

CRITIQUE OF HUMAN RIGHTS IMPEDIMENTS AND DEROGATIONS IN NIGERIA: THE WAY FORWARD*

Abstract

As a result of widening global human rights concerns, the international community is increasingly responding to the need for individuals to be protected irrespective of nationality. The 21st century has seen tremendous changes around the world on human rights and human rights protections and many developed and developing countries are thriving to ensure that the human rights of its citizens are protected and guaranteed. Nigeria is a signatory to many international human rights instruments and has some laudable provisions in her constitution on the protection of fundamental rights. However, human rights violations are experienced on a daily basis by many Nigerians, ranging from extra judicial killings, torture of detainees, curtailment of freedom of the press, discriminatory cultural practices, as well as discriminatory legislations. This work examined human rights impediments and derogations in Nigeria. The research methodology adopted for this study is the doctrinal methodology which involved the library reading of primary and secondary sources of law which included statutes, case law, journal articles, textbooks, internet sources and analyzing same. This work has found that despite the provisions in chapter 4 of Nigerian constitution that protects fundamental rights, Human rights violations are prevalent. The Constitution has derogation clauses that allow fundamental rights to be suspended and also demands domestication of international instruments before they can have the force of the law. This work recommends that Nigerian Laws should be amended to largely comply with respect for human rights; and International Instruments ratified should apply without more.

Keywords: Human Rights, Impediments, Derogation, Patriarchy, Way Forward.

1. Introduction

The issue of human rights is a global phenomenon. Human rights are rights inherent to all humans. We are all equally entitled to our human rights without discrimination whatever our nationality, place of origin, sex, colour, religion, language or any other status such as age, disability, health status. These rights whether they are civil or political rights such as right to life, equality before the law, and freedom of expression or economic, social and cultural rights such as right to work, and right to education are indivisible, universal, interrelated and interdependent.¹ They provide a common standard of behavior among the international community.² Human rights were developed and articulated in the Universal Declaration of Human Rights in 1948 in response to the effects of World War 11. International human rights lay down obligations on governments to act in certain ways or refrain from certain acts in order to promote and protect human rights and fundamental freedoms of individuals or groups.³ By becoming parties to international treaties, States assume obligations and duties under international law to respect, protect and fulfill human rights. This obligation implies that States must refrain from interfering with or curtailing the enjoyment of human rights and protect individuals, groups against human rights abuses by third parties as well as take positive actions to facilitate the enjoyment of basic human rights.⁴ Hence the subscription to most human right instruments by comity of nations, including Nigeria. Nigeria as a signatory to many international human rights instruments has some commendable constitutional provisions for their protection. Despite these provisions, there are still varying degrees of human rights violations in the nation, characterized by blatant disregard for, and gross undermining of, these basic rights and fundamental freedoms.⁵

In Nigeria, there are frequent cases of extra-judicial killings, unjustifiable torture of detainees by security agents, unbridled curtailment of freedom of the⁶, restriction of movement by men of the armed forces, brutal manhandling and assault of Nigerians by men of the armed forces and discrimination against women. Also, politically motivated arrests and detentions have continued unchecked, lengthy detaining of detainees without trial. These violations

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¹ United Nations, 'International Human Rights Law and Sexual Orientation and Gender Identity: What are Human Rights' <https://www.unfe.org/system/unfe-6-UN-Fact Sheets -V6-Internatioal-Human Rights Law Sexual Orientation Gender Identity> Accessed on 13th Nov by 6:15pm

² J A Dada, 'Impediments to Human Rights Protection in Nigeria', *Annual Survey of International and Comparative Law*, volume 18, issue 1, 2012, p.68

³ United Nations, 'International Human Rights Law and Sexual Orientation and Gender Identity: What are Human Rights' <https://www.unfe.org/system/unfe-6-UN-Fact Sheets -V6-Internatioal-Human Rights Law Sexual Orientation Gender Identity> Accessed on 13th Nov by 6:15pm

⁴ *Ibid.*

⁵ *ibid.* p.70

⁶ E. Akinwotu, 'Nigeria lifts Twitter Ban Seven Months after Site Deleted President's Post' <https://amp.theguardian.com/world/2022/jan/13/nigeria-lifts-twitter-ban-seven-months-after-site-deleted-presidents-post> accessed on 17th February 2023.

continue to happen in varying degrees. This raises the questions why these human rights violations continue to happen notwithstanding the many international instruments Nigeria subscribes to protecting human rights as well as her Constitutional provisions that also has provisions protecting same.

2. Factors Militating against Human Rights in Nigeria

There are a plethora of factors that militate against Human rights in Nigeria.

Patriarchy

Nigeria is a patriarchal society in the sense that it is more favourable to men. Nigeria is a signatory to the UDHR which opening words are unequivocal and provides that 'all human beings are born free and equal in dignity and rights'. This however is not the case as discrimination against women and children in many Nigerian communities is deeply entrenched. Cultural prejudices towards women and the stereotyping of social roles on the basis of gender are institutionalized in the Nigerian legal system. Under section 26 of the 1999 Constitution (as amended), A Nigerian woman cannot simply confer citizenship on her foreign spouse by marriage, her foreign spouse can however become a citizen by the more tedious method of naturalization⁷A man on the other hand can confer citizenship on his foreign spouse by marriage.⁸ Section 55 of the Labour Act bars women from being employed in night work except as nurses. Section 56 bars women from working in mines. Section 360 of the Criminal Code Act makes the indecent assault of women a misdemeanor punishable with a two-year prison term, as opposed to three years' prison term imposed for indecently assaulting a man, which is a felony in section 353 of the Criminal Code Act.

Under section 55 of the Penal Code, husbands are permitted to chastise their wives. Section 55(1)(d) states inter alia that; 'nothing is an offence which does not amount to the infliction of grievous harm upon a person and which is done by a husband for the purpose of correcting his wife'. The implication of this is that under the Penal Code, a husband is permitted to beat his wife provided that it does not lead to serious injuries or grievous harm. In essence, the Penal Code condones and encourages domestic violence against women. Some customs in Nigeria give preference to the male child against the female child in matters of inheritance. In many communities in Nigeria, where there is no surviving son of a deceased man, the closest male relative of the deceased inherits his property, rather than his daughters⁹, who are his biological children. Primogeniture where only the first son of a deceased man inherits everything without a thought for his wife or daughters is still rife in many Nigerian communities like Benin. However, recently, there have been judicial interventions upturning some of these obnoxious customary practices. In *Anekwe v Nweke*¹⁰ the Supreme Court held that any Custom that seeks to disinherit a widow or daughter is repugnant to natural justice and the perpetrators of such a custom must be dealt with decisively and punitively. Nigeria has never had a female president or vice president. Nigeria has had only had one female governor in the person of Virgy Etiaba of Anambra State and her tenure lasted a very short time. This was because she was deputy governor and assumed the position of governor when the governor was impeached. The only female speaker of the House of Representatives that Nigeria has ever had in the person of Patricia Etteh was unceremoniously removed after a short time in office. Access to grants for farming purposes, access to loans, women are often overlooked in favor of their male counterparts. The Gender and Equal Opportunities Bill have failed to see the light of the day as a result of patriarchy.

Religion

In Nigeria's development as a nation, religion has played a vital role. It is for this reason that Sharia law governs the actions or inactions of Muslims. Women in Purdah which is common practice amongst muslim women in Nigeria may sometimes not be allowed to speak¹¹ which infringes on their right to expression as guaranteed under the constitution¹² The Islamic religion also allows child marriage. A serving senator once married a 13 year old girl and is reported to have said his religion permits it.¹³In fact, the Constitution also allows for child marriage. The Constitution describes a person of full age to be someone of 18 years or above.¹⁴ It however stipulates this is not inclusive of a married woman¹⁵ the implication of this is that a woman of less than 18 is considered to be of full age if she is married. The *Almajiri* system practiced in the North for instance has religious implications for Muslims. Almsgiving is encouraged. It is for this reason that many children are out of school and this constitutes

7. Section 27 of the Constitution of the Federal Republic of Nigeria(CFRN) 1999 as amended (as amended) Cap C23 Laws of the Federation of Nigeria 2004

8 Section 26(2)(a) *Ibid*

9. O Oyelade 'Women's Rights in Africa: A myth or Reality' *University of Benin Journal*, Volume 9, Issue 1, (2006)P.100

10. (2014) 9 NWLR (PT 1412)393

11. F Anyogu, 'Access to Justice in Nigeria: A Gender Perspective', Ebenezer Production Ltd, Enugu, 2009.

12 Section 38 1999 Constitution (as amended)

13 Aljazeera, 'Nigerian Senator Marries Girl of 13,' <https://www.aljazeera.com/amp/news/2010/5/18/nigerian-senator-marries-girl-of-13>, accessed on 11th September 2022.

14 Section 29(4)(a) CFRN 1999 (as amended)

15 *ibid.* s 29(4)(b)

a violation of their rights. The Child Rights Act¹⁶ which protects the rights of children and recognizes that a child is a person under 18 years has unfortunately been left within the purview of State legislation to replicate it. Most Northern states have refused to adopt it and as such child marriages are prevalent in those areas.

Harmful Traditional Practices

Some harmful traditional practices are a gross violation of human rights. Female genital mutilation which is still prevalent in some communities and it involves cutting off of some parts of the female genitalia. This act is done to reduce female sexual urge and to prevent females from being promiscuous. The act of FGM is usually done in unsterilized environment using unsterilized tools.¹⁷ The resultant effect is loss of blood which could lead to death or exposure to life threatening infections from the use of unsterilized objects. Widowhood Rites where women who have lost their husbands are made to go through physical, emotional and physiological trauma is still prevalent in many Nigerian communities.¹⁸ The Violence against Person Prohibition Act (VAPP Act) came into force on 25th May 2015. VAPP Act prohibits all forms of violence against persons in public and private life and provides maximum protection and remedies for victims as well as punishment for offenders. The Act prohibits the offence of forceful ejection from home¹⁹ deprivation of liberty (psychological violence)²⁰ forced financial dependence or economic abuse;²¹ forced isolation; and emotional, psychological and verbal violence²². Furthermore, the Act prohibits harmful traditional practices. All traditional behavior, attitudes or practices, which negatively affect the fundamental rights of women, girls, or any person and includes harmful widowhood practices, denial of inheritance or succession rights, female genital mutilation, forced marriage forced isolation are regarded as offences punishable with four years' imprisonment or N500,000.00 fine or both.²³ It is however unfortunate that this Act has been left to the purview of State legislation to replicate it in her laws. Up till date, there are many states that are yet to domesticate it. But Anambra State has domesticated it – Anambra State VAPP Law 2017.

Weak Institutional Infrastructure

The judiciary is charged with interpreting the law. Nigerians have recourse to the law courts when their rights are infringed upon. Even though fundamental rights actions are sui generis and priority is given to such matters, it does not negate the fact that most of our judges are overworked and handle too many matters and as such most fundamental rights matters are delayed. Furthermore, judicial independence is not yet a reality but a mere aspiration in Nigeria today. The appointment and removal of judges has a lot to do with politics, ethnicity and favoritism usually influenced by the Executive.²⁴ Secondly, there is also the problem of disobedience to court orders and enforcement of same. It is a notorious fact that judgments and orders of courts are not self-executing and the judiciary does not have its own body or institution charged with the responsibility of enforcing its judgments.²⁵ The implication of this fact is that the judiciary depends on the executive for the enforcement of its judgments. The executive branch is the greatest violator of human rights.²⁶ It is the major 'predator' from which judicial protection is often sought. Nigeria has seemingly firm institutional infrastructure to safeguard human rights in the country. The institutional infrastructure includes the judiciary, the National Human Rights Commission, the Public Complaints Commission, and the Legal Aid Council.²⁷ Unfortunately, the various institutional mechanisms are not strong enough or capable of providing adequate and effective platforms for meaningful human rights promotion and protection. This so because many of these institutional mechanisms are not independent and do not have the financial and logistical capability to meaningfully function as they ought to²⁸ The Judiciary has been clamoring for autonomy and financial independence and has embarked on many strike actions to achieve but it has come to naught.

Constitutional Provisions

The Constitution is the supreme law of Nigeria.²⁹ Any law that is inconsistent with the provisions of the constitution is null and void to the extent of the inconsistency.³⁰ As earlier mentioned, Nigeria is a signatory to

¹⁶ Section 277 Child Rights Act 2003

¹⁷ F Anyogu *opcit.* p 355

¹⁸ S.9 of Violence Against Persons Prohibition(VAPP) Act 2015

¹⁹ S.10 *ibid.*

²⁰ S.17 *Ibid*

²¹ S.13 *Ibid*

²² S 14 *Ibid*

²³ L A Omunfuegbe, 'A Critical Appraisal of Women's Reproductive Rights in Nigeria', *Journal of Sustainable Law and Policy*, Volume 10, (2019) , p 271

²⁴ J A Dada *opcit.* p 83

²⁵ *ibid.* p 83

²⁶ *ibid.* p 83

²⁷ *ibid.* p83

²⁸ *ibid.* p 84

²⁹ Section 1(1) 1999 Constitution (as amended)

³⁰ *ibid.* Section 1(3)

many instruments/treaties on human rights protection. Section 12 of the Constitution deals with how treaties apply in Nigeria. Section 12 provides as follows;

(i) No treaty between the Federation and any other country shall have force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

(ii) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

The implication of this is that treaty agreements entered into by Nigeria will not have the force of the law or be binding except it is domesticated by an act of the National Assembly. Simply put, Nigeria practices the dualist approach to international instruments. Treaty agreements do not apply directly to Nigeria except they are domesticated. This is as opposed to the monist approach where treaty agreements entered into by a State apply directly without need for domestication.³¹ Chapter 2 of the Constitution also has a plethora of provisions that provide for the welfare and security of Nigerians. Unfortunately the provisions of Chapter 2 are non-justiciable and cannot be enforced. The Constitution makes distinction as to non-justiciable and justiciable rights. While the rights contained in chapter 4 are justiciable, the rights contained in chapter 2 are not. The African Charter on Human and People's Rights interestingly does not have a distinction between justiciable and non-justiciable rights. On the question of the superiority or otherwise of the African Charter over the Nigerian Constitution, the Supreme Court in *Fawehimi v. Abacha*,³² held that it was erroneous on the part of the Court of Appeal to have held that African Charter on Human and Peoples' Rights was superior to the Constitution. Mohammed J.S.C (as he then was) in the same judgment observed that the elevation of the African Charter on Human and Peoples' Rights above the Constitution by the Court of Appeal amounted to a violation of the provisions of the supremacy of our Constitution. This judgment, finally laid to rest the issue of superiority of the Constitution over domesticated treaties.³³

Notably, many International treaties protecting human rights do not have the force of the law in Nigeria even those Nigeria has ratified except they are domesticated and this is a factor militating against the enjoyment of human rights.

3. Derogation of Human Rights

Derogation of human rights refers to a temporary suspension of certain rights recognized in human rights instruments or constitutional bill of rights. It is the right of states to temporarily depart from their treaty obligation in certain exceptional circumstances as it enables governments resort to measures of extraordinary nature during the state of emergency³⁴ There are some derogation clauses in some of the human rights instruments permitting derogation in certain circumstances, because human rights Conventions recognize that sometimes States may experience situations of extreme crisis. In those times, it might not be possible for a State to achieve all of the conventions obligations, so the human rights convention provides some flexibility for dealing with such crises.³⁵ Article 4 of the ICCPR for instance recognizes and provides for permissible derogations and states as follows; 'In times of public emergency which threaten the life of the nation and the existence of which is officially proclaimed, the state parties may take measures derogating from their obligation under the present covenant'. The legal implication of this is that states can cleverly circumvent human rights obligations by relying on derogation clauses. For instance, no legal definition is offered by ICCPR of what constitutes public emergency. Article 15(1) of the European Convention on Human Rights provides that in time of war or other public emergency threatening the life of the nation any High Contracting party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

Derogation of Rights under the Nigerian Constitution

The Constitution allows the derogation of certain rights by an Act of the National Assembly during periods of emergency, through measures which are reasonably justifiable for the purpose of dealing with situations of emergency.

Section 33 of the Constitution - Right to Life

The right to life is a derogable right under the Nigerian Constitution. By the provisions of Section 33 of the Constitution;

³¹ J A Dada *op cit.* p 72

³² (2000) 6 NWLR 288

³³ J A Dada *op cit.* p 74

³⁴ F Ajogwu, ' Constitutional Provisions on Restriction and Derogation from Fundamental Rights and the Need for Balance(2014) (Paper delivered at Annual Colloquium of the Law Office of Adegboyega & Associates at the International Conference Center, Abuja on 23rd September 2014)

³⁵ <https://rights.info.org/derogation-human-rights-convention-plain-English/> accessed on 17th February 2023 *op cit.*

every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a Court in respect of a criminal offence of which he has been found guilty in Nigeria. A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary;

- (a) For the defence of any person from unlawful violence or for the defence of property,
- (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) For the purpose of suppressing a riot, insurrection or mutiny.

Section 35 - Right to Personal Liberty

The right to personal liberty of every individual is another derogable right under the Nigerian Constitution. The Constitution provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by Law.³⁶ Meaning that the right of an individual to personal liberty can be derogated from in certain circumstances to wit:

1. In execution of the sentence or order of a Court in respect of a criminal offence of which he has been found guilty.
2. By reason of his failure to comply with the order of a Court or in order to secure the fulfillment of any obligation imposed on him by law.
3. For the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence, in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare.
4. In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community.
5. For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto³⁷.

Section 37 and 38 of the Constitution-- The right to private and family life; right to freedom of thought, conscience and religion

The right to private and family life contained in section 37 of the constitution is a derogable right. Section 37 of the Constitution provides that the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is guaranteed and protected. The rights contained in section 38 of the constitution which provides for the right to freedom of thought, conscience and religion is also a derogable right under the Nigerian Constitution.

Section 39 of the Constitution - Freedom of Expression and the Press

Section 39 of the Constitution protects the freedom of expression of every person, including freedom to hold opinions and to receive and impart ideas and information without interference. As a derogable right, this right is not without limitation as the constitution provides that nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:

- (a). for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephone, wireless broadcasting, television or the exhibition of cinematograph films; or
- (b). imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.³⁸

Section 40 of the Constitution - Right to Peaceful Assembly and Association

Section 40 of the Constitution provides that every person shall be entitled to assemble freely and associate with other persons, and may form or belong to any political party, trade union or any other association for the protection of his interests. This right to peaceful assembly and association protected by this section shall however not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that commission does not accord recognition.

³⁶ S.35 CFRN 1999 (as amended); P C Arinze-Umobi & N Okpalobi, 'Derogation of human Rights in Emergency situations: Nigeria in perspective', *International Review of Law and Jurisprudence* volume 2, issue 1, (2020) p.174

³⁷ S. 35 CFRN 1999 (as amended)

³⁸ P C Arinze-Umobi & N Okpalobi, 'Derogation of human Rights in Emergency situations: Nigeria in perspective', *International Review of Law and Jurisprudence* volume 2, issue 1, (2020) p. 175

Section 41 of the Constitution - Right to Freedom of Movement

Section 41 of the Constitution protects the right of every citizen of Nigeria to move freely throughout Nigeria and to reside in any part thereof, and by virtue of that section, no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom. However, nothing under this section protecting the right to freedom of movement shall invalidate any law that is reasonably justifiable in a democratic society where:

- (a) Imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or
- (b) Providing for the removal of any person from Nigeria to any other country to:
 - (i) Be tried outside Nigeria for any criminal offence, or
 - (ii) Undergo imprisonment outside Nigeria in execution of the sentence of a Court of law in respect of a criminal offence of which he has been found guilty; provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.³⁹

Notably, Section 45 of the Nigerian constitution contains a derogation clause and provides a veritable foundation upon which any law invalidating fundamental rights may be justified. This section stipulates that; Nothing in sections 37, 38, 39 40 and 41 shall invalidate any law that is reasonably justifiable in a democratic society

- a) In the interest of defense, public safety, public order, public morality or
- b) for the purposes of protecting the rights and freedoms of other people

From the foregoing provision of Section 45, The right to private and family life, freedom of thought, conscience and religion, freedom of expression and the press, right to freedom of movement may be circumscribed or limited. These provisions limiting the rights guaranteed are imprecise and constitute massive obstruction to the promotion of human rights and as such, pose a real threat to actualization of human rights.

It is our considered opinion that these constitutional derogations are solely provided to prevent the average Nigerian from enjoying their fundamental rights. It is a way for leaders to continue to dictate, oppress and suppress the average Nigerian. Also Human rights violations have thrived and remain unabated because of lack of genuine and practical commitments on the part of government to ensure meaningful enjoyments of these rights. More so, derogation as a concept does not exist in a vacuum. It is designed to be a temporary measure that comes with considerable political and legal costs both domestically and internationally⁴⁰.

4. Way Forward on Human Rights protection in Nigeria

In order to ensure that human rights are protected, certain measures must be put in place. There is no doubt that there is a gap in the existing legal framework on human rights protection in Nigeria. It is essential that constitutional and institutional reforms be undertaken in addition to the need for government to be committed and exercise the requisite political will to promote and protect human rights. These measures on protection of human rights are as follows:

Eschewing Patriarchy

Patriarchy as earlier mentioned is one of the factors militating against the enjoyment of human rights by many. It is the reason for the rejection of the Gender and Equal Opportunities Bill as well as the reason for the many discriminatory cultural practices against women and children. Freedom from Discrimination on the basis of age and sex is a fundamental right guaranteed under the constitution and many international human rights instruments. Government must take proactive measures in ensuring that no citizen is discriminated against on the basis of gender. The rights of Women and children are human rights and consequently should be adequately protected. There should be mass sensitization of the Nigerian people by government funded establishments and non-governmental organisations (NGOs) on the dangers of Patriarchy and its resultant effects. Government must take active steps in ensuring that women are adequately represented in decision making process. The Gender and Equal Opportunities Bill should be passed into law and this would help in ensuring that women have access to all the perks and privileges their male counterparts enjoy.

Amendment of Section 45 of the Constitution

The ambit of the permissible derogations in the Constitution is too wide. The term 'that is reasonably justifiable' found in section 45 for instance, is too wide. What is reasonably justifiable is subjective and open to different interpretations and leaves the room open for human rights violation by the government. Our political leaders and government officials should be careful not to abuse any individual's human rights. Section 45 should be amended to include only cases of extreme emergency and what constitutes extreme emergency must be succinctly articulated.

³⁹ *ibid.*

⁴⁰ F Ajogwu *opcit*

Independence of the Judiciary and Obedience to Court Orders

There is an adage that states that 'He who plays the piper, dictates the tune'. The above adage emphasizes the need for the financial autonomy and independence of the judiciary. The executive arms of government (Presidents and Governors) should not be responsible for the appointment of Judges so as to enthrone and uphold independence of Judges. The Nigerian Constitution should be amended to remove the power of the appointment of Judges from the Presidents and Governors and vest such powers in the Judicial Service Commission (JSC) of State and National Judicial Council (NJC). Judges are to be unbiased in carrying out the substantial justice expected of them without interference from other arms of government. The continued interference with the judiciary by other arms of government has continued to impede the performance of the Judiciary. An independent Judiciary will be more effective and proactive in discharging their duties without fear of favor. The executive has the duty to ensure prompt compliance with the orders of the courts. The Government must be proactive and ensure that its policies are directed towards ensuring that court orders are enforced and obeyed.

Excluding Human Rights from the Clog Created by Section 12 of the Constitution of Nigeria

Treaty agreements create an obligation on member States. Section 12 of the constitution however requires domestication of already ratified treaties. This provision has greatly impeded protection of human rights as treaties already entered into by the Nigerian government do not have the force of law. By excluding human rights treaties from the ambit of section 12, treaties entered into by the Nigerian government will apply directly to Nigeria without the need for domestication.

Chapter 2 of the 1999 Constitution (as amended) should be Made Justiciable

The rights under chapter 2 should be made Justiciable and thus enforceable. These rights are essential for the protection and promotion of human rights. The provisions that guarantee right to education, welfare and security of the Nigerian citizen are contained therein and the continued non enforceability of these rights constitutes an impediment to human rights.

5. Conclusion

Human right is a global phenomenon. Despite laudable constitutional provisions on fundamental rights protection, human rights violations are prevalent in Nigeria. The clog in section 12 and 45 of the Nigerian constitution that requires domestication of already ratified instruments on human rights and the wide range of permissible derogations that suspend human rights respectively continues to impede on human rights Protection. The non-justiceability of chapter 2 of the Constitution has contributed to human rights violations in Nigeria. Also government's lack of commitment in protection of human rights is one of the greatest challenges on human rights protection. Therefore, it is imperative that the Nigerian government must necessarily direct its policies towards better machinery and stronger institutions for human rights protection and enforcement.