almost inevitable. It is to avoid such unpleasant situation and to re-engineer the dignity of man that certain rights are codified in the Constitution of Nigeria; hence giving the rights a constitutional flavour. Despite the constitutionality of these rights, their protection, observance and compliance have not been without hitches. These rights are often breached with impunity or unwittingly.[88]

The *Constitution* of the Federal Republic of Nigeria, 1999[89] spells out the various Human rights declared to be fundamental in Nigeria. Similarly, Nigeria being a member of various International Organizations is signatory to certain critical Treaties that border considerably on the Human Rights of its citizens. *Chapter* Four (4) of the 1999 Constitution of the Federal Republic of Nigeria provides for a total of 13 rights to *wit*: The Right to Life[90]; Right to Dignity of Human person;[91] Right to personal liberty[92]; Right to Fair hearing.[93] Right to private and family life[94]; Right to freedom of thought, conscience and religion;[95] Right to freedom of expression and the press;[96] Right to peaceful assembly and association;[97] Right to freedom of movement;[98] Right to freedom from discrimination[99] and Right to acquire and own immovable property anywhere in Nigeria.[100] The enforcement of these rights in Nigeria is regulated by Section 46 of the Constitution, which gave birth to the Fundamental Rights Enforcement Procedure Rules. Similarly, international *treaties* and *conventions* signed by

84 *Ibid*
85 *Ibid*.
86 *Ibid*
87 T. Fagbohunlu' *The Legal Frame Work of Human Rights in Nigeria.* in the CLO Annual Report on Human. Rights in Nigeria 1990 (Lagos 1991), P.109 at124- 126.
88 B. S, Kokpan & Anor. Fundamental Human Rights in Nigeria**:** Practice**,** Abuse and Remedy**.** www@ust.edu.ng. accessed 27th February 2022.
89 (as amended) in Chapter IV.
90 *Section* 33, *CFRN*, 1999 (as amended).
91 *Ibid* at s.34.
92 *Section* 35, *ibid*.
93 *Ibid*, *Section* 36.
94 *Section*.37, *ibid*.
95 *Section 38*, *ibid*.
96 *Sec*tion 39, *ibid*.
97 *Ibid*, *Section* 40.
98 *Ibid*, *Sec*tion 41
99 *Ibid*, *Sec*tion 42.
100 *Sec*tion 43, *ibid*.

Nigeria in relation to Human Rights are applicable in Nigeria subject to compliance with the provision of *section* 12 of the *Constitution* of the Federal Republic of Nigeria, 1999.[101]

The *treaties* when ratified and made applicable are still subjected to the enforcement procedure laid down in the *Fundamental Human Rights* (Enforcement Procedure) Rules. In practice, most of the international instruments are similar to the rights created in *Chapter* IV of the *Constitution*, the areas of differences being issues of nomenclature and semantic. The few others are also recognized in *Chapter* II of the *Nigerian Constitution*, which are made non-justiciable[102].

Section 46 of the *Constitution* provides that any person[103] 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 for redress. In other words, the *Section* contemplate three types/limbs to breach; where any person feel his right as encapsulated under the Chapter has been (here, it envisages the actual completion of the act complained of to be in breach); is being (this foresee a circumstance where the breach is in continuum and there is need to put an end to same. For instance, where a person is arrested and detained above the constitutionally provided time, this limb will avail him); or likely to be contravened (here the law allows factual certainty. Thus, where a person anticipate that his right will be in breach with quite a great amount of certainty, same spelt out in factual circumstance, the court can come to his aid and grant the reliefs as sought) he can approach the court for redress.[104] Interestingly, these rights are not only enforceable against the government or security agencies, they are also enforceable against private individuals who have breached the rights with respect to other citizens.[105] For instance, where a citizen instigates the police to arrest someone, he can be sued or joined as Respondent in an application for the enforcement by the victim of his right. Also situations play out where a person is molested by a mob, he can enforce his fundamental rights against the individuals involved. Significantly, with noticeable challenges faced in the enforcement of rights in court and the time lag as well as delays associated with technicalities, the *constitution* empowers the Chief Justice of Nigeria to make rules with respect to the practice and procedure of a High Court for the purpose of the section.[106] Pursuant to this power, the Chief Justice of Nigeria promulgated the *Fundamental Rights (Enforcement Procedure) Rules* 2009[107]. The purport of this rule is to fast track the method of attaining quick justice bearing in mind the *sui generis* nature of these rights. To the extent that the Rule expect early determination of fundamental rights applications, it is the belief of this paper that no significant improvement has been made as fundamental right applications still suffer the same delay as other writs. The enforceability of the Fundamental Rights is a lot more liberal under the *Enforcement Rules* 2009. Unlike the previous 1979 Rules, the *Fundamental Rights (Enforcement Procedure) Rules*, 2009 allows for

101 Section 46(3), *CFRN* empowers the Chief Justice of Nigeria to make rules for the practice and procedure necessary for the enforcement of the rights created in *Chapter* 1V.

102 In *Badejo v Federal Minister of Education* [1996] 8 NWLR (Pt. 464) 15, Kutigi JSC also stated that "A fundamental Right is certainly a right which stands above the ordinary laws of the land."

103 *Section* 18 of the *Interpretation Act*, Cap I23, LFN 2004 defines "person" to include anybody of persons corporate or unincorporate

104 In *A.G, Federation v. Kashamu* (No.1), [2020] 3 NWLR (Pt. 1711) 209 at 274, paras A-H, 278, Para. E, the respondent's application failed on appeal on the ground that the facts were mere speculations, as there was nothing to show that his right was in danger of being infringed.

105 See *Onwo v Okafor Oko* [1996] 6 NWLR (Pt. 456) 584.

106 *Section* 46 (3) *CFRN* 1999 (as amended). *Ibid*.

107 FREP Rules, 2019.

public interest litigation by eradicating the vexed issue of *locus standi*.[108] Therefore, where a person dies in the custody of Police or is incapacitated by the act of people in whose hands he was in custody, the right can be enforced by his beneficiaries. The extent of these enforcement sterns out of the importance of the rights as guaranteed.[109]

In *Jim Jaja v COP Rivers State*,[110]Muntaka-Coomassie JSC. emphasized the true essence or import of the proceedings under the *Fundamental Rights Enforcement Procedure Rules* for the protection and enforcement of the fundamental rights of the citizen thus:

> The procedure for the enforcement of the fundamental human right was specifically promulgated to protect the Nigerian's fundamental right from abuse and violation by authorities and persons. When the breach of the right is proved, the victim is entitled to compensation even if no specific amount is claimed.

Often times than not, the reliefs claimed in remedy for a breach are usually damages in monetary terms, release from custody, public apology and injunction restraining further arrest (this although is rarely granted by the court). It is obvious from the apt provision of the law as espoused by the law lord that compensation[111] is consequential even if no specific amount is claimed as same will be garnered from the quantum of breach and the personality involved.

Fundamental right is more significant than other similar rights under other statutes or laws because it is at the heart of human and corporate existent.[112] Its status was thus expected to be adorned with some sanctity and guarded reverently and jealously for the sake of order in society. Regrettably, the provisions of Chapter IV of the Constitution[113] have been variously violated by formal and informal institutions, Public institutions, authority, Officers, including private persons through various means. It has become a familiar phenomenon to see a clear breach of a fundamental right in the present day Nigeria with impunity. The incessant shooting of citizens by security agencies and retributive attacks and killings of law enforcement officials is no longer news as well as the rampant cases of adoption and kidnapping of citizens by citizens, incessant and sporadic killings, land grabbing amongst other heinous crimes of illegal detention awaiting trial, arrest, searching, intimidation, to mention but a few.

Furthermore, circumstances have played out where persons have been detained by the law enforcement agencies for more than the constitutionally prescribed period without trial by a competent court of law. Also, cases have arisen where suspects arrested are tortured to death in police custody all in a bid to extract confession from him.[114] There exist a lot more of the

---

108 *Paragraph* 3 (e) of the Preambles to the *Fundamental Rights* (*Enforcement Procedure*) *Rules*, 2009.

109 *Bello v A. G. Oyo State* [1989] 5 NWLR (Pt. 45) 82.

110 [2013] 22 WRN 39 @ 66.

111 *Muhammad v. I.G.P* [2019] 4 NWLR (Pt. 1663) 492 at 518-519.

112 *Essien v Inyang* [2011] LPELR – 4125 1 at 24.

113 *Ibid*.

114 The news was reported of one Chima, an automoblie mechanic who was alleged to have stolen a car along with four (4) others and in the process of obtaining confession/information, he was tortured and beaten to death; others receiving various degrees of injury upon release by the E – Crack Team, Mile One Police Station, Port Harcourt. 'Police Brutality: Nigerians demand Justice for Chima'. Available at Accessed 7/2/2020. Similarly, the cases of Nnamdi Kalu, Omoyele Sowore, Agba Jalingo, Ibrahim El – Zakzaky and Wife and Sambo Dasuki cannot be forgotten in a hurry. In these cases, the respective courts granted bail to the respective Accused persons/ defendants but the various detaining authorities deemed it necessary not to obey the orders of the courts. This is

breaches that are even more within the knowledge of every citizen of Nigeria; they stand as the abuse in contemplation in this discourse. Similarly, the abuse is not only a characteristic of the law enforcement agencies but also a common feature among the ordinary citizens of Nigeria. By this, it is meant that private individuals in a bid to enjoy their own fundamental right to the fullest often times than not, infringe on the rights of other citizens. The issue of jungle justice and kangaroo tribunals as well as trial by ordeal is very apt in this description. In *Onwo v Okafor Oko*[115] , the Appellant who was Applicant at the trial court filed a fundamental Rights action praying the court to enforce her rights to freedom of worship, conscience and religion, right to freedom of association, right to dignity of human person, right to own property etc. infringed upon by the Respondents. The grouse of the Appellant being that the Respondents and their agents shaved the hair of the Appellant, contrary to her conscience, conviction and faith; grievously assaulted the Appellant; locking up the rooms of Appellant's house and locking her properties on the ground that the Appellant refused to shave her hair in obedience to a pagan mourning ritual when her husband died. The trial court dismissed the application on the ground that fundamental right action cannot be commenced against private individuals. However, on appeal to the Court of Appeal, the rights as breached were enforced and damages awarded. The abuse of fundamental rights does not end with the visible breaches extant in the everyday Nigeria. Circumstances abound where parties in litigation, abuse the fundamental right to fair hearing. This operates in circumstances where a person fails to attend or participate in a judicial or quasi-judicial arbitration. Upon conclusion, the losing party may be heard alleging the breach of the fundamental right to fair hearing. This issue was ably considered in the case of *Des – Dokubo v Nigerian Army*[116] , wherein Nimpar JCA stated thus:

> Fair hearing and what it is all about has been flogged… it has become a fashion for litigants to resort to their right to fair hearing on Appeal as if it is a magic wand to cure all their inadequacies at the trial court…But it is not so and it cannot be so … the courts must not give a burden to the provision which it cannot carry or shoulder. Fair hearing is not a cut and dry principle which parties can, in the abstract, always apply to their comfort and convenience.[117]

Similarly, citizens have often time used fundamental rights enforcement proceedings as shield for their criminal action. Frivolous applications are filed to frustrate investigation of complaints, prevent lawful arrest, and hinder other lawful exercise of power. To this extent, the applications are brought *mala fide* as against the original purport of protecting citizens' rights.[118] On the part of respondents, it is a common practice to raise all manner of objections against the substantive application. In other scenario, respondents rather than respond to the application would resort to file charges against the applicant as a mean to defeating the essence of the pending application. Most courts are constrained to strike out pending fundamental rights enforcement application, the moment a charge is filed. The several antics apply by counsel in applications for enforcement have provided floodgate for delay in the determination of a class of suit that is ordinarily *suigeneris*.

---

in the glaring face of various contempt proceedings filed and threatened to be filed against the authorities as well as decisions of superior courts of record. Available at Accessed 4/8/2022.

115 [1996] 6 NWLR (Pt. 456) 584.

116 [2015] JELR 36711 (CA).

117 See also, *Mogaji* v *Nigerian Army* [2008] 8 NWLR (Pt. 1089) 338; *Okike* v *LPDC* [2005] SCNJ 596; *MDPDT* v *Okonkwo* [2001] 16 NWLR (Pt. 792) 172.

118 *A.G Federation v. Kashamu* (No.1), supra (n 24), where the applicant alleged that the 1st Respondent planned to kidnap him

Public Officers and Human Rights Protection in the United Kingdom.

The United Kingdom has a proud tradition of respect for human rights. Such rights have long been an integral part of common law, as well as being enshrined in statute;[119] these rights are supported by United Kingdom political parties. For rights to be effective they have to be capable of being enforced. It is therefore profoundly concerning that the recently retired President of the Supreme Court, Lord Neuberger of Abbotsbury, told us that "*we have pretty good rights but quite a yawning gap as far as enabling people to enforce those rights is concerned*."[120] This view was echoed by many who had experience of trying to enforce their rights; their evidence reflected a widespread feeling of exclusion from the system of protections and rights afforded to others in society.[121] A member of the Glasgow Disability Alliance said: "*justice is something other people get*".[122]

According to Murdoch[123], the main purposes of the police in a democratic society governed by the rule of law are:

(a) to maintain public tranquility and law and order in society;
(b) to protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights;
(c) to prevent and combat crime; f to detect crime;
(d) to provide assistance and service functions to the public[124].

In the interest of independent, impartial and effective delivery of policing services, and to protect against political interference, the police are granted a wide degree of discretion in the performance of their duties. For the purpose of performing their duties, the law provides the police with coercive powers that the police may use reasonable force when lawfully exercising their powers. In recent decades, as scientific and technological knowledge have advanced, the special powers available to the police for the purpose of performing their duties have increased, together with their capacity to intrude in people's lives and interfere with individual human rights.[125]

As a response to the actual abuses of human rights by the police, which have taken place in the past and, unfortunately, continue to occur at present and in different countries, one of the key underlying principles of the Council of Europe in regard to policing is that it should have as its fundamental objective the protection of human rights. There is no conflict between effective policing and human rights protection. On the contrary, the road to one passes through the other. Considering that police activities to a large extent are performed in close contact with the public, police efficiency is dependent on public support. At the same time, public confidence in the police and its support are closely related to the attitude and behavior of members of the police towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual.

---

119 by the *Human Rights Act* 1998.

120 Lord Neuberger of Abbotsbury.

121 See for example, Christian Concern (DRA0006)

122 Glasgow Disability Alliance (AET0029) Joint Committee on Human Rights [Session 2016–17] Publications; Oral evidence taken on 8 March 2017, HC (2016–17) HC 893, Q67 [Saunders family

123 J, Murdoch & Anor. "*The European Convention on Human Rights and Policing*". (2013). A Handbook for Police Officers and other Law Enforcement Officials. The Council of Europe. 7-24.

124 Recommendation Rec (2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics at Article I. 17.

125 Opinion Comm DH (2009) 4 of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police at *paragraphs* 15-17.

The European Convention on Human Rights sets out a comprehensive framework governing the operational work of police services, compliance with which it ensure that the public supports them.[126] Much of the case law of the European Court of Human Rights can be used in practice to improve the degree of human rights protection in the work of the police. In particular, the Court has constantly reiterated that Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organized crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most clauses of the Convention, *Article* 3 allows no exception and no derogation from it is permissible, even in the event of a public emergency threatening the life of the nation.[127]

Adherence to the rule of law applies to the police in the same way that it applies to every member of the public. There may be no attempt to conceal, excuse or justify the unlawful exercise of coercive or intrusive powers by a police officer by reference to his or her lawful recourse to coercive and intrusive powers. Police ethics and adherence to professional standards serve to ensure that the delivery of police services is of the highest quality, and going by the standards, there can be no police impunity for ill-treatment or misconduct,[128] and for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The role of the European police in protecting the liberties of individuals in the community involves particular challenges. In upholding the rule of law in a democratic society, those entrusted with the task of policing society must themselves be subject to accountability before the law. Police officers are in a real sense the day-to-day defenders of human rights, but in order to discharge that task, they often have to interfere with the rights of those mindful to harm the rights of others.

The problem of achieving an appropriate balance between police powers and individual liberty is not a new one. Often it is expressed in terms of accountability. *Quis custo dieti psos custodes*? was the question posed in ancient times. Today, in the context of liberal democracies, the answer to this age-old problem is normally expressed in terms of accountability to the law; yet in Europe, compliance is expected not only with domestic arrangements but also with European standards, and in particular with the European Convention on Human Rights.[129]

European citizens and those living within the borders of European States expect a great deal from their police services, but also rightly demand that the discharge of policing responsibilities is in accordance with the law, and furthermore, that it respects certain fundamental principles reflecting the nature of a democratic society. This 'law' is not only domestic law, but increasingly also European law which itself expresses certain 'values' on matters such as the importance of democratic protest, respect for the private lives of individuals, and protection against the arbitrary application of police authority.

Such values are expressed in the case law of the Strasbourg-based European Court of Human Rights. The task of the European Court of Human Rights is to give practical guidance through the interpretation of the European Convention on Human Rights as and when cases come

126 J, Murdoch & Anor. *The European Convention on Human Rights and Policing. A handbook for police officers and other law enforcement officials*. (2013). t the Council of Europe. 7-24.

127 *Chahal v. United Kingdom*, judgment of 15 November 1996.

128 *Ibid*. at paragraph 18.

129 *McCann and others v the United Kingdom*, (1995) 21 EHRR. 97.

before it. These cases will involve specific facts based upon individual systems of domestic law and practice, but underlying this jurisprudence are certain principles of universal application. For example, a case arising in Turkey can have major ramifications for France or for the United Kingdom, as with access to legal representation while in police custody.[130] In the same manner, a judgment involving the policing of street protests in Austria may have important consequences for police officers anywhere in Europe in respect of how the police deal with counter-demonstrators.[131]

The idea of legal certainty essentially involves the ability of an individual to act within a settled framework without fear of arbitrary or unforeseeable state interference. As the Strasbourg Court has put it, domestic law is expected 'to be compatible with the rule of law, a concept inherent in all the articles of the Convention'.[132] The consequences for police action involving interferences with the rights of individuals (for example, when effecting an arrest or detention under Article 5, which requires any deprivation of liberty to be 'lawful' and 'in accordance with a procedure prescribed by law', or carrying out a search or using surveillance or taking steps to maintain public order involving an interference with the rights of protestors, when the police action must be 'in accordance with law' or 'prescribed by law') is that any such action must not only have a basis in domestic law, but also that the quality of that domestic law must meet the requirements of accessibility and foreseeability: First, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able if need; be with appropriate advice, to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.[133]

What this means is that the 'necessity' of State action concerning civil liberties (such as interferences with the rights of protestors) essentially involves the search for an appropriate '*balance' between state action and individual right. The Court has stated that ''necessary' … is not synonymous with 'indispensable*', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable'…'; rather, 'it implies the existence of a 'pressing social need'.'[134] However, when applied to domestic decision-making (such as the policing of a public protest), the extent or intensity of international scrutiny by the Strasbourg Court is often dependent upon the specific circumstances of the case. It may be easier, for example, for the police to justify the seizure of publications considered obscene rather than those seeking to convey a political message.[135]

One important point is that reasons for police action giving rise to an interference with a civil or political right need to be both relevant and sufficient. The test of 'sufficiency' requires that there be not only a rational connection between the means employed and the aim sought to be achieved, but also that a fair balance be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In carrying out its assessment, the Court has also identified certain characteristics of a 'democratic society'. This is where it is expected that certain 'values' will guide policing

130 See *Salduz v Turkey*, (2008) ECHR. 36391/02 HRC.
131 *Plattform Ärzte für das Leben v Austria,* (1987) ECHR 10126/82.
132 *Amuur v France*, (1996). ECHR 19776/92. 609.
133 *Sunday Times v the United Kingdom* (No 1), (1979) 2 EHRR 245.
134 *Sunday Times v the United Kingdom* (No 1), *Ibid*.
135 *Ibid*.

determinations; for example, pluralism, tolerance and broadmindedness have been identified by the Court as the hallmarks of such a European 'democratic society'.[136]

The principle of non-discrimination itself reflects an important European value. It gains expression in *Article* 14 of the European Convention on Human Rights. This provides that: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. However, *Article* 14 has no independent existence (although *Protocol* No 12 now provides a separate stand-alone right not to be discriminated against).[137] *Article* 14 can thus only be considered in conjunction with one or more of the substantive guarantees contained in *Articles* 2 to 12 of the Convention or in one of the protocols. '*Discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations*…'.[138] Certain grounds of discriminatory treatment are regarded with particular suspicion, and it may prove highly difficult for a State to persuade the Strasbourg Court that the discriminatory treatment was justified. For example, the European Court of Human Rights has said that where a difference in treatment is based on race or ethnic origin, '*the notion of objective and reasonable justification must be interpreted as strictly as possible*'.[139] Attacks upon Roma and destruction of their property have also led to findings of violations.

In *Nachova and Others v Bulgaria*, a violation of *Article* 14 taken together with *Article* 2 was established in respect of the failure to hold an effective investigation into allegations of racially-motivated killing. While it had not been shown that racist attitudes had played a part in the killings, the failure of the authorities to investigate allegations of racist verbal abuse with a view to uncovering any possible racist motives in the use of force against members of an ethnic or other minority had been 'highly relevant to the question whether or not unlawful, hatred-induced violence has taken place'.[140]

In *Moldovan and Others v Romania* (Number 2), attacks by villagers aided by police officers had resulted in the deaths of three individuals and the destruction of 13 homes belonging to Roma families. The applicants had been forced to live in livestock premises, and only ten years later had the domestic courts ordered the payment of compensation. Violations of *Article* 14 taken with *Article* 6 and *Article* 8 were established.[141]

The increasing expectations placed upon police officers are directly prompted by heightened expectations on the part of members of the community that policing will reflect certain fundamental values and respect certain key principles. Such values and principles are contained in the European Convention on Human Rights. While diversity in national police arrangements and in domestic criminal justice systems is respected, the growing sense of minimum European expectations in the delivery of policing need not be seen as a threat to the police service; rather, the discharge of a human rights-compliant approach to policing

136 *Handyside v the United Kingdom* (1976) ECHR. 737. @ 751.

137 *Protocol* No 12 reads as follows: '(1) The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. (2) No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.'

138 DH and Others v Czech Republic, j(2007) ECHR. 57325/00/ 175.

139 *Ibid*.

140 *Nachova and Others v Bulgaria*, (2005). ECHR. 43577/98. 465.

141 *Moldovan and Others v Romania* (No 2), (2005) ECHR 41138/98 and 64320/01. 136-140. See also the similar cases of *Gergely v Romania*, (2007). ECHR. 57885/00. 127., and *Kalanyos and Others v Romania*, (2007) ECHR. 174.

will help maintain productive police-community relationships. There is a risk that the notion of 'human rights' can be perceived of as a 'charter for the criminal' and a negation of the rights of the victims of crime, but such is to ignore the important developments in human rights jurisprudence from the European Court of Human Rights in Strasbourg. The notion of positive obligations, for example, places heightened responsibilities upon the police to protect victims from exploitation; the increased intolerance of ill-treatment by police officers and the greater readiness to label certain ill-treatment as 'torture' also promotes both professionalism and an understanding of the importance of the rule of law within the police service.

Public Officers and Human Rights Protection in the South Africa

The position of special protections for public officers and institutions in South Africa was tested in the case of Constitutional Court of South Africa in the case of *Leach Mokeli Mohlomi v Minister of Defence*[142]. In the case under reference, a civil action was referred to the Constitutional Court of South Africa from the Witwatersrand Local Division of the Supreme Court; the plaintiff sued the defendant for damages for the consequences of injuries which the plaintiff sustained on 2 May 1994 when a soldier shot him intentionally. After the shooting, the boy was admitted to a hospital where he received treatment for seven weeks. Thereafter, the boy who sustained injury as a result of the shooting sought legal assistance from the Campus Law Clinic of the University of the Witwatersrand, an office run by lawyers and students which provides indigent people with free legal services. The office undertook to handle his case. It was mistakenly recorded that the boy was shot by a policeman.

The Clinic then sent a pre action notice to the Minister of Safety and Security in compliance with *Section* 32(1) of the *Police Act*[143]. The lawyer in charge of the case, who knew that a soldier was said to have done the shooting, detected the mistake six weeks afterwards when he had the occasion to examine the file. He immediately gave the defendant the notice. By that time, however, the deadline for the institution of the action was too close to brook the delay in launching it that would have allowed thirty-one days to elapse before its commencement. The defendant filed a preliminary objection, invoking *Section* 113(1) of the *Defence Act*[144] and taking the preliminary point of non-compliance with same.

The *sub-section* provides that:

> "No civil action shall be capable of being instituted against the State or any person in respect of anything done or omitted to be done in pursuance of this *Act*, if a period of six months ... has elapsed since the date on which the cause of action arose, and notice in writing of any such civil action and of the cause thereof shall be given to the defendant one month at least before the commencement thereof".[145]

The defendants contended that the requirements of the dual protections were not met in this case because the action was instituted after the six months limitation period and that the pre action notice had been given less than a month in advance. The Claimant contends that the case was filed within the six months limitation period. Regardless however, these special protections violate the interim Constitutional provisions of non-discrimination and equality

142 Case CCT 41/95.
143 *South Africa Police Act* (7 of 1958).
144 *Defence Act* (44 of 1957).
145 *Ibid*.

of access to a court of law; *Sections* 8, 22 and 28 of the *Interim Constitution*[146] and was therefore rendered invalid. The Court held that the provision of the *Defence Act*, 1957 which required that action be brought within six months when the cause of action arose and by issuing a notice of action one month before the commencement of the action contravened *Section* 22 of the *Interim Constitution*[147] which provided that, "*every person shall have a right to have justiciable disputes settled by a court of law or, where appropriate another independent forum*." The Constitutional Court held that the provision read as a whole must be construed:

> …against the background depicted by the state of affairs prevailing in South Africa, a land where poverty and illiteracy abound and differences in culture and language are pronounced, where such conditions isolate the people whom they handicap from the mainstream of the law, where most persons who have been injured are either unaware of or poorly informed about their legal rights and what they should do in order to enforce those, and where access to professional advice and assistance that they need so sorely is often difficult for financial and geographical reasons.[148]

The court concluded that the effects of the dual special provisions is to deprive the litigant an adequate and fair opportunity to seek judicial redress for wrongs done by public authorities against them and therefore *Section* 22[149] was violated. In coming to the conclusion, the court considered the rather strict provisions of the limitation period which in effect provided for a window of five months in which to give notice and file a suit.

This is a very sound judgment and is hereby recommended to the Nigerian judiciary, across the globe, it is generally agreed that a short limitation period in favour of public officers, agencies, bodies, establishments and institutions amounts to impediments and constitutes a clog in the wheel of access to justice and cannot reasonably be justified and defended in a constitutional democracy.

Mandatory pre-condition notices and short period of limitation tend to undermine probity, accountability, transparency and good governance. For example in England, the principles expounded in the reports of two Committees are relevant: as far back as 1936 the Law Revision Committee in its Fifth Interim Report titled "*Statutes of Limitation*"[150] stated:

> We have carefully considered how far it is advisable to interfere with the policy of the *Public Authorities Protection Act*. That policy is quite clear, namely, to protect absolutely the acts of public officials, after a very short lapse of time, from challenge in the courts. It may well be that such a policy is justifiable in the case of important administrative acts, and that serious consequences might ensue if such acts could be impugned after a long lapse of time. But the vast majority of cases in which the *Act* has been relied upon are cases of negligence of municipal tram drivers or medical officers and the like, and there seems no very good reason why such cases should be given special treatment merely because the wrong doer is paid from public funds.[151]

146 *South Africa Interim Constitution* (*Act* 200 of 1993).
147 *Ibid*.
148 Para. 17 of the *South Africa Interim Constitution* (*Act* 200 of 1993).
149 *Ibid*.
150 (1936, Cmd 5334)
151 *Ibid*.

In addition, the Report of the Committee on the Limitation of Actions[152] recommended that the *Public Authorities Limitation Act* should be repealed and this report was implemented by the enactment of the *Law Reform (Limitation of Actions, etcetera) Act* in 1954. Ever since, and till date the position in England is that special protections no longer apply exclusively to public authorities, same privileges apply to public officers and any other defendant.

In Ontario, Canada a Report on Limitation of Actions made recommendations that special protections for public authorities be discontinued in all legislations. The Commission observed that:[153]

> A notice of claim which must be given within a limited time as a condition precedent to the bringing of an action achieves the same result as a limitation period. It is, in effect, a limitation period within a limitation period...

The Commission does not believe that a person should be absolutely barred from bringing an action merely because he has failed to give the notice required. If such requirements are to continue, and there is some justification for their retention [in certain cases], then the courts must be able to give relief from any of these provisions where it would be just to do so[154].

Lessons for Nigeria

Nigeria can draw a lot of lessons from the Laws regulating the Role of Public Officers in Human Right Protection in United Kingdom and South Africa. The provisions of the Laws in United Kingdom and South Africa makes it clear as to who is responsible with regards protecting Human Rights and the extent and scope of exercising same, and the obligation to preserve and protect human right seemingly also creates a responsible for the protection of the rights, and the interpretation rules or mode adopted for public interest for example in South Africa case of *Leach Mokeli Mohlomi v Minister of Defence*, where the defendant filed a preliminary objection, invoking *Section* 113(1) of the *Defence Act* of the and taking the preliminary point of non-compliance with *Defence Act* which makes provision for Limitation of Actions against the injurious action of a Public Officer. In response to the preliminary objection, and coming to an outstanding conclusion, the court considered the rather strict provisions of the limitation period which in effect provided for a window of five months in which to give notice and file a suit. The Constitutional Court held that the provision read as a whole must be construed:

> …against the background depicted by the state of affairs prevailing in South Africa, a land where poverty and illiteracy abound and differences in culture and language are pronounced, where such conditions isolate the people whom they handicap from the mainstream of the law, where most persons who have been injured are either unaware of or poorly informed about their legal rights and what they should do in order to enforce those, and where access to professional advice and assistance that they need so sorely is often difficult for financial and geographical reasons.

This is a very sound judgment and is hereby recommended to the Nigerian judiciary.

In the United Kingdom on the other hand, the traditional attitude of respect for human rights from the custom of long use and observance has long become an integral part of their life

152 In 1949 chaired by Lord Justice Tucker (CMD 7740).

153 *Limitation of Actions Act* (1969) of the Ontario Law Reform Commission

154 *Ibid*. at 81 and 84.

style as reflected in common law, as well as being enshrined in statute; these rights are also supported by United Kingdom political parties. This is also reflected in the decisions of the European Convention on Human Rights and in some of the decisions we have reviewed in the course of this paper and the message inherent in them is that there cannot be different laws to protect Public Officers that cannot be available to the entire citizen. That the notion of the differential in the positive obligations, for example, places heightened responsibilities upon the police to protect victims from exploitation; the increased intolerance of ill-treatment by police officers and the greater readiness to label certain ill-treatment as 'torture' also promotes both professionalism and an understanding of the importance of the rule of law within the police service.

Summary

This paper did a comparative analysis of the Role of Public Officers in Human Right Protection in Nigeria, the United State of America, and the United Kingdom, and used the doctrinal approach as its method of fact analysis and finding. The summary of findings indicated that the Public Officer in Nigeria has a myriad of statutory protection in his favour to enable him effectively render optimal services in protection of Human Rights, and also has greater protection to protect him if he fails to; or defects, in ensuring the adequate protection of human Right. This is crystal clearly evident in the provision of the Public Officers Protection Act[155], Section 308 of the Constitution[156], Section 6 (6) (c) of the Constitution[157], which has resulted in the brazen abuse of rights by the Public Officers without adequate punishment for the abusers and adequate compensation for the victims of such violations. This has seeming led to a precarious security situation brazenly displayed by Kidnappers, Herds Men, Armed Robbers, Militants, to mention just a few. This has also resulted in the abuse of the Rights of these Public Officers some of whom lost their limbs or life in the course of National duties.

Human right abuse across the globe has attracted world condemnation and has drawn attention of the international communities such as United Nations, the Common Wealth, African Union, European Union, and so many other international organizations. The Nigerian government in a bit to curb these issues of unabated human rights in the country enacted the Human Right Commission of Nigeria to champion the plight the common man the entire citizen. Although the Nigerian government came up with the Oputa Panel in 1999 to examine instances of abuse over a period of time, the report was never released for public knowledge, talk or consideration.

Inherent lessons deduced from the United Kingdom and South Africa in terms of Human Right protection and regulatory laws and institutions are very instructive. The institutions created to enforce and ensure the protection of Human Rights in the United Kingdom and South Africa are seemingly independent and autonomous, with guaranteed tenure, and clear areas of reference and authority which are automatically initiated and automated without waiting for the "order from above" as practiced in Nigeria. These Agencies are well funded and adequately staffed with the requisite technical expertise to effectively enforce regulatory and related laws. In Nigeria, the regulatory Authorities and agencies lack autonomy and independence, they seeming continually wait for directives and order from above before

155 *CAP* 41. LFN. 2004.

156. *CFRN* 1999 (as amended). *CAP* C23 LFN 2004.

157 *Ibid*.

acting of furthering their actions. These Agencies are subject to political control and influence from their respective superior Officers.

It is also suggested that the Courts in Nigeria should adorn and assume the cloak of boldness like the Courts in United States and the United Kingdom. The Courts should be bold enough to make orders in cases of human right abuses, Political and Governmental influences, notable individuals, militant and terror prone alliances should be prosecuted and if found guilty, convicted and made to be liable for the abuses. The Courts should also be bold enough to lift veils in instances where some of the public officer hide behind the cloak of statutory institutions to make public institutions pay for their default and offenses, the continuous holding of statutory bodies to pay for the acts committed by its officers will not in any way dissuade them for the continuous abuse of power and human rights.

Conclusion and Further Recommendations.

Although the remedy for the breach of fundamental human right as provided avails all Nigerians irrespective of gender, tribe, or religious affiliation, the courts of law do not treat the enforcement of fundamental rights with kid gloves. The courts take into cognizance the ultimate reason for the application; whether it is for the protection of any of the provisions of Chapter Iv[158], or for any other purpose. Therefore, where a breach has been reported, the public officer or whosoever saddled with the responsibility to protect the affected person will have to perform their duty of apprehending the human right abuser.

The said person who is apprehended cannot in turn complain of any breach during the constitutionally prescribed period. In a similar vein, where there are germane reasons for keeping a person confined in a facility, the court will refrain from enforcing the purported right of the citizen. In certain instances, the apex court refuses bail application based on the caliber of person, issues involved and in line with the safety of other Nigerians. Hence, if the existence of the right of a citizen will jeopardize the enjoyment by other citizens of their own right, the court should approach the issue of enforcement with a fine tooth comb. An employee who is unlawfully sacked from his/her job has a right to seek redress by taking appropriate writs, as against filing a fundamental right application. A person whose landed property is trespassed upon has a right to sue for determination of ownership or compensation, but not to file fundamental right.

Nonetheless, the courts are enjoined to adopt a liberal interpretation to provisions guaranteeing the right of a citizen. In *Nafiu Rabiu v The State*[159] , Udoma[160] expressed the point clearly thus:

> "……that the function of the Constitution is to establish a framework and principles of government, broad and general in terms, intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural, dynamic society, and therefore, mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of government enshrined in the constitution. And where the question is whether the constitution has used an expression in the wider or in the narrow sense, in my view, this court should whenever possible, and in the response to the demands of justice, lean to the broader

158 *CFRN* 1999 (as amended).
159 (1980) LLJR-SC. 74.
160 JSC.

> interpretation, unless there is something in the text or in the rest of the constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the constitution. My Lords, it is my view that the approach of this court to the construction of the constitution should be, and so it has been"

The main purposes of the police in a democratic society governed by the rule of law are:

1. To maintain public tranquility and law and order in society;
2. To protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights;
3. To prevent and combat crime; f to detect crime;
4. To provide assistance and service functions to the public.

In the interest of independent, impartial and effective delivery of policing services, and to protect against political interference, the police are granted a wide degree of discretion in the performance of their duties. For the purpose of performing their duties, the law provides the police with coercive powers and the police may use reasonable force when lawfully exercising their powers. In recent decades, as scientific and technological knowledge have advanced, the special powers available to the police for the purpose of performing their duties have increased, together with their capacity to intrude in people's lives and interfere with individual human rights.

This thesis submits that the system of justice administration in area of Human right protection, particularly as it relates to limitation period and with particular reference to the Public Officers' Protection Laws in Nigeria, does not provide for, or allow enough room for the determination of civil wrongs in respect of bringing of action against institutions of government and public officers. One cannot resist but to point out the contrast between the Public Officers Protection Act[161] and the right to fair hearing guaranteed under the 1999 Constitution[162] (as amended). S, 36(1) of the constitution provides

> In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality[163].

In the light of the referred provisions, one wonders how the public officers protection laws secures a fair hearing within a reasonable time for an aggrieved and wronged person, when all the time allowed is three months. In this matter, it is proper to emphasize that the courts ought, in interpreting this provision in relation to the public officers' laws, bear in mind the dictum of Udo Udoma[164] in *Nafiu Rabiu v State*[165] on the proper approach to construction of constitutional provisions. He said:-

> My Lords, in my opinion, it is the duty of this court to bear constantly in mind the fact that the present Constitution has been proclaimed the Supreme Law of the Land,… and therefore, mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of

161 *Ibid*.
162 *Ibid*.
163 *Ibid*.
164 JSC
165 (1981) 2 N.C.L.R.293 @ 326.

> government enshrined in the Constitution. And where the question is whether the Constitution has used an expression in the wider or in the narrow sense, in my view, this court should whenever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution.

With this purposive approach to interpretation in mind, the proper thing for the courts to do will be to strike down the three months limitation in the public officer protection laws and instead adopt a 'reasonable time' approach. Reasonable time will thus depend on the circumstances of each case and this will ensure that wronged litigants like in *Adigun v Ayinde*[166]and *Ehiogu v Aliri*[167]and others are treated fairly.

This is especially against the background that many litigants usually do not notice the breach or injury done to their person until after expiration of the three months statutory period prescribed under the Act. Also upon realizing the injury or violation of their rights, many litigants almost always initially resort to negotiation with the government agencies concerned by writing numerous appeal letters seeking administrative redress or in attempt to exhaust the internal administrative remedies. And in the long run when they eventually approach the court, they would have been caught up by the limitation period.

This purposive interpretation will also save the Supreme Court and indeed all courts from the unenviable light in which they have been cast by the public officer laws as weak and toothless bulldogs. Based on the facts and the foregoing cases discussed, one could feel justified to respectfully describe the above dicta as epitomizing the '*lamentations of the Supreme Court*'[168]. What the apex court, which is in charge of leading the way in laying down judicial policy for other courts did in Adigun's case, with due respect, could be likened to the statement credited to Edmund Burke as, Having "*killed the bird of justice*" by an undue adherence to *jus dicere*,[169] the court turned volte face to "*pity its plumage*" through the recommendation of *ex gratia* payment for the sake of the welfare of Adigun's dependants[170]. That approach; it is respectfully submitted by this thesis, was too lame, timid, inconsequential and unpragmatic. First, the recommendation for "remedial" or administrative treatment is at best only advisory and as such can be ignored. This is more so in a country notorious for executive contempt for court orders. How much more would such advisory opinion, laced with sentiments and emotive remarks likely to be treated[171].

This thesis asserts and recalls with regret that the judgment was delivered in the era of military rule when even the judiciary survived on the knife's edge[172]. Perhaps this accounts for the rather deft maneuvers on the issue by the court. Nevertheless, it is submitted that the policy of rendering advisory opinion in any case at all should not be encouraged by the Supreme Court, especially as it is not covered by the Constitution. Rather, the Court should boldly and courageously remain assertive and stay on the side of justice all the times. That

166 *Ibid*.
167 *Ibid*.
168 *Ibid*.
169 C. A, Obianuju & C. F, Ude**:** Application and Scope of the Public Officers Protection Act in Nigeria: A Critique. (2019). *AJCAL* 3. 47.
170 *Ibid*.
171 *Ibid*.
172 C. A, Obianuju & C. F, Ude**:** Application And Scope Of The Public Officers Protection Act In Nigeria: A Critique. (2019). *AJCAL* 3. 47

takes us to the second point, which is that our legal system has no provision for advisory opinion. It is only judicial power that has been conferred on the courts in section 6 of the Constitution, to decide between parties in (concrete) 'flesh and blood' cases and no more.[173]

Writing about the attributes of judicial power, Nwabueze[174] has stated that its essential attribute is the ability of a judge to give coercive, final, authoritative and binding decisions in all cases brought before him. A court decision that lacks these attributes is not engaged in the exercise of judicial power.[175]To this end, an advisory opinion cannot be the product of a valid exercise of judicial power. This thesis also submitted that at the time the apex court was giving its advisory opinion in Adigun's[176] case it was no longer exercising judicial power but, probably, moral exhortation. And, as stated earlier, this is too lame and hortatory to be accorded any recognition by the executive arm of government. It is therefore recommended that the Court should develop and sustain a new attitude to the public officers' protection laws. The courts have ample grounds in law to do so in the light of Section 36 (1) of the 1999 *Constitution* (as amended)[177].

One must clearly and unequivocally express that stand for the repeal of the *Public Officers Protection Act/Laws* in Nigeria; as the legislation as shown above, has become an instrument of injustice and impunity, contrary to the democratic tenets of rule of law, equality before the law, and accountability of government provided under the 1999 *Constitution*.

The results of the above inquiries and research findings have shown that the opportunity for revising *Public Officers Protection Act* and pre action notice should be taken to overhaul entirely the concepts of limitation periods as they affect public officers, particularly in the light of constitutionally guaranteed access to court and the principles of fair hearing, *Section* 36. (1) *Constitution* of the Federal Republic of Nigeria. The injustices in Adigun's"[178] case and *Ekeoga*s'[179] case should not be allowed to fester, other commonwealth countries that inherited similar legislations by virtue of statutes of general application have revised such obnoxious laws. As indicated above, attempts have been made by the National Assembly and the National Reform Commission to revise *Public Officers Protection Act*, but such attempts proved abortive. The National Assembly is entrenched with the responsibility of making laws for the peace, order and good governance of Nigeria or any part thereof, *Section* 6 *Constitution of the Federal Republic of Nigeria* and should take urgent steps to revise *Public Officers Protection Act* to ameliorate the injustices being perpetuated by this instrument.

Private litigants and public authorities should, in general, be placed on an equal footing, *Public Officers Protection Act* should therefore be revised in line with other general statute of limitations, in particular for actions arising out of personal injury cases, a new limitation period of three years is advised and that it operate uniformly, without the need for prior notice, whoever the defendant may be.

Mitigating the problems *Public Officers Protection Act* is causing by making the period of limitation run from the accrual of the cause of action rather than the date of the act, neglect

173 Valentine Ashi, Federal High Court Judge, and Ex Law School Lecturer.
174 Prof Ben Nwabueze.
175 B. O, Nwabueze, Judicialism in Commonwealth Africa (1975) Nwamife Publishers, Enugu. 1
176 *Ibid*.
177 *Ibid*
178 *Ibid*.
179 *Ibid*.

or default in question, or in the event of injury the exception should accommodate the effect of the injury or the victim being biologically unaware of his surroundings, the date he became aware.

That the federal government should follow the footsteps of some states in Nigeria that has amended their laws on the Public Officers Protection and Limitation Law. The case of Ebonyi State for example, whereby *sections* 42 and 44 of the Public *Officers Protection and Limitation Law* removed the limitation period of three months should be applauded and adopted at the federal level.

Lastly, the courts in interpreting a legislative document should not give it the literal meaning or allow the mere technicalities to defeat the claim. Rather they should pay more attention to more vital issues and look at each case on its merit. A literal interpretation as can be seen in the cases mentioned above will defeat the ends of justice. Justice must not be allowed to be slaughtered on the altar of technicalities.

It is also recommended that the act be reviewed to apply strictly to acts of public officers committed in the course of their duties and not act of public institutions.

Public Officers Protection Act should be amended to apply strictly to acts of public officers committed in the course of their duties and not act of public institutions, as private companies and individuals do not enjoy such benefits.

The contributions suggested and advanced in this paper; if given consideration and activated, is likely to revolutionize the adequate protection of human rights for all in Nigeria.