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AN ANALYSIS OF THE ENFORCEABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF INTERNALLY DISPLACED PERSONS: NIGERIA AND SOUTH AFRICA AS CASE STUDIES

Foluke Oluyemisi Abimbola[*]

Abstract

The creation of two separate groups of a recognised body of human rights known as Civil and Political rights, enshrined in the International Covenant on Civil and Political Rights (ICCPR), and Economic, Social and Cultural rights, set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR), has formed an impression that civil and political rights are enforceable in courts while socio-economic rights are not. Nigeria is an example of one of such countries where the 1999 Constitution includes economic, social and cultural rights' provisions as well as civil and political rights. However, the economic and social rights provided in chapter 2 of the Constitution known as fundamental objectives and directive principles of state policy are not supposed to be justiciable in a court of law. These rights include the rights to food, adequate shelter, health, education, etc. However, the Nigerian position can be viewed from the fact that the African Charter on Human and Peoples' Rights (ACHPR) (African Charter) incorporates similar economic and social right

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provisions and has been recognised as a domestic law in Nigeria. Thus, it is not only a regional treaty signed and adopted by Nigeria but has been passed into law by the Nigerian National Assembly. On the other hand, the 1996 South African Constitution provides for the economic and social rights along with civil and political rights and all such rights are included in the South African Bill of Rights and can all be challenged in a court of law, if violated. This paper will propose that in view of the provisions of the African Charter and mechanisms for implementation as well as other international conventions and national constitutional provisions on human rights, domestic courts may ensure that the socio-economic rights, particularly the right to adequate shelter of the internally displaced persons, are protected. Cases decided by South African courts will be discussed in order to lend weight to the notion that socio-economic rights can be enforced in jurisdictions such as Nigeria even though the Constitution suggests otherwise.

KEYWORDS: *Social and Economic Rights, Internally Displaced Persons, African† Charter.*

Introduction

The historical separation of civil and political rights, enshrined in the International Covenant on Civil and Political Rights (ICCPR), from Economic, Social and Cultural rights, set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR), has led to the misconception that civil and political rights are enforceable in courts while socio-economic rights are

not.[1] Adherents of this view argue that 'unlike civil and political rights, which are negative rights constituting restraints on government action, social and economic rights prescribe positive government action that is better left to the political realm.'[2] As further evidence of this distinction between negative and positive (and justiciable and non-justiciable) rights, they point to the fact that the ICESCR requires States Parties only to 'progressively realise' social and economic rights; that, unlike the ICCPR, the ICESCR does not include the right to access justice and an effective remedy for rights violations; and that the ICCPR contains an optional complaints procedure while at its inception the ICESCR did not.[3] On the other hand, in many contexts where social and economic rights are not explicitly and constitutionally protected, judiciaries have affirmed the interdependence and indivisibility of all human rights by linking social and economic rights to the rights, among others, to life, security of the person,

[1] Insight Series 2 'A human rights approach to sustainable development: environmental rights, public participation and human security' 5. Available at <unac.org/wp-content/uploads/2013/07/HRandSD-EN-PDF.pdf> accessed 30 August 2018.

[2] M Langford 'The justiciability of social rights from practice to theory' in Malcolm Langford (ed), *Social Right Jurisprudence: Emerging Trends in International and Comparative Law* (2008) 8 cited in A Kwadrans 'Socio-economic Rights Adjudication in Canada: Can the Minimum Core Help in Adjudicating the Rights to Life and Security of the Person Under the Canadian Charter of Rights and Freedoms?'(2016) 25 *Journal of Law and Policy* 78, 81.

[3] B Porter "Rethinking Progressive Realisation: How should it be implemented in Canada?" Background paper for a presentation to the continuing committee of officials on Human Rights (2015)1. Available at <www.socialrights.ca/documents/publications/Porter%20Progressive%20Implementation.pdf> accessed 8 December 2017.

non-discrimination, and freedom from cruel and inhuman treatment.[4]

Though social and economic rights are included in Chapter 2 of the Nigerian Constitution, by virtue of section 6 (6) (c)[5] of the same Constitution these rights are not justiciable before a court of law. However, Nigeria is a signatory to the ICESCR and ratified it on July 29, 1973. In addition, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Protocol)[6] further provides for other social and economic rights. Such socio-economic rights as prescribed in the African Charter, the Protocol and the ICESCR include the right to health,[7] adequate food, clothing, and housing,[8] education,[9]

[4] In India, for example, the High Court of Delhi in Laxmi Mandal v Deen Dayal Harinagar Hospital and Others, WP(C) 8853/2008, Judgment of 4 June 2010, High Court of Delhi at para 20 stated: "The right to health [forms] an inalienable component of the right to life under Article 21 of the Constitution." As another example, the Supreme Court of Bangladesh has established that "[the] right to life is not only limited to the protection of life and limbs but extends to the protection of health and strength of workers, their means of livelihood, enjoyment of pollution free water and air, bare necessaries of life, facilities for education, development of children, maternity benefit, free movement, maintenance and improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent with human dignity" in Dr. Mohiuddin Farooque v Bangladesh 48 DLR.

[5] Section 6 (6) (c) "The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental
Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution."

[6] "Nigeria ratified the Protocol on the 16th of December 2004."

[7] "Article 12 of the ICESCR, Article 16 of the African Charter, Article 14 of the Protocol."

[8] "Article 11 (1) of the ICESCR, and Articles 15 & 16 of the Protocol."

[9] "Article 13 of the ICESCR, Article 17 of the African Charter."

participation in decision-making,[10] access to justice,[11] right to development,[12] a right to adequate compensation[13] and right to a clean environment.[14] Additionally, the African Charter has been recognised as a domestic law in Nigeria by virtue of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004 and its provisions are, just like any other domestic law, justiciable in Nigerian courts.

Enforceability of Socio-Economic Rights in Nigeria as Provided for in the African Charter

There are recondite decisions of the Supreme Court on the enforcement of human rights in Nigeria applying the provisions in the African Charter. In the case of *Ogugu* v. *the state,*[15] Bello CJN (Chief Justice of Nigeria) in reference to the enforcement of the human rights provisions of the African Charter within a domestic jurisdiction, observed as follows:

Since the Charter has become part of our domestic laws, the enforcement of its provisions as all our other, …laws, fall within the judicial powers of the courts as provided by the constitution and all other laws relating thereto…it is apparent… that the human and people's rights of the African Charter are enforceable by the several High courts, depending on the circumstances of

[10] "Article 9 of the Protocol."
[11] "Article 8 of the Protocol."
[12] "Article 22 (2) of the African Charter and Article 19 of the Protocol."
[13] Article 21 (2) of the African Charter.
[14] Article 24 of the African Charter and Article 18 of the Protocol.
[15] (1994) 9 N.W.L.R (Part 366) 26.

each case and in accordance with the rules, practice, and procedure of each court.[16]

In addition, in the case of *Gani Fawehinmi v. Abacha*[17] similar pronouncements were made by the Court. This was a case where the Appellant, Gani Fawehinmi, a legal practitioner and human rights activist, was unlawfully detained under Decree 107 of 1993 during the military regime. This decree by the military regime of then Head of State, General Sani Abacha, suspended chapter 4 of the Nigerian Constitution, which includes fundamental human rights provisions, As a result, Gani Fawehinmi decided to file an action using the fundamental rights provisions in the African Charter for the enforcement of his fundamental human rights, which had been violated particularly where he was arrested and detained without a detention warrant. Thus, in view of the suspension of chapter 4 of the Constitution where the right to freedom of movement is included, Gani Fawehinmi applied the fundamental provisions of Articles 4, 5, 6 and 12 of the African Charter to claim that these same rights had been violated. The contention of the counsel for the Head of state (Abacha)[18] was that the African Charter, being a treaty, could not be a subject of litigation entertainable by Nigerian courts.[19] On appeal to the Supreme Court, the justices of the Supreme court however, did not support this argument and emphasised that even the long title to the Act incorporating the African Charter, provides "An Act to enable effect to be given in the Federal Republic of Nigeria to the

[16] Per Bello CJN 27.
[17] (1996) 9 N.W.L.R (Part 475) 719.
[18] *Abacha v Fawehinmi* (2000) 6 NWLR (Part 660) 228.
[19] Per Uwaifo J.S.C 341-342, paragraphs a-f.

African Charter on Human and Peoples' Rights." Accordingly, the African Charter has been made part of Nigerian laws by the process of incorporation whereby the whole of the African Charter is given effect to under the Nigerian laws by reproducing the African Charter *unedited*[20] in the schedule to the municipal law.[21] Therefore, in this case, the Supreme Court of Nigeria per Ejiwunmi JSC held *inter alia* that "…anyone who felt that his rights as guaranteed or protected by the Charter, has been violated could well resort to its provisions to obtain redress in our domestic courts."

The debate on the enforceability of the African Charter in Nigeria was further reiterated by the Supreme Court when the government of Nigeria appealed to the Supreme Court in *Abacha* v. *Fawehinmi.*[22] This judgement confirms the recognition of the African Charter as a local law that the courts can enforce. Accordingly, Uwaifo JSC (Justice of the Supreme Court) held as follows:

> "It is common ground that this law (the African Charter) is indeed an International Treaty as it was the product of the Organization of African Unity of which Nigeria is a member. It is also common ground that Nigeria in accordance with the protocols enshrined in the Charter, caused through the National Assembly of the then government of Nigeria to enact as part of the municipal law, all the provisions of the African Charter on Human and

[20] Emphasis added.
[21] *Abacha v Fawehinmi* (note 18 above) paragraph H 312.
[22] Ibid.

> Peoples' Rights. This was done in accordance with the provisions of section 12 (1) of the 1979 Constitution." (Now S. 12(1) of the 1999 Constitution).

The Military decree challenged in the *Gani Fawehinmi* case, which ousted the provisions of chapter 4 of the Constitution, was the State Security (Detention of Persons) Decree, cap 414, Laws of the Federation of Nigeria, 1990 (otherwise called decree no. 2 of 1984) (as amended). The Supreme Court held that this decree is equivalent to a domestic legislation or municipal law. Though it has been repeatedly argued by some legal writers[23] that socio-economic rights are not justiciable in Nigerian courts by virtue of Section 6 (6) (c) of the Nigerian Constitution, the African Charter on Human and Peoples' Rights contains these rights and being an international law is in a class of its own; "it is not within the hierarchy of local legislations in Nigeria, and it is superior to all municipal or local laws in Nigeria." "It is trite law that no government would be allowed to contract out of its international obligations, by local legislation even though, the African charter was domesticated, or enacted into law in Nigeria by the National Assembly in 1983, it is an international law with international flavour, and ouster clauses contained in any decree, or law cannot affect its operation in Nigeria." Hence, the Justices of the

[23] I Agbede 'The Rule of Law and the Preservation of Individual Rights'in Ajomo and Owasanoye (eds) *Individual Rights under the 1989 Constitution* (Nigerian Institute of Advanced Legal Studies, Lagos, 1993). See also Aguda T 'Judicial Attitude to individual Rights in Nigeria' in Ajomo and Owasanoye (eds) at 68 cited in Govindjee A and Taiwo E "Justiciability and Enforceability of the Fundamental Objectives and Directive Principles in Nigeria: Lessons from South Africa and India", (2011) 7 (1*) Nigerian Bar Journal* 65, 80.

Supreme Court whilst entertaining the appeal from the court of appeal, declared in all certainty that:

The individual rights contained in the Articles of the African Charter are justiciable in Nigerian courts. Thus, the articles of the Charter show that individuals are assured rights which they can seek to protect from being violated and if violated to seek appropriate remedies; and it is in the national courts such protection and remedies can be sought and if the case is established, enforced.[24]

From the above pronouncements of the Nigerian Supreme Court justices, it is evident that the economic and social rights as enshrined in the African Charter can be adjudicated upon as a domestic legislation such that the courts can grant remedies that will be appropriate in the circumstance of each case. Additionally, the decision of the Supreme Court in *Attorney-General of Ondo State v. Attorney-General of the Federation*[25] confirms this position. The Supreme court in this case declared, "It is well established as per Section 6 subsection (6)(c) of the Constitution that rights under the fundamental objectives and directive principles of state policy are not justiciable except as otherwise provided in the Constitution." This point is well noted in the case of *Adebiyi Olafisoye v. Federal Republic of Nigeria*[26] where the Supreme Court held that the non-justiciability of section 6(6)(c) of the Nigerian constitution is neither total nor sacrosanct, as the subsection provides a way out by the use of the

[24] Per Uwaifo JSC 228.
[25] (2002) NWLR, (part 722), p. 222
[26] (2004) 4 N.W.L.R (part 864) 580.

words 'except as otherwise provided by the constitution.' This means that if the constitution otherwise provides in another section which has the effect of making a section or sections of Chapter 2 justiciable, it will be so interpreted by the courts.[27]In this connection, Section 13 of the Nigerian Constitution requires that 'It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this chapter of this constitution.' This section falls within chapter 2 of the constitution where the fundamental objectives and directive principles of state policy are contained forming economic social and cultural rights.

Displacements of Communities Resulting in Violation of Economic and Social Rights in Nigeria

There are cases in Nigeria where the African Commission on Human and Peoples' Rights had to exercise its powers of intervention while applying the provisions of the African Charter with respect to social and economic rights. An example of one of the cases is the case of *Social and Economic Rights Action Centre (SERAC) & Maroko Residents* v. *Nigeria.*[28] The rights sought to be protected were the right to housing, health and education. The facts of the case are as follows: On July 14, 1990, the military administration of Lagos State forcibly evicted approximately 300,000 residents of the Maroko district of Victoria Island from

[27] Per Niki Tobi, JSC, 659.

[28] Case taken to the African Union Commission by the Social and Economic Rights Action Center ("SERAC"), a non- governmental, non-partisan and voluntary initiative concerned with the promotion of economic and social rights in Nigeria (the "Applicant"), on behalf of the former residents of the Maroko district on the 3rd day of December 2008. Available at <allafrica.com/stories/200901150326.html > accessed 23 February 2020.

their homes and demolished their community. These evictions were carried out with no legal notice, consultation or process of law. The only warning of the impending destruction of their homes came in the form of press and radio reports appearing only days before the demolition. Some would not have seen those reports at all. Over the course of twelve days, the Lagos government destroyed the entire settlement of Maroko, including residential houses, religious institutions, schools, businesses, medical clinics, and community spaces. The demolition occurred at the peak of the rainy season, subjecting many evictees to exposure and the risk of disease. The demolition destroyed a vibrant community and local economy, as well as the family lives of the Maroko residents, and disrupted the education of Maroko's children. Before its demolition, Maroko was a sprawling, densely populated town on a small island adjacent to Victoria Island, the main business and financial area of Lagos, and Ikoyi, an upscale residential area and the former governmental centre of Nigeria. The majority of Maroko residents were low-income earners working in unskilled, low-wage, and informal sector jobs and trade. The purported justification for the demolition was that "the Maroko lands were below sea level, that they were prone to flooding, and that the people had to be removed so that the government could sand-fill the land and improve its infrastructure." No community leader had ever been consulted; no hearings or other public consultations or inquiries were held; no demolition notices were placed on the buildings scheduled for destruction, no individual notice to quit was ever provided to any Maroko resident, nor was any Maroko resident offered compensation or resettlement of any kind prior to the eviction. By forcibly evicting the Maroko residents, destroying their

community, failing to provide for adequate alternative housing, and continuing to threaten to evict them from their shelter, the government of Nigeria engaged in massive and systematic violations of the Maroko evictees' right to adequate housing as guaranteed by Articles 14, 16, and 18(1) of the African Charter and Article 16 of the Protocol, and other international human rights instruments. Lagos state has a duty to respect and protect the right to adequate housing of all her constituents, including the poor; and must ensure that in redeveloping the city, the local populations experience a non-decreasing level of well-being in the long-term.[29]

Unfortunately, despite the filing of the case by SERAC, a non-governmental organisation, the case was in court for 18 years and the victims never obtained any redress for their losses. The biggest and most enduring impact of the eviction has been its effect on the children of Maroko and their access to education. The destruction of their schools in 1990 and the construction of the single primary school in a government estate where some of them were resettled in 1993 resulted in many students missing several academic terms, and in some cases years because of distance to nearest school (exorbitant transport costs) and loss of school records. Many others dropped out of school due to homelessness and loss of parental income (whether by death, injury, or loss of employment). Direct consequences of this situation are the high rate of youth unemployment and juvenile

[29] T. Lawanson, D Odekunle and I Albert, "Urban Redevelopment and the Right to the City in Lagos, Nigeria." Retrieved from: <www.researchgate.net/publication/339415514_Urban_Redevelopment_and_the_Right_to_the_City_in_Lagos_Nigeria> accessed 1June 2020.

delinquency in the estates. Even though the community pooled resources to establish another primary school in 1995, there are still major challenges as average class size is 69-80. There is still no public senior secondary school in the community.

There are other cases of internally displaced persons in troubled communities where government mercenaries were used to displace and totally violate the rights of the people to housing and other consequential socio-economic rights. These include people living in the Niger Delta area of Nigeria where crises have occurred time and again in respect of oil exploration activities which destroyed farmlands and polluted the environment where the local people live. The case of *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR) v. Nigeria,* in defence of the Ogoni people,[30] explains how destruction and displacement can contribute immensely to the violation of socio-economic rights of people who are invariably displaced from their communities as a result of violence and crisis.[31] When violence erupted in the region, the first reaction from the government and oil companies was to kill agitators, destroy properties and burn down whole villages of these people in order to protect their oil investments without consideration for human rights and the lives of the vulnerable in the community. Thus, in this case, the African Commission on Human and Peoples' Rights established that the Nigerian

[30] Ogoni is one of the communities in the Niger Delta affected by oil exploration.

[31] Communication 155/96, *Social and Economic Rights Action Center (SERAC)/Center for Economic and Social Rights v Nigeria* Case No. ACHPR/COMM/AO44/1 (Afr. Comm. Hum & Peoples Rts May 27, 2002). Available at <www.umn.edu/humanrtsafrica/comcases/allcases.html> accessed 22 November 2016.

government at the material time was in breach of several provisions of the African Charter relating to second and third generation rights (which are primarily economic, social and cultural in nature), as well as solidarity rights, such as the right to a clean environment, the right to health, the right to housing and the right to food.[32] The Commission therefore held that by any measure of standards, the reaction of the government fell short of the minimum conduct expected of governments and, therefore, is in violation of Article 21 of the African Charter,[33] which states that "The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law." In the same case, the Complainants also asserted that the military government of Nigeria massively and systematically violated the right to adequate housing of members of the Ogoni community under Article 14, and implicitly recognised by Articles 16 and 18(1) of the African Charter. Article 14 of the African Charter provides: "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."

Following from the above, in Nigeria, much of the displacement in the Niger Delta region has been predicated on spills from 1970 till 2000.[34] In the 1970s, one such instance of oil spillage was in

[32] *Ibid* at 202.
[33] *Ibid* at paragraph 58.
[34] J Vidal 'Shell oil spills in the Niger Delta: 'Nowhere and no one has escaped' *The Guardian* 3 August 2011. Cited in R Adeola "The responsibility of businesses to

Igolu village in Isokoland as a result of the activities of Shell, resulting in the displacement of over 2 000 individuals in 1973.[35] In the 1980s, oil spillage from Texaco-operated Funiwa well and Agip-operated Ogada Brass pipelines in the Niger Delta region severely affected several communities.[36] In 1998, oil spillage at Osima creek in Bayelsa resulted in eight days of fire outbreaks, the destruction of an estimated 400 houses and the displacement of 130, 000 individuals.[37] Oil spillage from the Abiteye station operated by Chevron in the Delta state displaced over 10 communities and rendered hundreds of people homeless in 2007.[38]

There is thus a need to protect the economic and social rights of displaced people in order to ensure that they are compensated for their losses and that their lives can be re-built. This can be done employing the means of obtaining court orders compelling government to provide the necessary facilities and make arrangements for the welfare of displaced communities. Examples of such orders can be seen from some judgments of South African courts.

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prevent development-induced displacement in Africa," (2017) 17 *African Human Rights Law Journal* 244, 249.

[35] L Ajibade and A Awomuti "Petroleum exploitation or human exploitation? An overview of Niger Delta oil producing communities in Nigeria" (2009) 3 *African Research Review* 111, 114.Cited in Adeola (note 31 above).

[36] I Okonta I and O Douglas *Where vultures feast: Shell, human rights and oil* (2003) 113; Owolabi O and Okwechime I 'Oil and security in Nigeria: The Niger Delta crisis' (2007) 32 *Africa Development*, 1, 13.

[37] C Opukri and I Ibaba "Oil-induced environmental degradation and internal population displacement in Nigeria's Niger Delta" (2008) 10 *Journal of Sustainable Development in Africa* 173, 184. Cited in Adeola (note 31 above) 249.

[38] E Arubi "Oil spill displaces 10 Ijaw communities" *Vanguard* 13 February 2007.cited in Adeola (note 31 above).

Enforceability of Socio-Economic Rights in South Africa

A clear case on displacement of vulnerable people in South Africa is the case of *Government of the Republic of South Africa* v. *Grootboom*[39] which involved the right to housing. The facts of the case are as follows: Irene Grootboom was one of several hundred poor people, half of whom were children, who lived in an informal squatter settlement. The settlement lacked running water, electricity, sewage, and refuse removal services. Millions of South Africans still live in such conditions as a legacy of apartheid's influx control policies and forcible relocations. As a result of these conditions, the group moved on to vacant private land earmarked for low-income housing. The group was trespassing, however, so the owner obtained an eviction order. The situation worsened when the local government bulldozed the group's shanties and then burned the wreckage before the date set for eviction. The group then moved to a nearby municipal sports field and erected flimsy temporary structures. Winter rains left them unprotected under plastic sheeting, and the municipality declined to provide any assistance. The group applied to the court seeking a declaration that the government failed to comply with the right to housing. The constitutional court ruled for the settlers, declaring that "the action of the municipality was a breach of the right of the claimants to adequate shelter as provided for in the South African constitution.[40] The court instead asserted that the key question was whether the measures taken by the state to realise the right afforded by Section 26 are reasonable.[41] The Court explained, that the measures must establish a coherent

[39] 2000 (11) BCLR 1169 (CC).
[40] Section 26 (2).
[41] *Grootboom's* case (note 36 above) 33.

public housing programme directed towards the progressive realisation of the right of access to adequate housing within the state's available means.[42] Article 2 (1) of the ICESCR permits states to ensure that there will be a progressive realisation of the socio-economic rights as prescribed in the international instruments. Article 2 states as follows:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.[43]

Concerning the provisions of the ICESCR stating that governments should ensure the realisation of these rights means that governments should not be the institution that denies people of these rights. Rather government can ensure that where there is a short supply or no supply of adequate housing or health facilities or even schools there should be a program laid out for the progressive realisation of these rights. In Nigeria, for instance, private schools have more or less taken over the responsibility of government to provide education. Public schools in Nigeria were at one time among the best in the world; however, due to non-prioritisation of this right, the private sector has had to rise up for this inadequacy with the attendant cost of acquiring a good

[42] Ibid.
[43] Article 2 (1) ICESCR.

education which may adversely affect the vulnerable people in the society.

In South Africa, though the inclusion of economic and social rights in the South African Bill of Rights initially involved significant struggle, it ultimately achieved a goal considered impossible for decades.[44] According to Liebenberg, the inclusion of socio-economic rights as justiciable rights in the South African constitution represented the culmination of a process of struggle to recognise the socio-economic dimensions of human dignity, freedom, and equality.[45] Therefore, the South African constitutional court in the *Grootboom case*[46] stated that "our constitution entrenches both civil and political rights and social and economic rights. All the rights in our Bill of Rights are inter-related and mutually supporting."[47] In this regard, Justice Moseneke, in the same case, also expressed the axiomatic view that "fundamental rights cannot be meaningfully enjoyed unaccompanied by the substantive realisation of socio-economic rights."[48]

It follows that due to the inequality and socio-economic hardship suffered by South Africans during the apartheid era, it was important to establish a legal system where these issues of the

[44] E Christiansen "Adjudicating Non-justiciable Rights: Socio-Economic Rights and the South African Constitutional Court" (2006) 38 (1) *Columbia Human Rights Law Review* 321, 325.

[45] S Liebenberg *Socio-Economic Rights: Adjudication under a Transformative Constitution* (Juta & Co Ltd, Claremont, (2010) 21 cited in Govindjee A and Taiwo (note 23 above) 83.

[46] Supra (see note 36 above).

[47] Ibid.

[48] 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) Per Moseneke ACJ para 23.

past will be significantly erased. Therefore, the South African constitution contains a lengthy list of socio-economic rights, which the drafters hoped would protect and assist those disadvantaged by apartheid and those who are poor and vulnerable.[49] In several cases, the South African constitutional court has required the government to implement these rights.[50] For instance, with respect to the right to health (Section 27 of the South African Constitution), the South African Constitutional court expressed its position in the case of *Soobramoney v. Minister of Health*[51]*;* the court while reciting the constitution's fundamental principles stated thus:

> *We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed when the constitution was adopted and a commitment to address them, and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order. For as long as these conditions continue to exist that aspiration will have a hollow ring.*[52]

[49] M. Kende "The South African Constitutional Court's embrace of Socio-Economic Rights: A comparative perspective" (2003) 6 *Chapman Law Review* 137, 138.
[50] See for example, *Thiagraj Soobramoney* v *Minister of Health* (1997) 12 BCLR 1696 (CC).
[51] 1998 (1) SA 765 (CC).
[52] Per Chaskalson P paragraph 8.

The Constitutional Court of South Africa has thus adopted a reasonableness approach for assessing government policies for the protection of economic and social rights. There are examples where the constitutional court's reasonableness approach has led to the ordering of substantive entitlements. Substantive reasonableness requires courts to consider at the outset the needs and interests of the claimants. Then, courts must determine whether those needs and interests fall within the scope of the right in question and the weight to be accorded to them. Only against this backdrop should a government policy be assessed.[53]

The court in the *Grootboom case* further stated that "progressive realisation" meant that the government had an obligation to move as expeditiously and effectively as possible towards that goal and that the program must be reasonably implemented. An otherwise reasonable programme that is not implemented reasonably will not constitute compliance with the state's positive obligations.[54] The court then held:

> To be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those, whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right….If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test.[55]

[53] Kwadrans (note 2 above) 81.
[54] Ibid.
[55] Ibid.

This statement is significant because the Court was addressing the government's worthy efforts at constructing low-income housing. Nevertheless, the Grootboom group, and many others, could not obtain such housing for years given the backlog. The government simply had no policy to assist the homeless.[56] The court added by stating that: "The nationwide housing programme falls short of obligations imposed upon national government to the extent that it fails to recognise that the state must provide relief for those in desperate need. They are not to be ignored in the interests of an overall programme focused on medium and long-term objectives rather than short-term objectives. It is essential that a reasonable part of the national housing budget be devoted to this, but the precise allocation is for national government to decide in the first instance."[57]

This was the method adopted by the court in the case of South African Informal Traders Forum and others v. City of Johannesburg and others, South African National Traders Retail Association v. City of Johannesburg and others[58] where the city of Johannesburg forcibly removed informal traders, who were mainly women, from the streets of the city, alleging an increase in the level of crime in the inner city. After a deeper analysis of the case, the court reasoned and linked the socio-political rights, as it held that:

The ability of people to earn money and support themselves and their families is an important component of this right to dignity.

[56] Kende (note 46 above) 144.
[57] *Grootboom's* case (note 36 above) 66.
[58] (CCT 173/13, CCT 174/14) [2014] ZACC 8; 2014 (6) BCLR 726 (CC); 2014 (4) SA 371 (CC) (4 April 2014.

Without it, they faced humiliation and degradation. Most traders, we were told have dependants. Many of these dependants are children, who also have suffered hardship as the city denied their breadwinners' lawful entitlement to conduct their business…The City's conduct has a direct and on-going bearing on the rights of children, including their direct rights to basic nutrition, shelter, and basic health care services. The harm the traders were facing was immediate and irreversible.[59]

From the above statement, it is worth pointing out that government policies should be subject to scrutiny by the judicial arm of government. This may ensure that government policies are geared towards achieving progressively the enjoyment of social and economic rights of the vulnerable. Thus, the courts can effectively adjudicate and find a middle ground and thereby ensure that basic socio-economic rights are preserved and protected so that all groups of people are treated equally and discriminatory behaviour eradicated. Apart from declaratory orders that the courts can make against unfair practices by government agencies such as in the cases above, one should also not lose sight of the fact that several features of the judiciary make it well suited to vindicate socio-economic rights. Unlike the legislature and executive, courts are able to provide individualised remedies to aggrieved claimants and offer a comparatively speedy solution in the face of legislative or executive tardiness.[60] Courts are experts at interpretation of laws and are thus ideally suited to lend content to social rights and the

[59] Per Moseneke ACJ 17.

[60] M Pieterse, "Coming to terms with Judicial Enforcement of Socio-Economic Rights" (2004) 20 *South African Journal of Human Rights* 383, 395

standards of compliance that they impose.[61] Hence, courts should be capable of assessing government priorities in the light of the socio-economic rights enshrined in the constitution. An appropriate review paradigm and evaluative criteria can aid courts in doing so and thereby fortify the ability of adjudication to contribute to the realisation of socio-economic rights by guiding government policy and facilitating democratic dialogue.[62]

The Role of the Judiciary in the Protection of Socio-Economic Rights

In view of the above submissions, considering the plight of the vulnerable in Nigeria and South Africa who are denied their socio-economic rights such as access to justice, education, adequate shelter amongst other rights, the courts can apply what international human rights instruments propose while using the legal process, which is "rational and deliberative and is tailored towards producing fair and well-reasoned results."[63] The provisions of the African Charter are precise and can be used to protect the vulnerable if such cases are filed in court. Further, judges are educated, experienced and skilled in legal application and interpretation, and have the time and resources to properly deliberate issuesbefore them. Judges' independence and impartiality is (in principle) assured. While limited, their knowledge or expertise in specialist policy-making areas may in fact exceed that of members of the legislature or bureaucracy. In addition, courts handle real cases and thus can test more

[61] Ibid.
[62] S Van der Berg, "The Need for a capabilities-based Standard of Review for the adjudication of state Resource Allocation Decisions" (2015) 31 (2) *South African Journal on Human Rights* 330, 331. 331.
[63] Pieterse (note 57 above).

effectively the particular implications of abstract principles and discover problems the legislature could not forecast.[64] Even ideological opponents of the justiciability of socio-economic rights, like Lord Lester and Colm O'Cinneide, recognise that:

The Judiciary has an important role to play where there exists a sufficiently gross failure to uphold basic socio-economic rights. Where the other two branches have comprehensively failed to fulfil their responsibilities, then, the least dangerous branch has a duty to intervene.[65]

A comparison of the *Grootboom case* with the *Maroko* incident will reveal that the South African courts addressed the seriousness of the violations of the right to adequate shelter which is an economic and social right. Even though the government had no immediate plan, the *Grootboom case* was reported as a landmark judgement which guided future judgements of the court on the issue of the rights with respect to adequate shelter. Meanwhile, in Nigeria the courts still maintain that the socio-economic rights are not justiciable. The socio-economic right of adequate shelter may not be the immediate concern of the Nigerian government; however, it is completely unconstitutional for the government to be the violator of these socio-economic rights as the government should be committed to providing such

[64] H Spector, "Judicial Review, Rights and Democracy" (2003) 22 *Law and Philosophy* 281, 304 cited in Pieterse (note 57 above).

[65] Lord Lester QC and Colm O'Cinneide, 'The Effective Protection of Socio-economic rights' in Yas Ghai and Jill Cottrell (eds), *Economic, Social and Cultural Rights in Practice: The Role of Judges in implementing Economic, Social and Cultural Rights* (2004) cited in Odinkalu C, 'Lawyering for a Cause: The Femi Falana story and the Imperative of Justiciability of Socio-Economic Rights in Nigeria' (2013) Lecture in Honour of Femi Falana SAN 32, 43.

facilities rather than perpetrate the violation of the right. If situations such as the Maroko incident arise, the courts are duty bound to rely on domestic legislation to condemn the acts of government in this regard as well as other human right instruments such as the African Charter which invariably is now a domestic legislation in Nigeria.

Again, in the case of *Occupiers of 51 Olivia Road, Berea Township and 197 Main street, Johannesburg v. City of Johannesburg, Rand Properties (Pty),*[66] the City of Johannesburg acting on a legislation applied to the Johannesburg High Court for the eviction of more than 400 occupiers of buildings in the inner city on the basis that the buildings were unsafe and unhealthy. The High court refused to evict the occupiers, but instead ordered the city to remedy its housing programme, which was found to be inadequate. The Supreme Court of Appeal upheld the appeal by the city and granted eviction on condition that the city would provide alternative accommodation to those who would be rendered homeless. On appeal to the Constitutional Court, the Court, in a unanimous decision, per Yacoob J held *inter alia* that,

It is essential for a municipality to engage meaningfully before ejecting people from their homes if they would become homeless after the eviction. Various provisions of the constitution including Section 26 mandates this. People must be treated as human beings. A court must take into account whether there has been meaningful engagement before granting an order evicting people from their homes.

[66] 2008 ZACC 1.

In support of meaningful engagement with the affected parties, in the case of *Residents of Joe Slovo Community, Western Cape v. Thubelisha Homes*,[67] Justice Ngcobo asserted that "in implementing any programme giving effect to socio-economic rights, the key requirement, which must be met, is meaningful engagement between the government and residents."[68] Meaningful engagement is therefore an important guideline that the state can adopt in order to protect the socio-economic rights of the vulnerable. These submissions emphasise the importance of this socio-economic right to housing and courts can provide legal remedies for their violation.

International Guidelines on Internal Displacement for the Protection of Socio-Economic Rights

Recognising the need to address the various root causes of internal displacement, including development-induced displacement, the African Union (AU) in 2009 adopted a regional framework on internal displacement.[69] In article 10 of the African Union Convention for the Protection and Assistance of Internally-Displaced Persons in Africa (Kampala Convention), states are mandated to prevent displacement caused by projects carried out by public and private actors. Private actors in this provision refer to businesses. However, the Kampala Convention does not

[67] 2009 9 BCLR 847 (CC).
[68] Ibid.
[69] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa adopted at the Special Summit of the African Union Heads of State and Government in Kampala, Uganda, 19-23 October 2009 (Kampala Convention).

discuss what the responsibility of businesses entails within the context of development-induced displacement.[70]

Thus, other international guidelines for resettlement can be found in the World Bank Group's social safeguards for involuntary resettlement.[71] It is an operating manual designed to ensure that states and companies involved in the resettlement of communities will abide by human rights principles. According to the World Bank:

> Experience indicates that involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social, and environmental risks: production systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost. This policy includes safeguards to address and mitigate these impoverishment risks.[72]

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[70] Adeola (note 31 above) 245.

[71] World Bank Group (US), *Operating Manual OP 4.12-Involuntary Resettlement* December 2001, revised April 2013. Available at https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f89db.pdf accessed 25 November 2017.

[72] The Bank's policy on involuntary resettlement are the following:

> (a) Involuntary resettlement should be avoided where feasible, or minimised, exploring all viable alternative project designs.

The United Nations Basic Principles on Evictions No. 60-68 prescribes that: "When eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property." "Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better. Furthermore, the UN Covenant on Economic, Social and Cultural Rights prescribes that where it is impossible to return evictees to the lands they originally occupied, state authorities should provide just, equitable and adequate resettlement."

It is clear from the above recommendations that international best practice guidelines, if followed both in Nigeria and South Africa, may yield better results particularly in the area of consultation with the affected people before relocation in order to incorporate their concerns prior to the commencement of the relocation process. The Maroko residents have been given another location for resettlement; however, resettling in an environment which is not conducive is a hindrance to restoration of losses and adequate

(b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.
(c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

compensation. For instance, the Maroko evictees who are now residents at an uncompleted government estate experience homelessness and inadequate housing. There was no government resettlement plan, and a resettlement committee was set six days after the demolition, due principally to intensive local and international pressures on the government.[73] Evictees sought refuge under bridges, in church yards, open fields and other informal settlements. In view of this, if the government complies with best practices as recommended by the international codes, these codes may proffer certain practices (popularly known as best practices) for effective protection of the rights of people of these rural communities and the vulnerable.

The allocation of apartments which followed the setting up of a resettlement committee was found to be highly discriminatory as only landlords with evidence of property ownership prior to 1972 were considered. Thus, of the estimated 41,776 landlords displaced from Maroko, only 2,933 were considered for relocation, of which 1,766 were allocated houses in the new government housing estate.[74]

Conclusion and Recommendations.

As a result of the above cases and many more not cited in this paper, it is clear that the courts are recognised as the watchmen of the laws which individuals as well as governments are expected to respect and uphold. For instance, if an individual destroys property or burns down another's house, that will be a case of the crime of arson. However, some government agencies often

[73] Lawanson, Odekunle and Albert (note 26 above).
[74] Ibid.

commit such acts of wanton destruction, rape and arson with no fear of the consequences of such acts. Therefore, the courts are duty bound to pronounce on such acts and award, at the very least, compensation to the victims of such violations.

It is therefore recommended that in protecting socio-economic rights, the Nigerian courts can learn from the South African courts in their judicial intervention by adopting the approach of the Constitutional Court in South Africa. The Nigerian courts can seek to examine policies and activities of the government or any third party as is the case with the South African courts. The courts must recognise that one of the basic tenets of the rule of law is that anyone may challenge the legality of a law or of someone's conduct. It is a principle which is mirrored by the Latin maxim "*ubi jus ibi remedium*" (where there is a right, there must be a remedy). In other words, in order to give effect to the right to challenge the legality of law or conduct, there must be an independent entity capable of enforcing it.

Secondly, the Nigerian Constitution can be amended in order to reflect the indivisibility of both types of rights. The knowledge that their actions can be challenged in a court of law may help to curb government officials' destructive attitude. This can be a point of convergence between the Nigerian and South African laws by ensuring government officials can be mandated by the courts to ensure meaningful engagement with communities before dislocations or displacements take place as shown in the South African cases in this paper. In Nigeria, the absence of enough adjudication on the violation of the right to shelter and adequate compensation encourages wanton destruction by government officials. Thus, the approach by the South African

courts can be emulated by the Nigerian courts and dislocations of communities can be done in compliance with a court order and therefore the communities can be given sufficient notice and adequate compensation paid to the victims of the dislocation.

In addition, evictions leading to destruction of lives and property can be regarded as a violation of social and economic rights and additionally be considered as violence against persons, thus bringing it into the realm of civil and political rights such as the right to life and the right to dignity of the human person as provided under sections 33 (1) and 34 of the 1999 Nigerian Constitution.

JUSTICE IN TIMES OF EMERGENCY: LESSONS FROM THE COVID-19 PANDEMIC

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Abstract

Justice is one of the fundamental and most cherished benefits of constitutional democracy in modern day governance systems. The legal restrictions in justice systems and other extraneous challenges, however, negatively impact on the accessibility of justice for all. To improve access to justice, these restrictions should be reduced by prioritising substantive justice over technicalities and traditions, especially where they have no substantive impact on justice delivery. During the COVID 19 pandemics, attempts were made to introduce approaches to reduce some of these restrictions in order to improve access to justice. This paper examined these approaches as more sustainable alternative initiatives to improving access to justice during the COIVID 19 experience. The paper adopts a critical analysis approach at examining the initiatives and the challenges they sought to resolve, their successes and limitations. The paper finds that abundant opportunities exist for improving access to justice. It further finds that what is mostly required is an approach of prioritising substantive justice over technicalities and traditions. The paper thus makes recommendations against each challenge and how to make each good initiative

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sustainable. The paper is useful for scholars in law and stakeholders in the justice system towards crafting universally effective justice promotion initiatives.

KEYWORDS: *Access to Justice, Alternative Dispute Resolution, Criminal Justice, Crisis, Human Rights*

Introduction

Justice is one of the key hallmarks of a constitutional democracy. It demonstrates and assures citizens of the capacity of the law through the state to protect everyone. The best time to demonstrate this capacity is during times of crisis and emergency. The COVID 19 pandemic threw up this opportunity for Nigeria to assess itself, show the extent its laws promote justice and what may be done, if any, to improve justice in Nigeria. Justice is beyond access to court. It includes the process of deciding based on authentic and reliable information whether to approach courts or explore other options. Justice starts with access to information about understanding one's rights and duties, accessing those rights and promoting justice. For instance, with regard to judicial process of promoting justice, upon understanding one's rights and duties and feeling it is being breached, the next step is decision on how to enforce those rights: whether to access the courts, the capacity to understand that you need legal representation and being able to afford one or have one provided for you by the state. These are facilities that should be accessible to everyone, whether wealthy, poor, healthy or sickly. More importantly, in times of emergency and crisis, it should be available to persons whom the crisis or emergency may affect most or whose capacity to fend for themselves would be drastically reduced.

The facilities should, however, be such that every person can access. An inequality of access to justice facilities should not be created to benefit the vulnerable only and thereby short-change the supposedly capable. Such policy would only be creating another group of oppressed and disenfranchised. This can be achieved by exploring all policies and initiatives developed to protect the vulnerable to ensure that others are not excluded. Accordingly, the discourse in this paper examines the issue of access to justice from an inclusive perspective – for both the vulnerable and the capable. Accordingly, in this paper we explore access to justice in Nigeria in the context of COVID 19 challenges and initiatives and what may be done to strengthen existing policies or introduce new ones.

To explore these issues, the remaining parts of the paper are structured as follows: The next section provides a conceptual clarification of the key concepts of this paper. This is followed by a literature review on access to justice in Nigeria. Next segment deals with presentation of the challenges thrown up by the COVID-19 pandemic, how attempts were made to contain them, and examination of the sustainability of each initiative towards promoting access to justice for all in Nigeria. Thereafter, is a set of recommendations on what may be done to meet identified challenges as a model for improving access to justice in Nigeria. The paper ends with a conclusion.

Background

Access to justice has been variously defined with scholars emphasising different aspects depending on the author's intention or context. However, in Nigeria, the primacy of justice is duly enshrined in the Nigerian Constitution wherein it categorically

states to the effect that justice, democracy, security and welfare of citizens is the primary objective of government.[75] These objectives can neither be achieved nor sustained without citizens having access to justice which ensures that security of persons are maintained, peace is enshrined and opportunity for economic development assured. These objectives are not meant only for times of peace and stability; rather they are most needed in times of crisis and emergency. These are times when more than any other time, the law should be dependable, stable and not ad hoc or discretionary.

The events of the COVID-19 pandemic in Nigeria, particularly in the justice system, seem to have created a different impression. Ironically, the challenges arose both from judicial officers and legal practitioners.[76] There seem not to be any consensus on the primacy of justice or the understanding of constitutionality.[77] For instance, whereas the police continued to arrest people and put them in detention, the Chief Justice of Nigeria announced a lockdown of courts without first setting out a sustainable system to ensure that the justice system is not grounded.[78] Everyone seemed to be in panic mode, including the judiciary. Ironically, when the Chief Justice of Nigeria (CJN) eventually realised the

[75]CFRN 1999 s 14(1) (2) (b)

[76]The Guardian, "Lawyers sue FG, demand categorization of Legal practice as essential service" The Guardian, May 6th 2020, The Guardian. Available online at: <https://guardian.ng/news/lawyers-sue-fg-demand-categorization-of-legal-practice-as-essential-service/> accessed 1ST February 2022

[77] See Bethel Uzoma Ihugba'Conceptualizing Constitutionalism in Times of Emergency: The Covid-19 Experience' University of Port Harcourt Law Review, (2020) Vol. 4. 40 -52, 47

[78]SeeHalimah Yahaya'Coronavirus: Nigeria shuts all courts' March 23, 2020<https://www.premiumtimesng.com/news/headlines/383446-just-in-coronavirus-nigeria-shuts-all-courts.html> accessed 16TH February 2022

implication of the justice system shut down and sought to introduce remote justice system, it was challenged by some lawyers.[79] There was less attempt to improve CJN's initiatives but more to condemn it. In fact, when some groups of lawyers sought court intervention to declare legal services an essential service, the idea was lampooned by some other lawyers.[80] All these incidents raise the question of whether the justice system in Nigeria is strong enough to withstand such inevitable though unplanned shocks. It is recognised that the shocks and attendant missteps were not peculiar to Nigeria. Even some advanced systems faced similar challenges, although it appears that Nigeria, amongst her peers had a harder time stabilising, if at all it has done so. It is against this background that questions of how our justice system fares in times of crisis and how it may be improved arise.

[79]See Unini Chioma, "Lagos State Drags FG, NASS, To Supreme Court, Seeks Determination of Constitutionality of Online Court Hearings" June 7th 2020, The Nigerianlawyer. Available online at: <https://thenigerialawyer.com/lagos-state-drags-fg-nass-to-supreme-court-seeks-determination-of-constitutionality-of-online-court-hearings/>accessed 1ST February 2022: Adegboyega Awomolo "Virtual Court Hearing Does Not Pass The Test For Proceedings Conducted in Public: There is need for Constitutional Amendment" Barristerng May 20 2020,<https://www.barristerng.com/virtual-court-hearing-does-not-pass-the-test-for-proceedings-conducted-in-public-there-is-need-for-constitutional-amendment/> accessed 1ST February 2022; Queen Esther Ironsi, "Nigeria Senate introduces bill to legalise virtual court proceedings" Premium Times Online, May 12 2020,<https://www.premiumtimesng.com/news/headlines/392429-nigeria-senate-introduces-bill-to-legalise-virtual-court-proceedings.html> accessed 1ST February 2022

[80] See Raphael Christopher "Case for Designating Lawyers as Essential Service Providers during COVID-19 Lockdown" theloyalnigerianlawyer, May 24th 2020, available online at: <https://loyalnigerianlawyer.com/case-for-designating-lawyers-as-essential-service-providers-during-covid-19-lockdown/> accessed 1ST February 2022, The case was not just about getting court approval but also swaying public opinion in favour of improving access to justice

Clarification of Concepts

To properly address these issues, it is better to first define and appreciate key concepts. In this work key concepts include Justice, access to justice, constitutional democracy and fundamental rights. Understanding these concepts will provide a rich context to appreciating the arguments herein proffered.

Justice

Justice has several conceptualisations depending on the context and subject of discussion. Generally, however, it implies equity, equality and fairness in the distribution of protection by state including the distribution of public goods or resource. For these reasons, the recurrent theme in the discussion about justice is fairness and equity in procedural requirements and substantive provisions.[81] Although justice is seemingly an abstract philosophical concept which may be determined by the legal, cultural, religious and political background of the discourse, it is practicalised in the day-to-day relationship between individuals and with the state. For instance, in the context of Nigeria, justice is perceived as social justice. The Constitution of Federal Republic of Nigeria 1999 demonstrates or expects demonstration of justice through the principles of rule of law, sovereignty of the people, primacy of welfare and security of the people, and democratic participation in governance.[82] Accordingly, for purposes of this paper justice is defined in terms of its practical application in the equal and equitable enjoyment of rights and

[81] See Peter Vallentyne (ed), 'Justice in General: An Introduction in Equality and Justice: Justice in General, (Routledge, 2003)
[82] CFRN 1999 s 14

privileges that are permitted and mandated by law. Therefore, an unequal and unfair enjoyment of rights and privileges is injustice.

Access to Justice

This is the availability of access and knowledge about a system, facility and structures which assure and empower citizens and every individual within a state to approach the State for the protection and enforcement of rights and compelling the state to perform its duties. Access to justice starts with the understanding of a constitutional entitlement and duty in the enjoyment of such right through a constitutionally guaranteed and predictable process.[83] In details, these include the knowledge of these fundamental rights, of rights statutorily provided, how to enforce them, choice of options for their enforcement, and the ability to enjoy the fruits of a judicial or administrative decision on the enjoyment of rights and performance of civic duties.[84] Access to justice is assured by a sustainable and effective constitutional democracy where fundamental rights are protected. In practical terms, this entails the existence and access to every facility and infrastructure that ensures equitable access and enjoyment of fundamental rights of each individual. This means the existence

[83]Office of the Parliamentary Counsel, 'When Laws Become Too Complex: A review into the causes of complex legislation' Office of the Parliamentary, Counsel Cabinet Office March 2013, 34 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/187015/GoodLaw_report_8April_AP.pdf> accessed 1 February 2022.

[84]Stefanie A. Lindquist and Frank C. Cross,'Stability, Predictability And The Rule Of Law: Stare Decisis As Reciprocity Norm' <https://law.utexas.edu/conferences/measuring/The%20Papers/Rule%20of%20Law%20Conference.crosslindquist.pdf> accessed 1 February 2022; Marzena KORDELA 'The Principle of Legal Certainty as a Fundamental Element of the Formal Concept of the Rule of Law' Revue du notariat<https://www.erudit.org/en/journals/notariat/2008-v110-n2-notariat03643/1045553ar.pdf> accessed 1 February 2022

of an independent judiciary, a simplified process of accessing the judiciary, a knowledge of its existence and affordability (or not obstructed by cost).[85]

Constitutional Democracy

Constitutional Democracy is arrived at by a combination of the two concepts of constitutional supremacy and democratic process. This implies a democratic state wherein the constitution dictates how the process is achieved and maintained.[86] The key pillars of constitutional democracy are that the fundamental rights of citizens are assured and protected through an independent judiciary and that government is formed through democratically elected government where principles of separation of powers is fully maintained and observed.[87] In other words, a government where sovereign power resides in and is exercised by the citizens directly or through representatives.[88] These attributes must be demonstrated in the Constitution. In the case of Nigeria, the

[85] Bem Angwe 'Access to Justice and Protection of Rights of Citizens' being a paper presented, [by Secretary-General/CEO Centre For Legal Rights Advancement (CLERA)] at a Session of The Refresher Course for Magistrates on Modern Judicial Practice And Procedure-Modernizing Judicial Practices and Procedures, Held at the Andrews Otutu Obaseki Auditorium, National Judicial Institute, Abuja 24th-28th April, 2017, < https://nji.gov.ng/images/Workshop_Papers/2017/Refresher_Magistrates/s5.pdf > accessed 22 August 2022

[86] See CFRN 1999 s 1; Bethel U. Ihugba (2020) note 3, 43

[87]Diamond, L. What is Democracy?(2004) Lecture at Hilla University for Humanistic Studies
January 21, 2004, Stanford University<https://diamond-democracy.stanford.edu/speaking/lectures/what-democracy> accessed 22 February 2021; see generally Paula Becker and Jean-Aimé A. Raveloson, What is Democracy? September 2008Friedrich-Ebert-Stiftung (FES) and University of Trier, <http://library.fes.de/pdf-files/bueros/madagaskar/05860.pdf> accessed 22 February 2021

[88]Black's Law Dictionary 435 (9th ed. 2009)

Constitution of the Federal Republic of Nigeria 1999, wherein the principles of equality before the law, rule of law, separation of powers and independent judiciary are constitutionally enshrined.[89] The implication therefore is that justice delivery in Nigeria whether in times of stability or emergency must abide by the Constitution. The Constitution does not exempt times of emergency under its scope. It rather makes provisions for adherence to its provisions at all times including special emergency powers[90] and the limit to which certain provisions of the Constitution may be derogated.[91] In other words, there is no vacuum for discretion.

Fundamental Rights

In Nigeria, fundamental rights are constitutionally enshrined. These rights are non-negotiable except in accordance with the Constitution and through the power, process and procedure statutorily provided and regulated.[92] Under the CFRN 1999 Chapter IV, there are 11 fundamental rights. These are the (s 33) Right to Life, (s 34) the Right to Dignity of Human Person, (s 35) the Right to Personal Liberty, (s 36) the Right to Fair Hearing, (s 37) the Right to Private and Family Life, (s 38) the Right to Freedom of Thought, Conscience and Religion, (s 39) the Right to Freedom of Expression and the Press, (s 40) the Rights to Peaceful Assembly and Association, (s 41) the Right to Freedom of Movement, (s 42) the Right to Freedom from Discrimination

[89] See CFRN 1999ss 1, 4, 6 and chapter IV; Charles N. Quigley "Constitutional Democracy" Center for Civic Education. Available online at: <www.civiced.org/resources/publications/resource-materials/390-constitutional-democracy> accessed 29th April 2018.

[90] E.g. CFRN 1999 ss 45, 64, 135 and 305

[91] CFRN 1999 ss 45,

[92] CFRN 1999 s 45

and then, (s 43) the Right to Acquire and Own Immovable Property anywhere in Nigeria.[93] Access to justice is assured when individuals have confidence that the justice system is available and capable to protect and promote these rights.

The Extant Discussion

Scholars have sought to explore the concept of access to justice from several perspectives. One of such scholars found that the validity of access to justice is the enshrinement of rule of law demonstrated by none interference with and obedience to judgments of courts.[94] When judgments of courts lose efficacy because government does not obey them, then access to justice is of no value. In a similar position, an early scholarly work argued that access to justice does not just mean access to courts but includes effective and efficient dispensation of justice.[95] One of the ways of ensuring access to justice is improving legal education and imbuing in practitioners the culture of justice for all. This includes addressing factors like awareness by citizens of their rights and how to protect those rights. Others include issues of poverty and illiteracy.[96] Enhancing access to justice must not overlook the impact these negative factors have. In an apparent

[93]Chapter IV CFRN 1999

[94]Ayodele, John Alade 'The Concept of Rule of Law and the Notion of Justice in the Survival of the Nigerian State' Global Journal of Social Sciences' VOL 20, 2021: 25-32, 30 <https://dx.doi.org/10.4314/gjss.v20i1.3> accessed 12th January 2022

[95]C. I.N. Emelie 'Legal Education and Access to Justice in Nigeria' Research Journal of Humanities, Legal Studies & International DevelopmentVol. 2, No. 1 April, 2017, <http://internationalpolicybrief.org/journals/international-scientific-research-consortium-journals/research-jrnl-of-humanities-legal-studies-intl-dev-vol2-no1-april-2017> or <http://internationalpolicybrief.org/images/2017/APRIL/RJH/ARTICLE12.pdf> accessed 12th January 2022

[96]ibid

agreement with these conclusions, an empirical study on access to justice in Nigeria made some confirmatory findings. The 2018 study found that the problem of access to justice is universal and affects both poor and rich and that none access to justice for any group eventually result in harm and injustice to all.[97] It found however, that education and wealth improves access to justice for those who have education and wealth. Education here includes knowledge of the legal system, how it operates and how to access it.[98]Against these findings, it can be posited that to ensure equal access to justice, the government and other stakeholders must work to improve access to legal information, be creative in the use of alternative dispute resolution processes before civil matters degenerate to criminal cases and give the police a positive and civil role to play in resolving non-criminal cases.[99]A United Nations Development Programmes (UNDP) guidance note appears to have drawn from these studies to develop an access to justice guidance note for the COVID 19 period. The guidance note outlined access to justice improving strategies to include continuity plans to ensure that pandemics and consequential lockdowns do not stop justice dispensation.[100] Such strategic plan includes prioritising cases, supporting remote functioning through

[97]Rodrigo Núñez et al 'Justice Needs and Satisfaction in Nigeria2018: Legal problems in daily life' The Hague Institute for Innovation of Law 12 September 2018 <> accessed 12th January 2022

[98]ibid

[99]Ibid 222

[100]United Nations Office on Drugs and Crime "UNODC and UNDP issue guidance note on ensuring access to justice during the COVID-19 pandemic" United Nations <https://www.unodc.org/unodc/en/frontpage/2020/May/unodc-and-undp-issue-guidance-note-on-ensuring-access-to-justice-during-the-covid-19-pandemic.html> accessed 16th February 2022

effective deployment of technology,[101] being gender sensitive and inclusive in approach and expanding access to legal information. Access to legal information is important because at times, knowledge could help avoid undue waste of time in the court system.[102] One of the areas that this was experienced as noted by another scholar is on the issue of bail and trial for criminal offences, especially where defendants are remanded in jail.[103] The extant literature suggest that initiatives can be developed from crisis strategies to create an inclusive and sustainable access to justice model. We explore this in the next section as we look at attempts at negotiating the impacts of COVID 19 pandemic measures on the justice system.

Legal Initiatives and Challenges to Justice Caused by Covid 19 Pandemic

During the COVID 19 pandemics, particularly at its peak in Nigeria in March 2020, people felt confused as to how to resolve their legal issues. This was particularly troubling as courts were closed and lawyers were on lockdown like many in other professions. The directive coming from the office of the Chief Justice of Nigeria was that all courts should be closed for all

[101]Tania Sourdin, Bin Li, Donna McNamara, 'Court Innovations and Access to Justice in Times of Crisis' <https://www.researchgate.net/publication/343984796_Court_Innovations_and_Access_to_Justice_in_Times_of_Crisis?enrichId=rgreq-7fa0a81819fdb9e229dc9f12f04e3e7e-XXX&enrichSource=Y292ZXJQYWdlOzM0Mzk4NDc5NjtBUzo5MzE0NzA5MzE2NzcxOTVAMTU5OTA5MTM4NDg2NA%3D%3D&el=1_x_3&_esc=publicationCoverPdf> accessed 13 January 2022

[102]UNDP, 'Guidance Note: Ensuring access to justice in the context of COVID 19' UNDP May 2020 <https://www.undp.org/publications/ensuring-access-justice-context-covid-19#modal-publication-download> accessed 16th February 2022

[103]Tania Sourdin, Bin Li, Donna McNamara (n 27) 2

services except for matters 'that are urgent, essential or time-bound according to our extant laws'.[104] However, the directive failed to properly describe or define 'urgent, essential and time bound matters'. While election cases obviously fell under time bound matters, it was quite difficult to tell persons facing fundamental right abuses, for instance in form of false imprisonment, that their cases were not urgent. The directive was thus not helpful as these criteria were left undefined. The circumstance was more troublesome because although litigation lawyers were aware of this directive, the general public were hardly aware. More intriguing was that there were no emergency or contact numbers which the general public could access to reach the court administration. The effect was to leave litigants entirely at the mercy of lawyers.

With emergency numbers or dedicated websites, the general public would have been able to use these media to receive regular updates on the pandemic particularly as it relates to justice delivery. It would also have been a resource to help citizens understand how the lockdown affected them and what was expected of them. Questions about court sitting days, cause lists, email addresses and phone numbers of relevant officers could have been made available. It is however, noteworthy that later on in the pandemic, some courts made it a point of duty to share contact details of court officers with lawyers. While this was an

[104]Circular from the CJN titled 'Re: Preventive Measures on the Spread of Corona Virus (COVID – 19) and the Protection of Justices, Judges and Staff of Courts'. See Halimah Yahaya 'Coronavirus**:** Nigeria shuts all courts' March 23, 2020. Premium Times<https://www.premiumtimesng.com/news/headlines/383446-just-in-coronavirus-nigeria-shuts-all-courts.html> accessed 14th January 2022

improvement, it was discriminatory and only benefited lawyers while the general public were made to suffer.

There was also the issue of legal representation. Most lawyers panicked and did not have the courage to leave their homes and offices to attend to clients. The legal system was also unfriendly to innovative approaches at legal representation. Both the lawyers and judicial officers were not receptive of innovative approaches and resolving disputes. According to section 36 of the Constitution, citizens are entitled to legal representation where they cannot afford one. Such representation usually come as pro bono services from private legal practitioners and lawyers working with the Legal Aids Council. But during this period, none was forthcoming. An environment that encouraged remote working or provided willing lawyers with protective equipment would have minimised the negative impact of the COVID lockdown on the protection and promotion of rights of citizens. It is true that at a time, about two months after the initial lockdown, lawyers were agitating for exemption from the lockdown and declaration of legal services as essential services. This call was never categorically heeded.[105] This was not an encouraging response from the judiciary or body of lawyers.

Mobile court is another initiative that was promoted during the pandemic and lockdown in Nigeria. It improved an important aspect of access to justice – speedy dispensation of justice. The courts were brought closer to parties to a dispute. More

[105]Editorial 'Lawyers sue FG, demand categorization of Legal practice as essential service' The Guardian Newspapers 06 May 2020 <https://guardian.ng/news/lawyers-sue-fg-demand-categorization-of-legal-practice-as-essential-service/> accessed 14 January 2022.

importantly, parties did not have to wait indefinitely to get court dates for simple offences and civil wrongs. In Abuja, this was held at the Eagle Square. Anambra and Kwara states also took up this initiative.[106] The trials at these courts were however mostly limited to violation of COVID 19 regulations. The cases included breaches like failure to wear mask and gathering in excessive numbers.[107]

While this was a welcome initiative, its limitation to implementation of COVID regulation breaches was not ideal. It appeared more government centred than people centred. This was especially because, as was demonstrated in Abuja, most of the convictions resulted in payment of fines. It gave the impression that government was not interested in resolving crimes that directly affected individuals daily e.g., theft, assault and battery. The mobile courts should have been given the opportunity to try out the resolution of other misdemeanours and simple offences involving real victims.[108] Lagos State appears to have taken this approach and established mobile courts with expanded jurisdiction. The Lagos State Mobile Courts tried traffic as well as environmental offences.[109] While this was better than limiting it to COVID breaches, it still left a lot unattended. Offences

[106]Abraham Achirga 'Mobile courts target Nigeria's COVID-19 rule-breakers' REUTERS <https://www.reuters.com/article/uk-health-coronavirus-nigeria-court-idUSKBN2B3160> ACCESSED 14 January 2022

[107] ibid

[108]This is not to say that COVID does not have real victims. It is however a recognition that for many people, that is the perception. People still had to live their lives and resolve everyday struggles and challenges.

[109]Tayo Ogunbiyi 'Appraising Reforms In The Lagos' Justice Sector' Lagos State Government Official Web Portal, <https://lagosstate.gov.ng/blog/2019/04/28/appraising-reforms-in-the-lagos-justice-sector/> accessed 14 January 2022

directly affecting persons were not covered by the mobile courts. Another important check that seems to have been absent in the establishment of these mobile courts was the check for full and proper legal defence for defendants. While speedy dispensation of justice is a good objective, proper legal defence should not be sacrificed. That would be a breach of fundamental right to fair hearing as enshrined in section 36 of the Constitution of the Federal Republic of Nigeria 1999 (CFRN).

Another important initiative introduced as strategy to combat COVID 19 which can be adapted solely for access to justice was the establishment of COVID 19 emergency and toll-free telephone number. It is a means for Nigerians to report any COVID related issues.[110] The telephone number continues to play very important role for reporting outbreaks and calling for assistance. Other roles include reassuring the population that government was available to listen and guide them in the difficult process of dealing with COVID 19. The telephone numbers included alternate numbers to inform first responders about persons seeking help on COVID related health issues. It is also to pass critical information to the Federal and State Governments' Task Forces on COVID-19.[111]This initiative is a confirmation of the importance of information and access to information at resolving human challenges.

[110]NCC 'COVID-19: NCC's 112 National Emergency Number Offers Succour to Nigerians' Nigerian Communications Commission (NCC)02 APRIL 2020 <https://www.ncc.gov.ng/media-centre/news-headlines/810-covid-19-ncc-s-112-national-emergency-number-offers-succour-to-nigerians> accessed 17TH January 2022

[111]ibid

Access to justice, particularly understanding individuals' rights and where to seek assistance is one of the key challenges to achievement of the objectives of Sustainable Development Goal (SDG) programme. For instance, target 16.3 of the SDGs focuses on measuring whether persons who are faced with legal problems, both civil and criminal legal problems, are able to get access to legal advice that would assist in resolving their legal problems.[112] This is on the premise that at this stage, access to information rather than legal advice or representation may be most necessary.[113] Aside legal advice, one of the ways of ensuring access to justice is by providing access to information. Provision of emergency telephone numbers, emails addresses and websites, as done for COVID-19 emergencies, assists citizens and residents to access information on specific legal questions which will then guide their decision on how, whether and when to enforce their rights.[114]

The COVID-19 initiatives with regards to prison decongestion also demonstrated that people need not be locked up for every

[112] UN Sustainable Development Goals, Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels < https://unstats.un.org/sdgs/metadata/?Text=&Goal=16&Target=16.3#:~:text=Target%2016.3%3A%20Promote%20the%20rule,access%20to%20justice%20for%20all > accessed 22 August 2022

[113] World Justice Project, 'Access to Civil Justice Indicator Proposal for SDG Target 16.3.3' World Justice Project <https://worldjusticeproject.org/our-work/publications/working-papers/access-civil-justice-indicator-proposal-sdg-target-1633> accessed 17 January 2022

[114]The UN puts it this way: 16.10 ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements. See UNITED NATIONS SUSTAINABLE DEVELOPMENT GOALS, 'Goal 16: Promote just, peaceful and inclusive societies' UNITED NATIONS, <https://www.un.org/sustainabledevelopment/peace-justice/> accessed 17 January 2022

minor infraction. Justice can still be achieved if people attend courts from their homes. People need reassurance that, in accordance with the Constitution, they are indeed innocent until proved guilty. For some who have been found guilty, there are other forms of punishment and rehabilitation processes that could be initiated aside incarceration. However, the approach being followed in some States of the Federation is not clear. According to a report from Lagos State, the Police treated suspects who tested positive to COVID 19 instead of sending them to detention centres.[115] It is unclear if this approach was in accordance with the call for the Minister of Interior to decongest the Prison which was made sometime in March 2020.[116] The Ministers of Interior and Justice recognised the threat to health posed by congestion of prisons both to the prisoners and staff of correctional facilities including judges and court officials. This is especially the case as over 70 percent of detainees were awaiting trial. According to the Comptroller General of Corrections at the time, there were '74,127 inmates, among whom 1,450 are female, 21,901 convicted and 52,226 awaiting trial.'[117]A UNDP report suggests that the approaches being considered by Nigeria include release of prisoners convicted or detained for minor offences. Another approach is to improve the health facilities at detention

[115]Ifeoluwa Adediran 'COVID-19: How police are decongesting prisons – Official' Premium Times, September 16, 2021 <https://www.premiumtimesng.com/news/more-news/485205-covid-19-how-police-are-decongesting-prisons-official.html> accessed 18 January 2022

[116]Oge Udegbunam 'Coronavirus: Nigerian minister wants speedy decongestion of prisons' Premium Times, March 26, 2020 <https://www.premiumtimesng.com/coronavirus/384180-coronavirus-nigerian-minister-wants-speedy-decongestion-of-prisons.html> accessed 18 January 2022

[117]ibid

facilities.[118] There is also the opportunity of granting bail to detainees even for offences more serious other than capital offence. Bail is a constitutional right and not gratuitous.[119] Detention is only to ensure that defendants are present to answer for criminal charges against them. It is not meant to be punitive. Accordingly, where there is no fear of the defendant absconding, there should be no need to detain.[120] Another approach which should augment the issuance of bail, including bail on self-recognisance, is the power of the Chief Judge to order the release of persons.[121] The exercise of this power is not exactly a commendation to the justice system but an indictment of failure of the justice system and an attempt at providing a remedy to a constitutional breach. This is because it only arises or is exercised when the justice system has erred against a defendant. According to the Criminal Justice (Release from Custody) Special Provisions Act, the Chief Justice of Nigeria or the Chief Judge of a state can only exercise this power when it is demonstrated that detention is unlawful or the person has been detained longer than the length of whatever sentence the person may have received had the person been convicted.[122] In other words, the person being released should not be in detention in the first place at the time the person is being released. With regards to COVID 19

[118] UNODC 'Leaving No One Behind: Protecting people in prisons from COVID-19'UNODC <https://www.unodc.org/nigeria/en/press/leaving-no-one-behind_-protecting-people-in-prisons-from-covid-19.html> ACCESSED 18 January 2022
[119]CFRN 1999 s 35
[120] See – Onyebuchi V FRN & Ors (2007) LPELR-CA/L/358/07; Suleiman& Anor v COP., Plateau State [2008] 8 NWLR (PT.1089) 298
[121] See Criminal Justice (Release from Custody) Special Provisions Act, Cap 79,1990, s 1
[122]ibid

strategies, this power can only be used to expedite action to clean up and decongest the already congested prisons.

Another interesting approach is the call to expand the scope of plea bargain to all states [123] as contained in the Administration of Criminal Justice Act 2015 (ACJA) through domestication of the ACJA and the use of alternative dispute resolution to resolve some criminal cases.[124] These include criminal cases that arise from civil cases between natural persons or involving natural persons. Often, criminal cases arise because parties are unable to resolve what should ordinarily be civil disputes. As is wont to happen in many cases which flood police stations, individuals usually call in the police to intervene and this may end up being escalated to detentions. In such cases, the parties want the police to arrest people and escalate the civil case to a criminal one when Alternative Dispute Resolution (ADR) initiatives, including proper record keeping could have been positively deployed.[125] Incidentally, the new Police Act 2020 promotes this approach through its provisions on promotion of prevention of crime as

[123] Administration of Criminal Justice Act 2015 (ACJA) s 270

[124]See Anoop Kumar & Udai Pratap Singh, ADR In Criminal Justice System In The Backdrop Of Global Pandemic, White Black Legal : The Law Journal, Volume 2 : Issue 1 (June 2020)<https://www.researchgate.net/publication/342365738_ADR_IN_CRIMINAL_JUSTICE_SYSTEM_IN_THE_BACKDROP_OF_GLOBAL_PANDEMIC> accessed 28th January 2022; Diana Awino Orago, "Alternative Dispute Resolution in Criminal Justice System in Kenya" LLM Dissertation, School of Law, Parklands Campus, University of Nairobi 2016<http://erepository.uonbi.ac.ke/bitstream/handle/11295/154149/Final..A.D.R%20Dissertation%20Nov%202020%20(1).pdf?sequence=1> accessed 28 January 2022

[125]Ifeoluwa Adediran 'COVID-19: How police are decongesting prisons – Official' Premium Times, September 16, 2021 <https://www.premiumtimesng.com/news/more-news/485205-covid-19-how-police-are-decongesting-prisons-official.html> accessed 18 January 2022; Tania Sourdin, Bin Li, Donna McNamara (n27) 12

against only detection of crime and its promotion of partnership with communities and the protection and promotion of the fundamental rights of persons.[126]

Standardising Legal Initiatives for Inclusive Justice Delivery

Justice is not meant only for times of crisis. Justice is meant for all times and for everyone. It is most important that citizens are assured during times of crisis that justice will neither take the back seat nor be ignored. Times of crisis are times when everyone should have faith in government and governance. The establishment of government arose, as explained by the social contract theory, as a result of the desire to eliminate the problems and injustices that happen at times of lack of law and order, chaos, crisis and emergency. It is also a recognition that such chaos and crisis can happen at any time or be triggered by seeming justice imbalance that makes it necessary to ensure that the justice system is inclusive and stable for all and at all times. Against this background and drawing from the experience of COVID 19, the following are recommended:

1. ***Constitutional and Civic Literacy:*** Government should make concerted efforts to increase constitutional literacy and civic education. Citizens should have a fair idea at any point in time what their rights and duties are. Access to such information should not be limited to only lawyers or the highly educated members of society. This may require the use of jingles and community platforms, civic emphasisings, Non-Governmental

[126]See Police Act 2020 ss 1, 2 and 4

Organisations (NGOs) to educate the people. Similar to information about constitutional rights and duties, is the need for government to have on ground well-articulated legal and policy positions for all imaginable crisis scenarios. Even when these are developed ad hoc, they should be immediately translated into accessible language and format for citizens. This will help reduce confusion, engender sense of patriotism and reduce lawlessness. Access to such knowledge and confidence in its content, including use of websites and emergency numbers, desk offices at local government offices (including public libraries) will encourage citizens to willingly and actively participate in justice promotion initiatives, thus encouraging access to justice.

2. ***Installing Emergency Numbers***: Government should promote the practice of establishing emergency numbers and well-staffed call centres. Less use of automated responses and more use of human responders will assist in assuring callers that their concerns are being dealt with. Such centres could also be deployed to alert the citizenry of imminent dangers and what may be done to avert the worst cases. This will give individuals the feeling of being cared for by the state and in return evoke a spirit or patriotism and ownership of stake in the nation. It will reduce feelings of helplessness and desperation which are usually contributors to lawlessness. For instance, in the case of accessing

courts for update on ongoing cases, such information should either be freely available or easily accessible on government webpages. People should be informed the extent a crisis, chaos or emergency contacts may affect delivery of justice.

3. ***Free and Adequate Legal Representation:*** It is noteworthy that Nigeria has a legal aids system operating under the Legal Aids Council which provides legal services to indigent members of the public. Unfortunately, they are usually poorly staffed, poorly remunerated and poorly funded. While it may be necessary for government to fund such institution, it will also be helpful for professional organizations like the Nigerian Bar Association to encourage members to provide legal aids services to members of its immediate community. Such services should be recognised by professional organisations. This will encourage professionals to appropriately address paucity of legal practitioners for legal representation cases.

4. ***Mobile Court:*** This is a positive initiative and ought to be promoted. However, clear and unambiguous standards should be set to ensure that justice is done. Parties should be aware of what to expect from mobile courts, have knowledge of the practice and be properly guided. This will help to reduce arbitrary decisions and assure protection of fundamental rights, particularly the right to fair hearing. The standard should be such that justice and

fair hearing are not sacrificed for speedy trial. Establishment of standard and fair practice may also encourage defendants to opt for mobile courts and thus free the regular courts for more complex judicial cases.

5. ***Expand Mandate of Emergency Numbers***. Government should make it a matter of priority to expand the mandate of emergency numbers. There may be no need to have several emergency numbers. However, it could be configured in such a way that one emergency number could be used to explore available options – fire service, legal assistance, report of crime, etc. In this manner, persons in emergency will not have to worry which of the telephone numbers should be called but will just have to call one telephone number and be properly guided by the call centre.

   Call centres could also be established purely for providing information on citizens' rights, duties and how to access constitutional rights and privileges within extant legal framework. Such centres, whether virtual or in-person can, follow the United Kingdom model of citizens' advisory bureau. Similar to the UK Citizens advisory bureau, the centres could help collate information on recurring legal challenges facing citizens. Such data may then be used to develop models to resolve such challenges when they arise in the future.

6. ***Restorative Justice and Other Non-punitive Alternatives***: There have always been calls for alternatives to jail time and reducing punitive approaches to criminal justice. It is now a movement that justice should be restorative, both to the defendant and the victim. This will not only help defendants appreciate the hurt and harm caused, but also save them from the appellation of jail bird and its attendant hassles. For the government, it will save money being expended on caring for prisoners when such persons could have been at home with little or no harm to society. The initiative to decongest courts to reduce incidents of COVID-19 transmission demonstrated that this is a viable alternative that gives defendants opportunities to remain useful to society, less stigmatised and easier to integrate.

7. ***Decongestion of Courts:*** The magnitude of congestion of courts and prisons in Nigeria, without any hope of the numbers reducing indicates an urgent need to explore other options beside prosecution and detention for settling criminal cases. This is necessary as there is need to let the accused know their fate as soon as possible and for victims to get closure. In this regard, it may be necessary for Alternative Dispute Resolution mechanism to be expanded to accommodate criminal cases. These may include use of practices recognised by customs which are not repugnant to natural justice. Example

> is the use of oaths, payment of restitution and rendering of apology for theft, injury, destruction of property, death, etc..[127]

Conclusion

Questions about justice delivery will continue to plague society far beyond times of crisis and particularly, COVID 19. The trick is for government and stakeholders to realise that justice is for all times and accordingly set in place structures, institutions and laws that will assist in cushioning crisis challenges to the justice system. Issues like congestion of courts, poor access to information, scarcity and high cost of engaging legal practitioners, poor civic knowledge etc., will continue to bedevil society and impact negatively on access to justice. However, hope exists for the development of initiatives to counter these challenges as they arise. It is also far better to have these initiatives established and ready for deployment as soon as the issues needing their implementations arise. The COVID 19 pandemic, despite the challenges it brought, has proved positive and useful in showing us a glimpse of the depth of human initiative and availability of options. Drawing from this opportunity, we can explore and standardise mobile courts, access to legal information, use of technology, civic education, use of call centres for legal aids services, ADR and more, in resolving justice challenges. This paper has effectively highlighted these opportunities and calls on scholars to interrogate them for other stakeholders, particularly government. Civil Society

[127] Saylor.org Academy 'The Igbo Indigenous Justice System' < https://learn.saylor.org/mod/book/view.php?id=30522&chapterid=6473 > accessed 22 August 2022

Organisations (CSOs) and media should endeavour to put these opportunities into practice while testing their sustainability.

NATIONAL STRATEGIES FOR THE PROTECTION OF CHILDREN INVOLVED IN TERRORISM AND VIOLENT EXTREMISM CASES IN NIGERIA

Ibe Okegbe Ifeakandu[*]

Abstract

The activities of the Islamist extremist group, Jama'atu Ahlis Sunna Lidda'awatiwal (JAS), commonly known as the Boko Haram, have grossly undermined Nigeria's security and threatened human rights protection, especially the rights of children in the affected northeast states. The impact of the violence, which has lasted over a decade now, is felt more by children, as they are usually affected by both the actions of the terrorists and the counter-terrorism actions of the government. Government's counter-terrorism action had reportedly led to the rescue and arrest of several children. With the arrest or rescue of children during counter-terrorism operations, often comes the question of what to do with them. In the midst of this uncertainty, many of the arrested children have been, and are held in detention facilities pending a resolution to either free or put them through criminal justice processes. Where the decision is to subject such children to the criminal justice processes for their involvement in terrorism as perpetrators, victims, or witnesses, there are recommended guidelines that need to be followed to ensure their protection throughout the process. Using a doctrinal approach, this paper examines national

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strategies for the protection of children involved in terrorism and violent extremism cases in Nigeria. The paper finds that although measures exist for their protection, gaps and other challenges also exist that make practical implementation ineffective. Concluding that these challenges work to exacerbate the vulnerabilities of children, recommendations are proffered towards strengthening protection measures for children in Nigeria.

KEYWORDS: Children, Child's Rights, Terrorism, Violent Extremism, Boko Haram, Child Justice Administration

Introduction

The outbreak of insurgency and terrorism in Nigeria remains one of the most shocking intervening moments in our national history to date. These depravities had occurred in parts of the world for decades before they were popularised by the September 11, 2001 bombing of the United States of America (US).[128] In Nigeria, the signs were there, as seen in the *Maitatsine* riots that occurred in northern Nigeria between 1980 and 1985;[129] and even though the riots evinced a major wave of violence, they were regarded as religious acrimony and never treated as or associated with terrorism or violent extremism, since terrorism was principally viewed as a foreign activity at the time, which was a perilous mistake. Nigeria came to the realisation of the presence of terrorism in the country with the activities of *Jama'atu Ahlis*

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[128]The National Counter Terrorism Center, *Report on Terrorism* (2011) <https://irp.fas.org/threat/nctc2011.pdf> accessed 11 March 2021.

[129]Harvard Divinity School, "Religion and Public Life: *Maitatsin*e Riots, The"? <https://rpl.hds.harvard.edu/faq/maitatsine-riots> accessed 23 March 2022.

Sunna Lidda'awatiwal Jihad (people committed to the propagation of the Prophet's Teachings and Jihad) movement referred to as JAS, and commonly known as Boko Haram around 2009.[130]

The dastardly activities of this group, which began in northeast Nigeria, led to the wanton destruction of lives, and properties that led to displacements, which exposed many, especially women and children, to other forms of dangers, including people smuggling and human trafficking.[131] The quest by the Boko Haram to succeed in its mission to supplant the government of Nigeria and to establish their extremist Islamic regime saw them adopting a myriad of strategies to advance their cause, including the recruitment and exploitation of children for purposes of prosecuting their war.[132]

These children were incessantly and shockingly used as fighters and suicide bombers.[133] While some of them lost their lives in the course of suicide bombing attacks perpetrated by them,[134] others were apprehended. Referencing the arrest of a group of children accused of terrorism offences in 2016,[135] the Institute for

[130] NIALS, Dealing with the Past: Justice, Reconciliation and Healing in the North East of Nigeria (Nigeria: NSRP/NIALS, 2017) 6-12.
[131] I. O. Ifeakandu and Peter T. Akper, 'Terrorism and Insurgency as Triggers for Irregular Migration in the Lake Chad Region: Issues and Challenges for Nigeria'. *Journal of Criminal Justice* [2021] (9) (1) 20-35.
[132] United States Department of State, *Trafficking in Persons Report* (US Department of State, 2021) 424.
[133] Ibid.
[134] UNODC, Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System (United Nations, 2017)
[135] Institute for Security Studies, 'Nigeria Faces Complex Legal, Ethical and Practical Dilemmas when Implicated in Terrorism are-Related Offences' (2016)

Security Studies expressed the view that there are no easy answers for Nigeria in terms of whether to treat such children as victims or offenders.[136]

As with every situation for which one is not prepared, Nigeria's response was a bit wobbly initially before it became firm. The country's first response was the military option, with a retinue of personnel from the armed forces being deployed to the northeast to quell the insurgency. This was immediately followed by a terrorism specific legal framework in 2011, amended in 2013, before a number of other counter-terrorism strategies were adopted. For example, in 2014, the Office of the National Security Adviser (ONSA) developed the National Security Strategy (NSS) which was updated in 2019.[137] In the same year 2014, a National Counter-Terrorism Strategy (NACTEST) was adopted[138] and updated in 2016. The NACTEST highlights that counter-terrorism strategy in Nigeria is woven around 5 streams – *Forestall, Secure, Identify, Prepare, and Implement.* Preventing and Countering Violent Extremism (PCVE) programmes were also adopted in-between to stem the tide of insurgency.

<https://issafrica.org/iss-today/nigerias-child-terror-suspects-no-easy-answers> accessed 13 November 2021.

[136]Ibid.

[137] Office of National Security Adviser, *National Security Strategy* (Abuja, 2019) <https://ctc.gov.ng/wp-content/uploads/2020/03/ONSA-UPDATED.pdf> accessed 13 March 2021.

[138] Office of National Security Adviser, *The National Counter-Terrorism Strategy* (Abuja, 2014). See the 2016 update at < https://ctc.gov.ng/national-counter-terrorism-strategy-2016/ > accessed 13 March 2021.

In 2017, President Muhammadu Buhari signed the PCVE Policy Framework and National Action Plan[139] that aims to partner with stakeholders and groups to achieve "safer and resilient communities".[140] Adopting an approach tagged "a whole-of-government and a whole-of-society",[141]the document recognised the importance of mainstreaming human rights and the rule of law into PCVE programmes; hence a set of guiding principles were developed for critical stakeholders. Priority components of the intervention, strategies, and expected outcomes that are necessary for the successful implementation of the National Action Plan on a short, medium, and long-term basis were also developed.[142] Although the core constituents of the policy framework include youths and students, women and girls, families, policing as well as schools and teachers among others, the document does not specifically provide guidelines on the handling of children before, during, and after counter-terrorism operations, particularly how children involved in terrorism should be treated, particularly in the context of the criminal justice process.

This paper examines national strategies for the protection of children involved in terrorism and violent extremism cases, whether as victims, witnesses or perpetrators. Using a doctrinal approach, the paper probes the availability and effectiveness or otherwise of legal and policy frameworks established to deal with

[139] ONSA, *PCVE Policy Framework and National Action Plan* (2017) < https://ctc.gov.ng/national-counter-terrorism-strategy-2016/ > accessed 13 March 2021.
[140]Ibid.
[141]Ibid.
[142] Ibid.

children involved in terrorism cases. The research finds that Nigerian government has made a commendable effort to ensure the protection of children more generally, and those involved in terrorism and violent extremism cases specifically. However, practical implementation of these measures is ineffective due to gaps and other identified challenges. Based on the findings, overarching recommendations are made toward the adoption of more holistic, comprehensive, proactive, and integrated measures for the protection of children involved in terrorism and violent extremism cases. The paper is divided into 7 parts. Part 1 is the introduction, while concepts such as children, terrorism, violent extremism, and child justice administration are discussed in part 2. Part 3 examines children and terrorism/violent extremism in Nigeria. While part 4 examines the child justice system in the specific context of terrorism and violent extremism, part 5 scrutinises protection measures for children, particularly, the special provisions designed for their protection. Part 6 discusses the practical challenges impeding the effective application of protection measures for children, and part 7 makes some vital recommendations and concludes the paper.

Conceptual Clarification

Children

It is not in doubt that children form part of the groups that are usually most affected by conflicts. This is due to their level of vulnerability, which is three-pronged.[143] Firstly, children are exploited and recruited by terrorists as child soldiers and suicide

[143]Damilola S. Olawuyi, 'Terrorism, Armed Conflict and the Nigerian Child: Legal Framework for Child Rights Enforcement in Nigeria' (2015) <https://www.researchgate.net/publication/305611530> accessed 13 March 2021.

bombers, thereby jeopardising their innocence and lives. Secondly, children are orphaned, displaced, and rendered homeless, especially where families are shattered. Thirdly, government's anti-terrorism actions sometimes exert devastating impact on children.[144]

Several reports by Amnesty International and other humanitarian agencies have indicated grave anti-terrorism actions by government troops in the northeast over the years.[145] Needless to state that since the start of violent extremist and terrorist activities and the attendant counter-terrorism efforts in Nigeria, several persons have been arrested as suspects, including children. In September 2019, Human Rights Watch reported that thousands of children, including 5-year-old children, had been "arrested and detained" by the Nigerian military for "suspected involvement" with the Boko Haram.[146] The emphasis stated further that suspects are sometimes arrested while perpetrating or attempting to perpetrate the act, and sometimes after investigations;[147]and called on the Nigerian government to stop jailing children.[148]

[144] Ibid.
[145] Amnesty International, 'Nigeria: "We Dried Our Tears": Addressing the Toll on Children of Northeast Nigeria's Conflict' [2020] <https/www.amnesty.org/en/documents/afr44/2322/2020/en/> accessed 17 March 2021.
[146] Ibid.
[147] Human Rights Watch, '"They Didn't Know if I Was Alive or Dead": Military Detention of Children for Suspected Boko Haram Involvement in Northeast Nigeria' <http://www.hrw.org> accessed 16 March 2022.
[148] Human Rights Watch, 'Nigeria: Stop Jailing Children for Alleged Boko Haram Ties (14 December 2020) <http://www.hrw.org/news/2020/12/14/nigeria-stop-jailing-children-alleged-boko-haram-ties> accessed 17 March 2021.

When dealing with children who have come into conflict with the law, there are usually, sets of guidelines on how they should be treated. This also means that to benefit from this, it must be shown that the perpetrator, victim or witness is a child. The question, therefore, is: who is a child within the framework of law and policy for purposes of administering child justice?

Apart from international law instruments such as the UN Convention on the Rights of the Child (CRC), [149] African Charter on the Rights and Welfare of the Child (ACRWC)[150], among others, section 29 (4) (a) of the Constitution of the Federal Republic of Nigeria, 1999, as amended (CFRN), and several state and federal provisions define a child as any person below the age of 18. Such states and federal provisions include, but are not limited to the following: section 494 of Administration of Criminal Justice Act, 2015 (ACJA); section 277 of the Child's Rights Act (CRA) 2003; section 82 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEAA), 2015; section 2 of Oyo State Administration of Criminal Justice Law, 2017, section 2 of Oyo State Child Rights Law (OSCRL) 2006; section 3 of Kaduna State Administration of Criminal Justice Law (KadACJL), 2017; and section 3 of Kaduna State Penal Code Law (KadPCL), 2017 (amended in 2018 and 2020). The implication is that irrespective of what the definition of a

149 The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force September 2, 1990, in accordance with article 49.

150 The African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49; was adopted by the Heads of government of the Organization of African Unity (OAU), now African Union (AU) in 1990. It came into force November 29, 1999; available at, http://www.africa-union.org/root/au/documents/treaties/treaties.htm; accessed 22 March 2021

child is under any other law, any person below the age of 18 years has to be subjected to child justice administration governed by the CRA or CRL of the applicable state.

Terrorism

Although terrorism has existed for decades, there is currently no universally accepted legal definition of the concept due to its (a) subjective nature,[151] and (b) inclination towards politics and democracy.[152] While the general perception is that there is no generally accepted definition of terrorism, the Special Tribunal for Lebanon took a different view. In its 2011 interlocutory judgement,[153] the Tribunal ruled that, at least, since 2005, a definition of "transnational terrorism" has existed within customary international law;[154] and went further to find that a number of treaties, UN resolutions as well as the judicial practice of states demonstrate the formation of *opinion juris*[155] in the international community, accompanied by a practice consistent with such opinion, to the effect that a customary rule of international law regarding the international crime of terrorism, at least in time of peace, has indeed emerged. The customary rule

[151]Szurlej, Christina "Protecting human rights while countering terrorism a decade after 9/11" *Essex Human Rights Review* [2011) (8) 1-6.
[152]The National Counterterrorism Centre, *Report on Terrorism* (Washington DC, Office of the Director of National Intelligence, 2011) <https://fas.org/irp/threat/nctc2011.pdf> accessed 10 October 2020.
[153] Special Tribunal for Lebanon, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/1, 16 February 2011.
[154] Ibid.
[155]*Opinion Juris* is the second element necessary to establish a legally binding custom. It simply means an opinion of law or necessity. See Cornell Law School, *Opinion Juris*<https://www.law.cornell.edu/wex/opinio_juris_(international_law> accessed 23 March 2021

requires three key elements – perpetration of a criminal act, intent to spread fear; when the act involves a transnational element.[156] This decision sought to establish the fact that a form of "partial, customary definition of terrorism" possibly exists. This position was widely criticised and remains controversial even though the UNODC tried to justify the Tribunal's position because it relied on "relevant UN policies, practices and norms";[157] and also on national and international jurisprudence.[158]

Some existing definitions of terrorism include those proffered by the Federal Bureau of Investigation (FBI) of United States[159], Nigeria's TPA and the Black's Law Dictionary. The FBI defined both international and domestic terrorism, stating that international terrorism is: "violent, criminal acts committed by individuals and/or groups who are inspired, or associated with, designated foreign organisations or nations (state sponsored)";[160] while domestic terrorism is "violent, criminal acts committed by individuals and/or groups to further ideological goals stemming from domestic influences, such as those of a political, religious, social, racial or environmental nature".[161]This definition reflects the two dimensions of terrorism – international and domestic.

[156]See the Interlocutory Decision, 2011, paragraph 85.
[157]UNODC, "Defining Terrorism", available at <https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/defining-terrorism.html> accessed 23 March 2021.
[158]Ibid.
[159] The FBI is an intelligence-driven and threat-focused national security and law enforcement organisation with responsibilities to protect the US from terrorism, espionage, cyber-attacks and major criminal threats, among others. See more at <https://www.fbi.gov/about> accessed 23 March 2021
[160]FBI, What we Investigate: Terrorism <https://www.fbi.gov/investigate/terrorism> accessed 23 March 2021.
[161] Ibid.

In Nigeria, the Terrorism Prevention Act (TPA), 2011 defines an act of terrorism as any act, which is done with malice and calculated to unduly compel a government or international emphasisings to do or refrain from doing any act.[162] The Black's Law Dictionary[163] also defines terrorism as: "the use of threat of violence to intimidate or cause panic, especially as a means of affecting political conduct".[164] These definitions show enormous variations on what is considered as terrorism even though they all capture the very essence of terrorism, which is the element of *violence*, and *threat*.

The ramifications of an absence of a universally agreed definition of terrorism and violent extremism are immense. This is not only because it can potentially enable the misapplication of the concept of terrorism to check non-terrorist or non-criminal activities, but also because it may result in human rights violations.[165] It is even worse where domestic laws fail to proffer a clear and concise definition or has one that suffers from ambiguity, as this would naturally offend the principle of *nullum crimen, nulla poena sine lege,*[166](no crime without law), which applies in international and Nigerian criminal laws. The thrust of the principle is the certainty of criminal law provisions, i.e., acts

[162] The Terrorism (Prevention) (Amendment) Act 2013 prohibits all acts of terrorism and financing terrorism. The Act makes supplemental and elaborate provisions criminalizing acts of terrorism.
[163] Bryan Garner (Ed.), *Black's Law Dictionary* (USA: Thomson Reuters, 2009)
[164] Ibid, p. 1611.
[165]Ibid.
[166] See more on this maxim at <https://www.law.cornell.edu/wex/nullum_crimen_sine_lege> accessed 22 March 2021.

must be clearly defined as crimes and punishment prescribed for them.

This principle is given effect under sections 4 of Nigeria's Criminal Code (CC) and 36 (12) of CFRN, which stipulate that conduct cannot be deemed to constitute an offence unless that conduct is specifically defined as a crime and punishment prescribed for it in a law made by the National Assembly or the House of Assembly of a State. In line with these provisions, the TPA was enacted to give effect to the conducts that constitute terrorism in Nigeria and to prescribe punishment for them. The scope of terrorist offences under the TPA, as amended, is very wide; and each conduct constitutes an offence, upon which a person can be tried and punished on conviction as a terrorist offence if committed pursuant to a terrorist objective(s). This means that a single terrorist act can represent several offences, each of which requires the presence of the subjective element as expressly provided under section 1 (1) of TPA.

Violent Extremism

Like terrorism, the term "violent extremism" is prone to varied definitions as there is no universally accepted definition. The absence of a universally accepted definition means just one thing – states and organisations proffer definitions that best suit their context. Some of the commonest definitions include those proffered by the United States Agency for International Development (USAID),[167] the Organization for Economic and

[167] USAID is the world's premier international development agency and a catalytic actor driving development results. The organisation works to help lift lives, build communities and advance democracy. See more at <https://www.usaid.gov> accessed 20 March 2022.

Cooperation Development (OECD).[168] USAID defines the term as "advocating, engaging in, preparing, or otherwise supporting ideologically motivated or justified violence to further social, economic or political objectives".[169] The OECD on the other hand defines "violent extremism" thus: "Promoting views which foment and incite violence in furtherance of a particular belief, and foster hatred which might lead to inter-community violence".[170]

The definition proffered by USAID seems basic and simplistic on the face of it. However, it has raised a number of issues, including the question of whether "violent extremism" is something that relates solely to actions of non-state actors;[171] and the uncertainty surrounding how violent extremists can be differentiated from others involved in the conflict even if they are legitimate.[172] Another issue relates to the determination of whether violent extremism must be ideological; and whether it can simply be regarded as a synonym of terrorism or that the term means different things to different people.[173] According to UNODC, these issues are not merely academic or rhetorical, they are germane and should be given consideration, mainly because

[168] Established over 60 years ago with a goal to shape policies that foster prosperity. The organisation works to build better policies for better lives. See more at <http://www.oecd.org/about> accessed 23 March 2022
[169] USAID, The Development Response to Violent Extremism and Insurgency (2011) 2
[170] Ibid.
[171] Ibid.
[172] Ibid.
[173]UNODC, "Defining Terrorism", available at <https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/defining-terrorism.html> accessed 23 March 2021.

what people "call a phenomenon helps to determine"[174] how it is perceived as well as responses to it.

In a report that examined extant state practice, policies, and measures regulating "violent extremism" across many states,[175] the United Nations High Commissioner for Human Rights (UNHCHR), underscored diverse national approaches and challenges associated with defining the concept;[176]and emphasised the fact that a "variety of definitions used do not show clearly whether 'violent extremism' presupposes violent action or inciting violent action, or whether lesser forms of conduct that do not normally trigger criminal law sanctions would also be included".[177] For the UNHCHR, diversity of definitions does not depict strict negativity, mainly because it also portrays a certain level of consistency, particularly the fact that the concept of "violent extremism" is regarded as being broader than that of terrorism.[178]

This position was also reflected in the Plan of Action to Prevent Violent Extremism[179] where the Secretary-General noted that "violent extremism encompasses a wider category of manifestations"[180] than terrorism since it includes forms of ideologically motivated violence that do not qualify as terrorist

[174] Ibid.
[175]General Assembly, Human Rights Council report A/HRC/33/29.
[176]Ibid.
[177]See paragraph 17 of the Report.
[178](Report A/HRC/33/29, para. 19).
[179] United Nations Office of Counter-Terrorism, Plan of Action to Prevent Violent Extremism, available at, <http://www.un.org/counterterrorism/plan-of-action-to-prevent-violent-extremism> accessed 23 March 2022.
[180] Ibid.

acts.[181] The mixture of activities and conducts that can be regarded as "violent extremism" has been largely designed by the activities of terrorist groups such as Al Qaeda and Boko Haram, among others, which propagate messages of violence, hate, socio-cultural and religious bigotry, etc. Boko Haram for example, garnered many followers by distorting and exploiting religious and ethnic differences as well as political ideologies to mislead gullible followers and also legitimise their actions. These antics also formed part of recruitment and retention strategies.[182]

Generally, both concepts can, and have sometimes been used interchangeably and share similarities, particularly in their manner of impact.[183] However, using certain parameters, both concepts can be somewhat differentiated. For example, while "violent extremism" is more inclusive and is normally applied more narrowly than terrorism, both concepts convey identical meaning in their use.[184]

Child Justice Administration

Normally, it is better for a child not to come into conflict with the law. However, where this happens, the generally accepted position is for the child not to be made to face the formal justice apparatus except where there is no other option.[185] If the child is

[181]General Assembly report A/70/674, paragraph 4.
[182](Romaniuk, 2015, pp. 7-8).
[183] Institute for Economics and Peace, Global Terrorism Index 2015: Measuring and Understanding the Impact of Terrorism (2015, Sydney, Australia: IEP)
[184] A. P. Schmid, Violent and Non-Violent Extremism: Two Sides of the Same Coin (2014) ICCT Research Paper. The Hague: International Center for Counter Terrorism (ICCT)
[185]Section 209 (3) CRA provides that police investigation and adjudication before the court shall be used only as measure of last resort.

to face a formal justice process, then he or she should only be subjected to child justice administration.[186] Accordingly, the courts in Nigeria have, for a long period, emphasised the need to subject children only to the justice system prescribed by juvenile laws. In the case of *Amaike Doripolo v. The State,*[187] the Court of Appeal stated:

> *Now the principle of law is trite, that – where a child or young person is brought before the court or a Magistrate court charged with an offence, the charge shall be inquired into in accordance with the Children and Young Persons Act…Per Saulawa JCA (pp. 35-36, paras F-C)*

The need for children to be subjected to a unique justice system arises from their distinctive nature, their fragility as well as vulnerability to external or adult influences and pressures.

Children and Terrorism/Violent Extremism in Nigeria

Generally, terrorism and violent extremism affect everybody but children, indigenous people, women, minorities, less privileged, and refugees are considered victims due to their physical and mental limitations. Age as a major limitation makes children the most vulnerable group of people to the far-reaching impact of terrorism and violent extremism.[188] There is a limited amount of protection they can give to themselves while trying to escape violent situations. The fear associated with terrorism and violent

[186] See section 204 CRA.
[187] (2012) LPELR-15415 (CA)
[188]Damilola S. Olawuyi, 'Terrorism, Armed Conflict and the Nigerian Child: Legal Framework for Child Rights Enforcement in Nigeria' (2015) <https://www.researchgate.net/publication/305611530> accessed 13 March 2021

extremism, most times, means that children are separated from their parents or families, watch their loved ones die, and suffer long-lasting mental and physical disabilities.[189]

Keeping in mind that terrorism deprives children of their rights which has been entrenched in the Child's Right Act[190] and the CFRN,[191] the distinctive vulnerabilities of children to terrorist and violent extremists' activities are evident in the following circumstances: first, they are orphaned, rendered homeless, become stranded, through the actions of the terrorists. They may also be subjected to torture by the terrorists. Secondly, children are often recruited by violent extremist and terrorist groups as child soldiers. It has become a strategy among these groups to abduct children because they are less likely to resist because of their inability to understand their environment or issues around them.[192] Some children abductees may even suffer from Stockholm syndrome where the victim identifies and empathises with their captors.[193] Thirdly, the government has directly or indirectly added to the vulnerabilities of children from their actions to counter terrorism actions.[194]

[189]Crisis Group, 'Preventing Boko Haram Abductions of School Children in Nigeria' <https://www.crisisgroup.org/africa/west-africa/nigeria/b137-preventing-boko-haram-abductions-schoolchildren-nigeria> accessed 24 March 2021
[190] See sections 3-20, Part II, CRA
[191] Chapter 4 of CFRN
[192]Crisis Group, n.62
[193]Ibid.
[194] Child Rights International Network, 'The Effects of Terrorism and Counter-Terrorism Measures on Enjoyment of Children's Rights' (2016) <https://www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/NegativeEffectsTerrorism/CRIN.pdf> accessed 24 March 2022.

On the issue of recruitment of children by terrorist groups, it is important to highlight its significance to the status of children involved in terrorism. Usually, children are recruited for intricate and multifarious reasons, which vary according to context.[195] According to UNODC, they are not just recruited among adults but are specifically targeted because they afford more benefits to violent extremist groups.[196] For example, as child bombers, no one expects a child to be a suspect in possession of bombs and other weapons. This is a way of boosting their visibility as terrorists.[197] There have been cases where the analysis of the ISIL propaganda has revealed about 254 events that included the images of children involved in acts of violence; these images were used to shock the public and show how ruthless the terrorists are.[198] Just to reiterate, the fact that children form the bulk of Boko Haram membership is public knowledge, and so is the fact that many of them were forcefully recruited.

Child Justice System in the Context of Terrorism

The essence of justice administration in the context of children are to (a) seek, obtain and provide just and timely remedy through formal and informal institutions of justice that complies with human rights standards,[199] (b) counter complex phenomena of

[195] Amy-Louise Watkin, '" The Lions of Tomorrow": A News Value Analysis of Child Images in *Jihadi* Magazines' [2019] *Studies in Conflict and Terrorism* 42(1-2) 120-140.
[196] UNODC, Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System (Vienna, 2017) 40-58.
[197] Ibid.
[198] Ibid.
[199] Office of the UN High Commissioner for Human Rights, *Protecting the Rights of Children in Conflict with the Law,* available at < https://www.unodc.org/pdf/criminal_justice/Protecting_children_en.pdf> accessed 22 March 2021.

children recruited by terrorist and violent extremist groups; and (c) end impunity and offer pre-emptive measures targeted at curbing violence against children.[200] Bearing in mind the recruitment of children as one of the three scenarios that give rise to children getting involved in terrorism and violent extremism,[201] there is a second scenario which involves the capturing or demobilising of children during terrorist operations.[202] The third scenario is that the child is an actual perpetrator of violent extremist activities.[203] In all these scenarios, the conclusion would be that the child(ren) are involved in terrorism and violent extremism; and should face justice in order to be held accountable for their actions.

When dealing with such children, however, specific questions and issues must be raised and addressed, including whether the child's involvement warrants him or her to be treated as a perpetrator, victim or witness. This is to enable the authorities to determine appropriate measures to be applied. In every context, it is important to implement the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).[204] This is to be done in consideration of whether a child can be validly regarded as a suspect. To that end, there are contentions that children, in all situations of terrorism and violent extremism, should be treated either as victims or witnesses or

[200] Ibid.
[201] Ibid.
[202] Ibid.
[203] Ibid.
[204] Beijing Rules was adopted by the United Nations General Assembly on 29 November 1985. They were first named the Bill of Rights for Young Offenders before they were subsequently renamed.

both but never as suspects in compliance with the Beijing Rules.[205] Such treatment must also be in line with the protective provisions of the law. In Nigeria, children in terrorism cases/situations were not contemplated in the child protection or terrorism-specific laws. However, there are legal provisions that seek to protect children in criminal investigation and trial, whether as victims, witnesses, or suspects in criminal matters. These provisions are examined below.

Protection Measures for Children in the Context of Terrorism

Following Nigeria's ratification of the CRC[206] in 1991, and membership of the 1990 ACRWC,[207] the CRA was enacted in 2003 as a federal law to regulate child justice administration in the country. As already stated, the CRA, which is the most comprehensive legislation for child protection in Nigeria, principally domesticates the provisions of the CRC and ACRWC which enjoin state parties to adopt measures – legislative, administrative, etc. for child justice administration. It established a formidable child justice system for all children whether they are offenders, victims, witnesses or non-offenders. In recognition of this, the ACJA provides that when a child that comes into conflict with the law needs to face trial, he or she should be tried under the CRA[208] except with regards to bail, in which case, provisions on bail under the ACJA shall apply.[209]

[205] Ibid.
[206] G.A Res 44/25, 1989.
[207] OAU Doc. CAB/LEG/24.9/49, 1990.
[208]See section 452 (1) ACJA.
[209]See section 452 (2) ACJA.

The 278 sectioned CRA commences by introducing the principle of *Best Interest of the Child* which stipulates that every decision or action taken on behalf of or regarding a child must be in consideration of the *best interest of the child* in section 1. One of the highlights of the CRA is the provision of additional/special rights that accrue to children in addition to the general rights covered under Chapter IV of CFRN,[210] and the fact that children are given some responsibilities which they owe to their families and the society under sections 19 and 20. Generally, children must be protected against forms of exploitation, including child marriage and betrothal, child labour, sexual exploitation and child trafficking, among others. Furthermore, the Act imposes obligation on parents and *guardian ad litem,*[211]government and the general society to care for and protect children in all aspects. The Act also provides guidelines to regulate child adoption,[212] wardship,[213] guardianship,[214]custody,[215]fostering,[216] family court– at Magistrate and High Court levels[217] and more elaborately, child justice administration,[218] among others.

Under the provisions regulating Child Justice Administration in Part XX, the CRA emphasises the need to protect the child's

[210]See sections 3-18 CRA
[211]See section 89 CRA. *Guardian ad litem* is a guardian appointed to prosecute or defend a suit on behalf of a party incapacitated by infancy or otherwise. See Black, C. A; Black's Law Dictionary (6thEdn); (St. Paul: Minn West Publishing Co, 1990), p. 43.
[212] CRA, Part XII.
[213] Ibid, X.
[214] Ibid, Part IX.
[215] Ibid, Part VIII.
[216] Ibid, Part XI.
[217] Sections 149—159 CRA.
[218] Part XX CRA.

privacy, and to provide enhanced capacity building for police officials and others responsible for administering child justice. The Act also emphasises the principle of presumption of innocence for the child, the right to be notified of charges, right to remain silent, and right to presence of parent or guardian and legal representation, as encapsulated in the principle of fair hearing under section 36 CFRN. Effective implementation of the provisions of the Act, particularly those relating to investigation and trial of child offenders will, indeed engender a responsive justice system that adequately protects children and shows Nigeria's fulfilment of its obligation to protect children under international law.

Investigation Relating to Children Involved in Terrorism

As stated above, the CRA instituted *Child Justice Administration* in section 204, Part XX, wherein children are prohibited from being subjected to a formal justice system and this is applicable at all stages of the investigation, adjudication and disposition of any case against or involving a child in whichever capacity. Under section 209 (3) of CRA, the police, prosecutor or any other person dealing with a case involving a child is encouraged to dispose of the case without resorting to a formal trial. Where a trial is inevitable, how the case is to be adjudicated is as set out in sections 213-232. The Act also provides guidelines on how institutions should treat the child,[219] and how non-institutions should treat the child also.[220]

[219] Sections 236-238 CRA.
[220]Sections 233-235 CRA.

There is need to emphasise that neither the TPA nor the CRA contemplated the situation of terrorism involving children. Therefore, provisions of these laws apply to children in terrorism cases as they apply to them in all other criminal cases. With regards to investigation proper, sections 211 and 212 of CRA set out the procedure from when the child is apprehended until detention pending trial. Once a child offender is apprehended, the following procedure is to be followed: (a) the parents or guardian of the child is to be *immediately* informed or within the shortest possible time if it is impossible to notify them *immediately;* (b) the court or police is to consider the release of the child without delay, and (c) contact between the police and the child should be well managed. Such contact must be within a framework that respects the status of the child, promotes the *best interest of the child,* and avoids harm to the child. Harm in this context includes "the use of harsh language, physical violence, exposure to the environment and any consequential physical, psychological or emotional injury or hurt". By and large, the fragility and vulnerability of the child should be borne in mind during the process of investigation and beyond. If there is a *prima facie* case against the child that requires his or her detention pending trial, then this should be for the shortest possible time and as a measure of last resort.

During the period of detention, section 212(2) imposes an obligation on detaining authorities to ensure that the child is well cared for, protected, and given all necessary assistance that the child may require, including educational, psychological, and medical assistance, etc. If the police detain the child on the order of the court, the court shall state the reasons in a certificate, for

issuing the order, i.e., lack of availability of secure accommodation, and keeping the child elsewhere would pose a security risk to the public. More importantly, detention is required to be replaced by *alternative measures.* Alternative measures may include close supervision, child placement with a family member or in an educational setting or home.

Practical Situation: Challenges and Recommendations

There is no gainsaying that measures to protect children involved in terrorism and violent extremism cases exist in Nigeria. However, the effective application of these measures remains a challenge.

One major practical challenge is ascertaining the personal and other details of the affected child, especially where the child is an alleged terrorist offender. As pointed out earlier, there have been reports of arrests and detention of children for their involvement with Boko Haram.

When children are arrested for terrorism offences, law enforcement operatives sometimes find it difficult to determine the true age of the affected children. As a result, courts have had to rely on a sworn affidavit from parents due to a lack of or ineffective birth registration system.[221] The snag is that sworn affidavits can be manipulated by parents, particularly where parents of a person who may be above the statutory age of 18 may lie for fear of the child being subjected to regular criminal trial for terrorism offences. But law enforcement agencies are

[221] United States Department of State, 'Nigeria 2020 Human Rights Report'. available at < https://www.state.gov/wp-content/uploads/2021/03/NIGERIA-2020-HUMAN-RIGHTS-REPORT.pdf> accessed 24 March 2021

now developing more reliable strategies, including medical examinations to determine the true age of the child, especially where the child is a suspect.[222]

There is also the issue of limited human and financial resources. The result is that, law enforcement agencies and stakeholders involved with child protection work find it difficult to effectively apply available measures, especially where witness protection is required for child victims and witnesses.

There are also issues around guaranteeing access to justice for children who are victims of crime, including terrorism and violent extremism. The Nigerian justice system has consistently failed to provide access to justice for children whose rights have been violated, and has certainly failed to provide recompense for their losses.[223] Therefore, children's rights remain in dire straits, not only in terrorism affected northeast states, but across the country.

Other challenges associated with practical implementation of child protection measures in Nigeria include:

a) Difficulties associated with tracing parents/guardians especially where the child is a suspect or is complicit in the offence, leading to complicated decisions with regards to bail.
b) Law enforcement agencies sometimes lack facilities to separate children from adults in holding rooms/detention centres, so children below 18 are sometimes held together

[222] Ibid.
[223] Ibid.

with adults, which poses significant risk to the wellbeing of the child.

c) Expertise on how to address the needs of children held in detention facilities is limited.
d) Expertise on de-radicalisation of radicalised children is also limited.

In the light of the above, it is recommended that the gaps in the law regarding treatment of children involved in terrorism cases should be closed. Furthermore, challenges identified above, should be addressed while effective application of protection measures for children are effectively implemented and applied.

Conclusion

The 2021 Global Terrorism Index (GTI),[224] released by the Institute for Economics and Peace (IEP)[225] lists Nigeria as the sixth country that is most impacted by terrorism in the world. This report signifies successes in the government's counter-terrorism actions and implementation of PCVE programmes, because it moved Nigeria from its 4th position in 2020 to 6th in 2021. However, there are no significant changes in the plight of

[224]Institute for Economics and Peace, *Global Terrorism Index 2022: Measuring the Impact of Terrorism* (Sydney, March 2021) p. 18. Available at <http://visionofhumanity.org/resources> accessed 22 March 2021; and also, at <https://reliefweb.int/sites/reliefweb.int/files/resources/GTI-2022-web.pdf> accessed 22 March 2021.

[225]The IEP is an independent, non-partisan, non-profit institution that is dedicated to shifting the world's focus to peace as a positive, achievable, and tangible measure of human well-being and progress. It is headquartered in Sydney with offices in New York, The Hague, Mexico City, Brussels, and Harare. It works with a wide range of partners internationally and collaborates with international organisations on measuring and communicating the economic value of peace. See more at <https://www.economicsandpeace.org/> accessed 22 March 2021.

children, especially those involved in violent extremism and terrorism. While it is true that the propagation of violent activities perpetrated by violent extremist group(s) in Nigeria has undoubtedly constituted a major security threat to the country, and warrants perpetrators to be held accountable by facing prosecution, it is also important to ensure that children involved in terrorism and violent extremism are treated rightly and in compliance with applicable laid down rules and procedures. The best interest of the child and international good practice must also be the guiding principles when dealing with child terrorist offenders, victims, and witnesses. It is good practice to uphold, respect, and protect the rights of these children no matter the circumstance. It is also good practice to strengthen protection measures. It is even more important to ensure the occupational expertise of those saddled with the responsibility of applying them.

ADDRESSING EXECUTIVE DEPLOYMENT OF ARMED OFFICERS AND POLITICAL THUGS DURING ELECTIONS AND THE CONCERNS FOR RIGHTS TO LIFE AND PROPERTY IN NIGERIA

Akin Olawale OLUWADAYISI, Ph.D.*

Abstract

The enjoyment of fundamental rights to life and property enshrined in the grundnorm of any society is meant to be respected regardless of the circumstances calling for their violation. Violation of human rights during election process, is however what appears indignant and abnormal for any democratisation process. Every election year, African nations record casualties of human rights violations before, during and after electoral process. It is worrisome to hear or read about it but more appalling and repugnant, experiencing such incidents during the electoral processes that should lead to a peaceful transition from one democracy to another. Significant among the rights constantly violated, are rights to security of life and property. This paper argues about the need to secure life and properties among other rights during electoral process as it is in the nature of African politics and politicians and their supporters to behave violently during election just to win at all costs. The paper examines constitutional issues using the doctrinal legal research methodology which consists of the use of the primary and secondary sources of law. The resource materials obtained,

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were analysed in the context of the scope of the topic under examination. The legal issues falling under the context of discussion therefore include: the legal corpus of rights to life and security in African countries such as Nigeria, Ghana, and South Africa and the role of relevant agencies such as National Electoral Commission, the Police Force, Armed Forces, State Security Service and Intelligent Agencies, in achieving this desired protection particularly under the various Electoral Acts. It presents the possible implications of lack of assured protection each time election takes place in any African country. It therefore makes recommendations to the current insecurity that bedevils electoral process in Africa, such as sharing weapons among the security agencies, sharing intelligence information and re-orientation/ training of police officers purposely towards respect for human rights during the conduct of elections.

KEYWORDS: *Rights, Life, Property, Executive, Armed Officers, Electoral Process, Africa.*

Introduction

The right to life[226] and property,[227] are fundamental human rights enshrined in the Constitution of many African nations. The courts have since been empowered by the Constitution, to enforce these rights among others wherever they are brought before it against their violations.[228] For example, in Nigeria, Section 46 of the Constitution of Federal Republic of Nigeria 1999 (CFRN) (as amended), provides for special jurisdiction of High Court and legal aid for the enforcement of fundamental rights. It states that whenever anyone has allegation that any of the constitutional provisions on fundamental human rights inclusive of the rights to life and property has already been violated or about to be violated

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[226] Constitution of Federal Republic of Nigeria 1999 (CFRN) (as amended) s. 33; *Musa v. State* [1993] 2 N.W.L.R Pt 277, p. 550 CA; *Bello v. A. G. Oyo State* [1986[5 N.W.L.R. Pt 45, p. 828 S.C.; African Charter of Human and People Right, art. 4; *Joshua v. State* [2008] WHRC Vol. p. 45; *Maiyaki v. The State* [2008] 15 NWLR 173 at 220; *Lateef Adenyi v. State* [2008] WHRC Vol.1 P.83; *Okonkwo v. State* [1998] 4 N.W.L.R. Pt.544, p.142 CA; *Kalu v. State* [1998] 13 NWLR Pt. 583, P.531 S.C.; Odogu v. A.G. Fed (1996) NWLR Pt. 456, p. 508 SC; Ibe v. State 7 NWLR Pt 304, p. 185 C.A.; Lester, Pannick, at all (eds), Human Right Law and Practice, (Reed Lesevier Ltd 2009) p. 138; The European Convention, art. 2 (1).

[227] CFRN 1999 (as amended) s.43; African Charter Human and Peoples Right, art.14; *Lakanmi v. A. G Western State* [1971] 1 UILR 210; *LACOED v. Edun* [2004] 6 NWLR Pt. 870, p.476 Ca; *Ndoma– Egba v. Chuchwugor* [2004] 6 NWLR Pt 869, p. 382 S.C; *A.C.B. v. Okonkwo* [1997] 1 NWLR (Pt. 480) 195 C.A; *Ijeoma Anazodo v. All State Trust Bame Plc & Ors* [2007] CHR 117; *A.G. Bendel v. Aiyedan* [1989] 3 N.S.C.C 276; *Golden Victor Nangibo v. Uche Okafor* [2003] 10 S.C. 85; *Provost Lagos State College of Education v. Kolawole Edun & Ors.* [2004] 3 S.C.M 191; *Peenok Investment Ltd v. Hotel Presidential* [1982] 12 S.C. 1; *Onyiuke v. Eastern State Interim Asset Liabilities Agency* [1974] 10 S. C. 77 at 87; *Maiyegun v. Government of Lagos State* [2011] 12 NWLR (Pt. 1230) 154; *Federal Republic of Nigerian v. Joachim & Ors.* [2002] 2 F.H.C.R.R, 94

[228] CFRN 1999 (as amended), s. 46.

or it is in the process of being violated, the High Court near to him or her, is available to lodge his or her complaint.[229] In hearing the matter, the Court has the power to give order as may be appropriate in the circumstance. The jurisdiction of the Court can further be expanded in future by an Act of the Parliament.[230] This framework is virtually available in many African countries.

By implication, the Constitution is very protective of the rights of the citizens to such an extent that even when any of the rights are yet to be breached, the Constitution already provides the means of enforcement so as to prevent further damage as well as possible damage to the enjoyment of the rights. This is because the right of the citizens is one of the underpinnings of the basic concepts of governance such as rule of law and separation of powers.

Surprisingly however, the process that should usher in the kind of government that will take this responsibility of protection of these rights, have been found to be the medium by which they are violated, particularly, rights to life and security of property. This paper focuses on the examination of these two rights (rights to

[229] *Grace Jack v. University of Agriculture Markurdi* [2004]5 NWLR (Pt. 856) 208 at p. 225; CFRN 1999 (as amended) s.46(3) which empowers the Chief Justice of Nigerian to make rules with respect to the practice and procedure of a High Court for the purpose of this section. To this end, the Fundamental Right Enforcement Procedure Rules, 2009 was made.

[230] ibid.po-i

security of life and property) because right to life is conditional to the enjoyment of other rights contained in the Constitution of any nation. Second, rights to security of property, is right to shelter, without which the existence of life is seriously jeopardised and the society at large will become more disorganised.

Conceptual Framework and Legal Framework

Executive Arm of Government

The executive arm of government is the part of governmental body responsible for execution of the law made by the legislature and implementation of policies.[231] The duties and roles of the executive are quite clear and distinguished. However, there appears instances where conflict exist between the two organs.[232] Thus, the body is poised to defend the Constitution, uphold it and carry out the content of law made in compliance with the Constitution. Coincidentally, the second chapter of the Constitution on Fundamental Objectives and Directive Principles of State Policy places further responsibility on the executive body to ensure compliance with the spirit of the Constitution.[233]

While Chapter four of the Constitution provides for fundamental human rights to be respected and enforced in all situations including during electoral process,[234] it also makes adequate provisions for election process, adjudication and justice.[235]

[231] CFRN 1999 (as amended), s.5
[232] Godswealth I. C., Z. B. Ahmad, and J. Jawan, "Factors Influencing the Executive and Legislative Conflict in Nigeria Political Development", 21(8) (2016) *IOSR Journal of Humanities and Social Science*, 20-25.
[233] CFRN 1999 (as amended), s.13.
[234] CFRN 1999 (as amended), ss.33-43.
[235] CFRN 1999 (as amended), s.285.

Hence, the duty of the executive body is first to obey and then ensure that the provisions are obeyed.

Fundamental Rights Enshrined in Chapter 4 of the Constitution

Human rights are the basic entitlements of all human beings in any society.[236] They pertain to humans by virtue of their humility. [237] In the words of Justice Kayode Eso of blessed memory:

"This is no doubt a right guaranteed to everyone including the appellants by the constitution. However, what is the nature of a fundamental Right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilised existence…"[238]

To Professor M.A. Ajomo, [239] "human rights are inherent in man and they arise from the very nature of man as a social aroma. They are those rights which all human beings enjoy by virtue of their humanity, whether black, white, yellow, Malay or red, the deprivation of which would constitute a great affront to one's natural sense of justice." The history of human right in division in Nigerian constitution is traceable to events proceeding the

[236] Abdullahi Ahmed An-Naim, *Universal Rights Local Remedies* (Interrights, Afornet, GTZ, 1997) 7.
[237] Yemi Akinseye-George, *Improving Judicial Protection of Human Right in Nigerian* (Centre for social –Legal Studies, Abuja, Nigeria, 2011) 1.
[238] *Ransamo Kuti & Ors. v. Attorney-General of the Federation* (1985) 5 N.W.L.R. (Pt. 10) 211 at 229-230 quoted in *Improving Judicial Protection of Human Right in Nigerian* (Centre for Social-Legal Studies, Abuja, Nigeria, 2011) 1.
[239] See Ajomo M.A, 'The Development of Individual Right in Nigeria's Constitutional History' in Ajomo and Owasanoye (Eds), *Individual Right Under The 1989 Constitution*, (Nigerian Institute of Advanced Legal Studies 1993) 1.

1960 independent constitution[240] Yemi Akinseye–George quoted the account of the background that led to the inclusion of human right in the Constitution by Professor M. A. Ajomo in the following illustration:

"So, Nigeria forged ahead in constitutional development prodded on by the various nationalists of the time agitating for self-government, the need to introduce some elements of human right unto the country's constitution gained prominence. One factor, which prompted this, was the heterogeneous nature of the country and the fears of the minorities that their survival would be threatened in a country dominated by three major tribes the Hausa, Igbo and Yoruba. The minorities therefore urged the British colonial government to allay their fears by the creation of states for them before independence was granted. The British government's responses were the Minorities commission under the chairmanship of Sir Henry Willink with the mandate to ascertain the facts about the fears of minorities and suggest means of allaying those fears. The Commission did not surprisingly recommended the creation of more states, rather it recommended the entrenchment of fundamental right provisions in the constitution though the commission observed that such provision would be difficult to enforce and sometimes difficult to interpret.[241]

[240] See Yemi Akinseye- George, Improving Judicial Protection of human Right in Nigeria, at p.7.

[241] See Ajomo M.A 'The Development of Individual Right in Nigerian's Constitutional History in Ajomo and Owasanoye (NIALS 1983) 1 at.4; See also Femi Falana, *Fundamental Right Enforcement in Nigeria*, (2nd Edition) (Legal Text Publisher, Lagos) 3-5.

Whatever rationale is acclaimed for the inclusion of fundamental rights in the constitution, what is clear is that it is not accidental. The inclusion is a genealogical response to the development of human rights in the entire globe at that time.[242]

Thus, under the 1999 Constitution, chapter four is dedicated to Fundamental Human right which include:

1. Right to Life[243]
2. Right to Dignity of Human Person[244]
3. Right to Personal Liberty[245]

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[242] Historical development of human rights have shown that various documents were drawn at different times to enshrine human right. The Magna Carta of England in 1215, the United State Declaration of Independence 1776. The French Declaration of the right of man and the citizen 1789 and the America Bill of Right of 1791 were example of the human right documents upon which many nations built their constitutional Rights. The major and most often pronounced of these historical documents on Bill of Rights is the Universal Declaration of Human Rights, 1948.

[243] Section 33 of 1999 Constitution (as amended); Musa v. State (1993) 2 N.W.L.R Pt 277, p. 550 CA; Bello v. A. G. Oyo State (1986) 5 N.W.L.R. Pt 45, p. 828 S.C.; Article 4 of African Charter of Human and People Right; Joshua v. State (2008) WHRC Vol. p. 45; Maiyaki v. The State (2008) 15 NWLR 173 at 220; Lateef Adenyi v. State (2008) WHRC Vol.1 P.83; Okonkwo v. State (1998) 4 N.W.L.R. Pt.544, p.142 CA; Kalu v. State (1998) 13 NWLR Pt. 583, P.531 S.C.; Odogu v. A.G. Fed (1996) NWLR Pt. 456, p. 508 SC; Ibe v. State 7 NWLR pt 304, p. 185 C.A.; See also Lester, Pannick, at all (eds), Human Right Law and Practice, (Reed Lesevier Ltd 2009) 138; Article 2 (1) of the European Convention.

[244] Section 34 of 1999 Constitution; Article 5 of African Charter; section 31 of 1979 Constitution; Uzoukwu v. Ezeonu (1991) 6 NWLR (Pt 200) 708; Mogaji v. Board of Customs and Excise and Another (1982) 3 NCLR p.552 at 562; Alobo v. Boyles & Anor (1984) 3 NCLR 830; Odofe & Ors v. Attorney-General of the Federation & Ors (2005) (CHR 309; Amakiri v. Tuowari (1974)1 RSLR 5; Dele Giwa v. IGP unreported Suit No: M/44/83 of 30/7/84; Wabali v. COP (1985) 6 NCLR424 H.C; RV. Bodom (1935) 2 WACA 353; Queen v. Haske (1961) All NLR 330 SC; McNabb v. United states 318 US 332; Mallory Lagos State (1996) 6 NWLR Pt 427, p.713 CA; Labour Board v. Virgina Power Co. 314 US 469; Girouard v. United State 328 US 61; Schnenk v. United State, 249 US 47.

[245] Section 35 of 1999 Constitution; Article 6 of the African Chapter on Human and People Right; Ekanem v. Asst. IGP (2008) CHR 172 at p.182; Anekwe v. Michael

4. Right to Fair Hearing[246]
5. Right to Private and family [247]
6. Right to Freedom of thought, Conscience and Religion [248]

(2009) 10 N.M.L.R. 18; A.G Anambra State v. Uba and 3 Ors (2005) All FWLR. (Part 277) 909 C.A: Mohammed v. Olawunmi (1990) 2 NWLR Pt 133. P.458; COP v. Obolo (1989) 5 NWLR Pt. 120,P.130CA; Shugaba v. minister of Internal Affairs (1981) NCLR 459; Bamaiy v. State (2001) 8 NWLR Pt.715, P.270 SC; COP v. Oruware (1974) All NHR 627; Udeh v. FRN (2001) 5 N.W.LR. Pt 706, P. 312 C.A; Nwangwu v. Duru (2012) 2 NWLR Pt 751 P. 265 C.A; Lord Denning opinion in his book 'Freedom Under The Law' where he said liberty as "the freedom of every law abiding citizen to think what he will, to say what he will on his lawful occasions without hindrance from any other person" –(Freedom Under The Law, Steven & Son Ltd London, 1948 P.5): See also A.V. Dicey, Constitutional Law 9th ed pp. 207 708; Okeke v. state (2003) 15 N.W.L.R. pt. 839, p.57 S.C; State v. Olatunji (2003) 4 NWLR pt. 810, P. 233 S.C; N.A.F. v. Obiosa (2003) 4 NWLR Pt 810, P. 57 S.C; Nigerian Army v. Mohammed (2002) 15 N.W.L.R. Pt. 789, p. 42.

[246] Section 36 of 1999 Constitution (As amended); section 33 of 1979 Constitution; *Akulega v. Benue State Civil Service Commission* (2002) 2 CHR; *State Civil Service v. Bozugbe* (1984) 7 S.C. 19; *University Teaching Hospital v. Noli* (1984) NWLR (Pt.363) 376 at 403; *Federal Civil Service v. Laoye* (1989) 2 NWLR (Pt.106) 652 or (1989) 4 SCNJ. (Pt.11) 46; *Adigun & Ors v. A.G. Oyo State & Ors* (1987) 18 NSCC Part 1, 346; Okaduwa & Ors State (1988) NSCC Vo. 19 Part 1 718; Victino Fixed Odds v. Joseph Ojo & Board of Internal Revenue Edo State Ors (2010) 8. NWLR (Part 1197) P.488; LPDC v. Fawehinmi (1985) 1 NWLR Pt.7, p.300 S.C.; Orugbo v. Una (2002) 16 NWLR Pt. 175 S.C; 720, p. 126 C.A; *NAF v. Shekete* (2000) 18 NWLR Pt 798, p. 126.; Director of SSS v. Agbakoba (1999) 3 NWLR Pt 595, p.314 S.C; *Menakaya v. Menakaya* (2001) 16 NWLR Pt. 738 p. 303 S.C

[247] Section 37 of 1999 Constitution; Article 8 European Convention; *Staley v. Georgia* (1969) 384 U.S. 557; Article 18 (2) of the African Charter of Human and People's Right; *Tolani v. Kwara State Judicial Service Commission* (2009) All NWLR (Pt. 481) P-880; *Dudgeon v. United Kingdom* (1981) 4 E.H.R.R 149; Entirck v. Carryington (1558) - 1777) All ER 41; *Thomas v. Sawkins* (1935) All ER 655; Ezeadukwa v. Maduka (1997) 8 NWLR Pt. 518, p. 635 C.A; *Complete Comm. Ltd v. Strange* (1849) 4171; Malone v. COP (1979) 2 All E.R. 620

[248] Section 38 of 1999 Constitution (as amended); See *Agbai v. Samuel Okagbue* (1991) 7 NWLR (Pt.204) 391; *Theresa Nwafor Onwo v. Oko* (1996) 6 NWLR (pt.456) 587; *Ojonye v. Agbudu* (1981) 4 NCLR; Comfort Nduchuckwu v. Anor v. Obi Okonji & 2 Ors (2007) CHR 199 Adamu v. A.G. Borno State (1996) 8 N.W.L.R (part 465). 203, Emmanuel Bijoe v. State of Kerala AYR 1987 S.C 748 (1988) 14 CLB p. 43; Esabunor v. Fawja of the Rosicrucian Order, AMORC (Nigerian) v.

7. Right to Freedom of Expression and the Press[249]
8. Right to Peaceful Assembly and Association [250]
9. Right to Freedom of Movement [251]
10. Right to Freedom from Discrimination [252]
11. Right to Acquire and own Immovable Property anywhere in Nigeria [253]

Henry O. Anonyi & Ors (1994) 1 NWLR (Pt. 355) 154; *Hamisi Rajabu Dibagula v. The Republi*c (2009-2010) CHR 147: Davis v. Brown 133 US 333.

[249] Section 39 of 1999 Constitution (as amended); *Ondo State Broadcasting Corporation v. Ondo State House of Assembly* (1986) 6 N.C.L.R. 333 at 337; *Derbyshire Country Council v. Times Newspaper* (1993) AC 534; State v. Ivory Trumpet (2007) All NWLR (Pt.386) 658; *State v. Author Nwankwo* (1985) 6 N.C.L.R 228; Bailey, Hairs and Jones, *Civil Liberties case and Materials*, (5th Edition, London, Butterworth Lexis Nexis, 2001) 647; Frohwerk v. U.S (1919) 249 US 204*; Gitlow v. New York* (1925) 268 U.S 652; *A.G. Federation v. Guardian Newspapers* (1999) 9 NWLR Pt. 618, p.187 S.C.

[250] Section 40 of 1999 Constitution (as amended); A.G. Federation v. Atiku Abubakar (2008) 2 CCLR SC 483; Independent Electoral Commission and Anor. v. Balarabe Muda and Ors (2003) CHR 131; Agbai v. Okogbue (1991) 7 N.W.L.R. (Pt. 204) 391; Aniekwe v. Okereke (1996) 6 NWLR (Pt. 452) 60.

[251] Section 41 of the 1999 Constitution; Article 12 of the African Charter on Human and Peoples Right; *Agbakoba v. State Security Service* (1993) 3 NWLR (Pt.599) 314; *R. v. Secretary of State Export Everett* (1989) 1 All ER 655, 650; *Federal Minister of Internal Affairs v. Shagaba* (1982) 3 NCLR 915; *William v. Majekodunmi* (1962) NSCC Vol.2, 219,228; Arowolo v. Akapo & Ors (2003) 8 N.W.L.R (Pt.823) 451; *A.G. Federation v. Ajayi* (2003) 12 N.W.L.R. Pt. 682, Pt. 509 C.A.

[252] Section 42 of 1999 Constitution (as amended); Article 2 of the African Charter on Human and People's Rights; section 39 of the 1979 Constitution; *Adam v. A.G. Borno State* (1996) 8 N.W.L.R (Pt. 465 203; *Mojekwu v. Ejikeme* (1997) 7 N.W.L.R. (Pt. 572) 2381; Article 2 Constitution on the Elimination of All Forms of Discrimination Against Women (CEDAW); *Chukwu v. Amadi* (2009)3 NWLR (Pt. 1127) 56; *Timothy v. Ofooka* (2008) All F.W.L.R. (Pt. 413) p. 1370; Article 1, 2, 7 and 10 of the Universal Declaration of the Rights 1948; Resolution 41 of the World Health Assembly 1988.

[253] Section 43 of the 1999 Constitution; Article 14 of the African Charter Human and Peoples Right; *Lakanmi v. A. G Western State* (1971) 1 UILR 210; *LACOED v. Edun* (2004) 6 NWLR pt. 870, p.476 Ca; Ndoma– Egba v. Chuchwugor (2004) 6 NWLR Pt 869, p. 382 S.C; A.C.B. v. Okonkwo (1997) 1 NWLR (Pt. 480) 195 C.A; Ijeoma Anazodo v. All State Trust Bame Plc & Ors (2007) CHR 117; A.G Bendel v.

The focus of this article therefore is the right to life and property. Although, the Courts have since been enjoined to enforce all the rights regardless and whenever they are brought before it.[254] Section 46 of 1999 Constitution provides for special jurisdiction of High Courts and legal aid for the enforcement of fundamental rights.

Electoral Process and Innovations New Electoral Act 2022

Election process refers to all the activities and procedures involved in the election of representatives by the electorates. It refers to all the pre- and post-election activities without which an election is meaningless. These include the registration of political parties, review of voters' register, delineation of constituencies, resolution of electoral disputes, return of elected representatives, and swearing-in of elected representatives. In addition, electoral law is the set of rules that guide the conduct of election and important activities that make up an electoral process.[255] Election process can be said to commence with the announcement of intention to conduct elections, till the elections have been won and invariably lost.[256]

Aiyedan (1989) 3 N.S.C.C 276; *Golden Victor Nangibo v. Uche Okafor* (2003) 10 S.C. 85; Provost Lagos State College of Education v. Kolawole Edun & Ors. (2004) 3 S.C.M 191; *Peenok Investment Ltd v. Hotel Presidential* (1982) 12 S.C. 1; *Onyiuke v. Eastern State Interim Asset Liabilities Agency* (1974) 10 S. C. 77 at 87; *Maiyegun v. Government of Lagos State* (2011) 12 NWLR (pt. 1230) 154; *Federal Republic of Nigerian v. Joachim & Ors* (2002) 2 F.H.C.R.R, 94.

[254] See Section 46 of the 1999 Constitution (as amended).

[255]Nnamani D. O., 'Electoral Process and Challenges of Good Governance in the Nigerian State (1999-2011)' 2014, 2(3), *Journal of Good Governance and Sustainable Development in Africa (JGGSDA)*, 80.

[256] ibid 81.

It is worthy to note that, election process is all about election, which is a process that allows for smooth and orderly change of government in a democracy. Democratic election is widely recognised as a foundation of legitimate government. By allowing citizens to choose the manner in which they are governed, elections form the starting point for all other democratic institutions and practices.[257] The electoral process is fundamental to democracy and an integral part of it,[258] because democratic election serves as the means for citizens to freely express their will as to who shall have the authority and legitimacy to wield the reins of government as their representatives.[259]

The recent passage of Electoral Act 2022 brought in several new provisions that appear to have changed the status quo of electoral law and practice in Nigeria. Of particular relevance is the one that bothers on the right to vote and to be voted for at political party primaries. It states that "no political appointee shall be voted for or be a voting delegate at the convention or congress of a political party."[260] It is believed that political appointees fall among the executive body of government and the aim of this provision in the view of this author, is to prevent abuse of office and power,

[257]Eric B., 'More than Election, How Democracy Transfer Power 15(1) (2010) *E Journal USA*, 4.
[258]Gerhard T., 'Namibia's Constitution, Democracy and the Electoral Process', 1, <www.kas.de/upload/auslandshomepages/namimbia/constitution_2010/toetmeyer.pdf&sa=u&ved=0ahUKEwix0rGzbTPAhXBlxoKHf25DKsQFggNMAA&sig2=c_hRCjAzsSDduHPkjkXxz7A&usg=AFQjCNEo4QapeY2shJZOTjeWkcK88FZH5w> accessed on 23 September 2016.
[259]Patrick M., 'Promoting Legal Frameworks for Democratic Elections, an NDI Guide for Developing Election Laws and Law Commentaries', (National Democratic Institute for International Affairs (NDI) 2008) 1
[260] See Section 84(12) of the Electoral Act 2022.

wrongful deployment of state resources to garner support from electorates and party delegates. One major bad practice that section 84(12) of the Electoral Act 2022 would achieve in Nigerian politics is the abuse of armed officers and security men who have been used in the past to influence or rig elections to the favour of an individual political appointee as a member of one executive arm of government. This is because it is common to see politicians move about during elections, brandishing security men as if they are private guards even when they are not part of officiating officers for election purposes.[261]

Violence during Electoral Process Endangering Rights to Life and Property

The nature of breach of right to life and property during electoral process in Nigeria is something that gives cause for concern. Meanwhile, the electorates "voted for an improved quality of education, from the primary to the tertiary levels and they voted, most importantly, for security of lives and property."[262] In spite of that, the rights to life and property have been breached in Nigeria and other African nations in democratic dispensations against the supposed support that the right to life and property should have guaranteed. These two rights are often the most breached rights in Africa nations. Many electorates are interest in vying for offices and want to participate in the process but the

[261] Ikechukwu Ikeji, "Is Deployment of Soldiers During Elections Constitutional?", *Vanguard* (March 5, 2015) available at https://www.vanguardngr.com/2015/03/is-deployment-of-soldiers-during-elections-constitutional/ accessed 4th September, 2022; "2019 General Election and the Military", *Thisday* (March 17, 2019) available at https://www.thisdaylive.com/index.php/2019/03/17/2019-general-election-and-the-military/ accessed 4th September, 2022.

[262] Paul Usoro, 'Nba President's New Year Message: Welcome to Year 2020 and Happy New Year', 2nd January 2020.

fear of violence at the polling booths discourages them. Unfortunately, the Executive who is to address these issues passionately, are also the politicians who seek the votes of the electorates to return to offices. They must come to the level of understanding that without the security of lives and property, they face the prospect of a radical decrease in the level of participation of citizens in democratisation processes.

In a recent election held in Nigeria, a Woman was reportedly burnt to death by thugs who were apparently unhappy because of the role she played in support of her party. Mrs Samole Abuh, the Women leader of the People's Democratic Party in Kogi State, was said to have been burnt alive at Ochadamu, Kogi State on the 18th of November 2019 according to news reports.[263] That was a woman who had summoned the courage to participate in politics to the extent of leading other Women in the state in the most populous political party in Africa. The deprivation of her right to live in such a process which is supposed to be peaceful, free and fair was very heart rending. The United Nations in its response condemned this killing outright, and same goes for all Civil Society Organisations in the protection of rights to life and property.[264]

Similarly, the outbreak of violence in Oba Akoko in Akoko South-West Local Government Area of Ondo State, during the

[263] **News Agency of Nigeria, '**Salome Abuh, PDP Woman Leader burnt to Death, buried amid Tears', available at https://www.pulse.ng/news/metro/salome-abuh-pdp-woman-leader-burnt-to-death-buried-amid-tears/84ghgzv accessed 13th December 2019.

[264] Amina Mohammed, 'UN Condemns Killing of PDP Women Leader in Kogi' available at https://www.thisdaylive.com/index.php/2019/11/28/un-condemns-killing-of-pdp-women-leader-in-kogi/ accessed 13th December 2019.

April 2019 election to the House of Assembly, forced the state government to impose a curfew on the community. It was reported that one person lost his life, when security agents, particularly men of the Nigerian Police Force (NPF) and some political thugs, engaged the youth in an attempt by the security agents to 'protect' politicians and ballot boxes.[265] Several properties were destroyed in the process belonging to individuals, the community and the NPF.

Executive Deployment of the Army Officers and State Security Service during Electoral Process

The executive deployment of armed law enforcement officers such as the Nigerian Army and men of the Department of State Security Services other than the Police is not necessary except where there is a clear case of serious terror. An example of the region where this deployment may be required, is the North Eastern part of Nigeria where men of *Jamāʿat Ahl al-Sunnah li-l-Daʿawah wa al-Jihād,* otherwise known as 'Boko Haram', often carry out acts of terrorism on regular basis. A careful perusal of the constitutional[266] and statutory role of these agencies or armed entities will reveal their main purpose of establishment, powers and functions in a democratic system and during democratisation process.

The Armed Forces are the institutions of government saddled with the responsibility for preservation of peace and security

[265] 2nd Interim Report of the Nigerian Bar Association Election Working Group on the 2019 Gubernatorial and Houses of Assembly Elections which held on Saturday, 9th March, 2019.

[266] CFRN 1999 (as amended), ss.217 and 218.

across the federation. Security and orderliness are of great importance in the maintenance of organised government. For ease of performance of their duties, they are empowered by the Constitution and the Armed Forces Act in the context of the establishment, organisation, administration and in the exercise of military powers enshrined in the law. However, the performance of their lawful duties has been greatly and adversely hampered as a result of political factor in which they have inevitably found themselves. This led to the occasional problems of indecision by the Armed Forces' failure to perform duties imposed on them. Political system is in a way, one major obstacle confronting the Armed Forces when one looks at the way the president is given power of operational control of the Forces. This, therefore, raises some salient questions of national concern about the independence of the Armed Forces in the performance of their duties, and Armed Forces accountability and control under relevant laws in Nigeria. The Nigerian Army (NA) for example is the land branch of the Nigerian Armed Forces and the largest among the Armed Forces. The constitutional and statutory powers, duties and responsibilities of Nigerian Army are clearly spelt out in the Constitution.[267]

From the constitutional provision, the Armed Forces are known and designated for the purposes of: defending Nigeria against external aggression; maintaining her territorial integrity and securing her borders from violence on land, air and sea; *suppressing, insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President, but*

[267] CFRN 1999 (As amended), s.217(2)(a)-(d).

subject to some conditions as may be prescribed by the Act of the National Assembly.[268] The Armed forces can also perform such other functions as may be prescribed by the Act of the National Assembly.[269]

Without prejudice to any of the segmented functionality of the military forces above, it will appear that the underlined functions are the ones to focus and handle strictly as prescribed, otherwise, they can be abused on the altar of politics, executive bias and in favour of one political ally/party, state, or interest during the conduct of election. The clause, "acting in aid of civil authorities to restore order", could include when government calls on the Armed Forces to assist INEC or police for the purpose of ensuring peaceful electoral process. However, this paper argues that this supposed power of the President should only be read and acted upon in cases of "suppression or insurrection" since the statute used the word "and" and not "or". Hence, the Armed Forces are not expected to be ordinarily deployed to aid electoral process where it is obviously and manifestly clear that suppression or insurrection is not likely. This is the first leg of the condition for deployment that the President should not breach. In addition, the President is also not permitted to take such decision regardless of this first condition where it is not permitted by conditions stipulated by the Parliament.

On the contrary and in practice, the President hardly seeks the permission of the National Assembly before exercising powers over the Armed Forces. Regardless of the intention of the

[268] Underline mine.
[269] CFRN 1999 (As amended), s.217(2)(a)-(d).

executive, deployment of the Armed forces in the internal security system in Nigeria is the joint responsibility of the legislature and executive. On the roads, one would witness several road blocks now manned by the Armed Forces rather than the police.[270] During elections, some highly placed politicians within the executive protect themselves with military personnel.[271] It is also observed by the author that during elections, the entrance to and out of every state capital is manned by the armed forces. Police are not seen at these points of entry and exit except may be at polling stations. The practice of permitting soldiers to get near the polling units or areas including the INEC offices are not in tandem with the constitutional stipulation for which the army should be deployed. Invariably, they have taken over the work of para-military agencies like Nigerian Police, Nigerian Security and Civil Defence Corps as well the State Security Service (SSS), self - styled as the Department of State Services (DSS).

Also, the State Security Service (SSS), self-styled as the Department of State Services (DSS), is the primary domestic intelligent agency of Nigeria.[272] It is part of the organisation that

[270] "Illegal Roadblocks: Human Rights Commissioner Wirtes GOC, Enugu CP" *Vanguard* (December 8, 2021) available at https://www.vanguardngr.com/2021/12/illegal-roadblocks-human-rights-commissioner-writes-goc-enugu-cp/ accessed 3rd September 2022.

[271] Ikechukwu Ikeji, "Is Deployment of Soldiers During Elections Constitutional?", *Vanguard* (March 5, 2015) available at https://www.vanguardngr.com/2015/03/is-deployment-of-soldiers-during-elections-constitutional/ accessed 4th September, 2022; "2019 General Election and the Military", *Thisday* (March 17, 2019) available at https://www.thisdaylive.com/index.php/2019/03/17/2019-general-election-and-the-military/ accessed 4th September, 2022.

[272] Samuel Ogundipe, 'Fact-Check: How Nigeria's Secret Police, SSS, is violating the Law and Illegality Parading Itself as DSS', *Premium Times Nigeria*, (26 August

broke out from the defunct National Security Organisation (NSO) in 1986 and now established by the National Security Agencies Act (NSAA).[273] The SSS now operates as a department within the presidency and is under the control of the National Security Adviser.

Primarily, the mission of the SSS is to detect and prevent crimes that are against internal security of the nation. But the practical deployment of the SSS, is now to protect state officers such as the President, Vice President, Senate President, Speaker of the House of Representatives, State Governors, their immediate families, other high ranking government officials, past presidents and their spouses, certain candidates for the offices of President and Vice President, and visiting foreign heads of state and government.[274] The SSS, has constantly adapted to various roles necessitated by evolving security threats in Nigeria, including counter-terrorism and counter-insurgency. Observably, there is a cross section in the duty of the SSS and police. That notwithstanding, the SSS has little or no role to play during electoral process but the police has. Effort should be channelled appropriately and to the right source.

The Constitutional and Statutory Role of the Police

The roles and functions of the security agencies as examined above are distinguishable from that of the police force. The police in any nation in Africa are saddled with the mandate of protecting life and property. They are to protect the electorates, the officers

2016) available at https://www.premiumtimesng.com/investigationspecial-reports/209343-fact-check-nigerias-secret-police-sss-violating-law-illegally-parading-dss.html accessed 3 January 2020.

[273] National Security Agencies Act, Cap. N74 LFN 2004, s.1(c).

[274] Ikechukwu Ikeji (fn 45).

of the electoral body conducting the election, their agencies, local and international observers, members of the press and other personnel whose duties are meant to be performed while the exercise lasts. This is not just the first and primary goal of the police but also the summary of it. The police understand and ought to know that this core duty is most required, during the conduct of election. This is also true when you consider the disposition of typical African politicians and their supporters with their innate and underlining motive for violence where the electoral process does not end in their favour or even where it does like the case of Abuh.

Fortunately, the police live and reside close and even within the communities where elections are conducted. Some of the officers are members of these communities or at least, close ethnic associates. Hence, there is no better agency to harness, fund, prepare and deploy for the conduct of elections and protection of lives and property other than the Police.

However, the executive-politicians who wheels the power of control over the police[275] have rather used the entity to satisfy their political aspirations and the inordinate ambitions of their political parties. For example, just for a single gubernatorial election in Ekiti State, the federal government deployed thirty thousand police officers with armoured vehicles in 2018. In Kogi and Bayelsa state elections, over sixty-six thousand police officers were deployed,[276] yet, a precious live could not be saved

[275] CFRN 1999 (as amended), s.215(1) and (3).
[276] Seun Opejobi, 'Kogi Guber: Police deploy 35,000 additional Personnel ahead of Nov. 16 Election', available at https://dailypost.ng/2019/11/06/kogi-guber-police-

in the process. This gesture can only suggest a clandestine plan to use power of incumbency to win election at all costs. Consequently, the electorate is intimidated and a signal of threat to life is surreptitiously communicated to them by this act.

Besides, if government can deploy such large number of police officers, the electorates in such state will only sense insecurity to life and property. Perhaps half of the number is not necessary in their view (35,000 officers is approximately 10% of the strength of the entire police force that is about 371,800 in number). This increases the tempo of insecurity and could engender reprisal attack from aggrieved and angry youth. The contention here is that politicians occupying governmental positions should not act or use the power to control the police in a way that increases the possibility of jeopardising the enjoyment of the people's right to life and security of property while trying to protect same.

It is also observed that due to the political motive behind the deployment of armed military personnel and police alike for electoral process, there is little or no training, orientation or re-orientation for the officers about their supposed roles. The officers are not trained about their special duties, most especially as it bothers on the protection of lives and property on the field. With the nature of deployment now in practice, which has been considered above, many of the officers are posted to unfamiliar jurisdictions. They are meant to carry out their duties mostly within a maximum of forty-eight hours while the conduct of election lasts. It is therefore imperative for pre-election

deploy-35000-additional-personnel-ahead-of-nov-16 election/ accessed 3 January 2022.

orientation, as the strategy employed to maintain security in an atmosphere of riot, terror or conflict, cannot be the same strategy to be adopted in electoral process that is preconceived all over the world, to be a peaceful process.

Involvement of Security Agencies and Political Thugs in Breach of Rights to Life and Property

Report of the Nigerian Bar Association (the largest Bar in Africa) about the involvement of officers and electoral violence from all over Nigeria in the last gubernatorial and legislative elections were saddening. It was reported that party thugs and hoodlums had a field day, invading voting centres to snatch polling materials, destroy voting materials, harass, molest and intimidate voters and, in some instances, INEC officials.[277] Suspected political thugs, accompanied by security operatives, particularly officers and men of the Nigerian Army, hijacked materials, destroyed materials, harassed, interfered with the voting processes, prevented the counting of votes at some voting centres, hindered voting, intimidated and prevented some people from voting, chased away some party agents and observers from polling units and collation centres. For instance, in Polling Units 5, 6 and 7, of Ward 4 in Ogbomosho South Local Government Area of Oyo State, political thugs forced voters to show their ballot papers after voting before depositing same in the ballot boxes.[278]

In many cases, the issue of security officers' involvement in breach of people's right, may be complicated by hired political

[277] ibid.
[278] Nigerian Bar Association 2nd Interim Report (fn 9).

thugs. Communities have complained in the past where some political thugs were seen wearing Army or Police uniforms while operating during electoral process and yet with awareness of the government.

Observations

Political apathy is the possible outcome of unsecured environment where life and properties are in danger during electoral process. The response of the electorates moving away from voting began to decrease as a result of advocacy by many Civil Society Organisations, since 2003. However, the achievement made so far may degenerate or shrink if effort is not consciously maintained to address the security of life and property during election process. Accordingly, the state being premised on the principles of democracy and social justice, is to proclaim that sovereignty belongs to the people from whom government through the Constitution derives all its powers and authority.[279] It is therefore imperative that the security and welfare of the people shall be the primary purpose of government and the participation by the people in their government must be ensured in accordance with the provisions of this Constitution.

Again, African politicians with their disposition to grab power at all cost, must be checkmated with the corresponding duty to protect life and property.[280] In other words, if an incumbent politician occupying the seat of government seeks to be re-elected, then, the manner he or she conducts himself and how his political party activities give respect to rights to life and property

[279] CFRN 1999 (as amended), s.14(1) and (2).
[280] Ibid.

over time of his previous governance and during the process of election, will become germane instrument in this regard. This will become achievable where the electorates are educated and willing to take necessary proactive steps.

The provision of Section 84(12) of the Electoral Act 2022 has come to stay and it is believed to be in the best interest of the electorates and the citizens. Executive deployment and abuse of the use of security personnel to achieve political ambition has been partially resolved by this provision and should be encouraged. Thankfully, the Supreme Court, in a unanimous decision led by Justice Muhammad Dattijo, held that President Muhammadu Buhari (the head of the executive) was not the proper person to approach it with such suit, owing to the nature of reliefs that were sought. Above all, it held that to delete section 84(12) of Electoral Act 2022 would amounts to an abuse of judicial process just as permitting political appointees to vote during political primaries would lead to abuse of office in the use of army officers and security personnel as well as a major threat to rights to life and property.

Conclusion and Recommendations

This paper examined the legal issues bordering on the legal corpus of rights to life and security during the conduct of elections in Africa, the risk the rights usually suffer, and the supposed role of relevant agencies such as INEC, Nigerian Police Force, Nigerian Army and State Security Service that are meant to protect those rights. In achieving this desired protection, the paper identified certain loopholes already created by the law and functional operations of the regulatory institutions identified in

this paper. It therefore presents the possible implications of lack of assured protection each time elections take place in any African country.

The paper further and particularly discussed the violence experienced in electoral process and the danger to life and property, with examples such as the killing of the Women Leader of the People's Democratic Party in the Kogi State election that took place in 2019 in Nigeria. It further examines the legality or propriety or otherwise in the deployment of officers of the Nigerian Army and men of the Department of State Security Services during the election process with a view to protecting life and property.

To these causes, problems identified and implications, the paper recommends that strategies for overcoming the violence that bedevils electoral process in Africa should always be part of pre-election preparations and logistic planning to prevent further breaches. The process of election and the conduct of it, involves more than having the election or expecting the participation of voters. Necessary machineries should be put in place to ensure a safe and secure atmosphere for the electorates that will cast their votes. Politicians and political parties must see and understand that the votes of the electorates are cherished and treasured and more should be done to win the votes not only legitimately but also securely. It amounts to abuse of electoral process and 'human dignity' to think that votes can be gotten by the use of force, money and threat where life and property itself is put at risk. Such practices only portray the system, particularly the perpetrators as desperate, undemocratic and insensitive sets of

ambitious political leaders who neither value the essence of democracy nor the beneficiary of democracy who are the people.

The paper also recommends, a frequent training and re-training of the police officers whenever a transition to democracy is envisaged. The training should be a planned, strategic and coordinated one. With such training, the police officers will not only act well and in the interest of democratic value but are also likely to shun manipulation by politicians in the executive and view themselves as part of the democratisation process. They will also wish to contribute meaningfully to the delivery of a credible leader.

From the assessment, the paper views that considering the dwindling and scarce economic resources in Nigeria, the job of security is a joint effort that includes the citizens. As a result, arms and security information can be shared by the various security agencies instead of deploying the wrong personnel for the job of securing electoral process. At least, the arms shared can serve for the maximum period that the national assignment on election lasts. It is believed that the Army, SSS, Civil Defence and Custom possess arms and quite a number are available at their disposal that may not all be in use at the same time elections are carried out. As such, the police whose primary duty is to secure life and property at this crucial time, can be furnished, equipped and trained to use such weapons or arms. After all, the agencies as well as the arms they bear all belong to the government. However, proper accountability and high sense of responsibility, should be attached to this suggestion in order to ensure synergy between the security agencies.

ANALYSIS OF INCONSISTENCIES AND CONFLICTS RELATING TO HUMAN RIGHTS PROVISIONS IN THE CONSTITUTION: NIGERIA IN PERSPECTIVE

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Abstract

Discourse in constitutionalism must be as organic as society. While trying to maintain consistency and coherence in core and basic principles we must ensure they do not become obsolete. This includes the alteration of the constitution and the development of the principles that guide such alteration. In constitutional democracies, particularly ones with written constitution, the constitution is supreme and it is expected not to be in conflict with any of its part. The history of descent to totalitarianism in Kenya, Ghana and Nigeria, leading to military incursions in politics in Africa have shown that people always seek for ways to undermine the law unless the law stays ahead. It is usually the role of the courts and the legislature to ensure this dynamism. Where however, it appears that the courts and the legislature are faltering or being captured by the executive, academics and public discourse must come to the rescue either by asking questions or suggesting a new approach and seeking for articulation. This is the purpose of this paper –what if the constitution actually conflicts with itself and how such conflicts may be acknowledged and resolved. In answering this question, this paper adopted a critical analysis of doctrinal data comprising mostly constitutional provisions and secondary data from literature. The finding suggests that Constitutions do experience internal conflict usually arising from incoherence

and inconsistency in the constitution. From Nigeria's experience it is accelerated by the desire to reduce the constitution to a mere statute through constant alteration instead of the grundnorm for governance: with the Supreme Court allowed to provide guidance and interpretation in terms of ambiguity. Academics must continue to ask questions and proffer solution and should not be stopped by any perceived permanent principles. The judiciary should be bold and take ownership of its role in positive social engineering and good governance through application of innovative developments and analysis of the law.

KEYWORDS: *Constitutionalism, Constitution alteration, Constitution Conflict, Human Rights, Incoherence and Inconsistency.*

Introduction

News of the possibility of Goodluck Ebele Jonathan picking up a presidential candidate form to contest election for President of Nigeria in the 2023 general elections[281] has raised a serious constitutional question. This is the question of whether a constitutional provision can conflict with another and how such conflict, if any, may be resolved. The specific example is whether constitutional provisions on fundamental human rights takes precedence over other provisions of the Constitution. The

[281]Editorial, '2023: Northern group buys APC presidential nomination form for Jonathan'Premium Times May 9, 2022 <https://www.premiumtimesng.com/news/headlines/528677-2023-northern-group-buys-apc-presidential-nomination-form-for-jonathan.html> accessed 12 May 2022; Sodiq Oyeleke 'Presidency: APC forms bought without my consent, says Jonathan' Punch 10 May 2022<https://punchng.com/presidency-apc-forms-bought-without-my-consent-says-jonathan/> accessed 12 May 2022

received knowledge is that the Constitution is a wholesome document and no part or section of the constitution should be read to denigrate other provisions.[282] Although, as demonstrated in the USA Constitution, different sections of a constitution may deal with independent standalone subjects or be followed by provisions that have no direct relevance to the other, none should generally be read to conflict with the other.[283]

In jurisdictions other than USA, like Nigeria, Ghana and Kenya, while the received principle of the Constitution being a wholesome document is accepted, higher hierarchy is given to some provisions of the constitution. In the Ghana Constitution it is categorically stated,[284] but though this is reflected in the procedure for the alteration of different parts of the Constitution,[285] it is not categorically stated in the Constitution of Nigeria. Generally, this classification groups the provisions of the constitution into entrenched and none entrenched provisions. Two of the provisions which find their way in the entrenched group in these three jurisdictions (Nigeria, Ghana and Kenya) are

[282]See MADUMERE & ANOR v. OKWARA & ANOR (2013) LPELR - 20752 (SC): per Nwali Sylvester Ngwuta, JSC'Constitution is the supreme law of the land and while the validity of the provision of any law is determined by reference to the Constitution, the reverse is not the case. Also, same provision of the Constitution cannot be employed to call in the question the validity of another provision. The Supremacy of the Constitution in Section 1 thereof applies to the Constitution as well as each section thereof'

[283]Andrew M. Hetherington, '*Constitutional Purpose and Inter-clause Conflict: The Constraints Imposed on Congress by the Copyright Clause'*,(2003) 9 Mich. Telecomm. & Tech. L. Rev. 457, 484, <http://repository.law.umich.edu/mttlr/vol9/iss2/5> accessed 5 May 2022; Laurence H. Tribe, '*Taking Text and Structure Seriously: Reflections on Free-Form Method in Constitutional Interpretation', (1995)*108 HARV. L. REV. 1221, 1235

[284] See Ghana Constitution 1992 Articles 290 and 291 for items that fall under entrenched and non-entrenched provisions.

[285]CFRN 1999 s 8 and 9;

provisions on fundamental human rights and procedure for alteration of the Constitution.[286] To change these provisions, higher majority and wider participation is required. Perhaps this differentiation is due to the history of military dictatorship, pseudo-democracy, authoritarianism and one party system forced on citizens in these jurisdictions.[287] These provisions were inserted in their constitutions to reduce the possibility of degenerating to the level of authoritarianism – the intent being to reduce the opportunity for abuse of fundamental rights, constitution alteration procedure, promote unity of the state and political participations, especially provisions promoting multi-party systems.[288]

The insertion of these provisions now raises questions of what happens when a conflict arises between provisions of the constitution in general and conflicts or inconsistency between entrenched and none-entrenched provisions. This question arises not from the provisions of the constitutions as they originally were, but because of the recent spate of alterations of the 1999

[286]Ghana Constitution 1992 article 290; CFRN 1999 section 8 and 9; Kenya Constitution 2010 Articles 255

[287]Stephen Kwaku Asare and H. Kwasi Prempeh, Amending The Constitution Of Ghana: Is The Imperial President Trespassing? African Journal of International and Comparative Law, forthcoming may 2010, 16<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1614365>accessed 11 May 2022; *W.Maller-Freienfelst,* 'Conflicts of Law and Constitutional Law' (1978) 601

[288]See Nelly Kamunde-Aquino "Kenya's Constitutional History"REDD+ Law Project - Briefing Paper, July 2014<http://cbgoumaadvocates.co.ke/wp-content/uploads/2017/11/Kenyas-Constitutional-History.pdf> accessed 11 May 2022; Abdirizak Arale Nunow "Constitution Making and Legal Reform Process in Kenya" (Indiana: Indiana University Press, 2004)p.2. <https://www.researchgate.net/publication/47618920_Constitution_Making_and_Legal_Reform_Process_in_Kenya> accessed 11 May 2022

Constitution.[289] There is also this habit of resorting to alteration of the Constitution as a panacea for bad governance instead of seeking the assistance of the Supreme Court for interpretation. The constitution is generally a framework and not meant to provide detailed statutory provisions on every conceivable conflict.[290] Rather, the court is available to guide the society in its understanding and application.[291]This includes when there appears to be inconsistency, a clash or conflict between constitutional provisions. This paper explores this question in the context of Nigeria, its possibility and how it may be resolved. To answer this question, the remaining part of this paper is structured as follows. Next section provides brief conceptual clarifications. This is followed by a brief literature review.

Conceptual Clarification

For the purpose of consistency and coherence, some concepts like constitutionalism, constitution amendment/alteration and rule of law are clarified. Constitutionalism is a recognition and adherence to the purpose and the spirit of the constitution in a democracy where judicial independence and protection of human rights are assured.[292]*Constitution Alteration* on the other hand, refers to the act and process of making amendments to sections of the Constitution while *Constitution change* (not used in the 1999

[289] Nigeria has had several alterations of the 1999 Constitution affecting over 30 sections in total.

[290]Nora Hedling, 'The Fundamentals of a Constitution' Constitution Brief April 2017 IDEA, 3<https://www.idea.int/sites/default/files/publications/the-fundamentals-of-a-constitution.pdf> accessed 11 May 20022

[291]Ibid 6

[292]See Chhachhar, Varun and Negi, Arun Singh, 'Constitutionalism - A Perspective' (December 24, 2009), p. 1. Available at SSRN: <https://ssrn.com/abstract=1527888> or <http://dx.doi.org/10.2139/ssrn.1527888> accessed 23rd March 2022

Constitution) generally refers to a holistic or huge replacement of the constitution.[293]In this paper, change and alteration are used interchangeably as ways of reflecting the aspirations and realities of the people in the Constitution.[294] Rule of law is the principle that all individual and government entities are subject to the law and that the exercise of governance is subject to the law, specifically the constitution and not at the whims of individuals or group.[295] The discourse in this paper should be analysed against the above concepts.

Understanding the Discourse on Constitutional Coherence and Consistency

A number of scholarly works explored the question of constitutional inconsistency, incoherence and conflict, however, to maintain the sanctity of constitutionalism there have been great restraint in declaring provisions of constitution as conflicting with another, and rightly so. The language has been that of

[293] CFRN 1999 s 9(1)

[294] Markus Böckenförde, 'Constitutional Amendment Procedures: International IDEA Constitution-Building Primer 10' (International Institute for Democracy and Electoral Assistance 2017) 1, <https://www.idea.int/sites/default/files/publications/constitutional-amendment-procedures-primer.pdf>accessed 4 April 2022; Oserheimen A. Osunbor 'Constitution Amendment In Nigeria: Concepts And Misconceptions' p. 5, being a Presentation by Sen. (Prof.) Oserheimen A. Osunbor to Students of the Faculty of Law, Ajayi Crowther University, Oyo, 31 January 2017

[295]See Aberham Yohannes and Desta G/Michael 'The Need for Controlling the Powers of Government'(AbyssiniaLaw,1 February 2012), Available online at: <https://www.abyssinialaw.com/study-on-line/item/316-the-need-for-controlling-the-powers-of-government>accessed 27thSeptember 2018; Nchi S. I, Kana A. A, and Yamusa S. U. *'Nigeria's State House of Assembly: Powers, functions and Authority'* (Greenworld Publishing Company Ltd, Keffi, 2015) 27; For instance, the fact that the National Assembly has power to make laws does not empower it to make laws outside its legislative competence.

constitutional clash, coherence and inconsistency. The recent Nigerian experience, however, invites the deployment of the term 'conflict' if at least, to discourage the abuse of the constitution and alteration process for short-term political gains. On the issue of constitutional coherence, it is argued that the constitution is a political compromise between political interests, units and community and like every human arrangement there are bound to be conflicts. These conflicts may be immediate or in the future. In resolving the conflicts which usually appear as inconsistency and incoherence, the courts must examine the logical implications of some values to generate consistent, coherent, or rational constitutional doctrine.[296] Thus, despite the desire to elevate the constitution to the level of infallibility, this is never the case. Research showed that constitutionalism has degenerated in some jurisdictions to rule by law when some group take over power and supposedly use the constitutional process for alteration to gradually erode human rights, impose oppression and take over government.[297]The fact that most constitutions make provision for alteration is a recognition that there is no permanent universal constitutional infallibility. Rather, at every point, the interpretation of the constitution must prioritise the interest of the people and also follow the procedure set out by the people.[298]Thus by interpretation and restrained alteration the

[296]David Chang 'Conflict, Coherence, and Constitutional Intent' (1986-1987) 72 Iowa L. Rev. 753, 756<http://digitalcommons.nyls.edu/fac_articles_chapters> accessed 5 June 2022

[297]David Landau, *Abusive Constitutionalism*, (2013) 47 *U.C. Davis L. Rev.* 189 ,231<https://ir.law.fsu.edu/articles/555> or <https://lawreview.law.ucdavis.edu/issues/47/1/articles/47-1_Landau.pdf> accessed 12 May 2022

[298]Nora Hedling (2017) [n 10] 4

Constitution is made organic, dynamic and reflective of extant cultural milieu and aspirations.[299]

The first way this is practiced in the Nigerian legal system and recognised by the jurisprudence on constitutional law of most constitutional democracies with written constitution is through alteration of the constitution. The effect of an alteration is a direct conflict with extant provision which should be interpreted to present the latest alteration as the correct constitutional provision.[300] Other cases of conflict are however, recognised as indirect. Where such happens, it has always been the duty of the court in the exercise of its power of constitutional interpretation or judicial review to rein in one provision in favour of the other.[301] This may not require declaring the other void but only that it is inconsistent with another. The said conflicting provision may remain as far as the offending provision is modified to allow the Constitution take effect.[302] Other approaches recognised for dealing with seeming constitutional conflict is to regard such as an encroachment which should be reined in; or a logical inconsistency which should be interpreted to promote consistency; or purpose determination by interpreting seemingly conflicting provisions to promote the specific purpose they serve instead of promoting mere literal meaning.

However, the impact such constitutional conflict poses on governance and the constitution itself may be determined by how

[299]ibid
[300]Andrew M. Hetherington, (2003) [n 3]485
[301] ibid
[302] Ibid 486

the conflict is interpreted and resolved and not by pretending it does not exist. A scholarly work exploring this possibility of constitution internal conflict examined the instances of the European Union (EU) Directive conflicting with a constitutional provision of the constitution of an EU member country. It found that the major instances where such conflicts arise relate to the fundamental rights provisions. It observed that there are two instances where the EU Directive may conflict with a national primary law (national constitution) and these are: Where the EU Law appear to derogate fundamental right provisions in a national constitution and where the fundamental right provision in a national constitution is weaker than those provided under the EU Directive. To resolve such conflict, the Supreme Courts of countries affected have four options: (a) these are to seek harmony with the EU Law; (b) to interpret EU Law in line with the national constitution; (c) to convince the Court of Justice of the European Union or the European Court of Human Rights to change its case law to align with the National Constitution and finally; (d) to interpret the National Constitution in disobedience to the EU Law.[303] What is evident in the above analysis is that internal conflict of Constitution is possible. This is also mostly possible when fundamental rights of individuals are or may be breached.

In other words, constitution internal conflicts are possible and do happen. However, different jurisdictions treat it differently

[303]Ioannis Dimitrakopoulos'Conflicts between EU law and National Constitutional Law in the Field of Fundamental Rights'ejtn.eu [online]. EJTN.<https://www.ejtn.eu/PageFiles/17318/DIMITRAKOPOULOS%20Conflicts%20between%20EU%20law%20and%20National%20Constitutional%20Law.pdf> accessed 12 May 2022

because of the hierarchy of laws and legal system of each jurisdiction. What is however consistent is that fundamental right provisions in recent times, takes precedence over other provisions. For countries with written constitutions like Nigeria, this extends to constitution alteration provisions and national unity, etc. This paper therefore seeks to instigate further discourse on the possibility and implications of internal constitutional conflict in Nigeria.

The Nigeria Constitution and Potential Internal Conflicts

There is no case law in Nigeria so far that declared any constitutional provision to be in conflict with another. In fact, a Supreme Court decision has been categorical that a section of the constitution cannot be in conflict with another.[304] However, there have been scholarly work on existing inconsistency of some constitutional provisions with fundamental rights provisions, especially on issues of gender equity.[305] Two potential areas of internal constitutional conflict are herein examined. First, is the issue of hierarchy of Fundamental Rights provisions in Chapter IV with other sections of the Constitution. Also spread in the 1999 Constitution are other provisions laying frameworks for the practical demonstration of Chapter IV provisions of the Constitution. An example is the right to Political participation which provides that:

[304]Madumere & Anor V. Okwara & Anor (2013) LPELR - 20752 (SC): per Nwali Sylvester Ngwuta, JSC '. … provision of the Constitution cannot be employed to call in to question the validity of another provision.'

[305]This includes the use of masculine language in the Constitution and total disregard for the feminine, sending a message that contradicts the provisions on equality and non-discrimination on the basis of gender.

> Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:
>
> Provided that the provisions of this section shall 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.[306]

It provides and protects the right to freedom of association and participation in politics. To lay a framework for the practical demonstration of this right, there are provisions on qualification and right to vote and be voted into office for different elective positions ranging from local government council member to president of the Federal Republic of Nigeria.[307]It is noted that fundamental rights may be derogated by an Act of the National Assembly upon fulfilling strict conditions.[308] Our discourse here is however, not about derogation but of internal constitutional conflict arising from alteration of the Constitution which may impact on these rights. An example, is the contention that the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No 16) Act, 2017 which barred a candidate who had served out the tenure of another as President or Governor from contesting in subsequent election for the office of the President

[306] CFRN 1999 s 40
[307]CFRN 1999 s 7(5)
[308] CFRN 1999 s 45

for more than once, is in conflict with or inconsistent with section 40.[309] This paper is not about whether this interpretation is correct but whether possibility of conflicts exists and what may be done.

Second, is whether a disregard of the difference in constitution alteration procedure creates room for potential internal constitutional conflicts. This is important because in Constitutional democracies like Nigeria with written constitutions, the Constitution is supreme and anything done contrary to the Constitution, including alteration of the Constitution is deemed inconsistent and thus void.[310] For instance, the 1999 Constitution has different levels of alteration procedure for different provisions of the Constitution. A breach of any of the requirements should ordinarily impact on the outcome. Although once laws are made it is presumed that due process was followed until challenged in a court of law.[311] Once

[309]Muhammad Abdullahi, '2023 presidency and Jonathan's eligibility to contest' Vanguard May 9, 2022, <https://www.vanguardngr.com/2022/05/2023-presidency-and-jonathans-eligibility-to-contest/> accessed 11 May 2022; Seun Opejobi, '2023 Presidency: Goodluck Jonathan eligible to run for President – Olisa Agbakoba' Daily Post, May 11, 2022 <https://dailypost.ng/2022/05/11/2023-presidency-goodluck-jonathan-eligible-to-run-for-president-olisa-agbakoba/> accessed 11 May 2022

[310] CFRN 1999 s 1; See Madumere & Anor V. Okwara & Anor (2013) LPELR - 20752 (SC);UGBA & ANOR v. SUSWAM & ORS (2013) LPELR - 22882(SC); In fact the Ghana Constitution article 289 was more explicit with regards to amendments and states that the Constitution shall not be amended by an Act of Parliament or altered whether directly or indirectly unless - (a) the sole purpose of the Act is to amend this Constitution; and (b) the Act has been passed in accordance with this Chapter. In other words any purported amendment contrary to this article can be declared as in conflict with the Ghana Constitution.

[311]For detailed discourse of this principle see Joseph Eliot Magnet, 'The Presumption of Constitutionality' Osgoode Hall Law Journal 18.1 (1980): 87-145. <http://digitalcommons.osgoode.yorku.ca/ohlj/vol18/iss1/3> accessed 11 May 2022; F. Andrew Hessick, 'Rethinking The Presumption Of Constitutionality' *Notre Dame*

this challenge arises, either through application for judicial review or fundamental right enforcement procedure, the Court may be required to declare one way or the other on the specific provision. For instance, it would be incoherent, inconsistent and potentially unconstitutional to alter any entrenched provision of the constitution or introduce a provision in the constitution which has the effect of changing an entrenched provision or a right assured by an entrenched provision without following the procedure for alteration of entrenched provisions of the constitution. These two scenarios above are some of the worrisome instances when the constitution may expose internal conflict. The recent issue of the former president of Nigeria, Goodluck Ebele Jonathan's interest to contest for President in 2023 and the flux of alterations proposed by the 9th National Assembly makes this a pertinent issue to explore.[312]

Implications of Constitution Coherence on Constitutionalism

The Constitution is and should be recognised as organic and must grow as the society grows. Generally, neither the Constitution nor the society should change faster than the other. In fact, between the Constitution and society, it is acceptable for the Constitution to leave space for societal growth but not acceptable for it to shrink space for growth through restrictive provisions, especially ones that impede on fundamental rights. Put another way, while constitutional change/growth is welcomed and in fact courted, it

Law Review [vol. 85:4, 1447 -1504 <http://ndlawreview.org/wp-content/uploads/2013/07/Hessick.pdf> accessed 11 May 2022

[312]Queen Esther Iroanusi, 'National Assembly transmits 44 Constitution Review Bills to State Assemblies' Premium Times (March 29, 2022) <https://www.premiumtimesng.com/news/headlines/520524-just-in-national-assembly-transmits-44-constitution-review-bills-to-state-assemblies.html> accessed 30 March 2022

should not be such as would undermine the basis of constitutionalism especially in a constitutional democracy.[313]This is why and how the constitution is required to demonstrate coherence and consistency at all times. Where the letter of the Constitution fails in this task, it is the duty of society through the courts, to interpret the letters of the Constitution in such a way that incoherence and inconsistency does not lead to internal constitution conflict. The growth or change of the constitution should not be such that would affect the philosophical basis and purpose of the constitution which is to through good governance promote and protect the wellbeing of citizens and residents.

Protecting the fundamental rights of citizens as enshrined in the Constitution is a key way of promoting the essence of the Constitution.[314]The other key way, which also helps to assure the protection of fundamental rights is to provide for strict guidelines for the alteration of the constitution and to strictly abide by it.[315] Where constitution alteration procedures can be ignored or breached for whatever reason, the polity becomes a fertile ground for totalitarianism and autocracy.[316] This will happen if the people, who are the root and legitimate source of the constitution, are trampled upon and practices or governance devoid of constitutionalism is adopted. Weeding out whatever act, private

[313]See CFRN s 1

[314]Artur Dobryashkin, 'National Constitutional Courts Acting as EU Courts' PhD Thesis, Faculty of Law, Universitas Masarykiana Brunensis, Brno 2019, 58 <https://is.muni.cz/th/yltlz/diploma_revamp.pdf> accessed 12 May 2022

[315]Particularly with written constitution where the alteration procedure is spelt out. SeeGhana Constitution 1992 article 290; CFRN 1999 section 8 and 9; Kenya Constitution 2010 Articles 255

[316]See David Landau, (2013) [n 17] 195

or public, which can result to such is one of the key roles of the judiciary. The judiciary must be independent and alive to its function of judicial review and protection of human rights.

Without the judiciary's or public (including academic discourse) capacity to point out when the law, including the provisions of the constitution, has been breached or is likely to breach the fundamental spirit and purpose of the constitution, room and space is created for denigration of constitutionalism and rule of law. Examples include the disregard of hierarchy of provisions during constitution alteration and change of the constitution to breach fundamental right provisions contrary to constitutional procedure or standard. Rule of law requires that private and public entities are subject to the law and must act in accordance and conformity with law validly made.[317] This is immaterial of the purpose for which an action, private or public, was carried out. Nothing justifies arbitrariness or unconstitutionality, including attempts to change or alter the Constitution.

Recommendations

The key purpose of the paper is to examine what happens when a conflict arises between provisions of the constitution in general and conflicts or inconsistency between entrenched and none-entrenched provisions. Findings and analysis show that inconsistencies do arise. And when not properly addressed may set a precedence for bad governance. To reduce such occurrences to the barest minimum, it is recommended as follows. First, academics and constitutional law experts should create good

[317]Nchi S. I, Kana A. A, and Yamusa S. U, *Nigeria's State House of Assembly: Powers, functions and Authority* (Greenworld Publishing Company Ltd, Keffi, 2015), 27.

awareness (including to the legislature and judiciary) that the Constitution is different from normal statute or Acts of the National Assembly. The constitution is the grund norm and should not be changed at every little challenge to suit immediate political challenge. They should realise that written constitutions, like the Nigerian Constitution, are constructed to make their alteration difficult. Second is to entrench the principle of rule of law in constitutional democracy. Nigeria is a Constitutional democracy and this means that the Legislature is not supreme. It must work in accordance with and subject to the law. This includes that even though the Legislature can alter the Constitution, it must abide with the Constitution and constitutional law principles in its alteration activities. This includes the recognition of hierarchy of constitutional provisions and the differences between entrenched and none entrenched provisions. Third, the judiciary should be bold to declare unconstitutional enactments of the legislature as such. While there is equality between the three arms of government, each must respect the constitutional boundaries set. The judiciary as the interpreter of the Constitution should be alert and bold to clearly interpret the constitution. Fourth, academics should be pace setters in legal discourse and charting new perspectives and jurisprudence in the understanding of the law. Academics are not meant to unquestioningly follow accepted thoughts and positions but to query such, especially when the accepted thought or practice appears to undermine constitutionalism. Fifth and finally, active steps must be taken to improve constitutional literacy amongst stakeholders and citizenry. The more they understand

the content, context and purpose of the Constitution, the better they are at contributing to constitutionalism and rule of law.

Conclusion

This paper set out to examine the potential circumstances for internal conflict in the constitution, arising from inconsistency and incoherence. Whereas it is not a desired outcome and courts have sought to avoid the use of the words 'internal constitutional conflict' in describing constitutional inconsistencies and incoherence, the fact is that inconsistency and incoherence may lead to internal constitution conflicts. The other effect, also quite troubling is that Constitutions that suffer such abuse may face a constitutional legitimacy struggle and thus may create a path for totalitarianism. In the Nigerian experience, this may likely arise from Constitutional alterations or change. This paper is careful to avoid branding any particular Constitutional Alteration Act of Nigeria as being in conflict with the Constitution. However, the potential areas where such conflicts can occur include when an alteration breach fundamental right provision. More interestingly, when such alteration whose implementation breaches fundamental right provisions does not abide by the strict alteration requirements for fundamental right provisions, the judiciary when approached should not hesitate to declare such provisions as inconsistent with the constitution. Similarly, the academia should be bold to explore the accuracy of the jurisprudence of legislative enactments.

APPRAISING THE LIMITATIONS ON THE RIGHT TO FREEDOM OF INFORMATION IN NIGERIA

***Muhammad Nuruddeen**[*]

Abstract

The value and necessity for information to human beings has been recognised for a very long period of time. The desire for information is not only natural but also essential to human survival and well-being. Access to information brings about the entrenchment of democratic tenets of openness, transparency, accountability and responsiveness in governance. This paper focuses on the limitations to the right to Freedom of Information (FOI) under Nigerian law. It asks whether it is apt to place limitations on the right to FOI in Nigeria by exploring the views of its proponents and opponents. To achieve this objective, relevant provisions of the extant legal instruments in the country were examined. These include: The Constitution of the Federal Republic of Nigeria 1999 (As Amended), the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 1983, the Official Secrets Act, 1962 and the Freedom of Information Act 2011. The paper adopts a doctrinal research methodology. The paper reveals that FOI is a statutory right which has certain limitations. It also reveals that placing numerous limitations on the right to FOI may eventually erode the right. It is, therefore, recommended that there should be less restriction on right to FOI. However, restrictions can be placed on any foreigner who applies to obtain any information from the

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government institutions in Nigeria. This is to ensure that security and territorial integrity of the country are not sacrificed in the name of the right to FOI.

KEYWORDS: *Right, Freedom, Information, Limitations, Restrictions and Nigeria*

Introduction

Information is a powerful tool in any society. Individuals who control the flow and contents of the information received by people exercise considerable control over those people.[318] This perhaps could be the reason why advocates of freedom of information consider information as power.[319] Therefore, the relevance and significance of information in any given society cannot be overemphasised. There could not be any meaningful development if citizens are not informed of the happenings around them. Wrongdoings would not be disclosed. Charlatans would not be exposed. Unfairness would go without remedy. Misdeeds in the corridors of power, in companies or in government departments, would never be known.[320] Indeed, the free flow of information and ideas lies at the heart of the very notion of democracy and is crucial to the effective respect for human rights.[321] Legal instruments dealing with right to FOI at

[318] Pember, D.R., *Mass Media Law*, 5th ed., (US, Wm. C. Brown Publishers, 1990), p. 38.
[319] Nayak V. (ed.,) '*The Right to Information: An Aid for Litigation'*, www.humanrightsinitiative.org., pages 4-7, access on 27/07/18.
[320] British Steel Corporation V. Granada Television Ltd (1981) 1 All E.R. 417 at 441, per Lord Denning.
[321] Ladan, M. T., 'Freedom of Information as A Human Right from the International and Nigerian Perspectives' Vol I, 2014, In: Lawan, M. et al (eds), The Legal Icon (Maiden Publication of the Law Students' Society, Bayero University Kano, Nigeria), pp 31-51, particularly at p. 31.

international, regional and national levels abound. The main goal of these legal instruments is to ensure full enjoyment of freedom of information and provision of enforcement mechanism in any ideal democratic country.[322] However, this appears to be unrealistic in view of the fact that there are certain limitations being placed by the FOI legislation, particularly as regards the extent to which a person can assert his/her right.

It was strongly argued that, generally, limitations should not be placed on human rights such as the right to FOI. This is simply because, such limitations erode the rights which inhere in humans to the extent that the rights may become illusory.[323] There is, thus, no room for arbitrary limitation of these (human rights, freedom of information inclusive) by any democratic country.[324] It is against this background that this paper appraises the limitations and restrictions being placed on the right to FOI with particular reference to the practice in Nigeria. The paper, therefore, discusses the right to FOI from the perspective of international law, deals with issues relating to limitations on the right to FOI and traces the origin of, and debates surrounding the limitations on the right to FOI. The paper then proceeds with an examination of the Nigerian legislation dealing with limitations

[322] Auyo, M. A., 'The Acquisition, Management and Accessibility of Presidential Records in the National Archives of Nigeria: Implication for Freedom of Information' Being a PhD Seminar Paper Presented at the Faculty of Education, Bayero University, Kano (13/10/11), p.4.
[323] Udombana, N., 'Constitutional Constraints to the Realisation of the Right to the Dignity of the Human Person'. In: *The Nigerian National Human Rights Commission Journal*, Vol. 1 (2001), *Nigerian National Human Rights Commission Journal* (*NNHRCJ),* p. 46.
[324] Ibid.

of the right to FOI. The last part of the paper contains conclusion and recommendations.

The Right to Freedom of Information: an International Law Perspective

The free flow of information and ideas lies at the heart of the very notion of democracy and is crucial to the effective respect for human rights.[325] Over the years, there has been worldwide trend of canvassing for freedom of information at global, regional and national levels. This is spearheaded by the United Nations (UN), Civil Society Organisations, non-Governmental Organisations and other Democracy based Organisations. The main goal of their struggle is to ensure full realisation of freedom of information legislation through concrete enforcement mechanisms across the globe.[326]

To start with, scholars have argued that within the UN, freedom of information was recognised as a fundamental right. In 1946, during its first Session, the UN General Assembly adopted Resolution 59(1), which stated that "Freedom of information is a fundamental human right and … the touchstone of all the freedoms to which the UN is consecrated."

In ensuing international human rights instruments, freedom of information was not set out separately but as part of the fundamental right of freedom of expression. It is believed that freedom of expression includes the right to seek, receive and impart information. The *Universal Declaration of Human Rights*

[325] Ladan, M. T., op cit., at p. 31.

[326] Auyo, M. A., op cit, at p.4.

(UDHR), adopted by the UN General Assembly in 1948 is generally considered to be the flagship statement of international human rights. Article 19 of the UDHR, binding on all States as a matter of customary international law, guarantees the right to freedom of expression and information in the following terms:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The *International Covenant on Civil and Political Rights* (ICCPR) 1966, a legally binding treaty, was adopted by the UN General Assembly in 1966. The provision of Article 19 of the ICCPR, guarantees the right to freedom of opinion and expression in very similar terms to the UDHR.

From the above provisions, it was argued that the right to freedom of information has its origin from the right to freedom of opinion and expression. [327] That is why, careful perusal of the provisions of both Articles 19 of the UDHR and ICCPR would reveal the fact that none of these legal instruments make direct, express or clear provision on the right to freedom of information.

This lack of clarity eventually prompted the UN Commission on Human Rights to invite a Special *Rapporteur* on the subjects of the right to expression and thought to delineate a prototype of the right to information. A report was prepared by this Special

[327] Ogbuitepu F., 'An Analysis on the Practicality of the Nigerian Freedom of Information Act 2011' VOL 1, December (2011), The Nigerian National Human Rights Commission Journal (NNHRCJ), p. 2.

Rapporteur and submitted to the UN Commission on Human Rights in 1998. According to the Report, international law recognises the right to information, which it considers to be a positive right, deriving from the freedom of expression. A Nigerian author, *Adaka,* is also of the strong view that right to information has its philosophical roots in and has a bearing on the human rights to freedom of expression.[328]

The proposition that the right to information is a fundamental human right finds strong support in a number of national instruments. Several countries provide for constitutional recognition of this right through specific constitutional provisions. In other countries, FOI is not provided in the constitution, but rather leading courts have extended the general guarantee of freedom of expression as encompassing a right to information.

The importance of freedom of information is also reflected in a massive global trend towards adoption of national laws giving effect to this right.[329] In Nigeria, for example, the right to information has been recognised for a very long period. The provisions dealing with the FOI can be found under Section 39 of the 1999 Constitution. The Section deals with the right to FOI under the umbrella of freedom of expression and the press.

[328] Adaka, C. F., 'the Proposed Nigerian Freedom of Information Act: the Human Right to Freedom of Expression and Implications for Military Information Management'. In: Human Rights Review: Vol. 1, No. 1, (2010), An International Human Rights Journal, Published by the Department of Public Law, Faculty of Law, Ahmadu Bello University, Zaria P. 465 @ 468, see also, Ogbuitepu F., op cit at p. 2

[329] Mendel T., *Freedom of Information: A Comparative Legal Survey,* 2nd ed, (Paris, France, UNESCO, 2008), p. 29.

Additionally, in 2011, precisely on the 28th of May, Nigeria adopted a new comprehensive legislation on the right to FOI, that is, the Freedom of Information Act 2011(the FOI Act or the Act). The Act is the first of its kind in the history of the Nigerian legal system. It was enacted to address challenges standing in the way of peoples' right to access records and information in the hands of government. Thus, it was enacted to make public records and information more freely available and also to provide for public access to public records and information, to protect public records and information to the extent consistent with public interest and the protection of personal privacy. The Act seeks to protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorisation and also to establish procedures for the achievement or realisation of the above-mentioned purposes and for other related matters.[330]

Limitations on the Right to Freedom of Information: Origin and Debates

This section deals with origin and academic debates in relation to justification of placing limitations on the right to FOI. Hence, the two issues for examination under this section are as follows:

Origin of the Limitations

The first reference to the right to obtain information in international law arose during the First Session of the United Nations General Assembly, held in New York City in 1946. At that meeting, the General Assembly called for the convening of an international convention (Convention on Freedom of Information) to explore the subject of freedom of information,

[330] Long Title of the FOI Act.

recognising that freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the UN is consecrated.[331]

The convention was actually held and two years later, a draft of an International Covenant on the subject of Freedom of Information emerged. Yet, the UN committee established to promote ratification of the Covenant was unable to shape an agreement among the Organisation's members, which ultimately resulted in the Covenant being abandoned and unsigned.[332]

In fact, it was argued that the main reason that brought about the disagreement between members is actually on how or whether the UN should place limitations on the right to freedom of information. This was also the main reason that brought about the failure of the proposed Covenant.

Debates Surrounding Limitations Placed on the Right to FOI

It is a well-known principle of law that for every general rule, there must be an exception. In this respect, Oluyede argues that statutory rights are far from being absolute. The main source of the problem with such rights is that their protection takes the form of a general statement, followed by a qualification of the

[331] Peled, R. and Rabin, Y., 'The Constitutional Right to Information' http://www3.law.columbia.edu/hrlr/hrlr_journal/42.2/Peled_Rabin.pdf , accessed on 27/07/18, p. 25.

[332] Ibid.

right in the form of a proviso; thereby limiting the extent to which the right may be asserted by persons.[333]

The right to FOI is not an exception to this general principle of law. This is so because there are certain categories of information that are exempted from the general public's right of access. One of the reasons advanced to support this position is that it enables government to maintain and conduct international and diplomatic relations smoothly.[334] Other people argue that if limitations are not placed, the right will empower journalists unduly at the expense of national security, national defence, law enforcement agencies and general ability of the government to conduct daily governmental affairs which require some level of secrecy and confidentiality.[335] Consequently, scholars are divided on the justification of placing limitations on the right to freedom of information.

The Proponents

The proponents of the limitations are of the view that under international and regional conventions and national instruments, states' obligations in relation to freedom of expression is not absolute.[336] The instruments recognise that states may interfere

[333] Oluyede P.A. O., *Constitutional Law in Nigeria,* (Ibadan, Nigeria, Evan Brothers Ltd, 2001) Pp.144-146.
[334] Adujie P. I., 'Freedom of Information: Causes and National Consequences: A Comparative Analysis'. In: Azinge E., and Waziri F. (eds), *Freedom of Information Law and Regulation in Nigeria* (Lagos, Nigerian Institute of Advanced Legal Studies, 2012), Pp.150, 160 and 164.
[335] Ibid.
[336] Imam I., *et al,* 'Striking a Balance between Freedom of Expression and Political Violence'*:* Rights and Restrictions under International and Domestic Instruments' Vol. 1 No.2*,* (2010), *Ahmadu Bello University Zaria, Journal of Public and International Law (A.B.U.J.P.I.L.),* p. 180

with the freedom of expression and dissemination of information in certain circumstances.[337] For instance, under the European Convention on Human Rights, restriction on freedom of expression is permissible.[338]

The proponents of this view further argue that the restriction on freedom of expression must pursue one of the aims recognised as legitimate for national security, territorial integrity or public safety, protection of health or morals, prevention of disorder or crime, protection of the reputation or rights of others, maintenance of the authority and impartiality of the judiciary and prevention of the disclosure of information received in confidence.[339] In other words, any interference in the exercise of the rights and freedom of expression as guaranteed by the Constitution must be convincingly established and strictly scrutinised to be justified because the rights in question is a cornerstone of democracy.[340]

Judicial authorities on the justification of the limitation placed on the right to freedom of information and/or expression in general abound. For instance, in *R V. Her Majesty's Attorney General for New Zealand,*[341] the UK Armed Forces contested the right of an author to publish a book on the activities of the UK Special Forces in the Gulf War 1990-1991 because it was feared that the disclosure of such information to the general public could compromise the activities of the special forces in future

[337] Ibid at 181.
[338] Ibid.
[339] Ibid.
[340] Ibid.
[341] (2003) UKPC 22 (17 March 2003).

operations. The court held that the denial was justifiable as the purpose was to protect legitimate concerns around disclosing confidential military combat missions.[342]

Similarly, in the case of *United States V. Reynolds*[343], the US Supreme Court held that information should be protected from disclosure when there is a "danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged."

The Opponents

On the other hand, the opponents of placing limitations on the fundamental right to freedom of expression or information are of the strong view that there is no justification whatsoever to place such limitations. While referring to the African Charter on Human and Peoples' Rights, the opponents maintain that limitation should not be placed on human rights generally. Simply, because limitations erode one's right to the extent that the right itself becomes illusory. There is, thus, no room for arbitrary limitation of these (human rights, freedom of information inclusive) by the state parties.[344]

Exponents of this view strongly argue that the interest of the public is best served if free information dissemination is allowed, if public officials are not unnecessarily shielded as to make their activities not subject to public scrutiny and if citizens would be

[342] Ibid, also available at <https://www.lawteacher.net/cases/r-v-hm-attorney-general.php> accessed on 12/08/2022; 10:00pm
[343] 345 U.S. 1 (1953).
[344] Udombana, N., op cit., p. 46

encouraged to (express themselves to) give vital information on issues of public interest.[345]

At this point, it would be recalled that, at the inception of the UN, a draft copy of an international Covenant on freedom of information was presented. Thereafter, a committee was set up and was accordingly saddled with the responsibility of promoting ratification of the Covenant. Unfortunately, the covenant could not see the light of the day. The reason was attributed to disagreement that ensued among members on how or whether the UN should place limitations on the right to freedom of information.

It is, therefore, the submission of this paper that if really freedom of information is a touchstone of all the freedoms to which the United Nations is consecrated [346] or a cornerstone of democracy[347] then it should be an absolute right belonging to all Nigerian citizens without any qualification, or else the right would be eroded and all other human rights will eventually diminish. Despite the stance taken by this paper on this issue, it is pertinent at this point to examine the limitations of the right to FOI in Nigeria in the light of extant and relevant legislation in the country.

Limitations under the Constitution of the Federal Republic of Nigeria 1999

Even though the Nigerian Constitution has provided and guaranteed the right to freedom of expression and in particular

[345] Yakubu, A., *Press Law in Nigeria*, (Lagos, Nigeria Malthouse Press Ltd, 1999), p.19.
[346] Peled, R. and Rabin, Y., op cit,, p. 25.
[347] Imam, I., *et al,* op cit, at p. 181

freedom of information, the enjoyment of the right is however, not absolute.[348] In this respect, Section 39 (3) of the 1999 Constitution, (as amended) provides thus: 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 or members of the Nigerian Police Force.

In addition to the above, it should also be remembered that further restrictions to the full enjoyment of the right to freedom of expression or freedom of information in particular was also provided by Section 45 of the Constitution where it states:

[348] Even under international, regional conventions and other national instruments states' obligations in relation to freedom of expression is not absolute. The instruments recognized that states may interfere with the freedom of expression and dissemination of information (like any other fundamental rights) on certain circumstances (irrespective of the medium or forum through which opinions, information and ideas are expressed). For instance under the European Convention on Human Rights (ECHR) restrictions on freedom of expression must pursue one to the aims recognized as legitimate for national security, territorial integrity or public safety, protection of of health or morals, prevention of disorder or crime, protection of the reputation or rights of others, prevention of the disclosure of information received in confidence or maintenance of the authority and impartiality of the judiciary.(quoted by Imam, I., *et al*, op cit at Pp 180 - 181).

> Nothing in Sections 37, 38, 39, 30 and 31 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society:
>
> (a) in the interest of defence, public safety, public order, public morality or public health; or
>
> (b) for the purpose of protecting the rights and freedom of others.

From the combined effect of sections 39(3) and 45 of the 1999 Constitution, it has now become very clear that the freedom of expression or information could be derogated from, especially where a legislation allows such derogation or on the grounds of public safety, order, health or morality or for the interest of security of the country or on such other grounds or purposes such as the protection of the rights and freedoms of others.

Limitations under the African Charter on Human and Peoples' Rights 1981

This regional international legal instrument was ratified by Nigeria in 1983. The Charter was domesticated by the Nigerian legislature as African Charter on Humans and People's Rights (Ratification and Enforcement) Act 1983.[349] Therefore, it forms part of our municipal law.[350] Consequently, in the case of *Abacha v. Fawehinmi,*[351] the Supreme Court held that "like all other laws (enacted in the country) the court must uphold it (the Charter)."

[349] The African Charter on Human and People's Rights (Ratification and Enforcement) Act, Vol. 1, Cap A9, LFN 2004.
[350] Udombana, N., op cit., at p. 45.
[351] (2000) 6 NWLR (PT. 660) 228.

Similarly, in the case of *The Constitutional Rights Project and Ors v. Nigeria,*[352] the court re-stated the relevant provisions of the Charter which provides for the right to freedom of information under Article 19 to the effect that every individual shall have the right to receive information and that every individual shall have the right to express and disseminate his opinions within the law.

It is noteworthy that the Charter, unlike the 1999 Constitution and most other international human rights instruments, does not contain a restriction clause on the right.[353] The implication of this is that emergencies and special circumstances cannot justify any limitations to be placed by state parties on the right to freedom of information in particular and other rights and freedoms guaranteed by it.[354]

The only seeming caveat to the enjoyment of the right provided (in general terms) by the Charter is that "*the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.*"[355] Accordingly, Udombana argues with emphasis that limitation may not, therefore, erode a right to the extent that the right itself becomes illusory.[356]

Limitations under the Criminal Code Act 1962

Public servants are seen as the lubricating oil of the machinery of successful governance. They play a pivotal role in promoting and

[352] (2000) AHRLR 277 (ACHPR, 1999).
[353] Udombana, N., op cit at p. 45.
[354] Ibid.
[355] Art. 27(2).
[356] Udombana, N., op cit at p. 46.

perpetuating the core values of governance, public safety and public security.[357] It is against this backdrop that the Criminal Code states that 'any person who being employed in the public service, communicates any fact which comes to his knowledge by virtue of this office, and which it is his duty to keep secret, or any document which comes to his possession by virtue of his office and which it is his duty to keep secret, except to some persons to whom he is bound to publish or communicate, is guilty of a misdemeanour and is liable to imprisonment for two years.'[358]

Generally, the above provision has criminalised disclosure of any information which is in custody of a public officer who, whether for gain or not, discloses confidential information coming into his possession in his official capacity.[359]

In the same vein, any person who, being employed in the public service, without proper authority abstracts, or makes a copy of any document the property of his employer is guilty of a misdemeanour and is liable to imprisonment for one year.[360]

By the above provision, merely photocopying any document which can be regarded as belonging to the government for someone, without proper authority, is an offence. So also, merely abstracting or copying such a document by writing out its contents would also most certainly contravene this section. Such

[357] Garba I. I., 'Document, Security and Confidentiality: Legal Perspective', Being a Seminar Paper Presented at a Refresher Course for Clerical Officers Organized by Hut Ventures Ltd in Collaboration the Office of the Head of Civil Servants, Kano State, Held at Murtala Muhammad Library Kano on 09/09/2004 at p. 106.
[358] Section 97 (1) of the Criminal Code.
[359] Osibanjo, Y., and Fogam K., *Nigerian Media Law*, (Lagos, Nigeria, Gravitas Publications Ltd, 1991), p. 143.
[360] Section 97 (2) of the Criminal Code.

restriction really constitutes impediment to the full realisation of freedom of expression or information in Nigeria. The public should know information held by government to enable them to participate fully in daily activities of the government.

In *British Steel Corporation V. Granada Television Ltd,*[361] Lord Denning held that the public have the right of access to information which is of public concern and of which the public ought to know.

More so, it was equally held that government might not be allowed to work in secrecy. This is because secrecy is an evil in itself.[362] *Woodrow Wilson* is reported to have said that: Everybody knows that corruption thrives in secret places and avoids public places, and (we believe) it is fair presumption that secrecy means impropriety.[363]

Limitations under the Official Secrets Act 1962[364]

This is another legislation which limits the freedom to receive, seek and impart information as guaranteed under the Nigerian Constitution.[365] In fact, it has been argued that the Official Secrets Act (the Secrets Act or the Act) is the most comprehensive legislation on the restrictions on access to

[361] (1981) 1 All ER 417 at 441
[362] Osibanjo, Y., and Fogam K, op cit at Pp.141-142
[363] As quoted by Osibanjo, Y., and Fogam K, op cit at p. 142
[364] Now Cap O3, L.F.N. 2004
[365] Sani, D. M., 'Law, Mass Media and the Challenges of Promoting National Integration in Nigeria'. In: Madaki, A. M. (ed), *Challenges of Constitutional Governance in Nigeria,* Department of Private Law, Ahmadu Bello University, Zaria, Nigeria (2012) P. 390.

government-held information.[366] It goes far beyond the mere restriction of disclosure of official or classified facts. It concerns itself with the prevention of spying, espionage and sabotaging of the nation's strategic installations.[367]

The Secrets Act makes it an offence for any person to transmit a classified matter to a person to whom he is not authorised on behalf of the government to transmit it or to obtain, produce or retain any classified matter which he is not authorised by the government to transmit, obtain, produce or retain as the case may be.[368] Also failure of a public officer to safeguard any classified matter under his control amounts to an offence under the Act.[369]

A similar provision under Section 2 of the English Official Secrets Act of 1991 was considered in the case of *Crisp & Homewood*[370] where the accused, a clerk in the British War Office, gave details of contracts between the office and manufacturers of officer's clothing to the director of a tailoring company. The court in convicting the accused, took the view that since the accused had obtained information by virtue of his position in the war office, and had communicated it, he had committed the offence under the section.

It should be noted that Section 1 of the Nigerian Official Secrets Act provides that any person charged under the above section can raise a defence to the effect that he did not know that the

[366] Osibanjo, Y., and Fogam K, op cit at P. 144.
[367] Ibid.
[368] Section 1 of the Official Secrets Act, Cap O3, L.F.N. 2004.
[369] Ibid.
[370] 1919, 83 J.P. 121.

document in question is a classified matter.[371] Furthermore, the Act makes it an offence for any person to, without written permission from the government, take a photograph or make a sketch or in any other manner whatsoever make a record of the description ofsuch things designed or adopted for use for defence (protected places) purpose during any emergency period within the meaning of Section 256 of the 1999 Constitution.[372]

Hence, the above provision prohibits not only "gathering" of information in protected places but also "entering" or "being in" the vicinity of such places and the offence is strictly committed even without the accused transmitting information so gathered to any other person.[373] A journalist, for instance, may therefore be convicted of the offence once he is found with any document or photograph relating to anything situated in a protected place.[374]

Limitations under the Freedom of Information Act 2011

The FOI Act 2011 was enacted to address challenges standing on the way of citizens to access records and information in the hands of government. The FOI Act has a lot of noble purposes. Particularly, the Act is aimed at making public records and information more freely available without much difficulties. More particularly, the Act is meant to protect public records and information to the extent consistent with public interest and the protection of personal privacy.

[371] Section. 1 of the Official Secrets Act, Cap O3, L.F.N. 2004.
[372] Ibid, section 3.
[373] Osibanjo, Y., and Fogam K, op cit at P 148.
[374] Ibid.

Similarly, the Act seeks to protect serving public officers from adverse consequences for disclosing certain kind of official information without authorisation and also establish procedures for the achievement or realisation of the above mentioned purposes and for other related matters.[375] This is a laudable achievement as it will increase the availability of public records and information to citizens of the country in order to participate more effectively in the making of laws and policies and to promote accountability of public officers. Thus, the Act has been described by a representative of Civil Liberties Organization as one out of three necessary Acts[376] for the fight against corruption and promotion of good governance in Nigeria.[377]

Despite the noble purposes of the Act, there still exist provisions that are meant to limit the rights of the citizen to access certain information and records held by the government. So many restrictions are attached to the enjoyment of the right. In fact, *Ladan* argues that the Act contains more exemption sections and clauses than sections that grant access to information, alerting that some mischievous public officers can use these sections for unjust and mischievous purposes. He further observes that only Sections 1 and 3 grant access to information; but as many as ten sections (Sections 7, 11, 12, 14, 15, 16, 17, 18, 19 and 26) are

[375] Long Title of the Act.

[376] The other two Acts which are yet to go through the huddles of a bill before becoming a law are: The Ethics in Government and Openness in Government respectively.

[377] Ogbuitepu, F., op cit, p. 5.

meant to deny the public access to information.[378] Specific examples of such restricted information are as follows:

Limitations based on National Security and Personal Information (Privacy)

Limitations on the grounds of National Security and Personal Information include the following:

a) information that may be injurious to the defence of Nigeria or conduct of international affairs,[379]
b) information that may interfere with law enforcement investigation or security of penal institutions,[380]
c) personal information contained in personal files of employees, appointees, students, patients or any information revealing the identity of persons who file a complaint with or provide information to administrative, investigative, law enforcement or penal agencies,[381]
d) information that contains trade secrets or commercial or financial information obtained from a third party or business, the disclosure of which may cause competitive harm to that third party,[382]
e) files and personal information maintained with respect to clients, patients, residents, students, or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from public institutions,[383]

[378] Ladan, M. T., op. cit.
[379] S. 11 of the Act.
[380] S. 12 of the Act.
[381] S. 14 of the Act.
[382] S. 15 of the Act.
[383] S. 14 of the Act.

f) Information on course of research materials prepared by faculty members.[384]

In the landmark case of *Boniface Ebere Okezie & Ors v. Central Bank of Nigeria & Ors*[385] the court gave ruling on the application of the FOI Act, particularly concerning limitations under Section 14 and 16 of Act. In this regards, the court held as follows:

> "… the CBN, being a public institution, has a duty under the Freedom of Information Act to provide details of such information, and that the refusal of CBN to make public the information upon request by Okezie was unlawful."
>
> The court went further to order the CBN to comply with the request of the shareholders by releasing the information sought. Stressing that it was unlawful for CBN to withhold such information.

At the later part of its judgment, the court refused to order the CBN to disclose the information relating to the fees and commissions paid to the law firms representing it on the grounds that such information enjoyed client-attorney privilege and was accordingly protected under the FOI Act.

[384] S. 17 of the Act.
[385] (2012) LCN/5104 (CA).

Similarly, in *Public & Private Development Centre Ltd./GTE (PPDC) v. Federal Ministry of Finance,*[386] the Applicant applied for access to a loan agreement executed between the Federal Republic of Nigeria and the Chinese Exim Bank on the execution and completion of the Abuja light rail Project in the custody of the Federal government. The Federal government denied the request on the grounds that the documents contain the trade secrets of the Chinese Exim Bank which ought not to be disclosed. After perusing the documents, the Court held that the respondents had no justification in denying the Applicants the documents sought under the FOI Act.

In the same vein, the Federal High Court in the case of *Uzoegwu F.O.C. v Central Bank of Nigeria*,[387] ordered the Central Bank of Nigeria to allow the applicant access the emoluments of its senior staff. The Court overruled the objection of the CBN that request such as these would be exempted under the personal information provision of the FOI Act.

Going by the decided cases cited above, it is now obvious that the interpretation of what constitutes limitation or not is vested in the court. This is in line with 10 principles of right to know, to which effect refusal of access to information on whatever ground must be subject to judicial review as guaranteed under the FOI Act. The Act allows everyone the right to initiate proceedings in court

[386] Suit No. FHC/ABJ/CS/856/13; See also PPDC v. National Agency for Food & Drug Administration and Control (NAFDAC) Suit No. FHC/ABJ/CS/760/13.
[387] Suit No. FHC/ABJ/CS/1016/2011.

to compel any public institution to comply with the provisions of the Act.[388]

Limitation based on Availability of Materials in the Market and Special Library/Museum Materials

Moreover, the provisions of the Act relating to right to access information are not applicable to certain materials contained under Section 26 of the Act, where it provides thus:

> This Act does not apply to:
>
> a) Published materials or materials available for purchase by the public;
> b) Library or museum material made or acquired and preserved solely for public reference or exhibition purposes; or
> c) Material placed in the National Library, the National Museum or the non-public section of the National Archives of the Federal Republic of Nigeria on behalf of any person or organisation other than a government and/or public institution.

The implication of the provisions of the Act on the materials specified above is that although a person can be allowed to see the materials from where they are displayed, he cannot apply to have access to them in any format, be it photocopy, in a video cassette, CD Rom, etc.

[388] Ss. 1 (3), 2 (6), 6(b), 7(1), 20 and 25 of the FOI Act.

Limitation as to the Nationality of an Individual

The FOI Act does not place any restriction on persons seeking to get access to any information held by the government. Section 1 of the Act guarantees the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution.[389] The wordings of this provision **"any person,"** implies that, it covers all citizens and non-citizens, juristic and non-juristic persons, an individual or group of individuals, male, female, children and/or persons with disability, to mention but a few.[390] Therefore, every person in Nigeria has a legally enforceable right to access records, documents and information held by the public or government institutions.[391]-[392]

It has been submitted that this is a laudable provision in the Act as it promotes equality and non-discrimination.[393] If we may add, this is also in conformity with the ten principles on the right to know, which states that "Access to information is the right of everyone. Anyone may request information, regardless of nationality or profession..."[394] However, this paper holds a

[389] S. 1 of the FOI Act.
[390] Ogbuitepu, F, op cit at p. 2
[391] Understanding the Nigerian Freedom of Information Bill, Published by Nigerian Freedom of Information Coalition, at p. 26. For further information, see http://www.mediarightsagenda.org
[392] for the purpose of this research, public or government institutions means any legislative, executive, judicial, administrative or advisory body of the Federal, State and Local Governments', Boards, Bureau, Committees or Commissions and any subsidiary body of those public bodies including but not limited to committees and sub-committees which are supported in whole or in part by public fund or which expends public funds and even private bodies carrying out public functions. Section 31 of the Act.
[393] Ogbuitepu, F, op cit at p. 2.
[394] Understanding the Nigerian Freedom of Information Bill, op cit at p. 26.

contrary view in the case of Nigeria. In view of the sovereignty and peculiarities of this country and for security reasons, our documents should not be made available to non-citizens. In the alternative, a provision should be made to the effect that a foreigner seeking to get access to government records should obtain prior consent of the Minister of Foreign Affairs, and evidence of compliance must be shown to the institution concerned before any foreigner is given access to any information in the country.

The practice in India, for instance, is that some Indian officials usually insist that individuals must show proof of citizenship when they show up to demand information contained in public records.[395] Nigeria should also follow suit.

Protection of Public Officers *vis a vis* Provisions of Official Secrets Act and Criminal Code, etc.

Notwithstanding the above issues relating to limitation and confidentiality of information under the Official Secrets Act and Criminal Code, the FOI Act categorically guaranteed the Protection of officers who acted in good faith in releasing information to applicants. In this respect, Section 27 of the FOI Act Provides:

> (1) Notwithstanding anything contained in the Criminal Code, Penal Code, the Official Secrets Act, or any other enactment, no civil or criminal proceedings shall lie against an officer of any public institution, or against any person acting on behalf of a

[395] Ibid.

public institution, and no proceedings shall lie against such persons thereof, for the disclosure in good faith of any information, or any part thereof pursuant to this Act, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Act, if care is taken to give the required notice.

(2) Nothing contained in the Criminal Code or Official Secrets Act shall prejudicially affect any public officer who, without authorisation, discloses to any person, an information which he reasonably believes to show –

(b) mismanagement, gross waste of funds, fraud, and abuse of authority; or

(c) a substantial and specific danger to public health or safety notwithstanding that such information was not disclosed pursuant to the provision of this Act.

(3) No civil or criminal proceeding shall lie against any person receiving the information or further disclosing it.

Similarly, section 28 of the FOI Act makes further categorical provision regarding classified documents as follows:

(1) The fact that any information in the custody of a public institution is kept by that institution under security classification or is

> classified document within the meaning of the Official Secrets Act does not preclude it from being disclosed pursuant to an application for disclosure thereof under the provisions of this Act, but in every case the public institution to which the application is made shall decide whether such information is of a type referred to in Sections 11,12,14,15,16,17,19,20 or 21 of this Act.
>
> (2) If the public institution to which the application in subsection (1) is made decides that such information is not a type mentioned in the sections referred to in subsection (1), access to such information shall be given to the applicant.
>
> (3) If the public institution, to which the application mentioned in subsection (1) is made, decides that such information is of a type mentioned in sections referred to in subsection (1), it shall give notice to the applicant.

In essence, going by the above provisions, it is now clear that limitations under any other enactment regarding disclosure of information is not recognised unless such information falls under the specific exceptions provided under the FOI Act. This is more glaring when Section 30 of the FOI Act is closely studied. Which is to the effect that the Act is meant to complement and not to replace the existing procedures for access to public records and

information. It is not meant to limit in any way access to those types of official information stated herein, unless otherwise exempted by the FOI Act.

On a final note, it is worthy to state that notwithstanding the forgoing limitations, the court is empowered in the interest of public to order release of records or information if so doing is greater and more vital than denying the applicant such records or information.[396]

Conclusion and Recommendations

The right to FOI has been established in Nigeria. The Constitution and the FOI Act have guaranteed the right of every person in Nigeria to access information in the custody of government institutions. This right is not without limitations. In other words, not every information can be accessible in Nigeria. Reasons such as the protection of national security, privacy of individuals, public morality and peace are considered as some of the valid grounds that will limit the right of a person to access information in the hands of the government. This paper, therefore, recommends that there should not be too many restrictions to the exercise of the right to FOI in Nigeria. Too many limitations may render the right illusory. In fact, there is bound to be abuse of office, inefficiency and corrupt dealings where the activities of government are shrouded in secrecy. The consequences of withholding information by public officials could include denying the public the opportunity to make informed choices concerning their affairs. The paper, finally, calls for the amendment of Section 1 of the FOI. The wordings of

[396] S. 25 (1) (c) of the Act.

the Section which guarantee "the right of ***any person*** to access or request information" should be replaced with "the right of ***every citizen*** to access or request information…" This is to ensure that information and records of the government are not outrightly given out to foreigners who might use the information against the interest of government and/or people of this country. This is in line with the practice in India where Indian officials usually insist that individuals must show proof of citizenship when they show up to demand information contained in public records. In the alternative, the paper suggests that foreigners should obtain prior permit from the relevant government authorities and must show evidence of compliance before they could be allowed to access information or records in the hands of government institutions.

COMMUNITY RELATIONS IN MILITARY OPREATIONS IN NIGERIA: HUMAN RIGHTS IN PERSPECTIVES

Amana Mohammed Yusuf*

Abstract

This article is concerned with community relations in military operations in Nigeria. The article finds that interaction between the military and the civilian population is inevitable both in times of peace and during conflicts. Also, in any of these circumstances, the interaction requires and or results in the use of force or arms to achieve the goals of the operations. Consequently, human rights are violated in the process. This article thus seeks to interrogate derogation and limitation of human rights on the premise of national security, public safety and order as the arguments for the justification for violations of the rights during military operations and argues that a balance must be found between derogation and limitation of the rights on the one hand and the respect for and protection of the enjoyment of the right and freedoms on the other hand. The article thus recommends the integration of human rights into military law and training of commissioned and non-commissioned officers in the Nigeria Military.

KEYWORDS: Community Relations, Civilian Population, Military Operation, Rights, Conflict.

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Introduction

The physical proximity of the Military and the Civilian population in every nation is inevitable both in times of peace and conflicts. In times of peace, an interactive relationship exists as military installations, offices and residential quarters are surrounded or located near civilian communities or population. At this time, military operations take place across several civilian communities from one military location to another. In times of conflicts, military operations sometimes happen close to or around civilian population and objects. This may be consequent upon direct or indirect involvement in hostility, complimenting other security agencies of the State in ensuring the safety and security of life and properties in complex emergencies, election monitoring, and or the provision of humanitarian services/assistance through the delivery of relief aid materials.

Indeed, the changing security situations in the world today have increased the scope of military operations and have made Military-Civilian interactions more constant. These circumstances create community relations in military operations and the interactive circumstance so created is expected to be built on established principles of relationship, one of which is the observance of and respect for human rights.

However, concerns have been raised over time that when a military operation is carried out, whether under a mandate or not, its military component engage in the use of force, which most times results in the violation of fundamental human rights, thereby putting to question the issue, whether there is an obligation for the observance of and respect for human rights by members of the military. Fundamental Human rights are those

rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.[397] Everyone is entitled to these rights without any form of discrimination. These rights include the right to life, liberty and security of persons, freedom from torture, cruel, inhuman and degrading treatment, freedom of movement, etc.[398] And from the perspective of this article, it includes matters related to sexual and gender based violence, extrajudicial and other unlawful killings, arbitrary arrest and detention, deprivation of personal liberty in enforcement of contractual claims/debts and torture and other ill treatments.

Today, it is common argument globally, Nigeria inclusive, that the application of human rights law, during military operations both in times of peace and conflicts presents significant legal and practical challenges to most armed forces in the world. In recent times in Nigeria, incidents involving violations of human rights by the military in peace times and in conflict situations have dominated the airspace in the social and print media.[399] It is

[397] United Nations, Human Rights, available at https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20include%20the%20right,to%20these%20rights%2C%20without%20discrimination. Accessed 12 August, 2022

[398] Ibid

[399] Adeyemi, A., Female Nigerian Soldier Beats Civilian for Calling Her 'Beautiful', YouTube Video, Uploaded, 15th February, 2016, accessed 6th July, 2018, Nyanin, J., Nigeria Soldiers Beats up Civilian Wearing Military Uniform, YouTube Video, Uploaded 1st August, 2016, , accessed 6th July, 2018; Ayoola, S., Nigerian Soldier Allegedly Beats up Civilian for Mistakenly Touching Him, Naija Gossip, Niaja.com, , accessed 6th July, 2018; Deolu, Nigeria Soldier Beats up the Hell out of Civilian, Forces Him Inside Dirty Water, News Feed, 18th May, 2017, www.informationng.com , accessed 6th July, 2018; Ogundipe, M., Soldiers at Tai Solari University Beats up Student for Wearing Camouflag, 10th October, 2017, www.nigeriaeye.com, , accessed 6th July, 2018; Oyedeji, O., How Nigerian Soldiers Beats my Brother to Death, Witness Tells Tribunal, Premium Times, 24th October,

against this background that this article seeks to provoke a number of questions: Do community relations in military operations create an obligation for the observance of and respect for human rights? Are there circumstances where the guaranteed human rights may be derogated or restricted during military operations? What remedies are there against an unjustifiable breach? Etc.

Understanding Key Terms

To appreciate the human rights perspective of community relations in military operations in Nigeria or elsewhere, an understanding of the key words or phrases that make up the topic is necessary if not fundamental.

Community Relations

It is the relationship that a company, organisation, etc. has with the people who live in the area in which it operates.[400] According to the Defence Information School, community relations are on-going relationship between a military community

2017, www.premiumtimesng.com, , accessed 6th July, 2018; Ebegbulem, S., Army Invades Edo Community, Sacks Villagers Over Land Dispute, The Vanguard News Paper online, 8th August, 2017, https:/www.vanguardngr.com/2017/08/army-invades-edo-community..., accessed 6th July, 2018, Atoyebi, O., Soldiers Invades Community, Mark Houses for Demolition, Residents Claim, Punch News Paper Online, 30th October, 2017, punchng.com/soldiers-invades-comm.., , accessed 6th July, 2018; Press Release, Amnesty International Accuses Nigerian Soldiers of raping Women Rescued from Boko Haram, Premium Times, 24th May, 2018, www.premiumtimesng.com, , accessed 6th July, 2018

[400] The Cambridge Business English Dictionary, Cambridge University, http://dictionary.cambridge.org/us/dictionary/english/community-relations accessed 7 January, 2018

and a civilian community. The community relations process can occur through various activities.[401]

In a broader context, it connotes that relationship which applies not only to official acts but also to unofficial acts, which by their commission or omission affects public opinion. The relationship also applies to individual members of the Army, their dependents and the civilian employees of the military in their personal contacts with the civilian community. In a nutshell, it is the interactive relationship between the military and their surrounding civilian communities. In the context of this article, community relations are understood as the engagement or interface between the military and the civilian populace or communities in their areas of operations or responsibility. The study of the relationship is important because, it underscores the fundamentals of military-civilian relationship, especially as it concerns the observance of human rights and the rule of law in conflict management.

Military Operations

A military operation is the coordinated military actions of a state, or a non-state actor, in response to a developing situation. These actions are designed as a military plan to resolve the situation in the State's favour. Operations may be of a combat or non-combat (peace operation) nature and are referred to by a code name for the purpose of national security. Military operations are

[401] The Defence Information School, Basic Combat Correspondent Course, Fort George G. Meade, Maryland, https://dinfos.blackboard.com/bbcswebdav/library/Library%20Content/Broadcast%20Operations/BCC%20-%20Army%20Specific/Community%20Relations_COMREL_no%20%20review%20questions.pdf, accessed 7 January, 2018

often known for their more generally accepted common usage names than their actual operational objectives.[402]

Contextually, military operations are crisis response and limited contingency operations, and normally include efforts or missions to contain conflict, redress the peace, and shape the environment to support reconciliation and rebuilding and to facilitate the continues operation of legitimate governance. Such operations fall within four principal subsets: peacekeeping operations (PKO), peace building (PB), post-conflict actions and peacemaking (PM) processes, conflict prevention, and military peace enforcement operations (PEO). Any of these operations may be conducted within or outside the territorial border of a State.[403]

The fundamental premise of military operations are consent, impartiality, transparency, credibility, freedom of movement, flexibility and adaptability, civil-military harmonisation and cooperation. Others are restraint and minimum force, objective/end state, perseverance, unity of effort, legitimacy,

[402]Wikipedia, the free encyclopaedia, https://en.wikipedia.org/wiki/Military_operationaccessed 7 January, 2018

[403] David H. L, et. al, *Operational Law Handbook*, (Virginia, International and Operational Law Department, The Judge General Legal Center & School, U.S Army, Charlottesville, 2015), available at at www.jagcnet.army.mil , ; Gortney E. W., *Peace Operations*, (United States, Joint Publication 3-07.3, 01 August 2012) available at https://fas.org/irp/doddir/dod/jp3-07-3.pdf, accessed 8 January 2018; Scott, D. K., *Peace Operations*, (United States Joint Publication 3-07.3, 01 March 2018), available at https://pksoi.armywarcollege.edu/conferences/psotew/documents/wg2/jp3_07_3%20Peace%20Operations%201Mar18.pdf, accessed 22 June 2018; Kouba, D, et. al, *Operational Law Handbook*, 17th Ed., (Virginia, International and Operational Law Department, The Judge General Legal Center & School, U.S Army, Charlottesville, 2017), available at at http://www.loc.gov/rr/frd/Military_Law/pdf/operational-law-handbook_2017.pdf, accessed 22 June 2018

security, mutual respect and cultural awareness, and current and sufficient intelligence. These tenets affect every facet of the operations and remain fluid throughout any mission.[404]

Human Rights

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. They can never be taken away, although they can sometimes be restricted, for example if a person breaks the law, or in the interest of national security. The human rights idea declares that every individual has legitimate claims upon his or her own society for certain freedoms and benefits. These basic rights are based on values like dignity, fairness, equality, respect and independence. Human rights are not just abstract concepts; they are defined and protected by law.[405] The rights which are inherent in all human beings are interrelated, interdependent and indivisible.

These rights are commonly divided into two categories, namely civil and political rights; while economic and social rights form the second.

Civil and political rights includes rights to life and physical integrity; freedom from torture; slavery; and arbitrary detention; and rights to fair criminal process; as well as rights of personhood

[404] Ibid.

[405] Henkin, L., 'The Universality of the Concept of Human Rights', Vol. 506, 1989, *The Annals of the American Academy of Political and Social Science*, pp. 10-16 available at http://www.jstor.org/stable/1046650, Accessed: 13February 2018; Ogwuche, A. S., *Compendium of Human Rights Law, First Ed.* (Nigeria, Espee Printing &
Advertising, 2006) pp. 1-6

and privacy; freedom of conscience, religion, and expression; and the right to vote and participate in government (the discussion in this article will be centred on some of these rights). Economic and social rights, which are the second category, are essentially those associated with the welfare state. Among these are the right to work, to eat, to obtain health care, housing, education, and an adequate standard of living generally, etc.[406]

Human rights have four dimensions: Exercising the rights (it can be asserted, claimed and pressed), Respecting the rights (corresponding obligation by others to respect the rights is created), Enjoying the rights (the right is enjoyed when it is free from interference or violation by the State or other individual members in the State) and enforcing the rights (the unjustifiable breach of the rights give rise to enforcement and possible remedies). And its core features are: Equality (no one's right supersedes that of another); Inalienability (it is inherent in every one as long as you are human and alive); and Universality (it is the same anywhere you go). Human rights law therefore has the goal of preserving the dignity and humanity of all by creating legally binding obligations concerning the rights of persons both in times of peace and war. This article therefore seeks to situate sexual and gender-based violence, extrajudicial and other unlawful killings, arbitrary arrest and detention, deprivation of personal liberty in enforcement of contractual claims/debts, torture and other ill treatments amongst others committed by the military in their community relations with the civilian populace or communities as human rights abuses.

[406] Ibid

Respect and Protection of Human Rights: Contextualizing Community Relations in Military Operations in Nigeria

The traditional military occupation by their training and orientation is to defend national territory against external threats and to engage in non-international armed conflicts where any element within the State rises against the constituted authority.[407] The sole objective of the Military in carrying out its mandate is to destroy the fighting capacity of an enemy force and they employ military forces to achieve the stated objectives.[408] This is quite in contrast with the methodology the police and other paramilitary authorities adopt in the discharge of their primary responsibility for law enforcement (i.e. maintenance of domestic law and order).

Notwithstanding the traditional military occupation, there are instances when they may be called upon to assist the police and other paramilitary authority in dealing with law enforcement responsibilities.[409] In this context, the military are called upon to perform law enforcement tasks like guard duties, cordon and search, arrest and detention, road blocks, securing routes, crowd or riot control and enforcing curfews or peace in situations of emergencies, assemblies and demonstrations,[410] internal disturbances and tensions,[411] with a view to maintaining or restoring public order and security; preventing, detecting and

[407] Section 1(3) & (4) Armed Forces Act, Cap. A20 LFN, 2004
[408] ICRC, *Handbook on International Rules governing Military Operations*, (International Committee of the Red Cross, December 2013), available at shop@icrc.org ; www.icrc.org p.418
[409]Ibid p.69
[410] Situations where people take to the streets to express their opinion publicly
[411] Situations where people engage in agitation with the potential of likely break down of law and order

investigating crime; and aiding and assisting populations affected by emergencies of all kinds.

During the traditional military operations in times of armed conflicts, community relations are traditionally based on a distinction between the military and the non-military domains, built upon the principles of international humanitarian law that distinguishes between combatants and non-combatants to protect the latter from armed attacks.[412] In the context of the relationship, the military are expected to discharge their responsibilities based on the key humanitarian principles of humanity, neutrality, and impartiality.[413]

In times of peace and other conflict situations, the fundamental premise of community relations in military operations are consent, impartiality, transparency, credibility, freedom of movement, flexibility and adaptability, civil-military harmonisation and cooperation, restraint and minimum force, objective/end state, perseverance, unity of effort, legitimacy, security, mutual respect and cultural awareness, and current and sufficient intelligence. These tenets affect every facet of the operation and remain fluid throughout any mission.[414] At such times, the military in the discharge of law enforcement responsibilities are required to protect and respect the human

[412] Bessler, M., and Seki, K., 'Civil Military Relations in Armed Conflicts: A Humanitarian Perspective', *Liaison – A Journal of Civil-Military Humanitarian Relief Collaborations*, Vol. III No.3, 2006, p 2. available at: http://coe-dmha.org/Liaison/Vol_3No_3/Dept01.htm

[413] Ibid.

[414] David H. L, et. al, *Operational Law Handbook*, (Virginia, International and Operational Law Department, The Judge General Legal Center & School, U.S Army, Charlottesville, 2015), pp.60-62 available at at www.jagcnet.army.mil

rights of all people without any adverse distinction, while performing their duties.[415] Though the military are trained to use force and kill, they are trained to do so only for a purpose or just cause. They are therefore prohibited from the use of unjustifiable force or weapons against civilians and their properties[416] or commit any acts of unlawful sexual transgression against them.[417] These clear prohibitions by implication create obligations for the respect and protection of human rights by the military in the discharge of their duties both in times of peace and conflicts.

In recent times however, the perception of community relations in military operations in Nigeria as contemplated has changed, as the military have been accused of the violation of human rights in discharge of their obligations. There have been reports of:

[415] Article 2 International Covenant on Civil and Political Rights 1966 (ICCPR); Article 2 International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), and Article 2 & 8 Convention on the Rights of the Child, of 1989 (CRC)
[416] Sections 104-114 Armed Forces Act, Cap. A20 LFN, 2004
[417] Sections 77-81 Armed Forces Act, Cap. A20 LFN, 2004

Soldiers Raping Women Rescued from Boko Haram, as well as Sexual Abuse/Exploitation[418] of Women and Girls in IDP Camps[419]

Rape and other forms of sexual abuse or exploitation are gender-based violence:[420] Gender-based violence is a form of discrimination and is prohibited by human rights law.[421] In this regard, the sexual exploitation and abuses, rape and other forms of sexual violence, including enforced prostitution reportedly carried out by the military against women and children in Nigeria constitute a gross violation of the human rights of the victims. Sexual and gender-based violence is most prevalent in environments where there is a general lack of respect for human rights and internally displaced people (women and girls) are among those most vulnerable. Even though these atrocities committed by Nigeria military both in times of peace and conflict situations are often well publicised,[422] it still continues unabated. Reports are available of Nigerian security forces raping thousands of women and girls who escaped from the

[418] The actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions

[419] Press Release, Amnesty International Accuses Nigerian Soldiers of raping Women Rescued from Boko Haram, Premium Times, 24th May, 2018, www.premiumtimesng.com, , accessed 6th July, 2018. *Amnesty International Report 2016/17, The State of the World's Human Rights - Nigeria*, 22 February 2017, available at: http://www.refworld.org/docid/58b033c93.html [accessed 20 July 2018]pp.276-281. The report claims that the Military and Civilian JTF working alongside them sexually exploiting women in the IDP camps in exchange for money or food, or for allowing them to leave the camps

[420] Violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty

[421] ICRC, note 11, p. 457; Lubbers, R., Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response, (United Nations High Commissioner for Refugees, May 2003), p. 10 available at https://www.unicef.org/emerg/files/gl_sgbv03.pdf, accessed 26 July, 2018

[422]See Note 3

brutal rule of Boko Haram insurgents.[423] Also during the military occupation of Ogoniland, the Nigerian Armed Forces reportedly perpetrated acts of sexual violence.[424] Acts of sexual and gender-based violence violate a number of human rights principles enshrined in international human rights instruments as well as the 1999 Constitution of the Federal Republic of Nigeria as amended. Among others, these include the right to life, liberty and security of the person; the right to the highest attainable standard of physical and mental health; and the right to freedom from torture or cruel, inhuman, or degrading treatment or punishment, etc.[425] International human rights law imposes an absolute prohibition on discrimination in regard to the full enjoyment of all human rights, inclusive of the right to be free from rape and other forms of sexual abuse or exploitation.[426] In fact, the 1998 Rome Statute of the International Criminal Court proscribes rape, sexual slavery, enforced prostitution and other forms of sexual and gender-based violence against internally displaced persons, and considers it as violence of comparable

[423] See Note 24; see also Njoku, E. T., and Akintayo, J., (2021) Sex for survival: Terrorism, poverty and sexual violence in north-eastern Nigeria, South African Journal of International Affairs, 28:2, 285-303, DOI: 10.1080/10220461.2021.1927166

[424] See Odoemene, A., (2012) The Nigerian Armed Forces and Sexual Violence in Ogoniland of the Niger Delta Nigeria, 1990–1999. Armed Forces & Society 38(2):225-251, DOI:10.1177/0095327X11418319

[425] Lubbers, R., Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response, (United Nations High Commissioner for Refugees, May 2003), pp. 7-27 available at https://www.unicef.org/emerg/files/gl_sgbv03.pdf, accessed 26 July, 2018

[426] Sida, 'Preventing and Responding to Gender-Based Violence: Expressions and Strategies', Sida, International Organisations and Policy Support, 2015, p. 14 available at https://www.sida.se/contentassets/3a820dbd152f4fca98bacde8a8101e15/preventing-and-responding-to-gender-based-violence.pdf, accessed 26th July 2018

gravity as a crime against humanity.[427] It has also been judicially affirmed that beating and humiliation in custody and the rape of young girls by State agents such as military and police personnel amount to torture.[428]

Further, in the Peru Case,[429]it was stated that current international law establishes that sexual abuse committed by members of security forces whether as a result of a deliberate practice promoted by the State or as a result of failure by the State to prevent the occurrence of the crime, constitutes a violation of the victim's human rights, especially the right to physical and mental integrity.

Gender-based violence can have serious long-term and life-threatening consequences for victims/survivors. These can range from permanent disability or death to a variety of physical, psycho-social and health-related problems that often destroy the survivor's self-worth and quality of life and expose her or him to further abuse. Gender-based violence can lead to a vicious cycle of violence and abuse as survivors' risk being rejected by their family, excluded and ostracised by society, and even arrested, detained and punished and sometimes abused again for seeking protection, assistance or access to justice.[430]

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[427] See also the case of The Prosecutor vs Jean-Paul Akayesu (1998) International Criminal Tribunal for Rwanda, Judgment, 2 September

[428] Aksoy vs Turkey (1996) 23 EHRR 535; Aydin vs Turkey (1997) 25 EHRR 251 and Selmduni vs France (2000) EHRR 403

[429]Peru Case 10. 970 (1996) IACtHR Report, 1 March

[430] Action Sheet 4, Handbook for the Protection of Internally Displaced Persons, available at http://www.unhcr.org/protect/PROTECTION/4794b3512.pdf, accessed 26th July 2018

Extrajudicial[431] and other Unlawful Killings[432]

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.[433] The right to life is a non-derogable human right. The use of force and firearms by the military in community relations in military operations must be consistent with human rights obligations concerning the right to life. At all times, the use of force must have a sufficient legal basis and must have been dictated by necessity only to the extent necessary to achieve a legitimate objective and only when all less harmful means have failed or remain without reasonable promise of success. The use

[431] Amnesty International in its 2016/2017 report claimed that the security forces continued to commit serious human rights violations including extrajudicial executions and enforced disappearances. The police and military continued to commit torture and other ill-treatment. Conditions in military detention were harsh. Communal violence occurred in many parts of the country. Thousands of people were forcibly evicted from their homes. See *Amnesty International Report 2016/17, The State of the World's Human Rights - Nigeria*, 22 February 2017, available at: http://www.refworld.org/docid/58b033c93.html [accessed 20 July 2018]pp.276-281

[432] Ibid. The report further claimed military was deployed in 30 out of Nigeria's 36 states and in the Federal Capital Territory of Abuja where they performed routine policing functions including responding to non-violent demonstrations. The military deployment to police public gatherings contributed to the number of extrajudicial executions and unlawful killings. Since January, in response to the continued agitation by pro-Biafra campaigners, security forces arbitrarily arrested and killed at least 100 members and supporters of the group Indigenous People of Biafra (IPOB). Some of those arrested were subjected to enforced disappearance. On 9 February, soldiers and police officers shot at about 200 IPOB members who had gathered for a prayer meeting at the National High School in Aba, in Abia state. Video footage showed soldiers shooting at peaceful and unarmed IPOB members; at least 17 people were killed and scores injured. On 29 and 30 May, at least 60 people were killed in a joint security operation carried out by the army, police, Department of State Security (DSS) and navy. Pro-Biafra campaigners had gathered to celebrate Biafra Remembrance Day in Onitsha. No investigation into these killings had been initiated by the end of the year.

[433] Article 4, 6 International Covenant on Civil and Political Rights 1966; Article 3 Universal Declaration of Human Rights (1948) (UDHR); Article 4 African Charter on Human and Peoples' Rights 1981 (ACHPR); Article 2 European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950

of force or measures leading to loss of life must be exercised after due precaution and must be proportionate to the extent that harm likely to result from the use of force and firearms to any person or object must always be in proportion to the seriousness of the offence and the legitimate objective to be achieved.

In Nigeria, the right to life and the sanctity of life is guaranteed under the 1999 Constitution of the Federal Republic as amended. It stipulates that:

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[434].

Extra judicial and other unlawful killings by the military in Nigeria therefore constitute a breach of the right to life. Evidence gathered by Amnesty International paints a damning picture of ruthless excessive force by Nigerian security forces.[435] In the southeast alone, it was estimated that at least 115 were killed by the Nigerian security forces.[436] A report by Guardian newspaper[437] indicates that extrajudicial killings by Nigerian military have become the primary cause of death in the country.

[434] Section 33(1) of the constitution of the federal republic of nigeria 1999 as amended

[435] Amnesty International, (2021) Nigeria: at least 115 people killed by security forces in four months in country's southeast. Available at https://www.amnesty.org/en/latest/news/2021/08/nigeria-at-least-115-people-killed-by-security-forces-in-four-months-in-countrys-southeast/

[436] ibid

[437] The Guardian, '13,241 Nigerians unlawfully killed by security forces in 10 years'. 30 november 2021. Available at https://guardian.ng/news/13241-nigerians-unlawfully-killed-by-security-forces-in-10-years/ ,

In fact, the military, it was stated, have cumulatively killed 13,241 people since 2011.[438] Killing a person for any reason or in furtherance of the execution of a lawful duty by the military or any other law enforcement agencies, even on the suspicion of the commission of an offence would amount to condemning a person to death unheard. The fear of situation like this is not far from what his Lordship OBADINA JCA had in mind when he held thus in the case of Ani vs. State[439].

"...as it is only the living that can praise God, so it is only the living that can be tried, convicted and punished for an offence no matter how heinous the offence may be…"

Also in the case of K. H. W. vs Germany (2001)[440] the court held thus:

The law would not support even a private soldier or police constable who show total, blind obedience to orders which flagrantly infringe the constitution of a state, legal principles and international human rights, particularly the right to life, which constitutes the 'supreme value in the hierarchy of human rights'.

Thus, where a man is condemned to death unheard, how can he be tried for any offence he may have been suspected to have committed? Therefore, even the accused before he is pronounced guilty is entitled to the preservation of his life, a right universally recognised.

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[438] ibid
[439]ani vs. State (2002), nwlr pt. 747 p. 217 @ 234-235
[440]*k. H. W. Vs germany (2001)* ecthr, judgment, 22 march

Arbitrary Arrest and Detention,

Human rights law guarantees the liberty of person and freedom of movement without any restraint save for justifiable reasons.[441] In this regards, persons who are arrested or detained during military operations must be treated humanely and are entitled to protection.[442] It is prohibited to subject a person under arrest to torture or to cruel, inhuman or degrading treatment or punishment.[443] It is also inhumane to deny them medical attention. It is equally a fundamental breach to keep persons arrested and in detention beyond the specified constitutional time limit and or deny them access to counsel or legal representation. More importantly, arrested persons must be informed, at the time of arrest, of the reasons for his arrest and must be promptly informed of any charges against him. In addition, a person under arrest must be informed of his rights and how to avail himself of those rights and he must be availed information in a language he understands.[444]

Fundamentally, women and children who are arrested and detained are entitled to special rights and protections. Women who are arrested have the same rights as men who are arrested and are entitled to the same protections. Specifically, however, women by virtue of their gender, are guaranteed that while

[441] Section 35 of the Constitution of the Federal Republic of Nigeria 1999 as amended; Article 6 ACHPR,
[442] Articles 3, 9 Universal Declaration of Human Rights 1949 (UDHR); Article 9 ICCPR; Article 37 CRC
[443] Section 35 of the Constitution of the Federal Republic of Nigeria 1999 as amended, Article 5 UDHR; Articles 7 & 10 ICCPR; Article 2 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CAT); Article 37 1989 CRC
[444] Article 9 ICCPR; Article 40 CRC

under arrest or in detention all physical searches of their person or clothing must be carried out by female staff; must be kept in separate quarters from men; and must be attended and supervised only by female officers.[445] This special protection is to safeguard them from abuse by male officers.

Children[446] under arrest and in detention have all the same rights as adults but are entitled to additional protections by virtue of their age. It is specifically guaranteed to a child that: arrest and detention should only be a measure of last resort; where arrested and in detention the child must be separated from adults unless it is considered in the best interest of the child not to do so; must be brought before a court of competent jurisdiction as speedily as possible; must be allowed to maintain contact with his family unless exceptional circumstances prevail; the arresting and detaining authorities must notify the child's parents or guardians promptly of the arrest, and of the place where the child is held; in addition, the authorities must also notify them of any transfers to another place of detention; and when the child is taken to the court, parents or guardians should be informed of the charges against the child and permitted to attend the required judicial proceedings, unless it is not in the best interests of the child.[447]

In Nigeria, a report by Amnesty international[448] claims that the military arbitrarily arrested thousands of young men, women and

[445] Article 2 & 26 ICCPR,
[446] Children are defined in the Convention on the Rights of the Child as human beings below the age of eighteen years unless, under applicable domestic law, the age of majority is attained earlier.
[447]Article 10 ICCPR; Articles 37 & 40 CRC
[448] Amnesty International 2016/2017 report, note 36.

children who fled to the safety of recaptured towns, including Banki and Bama, Borno state. These arrests were largely based on random profiling of men, especially young men, rather than on reasonable suspicion of having committed a recognisably criminal offence. In most cases, the arrests were made without adequate investigation. Other people were arbitrarily arrested as they attempted to flee from Boko Haram. Those detained by the military had no access to their families or lawyers and were not brought before a court. The mass arrests by the military of people fleeing Boko Haram led to overcrowding in military detention facilities. At the military detention facility at Giwa barracks, Maiduguri, cells were overcrowded. Diseases, dehydration and starvation was rife. At least 240 detainees died during the year. Bodies were secretly buried in Maiduguri's cemetery by the Borno state environmental protection agency staff. Among the dead were at least 29 children and babies, aged between new-born and five years. At Giwa barracks, children under five were detained in three overcrowded and insanitary women's cells, alongside at least 250 women and teenage girls per cell. Some children were born in detention.449

Suffice it to say that arrest and detention during armed conflicts (Boko haram conflict in the North East) and other conflict situations (the Biafra and Niger-Delta agitations, riots, demonstration or protest march), must satisfy the minimum standards of the rights and protection guaranteed to the human person. In this regard, all persons arrested and deprived of, for any reason, their liberty must be treated with humanity and with

449 Ibid

respect for their inherent dignity.[450] They must in particular, irrespective of sex, age and inclination, be entitled to: adequate sanitation and hygiene facilities; adequate light, heating, ventilation, floor space; clean and decent clothing suitable for the climate; medical care; daily exercise in the open air; food and drinking water in sufficient quality and quantity; and accommodation, in particular sleeping accommodation, compatible with human dignity.[451]

Deprivation of Personal Liberty in Enforcement of Contractual Claims/Debts

Further to the above, today in Nigeria, there are reported cases that in community relations during military operations, family relations and close friends of the military as well as other persons resort to using the military to pursue the recovery of contractual claims/debts and in the process the constitutionally guaranteed right to personal liberty of citizenry is breached.[452] In EFCC vs. Diamond Bank Plc. (2018) NWLR Pt.1620 p.61 @ 80-81 SC, the court held that 'by section 35(1) of the Constitution of the Federal Republic of Nigeria, 1999, every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in cases listed in the section and in accordance with procedure permitted by law. It would therefore constitute breach of a person's fundamental human rights for him to be subjected to intimidation, arrest or deprivation of his liberty by the military at the instigation of

[450] Op. cit.
[451] Ibid
[452] Our law reports are overflow with many such decided cases where the Courts in Nigeria have made express pronouncement prohibiting the use of the military and other law enforcement agencies as debt collectors.

another solely for the purpose of recovery of a contractual claim/debt. Displeased with this practice, in EFCC vs Diamond Bank Plc (supra) at p.80 per Bage JSC, the Supreme Court held thus:

What is even more disturbing in recent times is the way and manner the Police and some other security agencies, rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous and/or unscrupulous characters for the recovery of debts arising from simple contracts, loans or purely civil transactions. Our security agencies, particularly the police, must know that the citizenry's confidence in them ought to first be ensured by the agencies themselves by jealously guarding the integrity of the uniform and powers conferred on them. The beauty of salt is in its taste. Once salt loses its own taste, its value is irredeemably lost. I say this now and again, our security agencies ...are not debt recovery agencies...'

Torture and Other Ill Treatments

The legal regimes of fundamental rights, nationally and internationally absolutely prohibits subjection, of a person moving around freely or under arrest or in detention to torture or other cruel, inhuman or degrading treatment or punishment. Indeed, no exceptional circumstances whatsoever may be invoked as justification for torture or other cruel, inhuman or degrading treatment or punishment.[453] The case of *Prosecutor*

[453]Section 34 of the Constitution of the Federal Republic of Nigeria 1999 as amended ; Article 5 UDHR, Article 7 ICCPR; Article 2 CAT

vs. Jean-Paul Akayesu[454]set out *the essential elements of torture when it states that:*

> *The perpetrator must intentionally inflict sever physical or mental pain or suffering upon the victim for one or more of the following purposes: (i) to obtain information or a confession from the victim or a third person; (ii) to punish the victim of third person for an act committed or suspected to have been committed by either of them; (iii) for the purpose of intimidating or coercing the victim or the third person; (iv) for any reason based on discrimination of any kind; (b) the perpetrator was himself an official, or acted at the instigation of or with the consent or acquiescence of an official or person acting in an official capacity.*

The African Commission on Human and Peoples Rights, also in its decision concerning the trial of Ken Saro-Wiwa and other co-defendants[455]held that:

> *The detention of Mr. Saro-Wiwa in leg irons and handcuffs with no evidence of attempts to escape constituted actions which humiliated the individual or forced him to act against his will or conscience.*

More specifically, the European Court on Human Rights has held that, beating and humiliation in custody and the rape of a

[454]*The Prosecutor vs Jean-Paul Akayesu (*1998) International Criminal Tribunal for Rwanda, Judgment, 2 September

[455]International Pen and Others vs Nigeria (1998) ACtHPR Decision, 22-23 October, 1998

young girl by State agents such as the military or police personnel amount to torture.[456]

Military Operations in States of Emergency[457] and other Situations of Conflicts: The Limits to Derogation & Restriction of Fundamental Rights

States of emergency are critically important from a human rights perspective because the suspension of legal order often paves the way for systematic human rights violations.[458] Some human rights treaties and provisions in national laws permit States to derogate from (temporarily waive) treaty provisions/laws when taking measures in situations of emergency.[459] Apparently, it seems a contradiction, since these treaties have been drafted with the main purpose of protecting human rights.[460] However, the provisions allowing for derogation during state of emergency or other conflict situations contemplates a balance between military necessity and humanity.[461] Derogation provisions are of crucial importance at least for three reasons.

[456]Aksoy vs Turkey (1996) 23 EHRR; Aydin vs Turkey (1997) 25 EHRR 251; Selmduni vs France (2000) 29 EHRR

[457] States of emergencies are situations of internal disturbances and tensions which may escalate to the point at which a government is no longer able to control the situation with the measures it normally has at its disposal.

[458] Criddle, Evan J. and Fox-Decent, Evan, 'Human Rights, Emergencies, and the Rule of Law' (2012).*Faculty Publications*, Paper 1531, p.45 available at http://scholarship.law.wm.edu/facpubs/1531

[459] ICRC, Handbook on International Rules governing Military Operations, International Committee of the Red Cross, December 2013, available at shop@icrc.org ; www.icrc.org pp. 65-66

[460] Salerno, D. M. E, 'In the fight against terrorism, does Article 15 of the ECHR constitute an effective limitation to states' power to derogate from their human rights obligations?' Giurisprudenza Penale, 2016, p. 1 available at *http://www.giurisprudenzapenale.com/wp-content/uploads/2016/04/Scarica-il-contributo.pdf*

[461] David H. Lee, et. al, Operational Law Handbook, available at at www.jagcnet.army.mil , 2015 p.53

Firstly, it is better to decide in advance what measures have to be adopted in time of emergency or crisis; secondly, these clauses establish specific limitations to restrain states' action; finally, for a derogation to be adopted, states are required to provide a valid justification that it is related to the safety of the nation, not to the pursuit of their own interests.[462] Thus, in order to derogate from a human right, the ICCPR for instance stipulates conditions that must be fulfilled:[463] There must be a public emergency which threatens the life of the nation; the State must officially proclaim that there is a public emergency, using the procedures in its national law or constitution for declaring a state of emergency; the derogation must be limited to the extent strictly required by the exigencies of the situation (strict necessity/proportionality); the derogation must not be inconsistent with the State's other obligations under international law (including the law of armed conflict); the derogation must not involve discrimination (on the ground of race, colour, sex, language, religions, or social origin); and finally, international notification is required. These conditions operate as the scale upon which the limits of the derogation can be tested. To this end, any derogation of the fundamental rights by the military in their community relations in military operations which do not meet these set standards would amount to a breach of the right. Thus, in the recent cases of Şahin Alpay v. Turkey and Mehmet

[462] Op. Cit pp. 1-2
[463] Article 4, ICCPR,

Hasan Altan v. Turkey[464] the European Court of Human Rights held that:

The guarantees of the right to liberty and security would be meaningless if it were accepted that people could be placed in pre-trial detention without any strong evidence that they had committed an offence. Accordingly, it found that the applicant's deprivation of liberty had been disproportionate to the strict exigencies of the situation… that a measure of pre-trial detention that was not "lawful" and had not been effected "in accordance with a procedure prescribed by law" on account of the lack of reasonable suspicion could not be said to have been strictly required by the exigencies of the situation.

As rightly submitted by Salerno,[465] it is in times of emergency that there is a greater risk for human rights violation, due to the possible abuse of the derogation powers by states. It must be argued that, in this context, states' freedom of action is not unlimited. Indeed, it is restricted by the identification of non-derogable rights,[466] which cannot be suspended even in state of

[464]Alpay v. Turkey and Mehmet Hasan Altan v. Turkey (20 March 2018) Chamber judgments see Factsheet – Derogation in time of emergency, Press Unit, P. 8 available at https://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf. These cases concerned complaints by two journalists who had been arrested and detained following the attempted military coup of 15 July 2016. The Turkish Government emphasised in particular that all of the applicant's complaints should be examined with due regard to the derogation of which the Secretary General of the Council of Europe had been notified on 21 July 2016 under Article 15 of the Convention.

[465] Note 54 p.2

[466] The ICCPR explicitly states that the following rights are non-derogable: the right to life; the right to be free from torture and cruel, inhuman or degrading treatment;the right to be free from slavery, the slave trade, and servitude; the prohibition of detention for debt; the prohibition of retroactivity in criminal law; the right to

crisis, and by the strict substantive and procedural conditions required to derogate. It must be suggested that, in states of emergency, even without a specific provision, states would derogate the application both of human rights obligations and the ordinary law, due to its inadequacy. For this reason, it is better to coordinate the way in which states respond to these extraordinary circumstances and to control whether they restrict only derogable rights.

It is interesting to note that like the derogation clause, some human rights treaty provisions or national law contains a limitation clause which allows for restrictions of the particular right, without the need for a situation of emergency, for the reasons set out in the provision itself. Unlike derogations, limitation clauses are used in time of peace and they allow an interference with human rights on the basis of collective exigencies, specifically included in the provision itself.[467] For instance, a limitation clause might allow restriction of a right in the case of necessity for reasons of national security, public health or public order. Generally, a State may only restrict a right when necessary for reasons and purposes set out in the limitation clause. In addition, the restriction must be proportionate to the protected interest.

It is therefore respectfully submitted that the security of the State and its democratic institutions, as well as the safety of its officials and its population, is a vital public and private interests

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freedom of thought, conscience and religion; and the right to recognition as a person before the law.

[467] Op.cit p.3

that deserves protection. In this regards, States are under the obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life.[468] The protection of the right to life includes preventive operational measures to protect life and guarantee freedom from fear of the individual members that makeup the society, especially during community relations in military operations.[469] This obligation with respect is consistent with the decision of the European Court of Human in the case of Osman v. United Kingdom,[470] where it held that:

In certain well-defined circumstances, there is a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.

The above argument on limitations of fundamental human rights may well be invoked by the military in Nigeria in their community relations in military operations as a justifiable basis or measure to limit the enjoyment of the fundamental human right of an individual. However, the justification of limitations of fundamental human rights depends on a number of factors: first, if the right or freedom concerned is formulated as an absolute right or freedom, which is for instance the case with the right to

[468] Venice Commission, Opinion on the Protection of Human Rights in Emergency Situations, Council of Europe, Opinion no. 359 / 2005, Strasbourg, 4 April 2006, p.2
[469] Ibid pp.2-3
[470]Osman v. United Kingdom (judgment of 28 October 1998) paragraph 115

life and the prohibition of torture, for which no limitations are allowed[471].

Secondly, one of the limitation grounds that is exhaustively listed in the applicable treaty provisions or must be at stake, such as the interests of national security and public safety. Thirdly, the limitations must be "prescribed by law" which requires their regulation in transparent and accessible legal provisions. And fourthly, the limitations must be "necessary in a democratic society".[472] The implication is that the protection of national security and public safety may justify restrictions of the enjoyment of certain human rights, but that such justification is subject to certain rather strict conditions.[473] Though there is no fixed scale to assess the balance that has to be struck between national security and public safety, on the one hand, and the enjoyment of fundamental rights and freedoms, on the other hand, the justifiable measures for the restriction or limitation of fundamental rights must meet the standard of fairness and proportionality.[474] In the operational code of conduct for the Nigerian army[475] for instance, it is an operational rule in all circumstances that: Under no circumstances should pregnant women be ill-treated or killed; children must not be molested or killed, they should be protected and cared for; youths and school children must not be attacked unless they are engaged in open hostility against Federal Government Forces, they should be

[471] This justification is founded on judicial decision or the interpretation of the provisions of the law given the circumstances of the case.
[472] Note 63 p. 3
[473] Ibid
[474] Ibid
[475] Operational Code of Conduct for The Nigerian Army, 1967

given all protection and care; hospitals, hospital staff and patients should not be tampered with or molested; soldiers who surrender will not be killed, they are to be disarmed and treated as prisoners of war (this as well should apply to members of militia or armed groups in Nigeria, even though under the law, they do not enjoy the status of prisoners of war). Thus, they are entitled in all circumstances to humane treatment and respect for their person and their honour; no property, building, etc, should be destroyed maliciously; Churches and Mosques must not be desecrated; no looting of any kind. (A good soldier will never loot); women will be protected against any attack on their person, honour and in particular against rape or any form of indecent assault; male civilians who are hostile to the Federal Forces are to be dealt with firmly but fairly, they must be humanely treated; all military and civilians wounded will be given necessary medical attention and care, they must be respected and protected in all circumstances, etc.[476] It is therefore safe to state that operational military code exist in Nigeria with clear provisions safeguarding the human rights of citizens both in times of war and during peace times.

It is against this background that the justification of what is obtainable in Nigeria can be questioned and whether there does exist any remedy in the event of a breach?

Remedies for Breach of Human Rights in Community Relations in Military Operations

One of the most important legal obligations arising from violations of human rights is the obligation to ensure

[476] Ibid

accountability for those violations and provisions for remedy.[477] States have an obligation to respect and protect the fundamental rights of individuals under their jurisdiction against violations by any person. Such an obligation includes taking measures to prevent violations of human rights, investigating human rights abuses or violations promptly, thoroughly and independently and prosecuting those found responsible, providing adequate and effective remedies, and preventing the recurrence of violations.

Attribution to and State responsibility for violations of fundamental human rights arises where such: violations are committed by its organs, including its armed forces; violations are committed by persons or entities empowered to exercise elements of governmental authority; violations are committed by persons or groups acting in fact on its instructions, or under its direction or control; violations committed by private persons or groups which it acknowledges and adopts as its own conduct (in the case of the last two instances, Civilian JTF working alongside the military in the North-East of Nigeria, where the Boko haram insurgency is taking place).

Aside from State responsibility for the violation of human rights, the military are responsible and accountable for the breach of human rights either on the basis of command or individual responsibility. This is because in all military systems, the power to command and the duty to obey are of central importance.[478] In

[477] United Nations, International Legal Protection of Human Rights in Armed Conflict, (New York and Geneva, 2011, United Nations Publications) eISBN-13: 978-92-1-055097-0, P.71

[478] OSCE/ODIHR, Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2008, P.209

the context of breach of human rights, Commanders have both a moral and legal role in preventing breaches of human rights and or commission of offences that could potentially be committed by subordinates and therefore, under obligation to ensure respect for and protection of human rights. Thus, commanders bear responsibility for the orders they give, and they are also responsible for breaches of human rights committed by their subordinates, even if they do not order or directly participate in the breach or commission of unlawful acts, if they knew, or should have known, about these unlawful acts and failed to take steps to prevent them from occurring.

Similarly, in all military systems, members of the armed forces have a general duty to obey superiors' orders. In case of execution of an illegal command, moral and legal responsibility is borne both by those issuing and by those actually executing the illegal order. Therefore, armed forces personnel executing unlawful orders or acting illegally on their own initiative are, in general, held individually accountable for offences or crimes committed, the breaches of human rights inclusive.

Whatever the basis of responsibility for the breaches of human rights, in order to ensure that the human rights are respected by all, including the military, treaties/laws and regulations protecting human rights have been put in place, with stipulations on effective remedies available to deal with any violations that may occur.[479] Victims of violation of fundamental human rights can have recourse to the court against a violator of the right for the

[479] See for instance Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria as amended, Articles 2 & 9 ICCPR

purpose seeking redress and getting compensation as the case may be.

Conclusion

Community relations in military operations at peace and war times and during domestic civil-military operations present serious and contending human rights issues. The military like quick result. This impatience has potential consequences in peace times and during community relations in military operations. The frequent uses of excessive force by the military personnel against civilian during military operations have raised serious concerns. This has resulted in serious adverse consequences on Civilian-Military relations particularly with regard to respect for and protection of human rights.

The importance of respect for and protection of human rights cannot be over emphasised. The changing nature of military operations, which increasingly include the performance of the task of law enforcement, provision of humanitarian services etc. that are the responsibility of the police and other para-military authorities, as well as their normal daily interaction with civilians requires that soldiers have a solid ethical outlook based on human dignity, human rights, morality, and tolerance.[480] This will help to prevent the military from becoming a state within a state by the adoption of laws, policies, and a military mindset that underlies the integration between the armed forces and society.[481]This is necessitated by the need for a balance between the societal need

[480] OSCE Report, Citizen in Uniform: Implementing Human Rights in the Armed Forces Berlin 7-8 September, 2006, Conference Report, *https://www.osce.org/odihr/22130?download=true* p.1
[481] Ibid p.2

for security on the one hand and civil liberties on the other.[482] It is therefore respectfully argued that the reliance on state of emergency, terrorism and other conflicts situations as justifiable basis or measures for derogating or limiting fundamental human rights by the military must meet the limits of national and international standards. Justice Barak, President of the Supreme Court of Israel, rightly captured and stressed this fact when he aptly stated that:

> *Every balance that is made between security and freedom will impose certain limitations both on security and on freedom. A proper balance will not be achieved when human rights are fully respected, as if there were no terrorism. Similarly, a proper balance will not be achieved when national security is afforded full protection, as if there were no human rights. The balance and compromise are the price of democracy. Only a strong, safe and stable democracy may afford and protect human rights, and only a democracy built on the foundations of human rights can exist with security*[483]

Be that as it may, notwithstanding the presence of appropriate regulatory regimes, national and international on the respect and protection of human rights, they are proved inadequate for ensuring respect for these rights in day-to-day military life in their relationships with communities both in times of peace and

[482] Ibid p.3
[483] Barak, A., 'The Role of a Supreme Court in a Democracy, and the Fight against Terrorism', 58, October 2003, University of Miami Law Review, p. 133

conflicts.[484]The military need not only be trained on military law but also on practical application of human rights, and international humanitarian law. Integrating human rights law into military doctrine is not achieved through the mere inclusion or quotation of rules and principles of human rights applicable law in codes of conduct, manuals and procedures. The relevant principles of fundamental human rights, together with the means and mechanisms to ensure respect for and protection must become a natural and integral part of every component of military doctrine. Reference manuals for the different specialists and areas of action, at the deferent levels of the chain of command, must also be reviewed or adapted, so that orders, procedures and rules of engagement allow compliance with human rights law in the varied and complex situations faced during operations in times of peace and conflicts. This is because it has been proven that the most effective instruction method is practical exercise, which is an approach that enables participants to retain nearly 90% of the contents years thereafter on the job.

Sanctions as a key preventive mechanism must be visible, predictable and effective and explore to check the violation of human rights internally by the military. This is because the more visible and predictable the application of the sanctions on erring officers, the more dissuasive the others will be.

[484] Op.cit

Recommendations

This article adopts without modification the clear recommendations of OSCE/ODIHR[485]in addressing the issue of respect for and observance of human rights by the military in their community relations both in times of peace or conflicts:

1. Education on human rights should form a core part of initial military training. Members of the armed forces should therefore be unable to pass military training without demonstrating familiarity with the principles of human rights;
2. Armed forces should draw on the expertise of civilian experts and civil society organisations in providing training in human rights;
3. Where codes of conduct do not already exist, consideration should be given to adopting and promoting codes that outline the responsibilities of members of the armed forces in terms of respecting the human rights of others at all times;
4. Human rights should be given greater prominence in the staffing and work of military colleges and Centres of excellence should be established to promote awareness of human rights in the armed forces.

[485]OSCE/ODIHR, Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2008, P.209

WIDOWHOOD RITES: A THREAT TO THE ACTUALISATION OF WOMEN'S RIGHTS IN NIGERIA

Andrew Stephen Ubong[*] and Ashibi Jacob Eneji[**]

Abstract

A widowhood rite is a traditional practice in several Nigerian communities today but with a few observed nuances. As one of those rites that is characterised by compulsion, threat, emotional, sexual and physical violation of victims, the practice appears to be in outright defiance to fundamental human rights of women as enshrined in the Constitution of the Federal Republic of Nigeria, the United Nations treaty and other legal instruments of international emphasisings to which Nigeria is a signatory. This article examined the features of widowhood traditional practice as operational in the south eastern, south western, south southern, and Northern Nigeria; and by so doing brought out salient components that undermine full expression of women's rights under the practices of widowhood. The Deviant place theory as well as the Routine activity theory were deployed as a framework. The study found out that poverty on the part of men and women, ignorance, illiteracy, culture, greed on some men's part and low status of women are some of the mostly reckoned enablers of widowhood rite practice. Based on these findings, the study recommends that government should initiate or at least support significantly researches on widowhood practices in the country. Other recommendations include, creation of intense

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awareness campaign, activation of vicarious liability, women empowerment particularly at the local level, exploration of educational curriculum channel and government sponsorship as relevant measures to ending the widowhood rites practice in the study area.

KEYWORDS: Widow, Widowhood Rites, Women's Right, Victims, Deviant Place

Introduction

Widowhood rite is one of most prevalent inimical traditional practices that affect the female folk in Asia and Africa. Attempting a definition of this misogynistic rites, Nwogu quoting Afolaya who she argued was citing Anugwom study, contended that widowhood rites are immoral traditional practices which include mourning rituals and food taboo. These practices exert negative consequences on widows and inevitably expose them to economic hardship, confinement and ill treatment.[486] From the perspective of Mezieobi and his colleagues (2011), as cited by Adedeji, Onyiohu, Kayode, and Wuraola, widowhood rites are sets of expectations as to actions and behaviour of the widow, actions of others towards the widow, and rituals performed by, or on behalf of the widow, from the time of the death of her husband.[487] Finally, widowhood rites may refer to the rituals and

[486] M. I. O. Nwogu, 'The legal anatomy of cultural widowhood practices in south eastern Nigeria: The need for a panacea.' Global Journal of Politics and Law Research. [2015]. (3) (1) 80.

[487] A. S. Adedeji, L. M. Onyiohu,; O. S. Kayode, & A. O. Wuraola, 'Practice and correlates of widowhood rites in a city in North Central Nigeria. Texila International Journal of Public Health [2019] (7) (3) 1

customs that are performed for a woman when her husband dies.[488]

This custom is operational in some tribes in India, Bangladesh, South Africa, Cameroon, Ghana, Malawi, Mozambique, Kenya, and Nigeria.[489] The practices which affect only women whose husbands have recently died has a few nuances that gives some uniqueness to it across these practicing societies. The rite is characterised by a period of seclusion sometimes in a dark room, stripping, compulsory wailing and food taboos, sexual violation, regimentation, and the like [490]depending on the community involved. In Limpopo area of South Africa for instance, custom demands that the widow remain in her husband's home even after his demise irrespective of her desires. Hence, she is bound to remain married to a family member of the late husband, making widow inheritance an aspect of widowhood. In Isiokpo, a community in River State, south-south, Nigeria, it is observed that widows are forced to drink the water in which their late husbands' corpses were washed.[491] In Balengou community of Cameroon, the widow is kept away from any sexual relations with whoever for one full calendar year as a test of her fidelity to her late husband. Among the Ogu people of Lagos state, Nigeria, it is mandatory that the "*Oshosi*" (a derogatory name for widows)

[488] C. Merton, (2016). Widowhood rites in Ghana. Social Studies (Online 17, March 2022) https://www.virtuakollage.com/2016/08/widowhood-rites-in-ghana.html?m=1
[489] G.I.K. Tasie, 'African widowhood rites: A bane or boom for African women', International Journal of Humanities and Social Science (3)(1) 158
[490] N.V. Pemunta & M. F. Alubafi, 'The social context of widowhood rites and women's human rights in Cameroon' Cogent Social Sciences [2016], (2) (1234671) 11
[491] Grace Reuben-Etuk, Violence Against Women. (Lamert Academic Publishing, 2019)

are forced to shave off their hair and to stay indoors for 40 days.[492]

Generally, the rationales behind this practice as claimed by the practicing communities have some benefits for the widows and their children. Some of these include building courage in the widow to face life, and rituals 'to separate the widow from the ghost of the late husband' to facilitate the widow's reintegration into the community, and exoneration of the widow from suspicion and accusation of killing her husband.[493]

In spite of the innocuous reasons offered by protagonists of widowhood rites, some scholars have argued that these practices inflict physical, emotional, educational, social, economic and spiritual harm on victims and as such negate their fundamental human rights. These rights include their rights to liberty, and rights to respect and dignity of human person. Widowhood rites, also have the tendency of disenfranchising victims particularly if the seclusion process takes place during electioneering season. In addition, they threaten the rights to life, particularly when it involves drinking the poisonous waste water collected after bathing the corpse of the late husband, and or incisions of any form and sexual violations. The other human rights violations involved are rights to privacy and family life of widows as enshrined in the Constitution of Nigeria as well as other legal

[492] M. I. O. Nwogu, 'The Legal Anatomy of Cultural Widowhood Practices in South Eastern Nigeria: The Need for a Panacea.' Global Journal of Politics and Law Research [2015] (3) (1) 84

[493] W. C. Adeyemo, 'Widowhood and Its Harmful Practices: Causes, Effects and the Possible Way out for Widows and Women Folk'. World Journal of Educational Research [2016] 3(2).383-385

documents and Conventions, which Nigeria has either signed or domesticated.

Poverty, dogmatic theosophical beliefs, illiteracy/ignorance, patriarchy, and culture are a few factors pundits have indicted as being responsible for this inhumane traditional practice.[494] The implication of this is that so long as these factors continue to permeate society, widowhood practice might remain indomitable. It is against this backdrop that this paper shall be examining widowhood rites as they contravene women's rights across Nigerian communities with the aim of proffering workable solutions to it.

Problem of the Study

The continuous violation of women's rights through widowhood rites in Nigerian society portends social anomie, a situation where people go about doing what they feel like without restraint and or any recourse to law. This situation where women are kept in seclusion, sexually violated, economically exploited and barricaded, deprived of access to and enjoyment of their late husband's property (which sometimes may be jointly owned), manipulated into submitting to wife inheritance, gaslighted to drinking water in which the corpse of their late husband corpses were washed, in the very face of the law, is a very pathetic one, which needs urgent attention. These rites threaten women's right to personal liberty, right to life, right to private and family life, as well as right to own property. More troubling is the fact that despite the laws prohibiting these obnoxious practices, resolution

[494] Grace Reuben-Etuk, Violence Against Women. (Lamert Academic Publishing, 2019)

and advocacies seeking to obliterate the same, the problem appears to be gaining momentum in Nigerian societies. Although there have been a few research efforts in this area, the desired result is obviously still far from being achieved. Hence this paper seeks to reawaken public consciousness and remind the government, religious emphasisings, international emphasisings, traditional rulers and relevant agencies that this 'monster' is still biting hard and should not be forgotten as though already defeated.

Literature and Theory

Widowhood rites in the light of *rites de passage*

Widowhood rites, like every other *rites de passage,* has three stages, namely: Separation, transition and incorporation stage. Citing Arnold Van Gennep, who is the acclaimed originator of the concept of *rites de passage,* Charles acknowledged that in the separation stage, the person involved in the status change is taken away from the transitional setting of close relatives, friends and associates to a neutral venue. This stage is symbolic of death as it is associated with the experience of grief and shocks of missing. During the transition stage, which Charles also referred to as the stage of liminality (a stage of in-between), frustration, and anxiety are experienced, as well as uncertainty.[495] In the third stage, which is that of aggregation or incorporation, the individual involved is reintegrated into the society to meet again with loved ones and relatives. How each of these stages is practiced in Nigeria are reviewed in the following paragraphs.

[495] Joseph Okokon Charles, Ethnography of African Societies: Sub-Saharan Region (University of Calabar Press 2014)

The separation stage of widowhood rites: In Nigeria, the separation stage begins as soon as the husband of the widow dies. It is a stage beyond the control of the victim, which happens suddenly and characterised by shock as well as grief and a real experience of death as opposed to just its symbolic meaning. This stage is universal in all societies where widowhood practice is upheld.

The transition stage: This second stage is characterised by seclusion, defacement, ritual cleansing, ostracism, regimentation, loss of custody of children, disinheritance and the likes and a number of culture-specific rituals. Among the Igbos, Reuben-Etuk observed that the widowed woman has to wear black clothes, black earrings and necklace, and probably black shoes from the time of the husband's death till about two to three months after his burial. In some instances, the widow may be required to shave off her hair, stay in confinement and weep aloud from midnight till daylight for a stipulated period of time. Reuben-Etuk argued further that in the case where the woman is suspected to have directly or indirectly facilitated her husband's death, she will be subjected to an oath taking ritual which could be manipulated against her and other series of trail by ordeal climaxing in her drinking the water in which the husband's corpse was washed. In the Igbo's as well as the middle belt's theosophy, a woman who is guilty would fall sick and die shortly after this ritual but the innocent one will live. Suspicion with some form of evidence often led to verbal abuse, and solitary

confinement in odd places with the corpse of the late husband for a period of time. [496]

Another Author adds that the widow is expected to scratch her body with a stick from time to time throughout the mourning period.[497] While Arinze-Umobi and Anyogu as quoted by Nwogu observed that in some parts of Igbo land, the widow is forced to have sexual intercourse with the high priest of a deity to separate herself from the spirit of the dead husband and as a mark of purification.[498]

Among the south-south people of Nigeria, Reuben-Etuk found the practices similar to the Igbos', but as a unique feature, they force the widows to seat bare waist-upwards on the corpse of her husband for a period of sixty days or more in confinement except when she needs to ease herself or take a bath.[499]

According to Akanni, among contemporary Yoruba Muslims, women stay in *Iddah* (waiting/confinement) from eight days to four months and 10 days depending on the relationship between the wife and the late husband, depth of faith, and economic prowess.[500] Irrespective of the days spent in *Iddah* however, the widow is expected to sacrifice a goat to mark her official exit

[496] Grace Reuben-Etuk, Violence Against Women. (Lamert Academic Publishing, 2019)
[497] A. A. Akanni, 'Widowhood Practice among Contemporary Yoruba Muslims of South-West Nigeria. KIU Journal of Humanities [2020] (5)(1)146
[498] M. I. O. Nwogu, 'The Legal Anatomy of Cultural Widowhood Practices in South Eastern Nigeria: The Need for a Panacea.' Global Journal of Politics and Law Research [2015] (3) (1) 81
[499] Grace Reuben-Etuk, Violence Against Women. (Lamert Academic Publishing, 2019)
[500] A. A. Akanni, 'Widowhood Practice among Contemporary Yoruba Muslims of South-West Nigeria. KIU Journal of Humanities [2020] (5)(1)146

from the *Iddah*. On the eve of her exit, she with the assistance of friends and relatives is mandated to keep a vigil in honour of her late husband. To secure her future endeavours as well as to finally severe her connection with her late husband, all clothes used by the widow in *Iddah* is either set ablaze or given to charity.[501]

Genyi & George-Genyi citing Emery's work noted that Muslim widows in Kano undergo a 4-month mourning period and observe reasonable number of days in seclusion. In Plateau and Bauchi States, Muslim widows observe 40 days of mourning and 30 days of seclusion which run concurrently.[502] Reuben-Etuk added that the Muslim widows in the north are required to weep aloud every mid-night while in confinement. This is followed by an elaborate ceremony and entertainment of guests by the widow. The Christian widows in the north, are required to shave their hair and stay in confinement for 16 to 17 weeks, while the African traditional religionists are shaved, get their head tied with a black scarf, kept in seclusion for 7 days and each provides a goat for sacrifice in honour of her late husband.[503]

Among the middle-belt, widowhood rites equally involve various mistreatment, compulsory mourning period, and denial of access to basic life necessities. Here, reintegration is only possible if the

[501] A. A. Akanni, 'Widowhood Practice among Contemporary Yoruba Muslims of South-West Nigeria. KIU Journal of Humanities [2020] (5)(1)146
[502] G. A. Genyi; & M. E. George-Genyi, 'Widowhood and Nigerian Womanhood: Another Context of Gendered Poverty in Nigeria'. Research on Humanities and Social Sciences [2013] (3) (7) 69 & 70
[503] Grace Reuben-Etuk, Violence Against Women. (Lamert Academic Publishing, 2019)

widow successfully sponsors some expensive traditionally stipulated ceremonies and banqueting for guests.[504]

Incorporation stage: This is the third and end stage or goal for every widow who has gone through the customarily prescribed rituals. At this stage, the widow is reintegrated into the community and her interaction with other members of the community, in safety and confidence and without discriminations This, according to Manala, is based on the belief that the woman has been cleansed of all the bad omen that the death of her husband brought upon her.[505] At this point, the woman feel loved again as she now interacts freely with loved ones again apart from her late husband.

Enablers of Widowhood Rites in Nigeria

Culture: Culture can be a very rigid determinant of people's lifestyle even in the face of modernisation, civilisation and Christianity, particularly for those who refuse to understand that culture was made for man and not necessarily man for culture. Charles, for instance, while establishing how strong culture could be argued how the trio of *Imaan*, *Ayeyin* and *Ukod* are still very effective agents of crime control among the Ibibio today irrespective of the wind of civilisation and Christianity.[506] The only reason some practitioners including the victims will and

[504] W. C. Adeyemo, 'Widowhood and Its Harmful Practices: Causes, Effects and the Possible Way out for Widows and Women Folk'. World Journal of Educational Research [2016] 3(2).383

[505] M. Manala, 'African traditional widowhood rites and their benefits and/or detrimental effects on widows in a context of African Christianity'. HTS Teologiese Studies/ Theological Studies [2015] (71)(3)5

[506] Joseph Okokon Charles, Ethnography of African Societies: Sub-Saharan Region (University of Calabar Press 2014)

indeed give in to upholding widowhood rites in the absence of any logical argument is: "This is tradition and must be followed".

Fear of spiritual attacks: Some aspects of African-based tradition including widowhood rites are perceived to be deeply entrenched in diabolism and full of repercussions for anyone who tries to resist its free course. Akanni contends that "no one wants to dare the consequences of missing out on any aspect of this rituals". [507] In this regard, some law enforcement agents avoid interfering in those practices for fear of any form of reprisal attacks from spirits. To this end, the practice continues to thrive irrespective of clamours, resolutions and advocacies to see to the eradication of it.

Poverty: Poverty is obviously very pronounced in Nigeria, much more prevalent in its rural areas with little or no hope for any remedy in the nearest future. Emphasising rural poverty, Ishaku and Adeniran aver that individuals who reside in the rural areas are 65% more likely to be poor than their urban counterparts.[508] The poor are unable to meet their lives' basic needs independently, so they see widowhood rites as an opportunity to feed and acquire some property, including the wife that the late man left behind, particularly when it involves their relatives'.

On the part of the victims, poverty makes them subservient and sheepish such that they cannot even resist some of the practices. Some who want to resist the practice find it difficult to procure

[507] A. A. Akanni, 'Widowhood Practice among Contemporary Yoruba Muslims of South-West Nigeria. KIU Journal of Humanities [2020] (5)(1)146

[508] J. Ishaku, & A. Adeniran, 'Some thoughts on new poverty number in Nigeria'. Centre for the Study of the Economies of Africa. [2021] 2

the services of a lawyer, so they just manage to go through the process.

Greed/Primitive acquisitive tendencies: Greed, which refers to the intense and selfish crave for wealth, is a challenge that both the poor and the rich could suffer from. Manala noted that materialism is behind the forced widow/wife inheritance because the in-laws see it as an opportunity to keep their late son's wealth within the family.[509] Manala cited Nkhwashu's empirical evidence in South Africa, where a particular widow received attractive compensation from the employer of her late husband, and even when the husband did not die intestate, her brothers-in-law swore that she would not be allowed to take their brother's million to another man but must marry one of them. When this ploy failed because the widow engaged the services of a lawyer, the in-laws deployed another unsuccessful trick where they claimed their late brother had two additional children who should share in the property.[510]

Women's low status: It is common knowledge that women in Nigeria are considered secondary citizens who should only be seen but not heard. This perception creates a restrictive environment around gender stereotyping which according to Tasie, restrains them from openly criticising the dominant

[509] M. Manala, 'African traditional widowhood rites and their benefits and/or detrimental effects on widows in a context of African Christianity'. HTS Teologiese Studies/ Theological Studies [2015] (71)(3)2

[510] M. Manala, 'African traditional widowhood rites and their benefits and/or detrimental effects on widows in a context of African Christianity'. HTS Theologies Studies/ Theological Studies [2015] (71) (3)2

customs in their culture.[511] In this regard, widowhood rites continue to thrive even when its harmful effects are incontrovertibly visible and known.

Ignorance and illiteracy: Ignorance is largely a function of illiteracy, which more women suffer than men in Nigerian society because education according to Godwin, has been porous towards them.[512] A large number of women do not know what is called human rights, nor the existence of laws prohibiting the practice of widowhood rites and many of those that know do not know how to go about securing cover from the law or protecting their inalienable rights. To this end, a host of them particularly in the rural communities continue to kowtow to these rites thereby allowing for its perpetuation.

Inverted fairness: Inverted fairness here means administering something harmful or negative equitably without discrimination nor favour. In this regard, some older widows who have gone through the process sometimes may feel cheated if the practice is stopped. Hence, they sometimes insist that the practice continues so everyone from the community whose husband dies can have a fair share. This for them, is a way of venting or cushioning the pains they went through during their time of grief.

Rationale for Widowhood Rites

The rationale for the practice and sustenance of widowhood rites in practicing communities are mostly entirely shrouded in myths

[511] G.I.K. Tasie, 'African widowhood rites: A bane or boom for African women', International Journal of Humanities and Social Science (3)(1) 160

[512] I. Godwin, 'The need for participation of women in local governance: A Nigerian discourse' International Journal of Educational Administration and Policy Studies [2013] (5) (4) 64

which are passed down from one generation to another. Scholars have identified some of these which are discussed under this theme. They include, declaration of innocence or guilt of murder, proof of love or honour for one's late husband, severance of the living widow and her children from the late husband, preparation of the widow for an independent life, and removal of bad luck to allow for proper societal reintegration.

Declaration of Innocence or Guilt on the Accusation of Killing One's Husband: As already established above, most Nigerian communities and their African counterparts' subject a widow to a number of trials by ordeal to prove her innocence of the cause of her husband's death. To this end, protagonists believe that the rites are necessary to publicly declare to the entire community that the widow is either innocent or guilty of the death of the husband. But if she is not innocent and suffers the consequences of the trial by ordeal, what has befallen the guilty woman will deter other women from having a part in their husband's death.[513]

Respect for One's Late Husband: Protagonists believe that widowhood rites are considered as means of paying the late husband the last respect due him from the wife. In this wise, Kotze, Lishje, and Rajuili-Masilo, noted that in many African

[513] M. Manala, 'African traditional widowhood rites and their benefits and/or detrimental effects on widows in a context of African Christianity'. HTS Teologiese Studies/ Theological Studies [2015] (71)(3)3

traditions compliance with the rites is a sign that the widow is grieving properly and that she respects her late husband.[514]

Severance of the Dead from the Living: According to Tasie, the belief is that immediately after death, the husband's ghost lingers around the homestead to haunt the survivors and to continue performing his roles to his surviving relatives. In this context, widowhood rites are carried out to officially bring the marriage to an end, thereby severing the ties between a dead husband and surviving wife and facilitating the entry of the late man into the world of the dead.[515]

Preparation of the Widow for an Independent Life: Tasie observed that some aspects of the rites seek to endow the living wife with the boldness necessary to cope with the death of her husband and to build self-reliance, which has been occasioned by the demise of the bread winner of her family. Merton added that some of the rituals are performed to remind the living widows that there are difficulties ahead as they will be without the companionship they had been used to and the fact that they have become the fathers and breadwinners of the family because the men who were the breadwinners were now gone.[516]

Removal of Bad Luck: Manala cited Makatiu, Wegner and Ruane who argued that the belief that death comes with

[514] M. Manala, 'African traditional widowhood rites and their benefits and/or detrimental effects on widows in a context of African Christianity'. HTS Teologiese Studies/ Theological Studies [2015] (71)(3)2

[515] G.I.K. Tasie, 'African widowhood rites: A bane or boom for African women', International Journal of Humanities and Social Science (3)(1) 160

[516] C. Merton, (2016). Widowhood rites in Ghana. Social Studies (Online retrieved 17, March 2022) from https://www.virtuakollage.com/2016/08/widowhood-rites-in-ghana.html?m=1

negativities to those alive, necessitated widowhood rituals. The rituals are therefore occasioned for their perceived curative value that assists the griever in forging ahead with life. It is also believed that these mourning rites eliminate misfortune that is believed to hover around widows for which they are usually discriminated against and feared. Rites like sexual intercourse with the high priest as practiced among the Igbos are meant to cleanse the widow of perceived defilement related to the death of her late husband, to neutralise and/or counter the effects of danger embedded in widowhood.[517]

Specific Impact of Widowhood Rites on Nigerian Women's Rights.

Widowhood rites arguably directly or indirectly impinge on its victim's rights to life, right to dignity of human persons, right to personal liberty as well as right to personal and family life as enshrined in section 33 to Section 35 of the 1999 Constitution of the Federal Republic of Nigeria with amendment through 2011 as well as section 40.[518] This section shall specifically discuss how each of these mentioned rights are trampled upon by widowhood practice.

Widowhood Rites and the Women's Right to Life

There are several aspects of widowhood rites that threaten and have indeed led to the termination of the life of several widows. For instance, the aspect that gaslights or sometimes outrightly coerce widows to drink the water with which the corpses of the

[517] M. Manala, 'African traditional widowhood rites and their benefits and/or detrimental effects on widows in a context of African Christianity'. HTS Teologiese Studies/ Theological Studies [2015] (71) (3)3

[518] Constitution of the federal republic of Nigeria 1999 as amended through 2011

late husbands were washed, manipulated oaths administration, sexual violation, mandatory wailing aloud for long hours, and separation from people for length of days have anti-life implications. The water in which a corpse is washed is obviously not potable for human beings because they are filled with deadly microorganisms which may cause various kinds of infirmities. According to the World Health Organisation (WHO) these health challenges have been responsible for 485,000 diarrhoea associated deaths and other deadly diseases like cholera, dysentery, typhoid and polio. Contaminated water serves as habitat for some parasitic worms responsible for schistosomiasis – an acute and chronic disease. In addition, insects that carry and transmit diseases such as dengue fever find contaminated water a safe haven.[519]

Social Isolation, another prominent component of widowhood rites, can be responsible for insomnia. According to Tulane University School of Public Health and Tropical Medicine, social isolation reduces immune system and loneliness is connected to poor cardiovascular health and cognitive function (particularly 40% risk of dementia) as well as high risk for coronary heart disease and stroke.[520] The act of regimenting and the manipulative oath the widow is made to swear most times also leads to her untimely death not necessarily because she was guilty but because some persons manipulated the oath against her.

[519] World Health Organisation 'Drinking-water' World Health Organisation (21 March 2022) https://www.who.int/news-room/fact-sheets/detail/drinking-water
[520] Tulane University School of Public Health and Tropical Medicine 'Understanding the effects of social isolation on mental health.' Tulane University (Online, 8 December 2020) https://publichealth.tulane.edu/blog/effects-of-social-isolation-on-mental-health/

Futhermore, forced sex in the name of purification may predispose the widow to contracting sexually transmitted infections such as HIV/AIDS and hepatitis B, while the compulsory loud wailing may result in headache, depression and other health complications which eventually may lead to her death.[521] These are a clear contradiction to sections 33 (1) of the Nigerian Constitution, which states that "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 guilty in Nigeria".[522]

Widowhood Rites and Women's Right to Dignity of Human Persons

Manala citing Idialu emphasised that treatment of widows in Africa is inhuman and as such widowhood rites are geared towards dehumanising the victims.[523] In the observation of Ambasa-Shisanya cited in Manala, a widow who is sexually molested by professional cleansers, including sexual perverts, insane and alcohol abusers and forced to sleep in an unconducive environment, is obviously not treated with dignity but indignity. The emotional torture is a direct defiance of section 34 (1) of the Constitution, which unequivocally states that "every individual is entitled to respect for the dignity of his person and accordingly: no person shall be subjected to torture or to inhuman or degrading

[521] M. Manala, 'African traditional widowhood rites and their benefits and/or detrimental effects on widows in a context of African Christianity'. HTS Teologiese Studies/ Theological Studies [2015] (71) (3)7
[522] Constitution of the federal republic of Nigeria 1999 as amended through 2011
[523] M. Manala, 'African traditional widowhood rites and their benefits and/or detrimental effects on widows in a context of African Christianity'. HTS Teologiese Studies/ Theological Studies [2015] (71)(3)6

treatment;"[524] while to make a woman cook and feed some persons at the end of her confinement is tantamount to forced or compulsory labour from which she is constitutionally protected. To this effect, Sec 34 (1) (d) of the Constitution states that "no person shall be required to perform forced or compulsory labour".[525] This provision is supposed to includes all women in Nigeria. But sadly, those subjected to harmful widowhood rites are denied from the benefits of these clauses.

Widowhood Rites and Women's Right to Personal Liberty, Privacy, Political Rights and Association

According to Section 35 (1) of the Nigerian Constitution, every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in some specified lawful conditions.[526] The specific lawful situations under which a person can be denied personal liberty as outlined by the constitution does not at all accommodate any such traditional practice as widowhood rites. This follows that widowhood rites are an affront to Nigerian Constitution and a mechanism through which widows are alienated from their rights. Furthermore, the widows under seclusion in some communities may be politically disenfranchised if the traditional rites of her late husband are slated for election season. Again, during the period of seclusion, section 37 which states that "the privacy of citizens, their homes, correspondence, right to telephone conversations and telegraphic communications are private and guaranteed and protected,"[527] seemed to be illegally suspended for the widow. The reason being

[524] Constitution of the Federal Republic of Nigeria 1999 as amended through 2011
[525] Constitution of the Federal Republic of Nigeria 1999 as amended through 2011
[526] Constitution of the Federal Republic of Nigeria 1999 as amended through 2011
[527] Constitution of the federal republic of Nigeria 1999 as amended through 2011

that during the time of her seclusion, the widow is seriously monitored and regulated. In this context, she is also denied her right to peaceful assembly and association as stipulated in section 40 of the 1999 Constitution as amended through 2011.[528]

Theoretical Consideration

Deviant Place Theory

Deviant Place theory was developed by Stark, a Professor of Sociology and Comparative religion in 1987. The theory holds that victims do not encourage crime but are victim prone because they reside in socially disorganised, high-crime areas where they have the greatest risk of coming into contact with criminal offenders, irrespective of their own behaviour or lifestyle.[529] According to Siegel, who contributed to the theory, the more often victims visit dangerous places, the more likely they will be exposed to crime and violence. Neighbourhood adherence level, then, may be more pivotal for determining the chances of victimisation than the widow's characteristics. Consequently, there may be little reason for residents in lower-class areas to alter their lifestyle or take safety precautions because personal behaviour choices do not influence the likelihood of victimisation.

The theory is criticised for its inability to explain why some who live in deviant places are speared from victimisation. Nevertheless, the theory is considered relevant to this work in that it implies that for a widow to be victimised with widowhood practice, the woman must be from or be married to someone from

[528] Constitution of the federal republic of Nigeria 1999 as amended through 2011
[529] R. Stark, A theory of the ecology of crime. Criminology [1987] (4)(25) 894

a place or community where such practice is upheld and the widow must have also visited that community for the burial rites. Those who are from or married men from the communities where these traditions are not practiced or where the practice is done in a humane manner will never be victims of the practice. However, to cater for some of the inadequacies of the deviant place theory, the Routine activity theory (RAT) shall now be deployed.

Routine Activity Theory

This theory was first articulated in a series of papers by Lawrence and Felson in 1979.[530] The theory holds that for predatory crime to take place, three factors must interplay concurrently, viz: the availability of suitable targets, the absence of capable guardian, and the presence of motivated offender. According to Tierney,[531] Felson added a fourth dimension to the three factors which is an intimate handler (someone close to and capable of restraining a motivated offender). The limitation of this theory is that it only explains predatory crime, but this weakness happens to be the strength of the theory here in that widowhood rites is generally predatory in nature. All identified factors that must be in place for crime to occur are obvious in the situation of widowhood victimisation.

First, availability of suitable target appears to be represented by the vulnerable widow who suffer victimisation from the traditional widowhood rites. The second necessary factor: absence of a capable guardian, is represented by the absence of law enforcement agent that is favourably predisposed to

[530] L. J. Siegel, Criminology 11th Ed (Wadsworth Cengage learning, 2012)
[531] Tierney, Criminology: Theory and Context 3rd Ed (Routledge, 2013)

defending women when their fundamental human rights are being threatened. The third condition, presence of a motivated offender, simply is represented by the practitioners of this tradition, who may be motivated by the rewards they seek to gain from perpetuating the practice and/or their culture. While the fourth factor later added by Felson which is the lack of an intimate handler,[532] here refers to the absence of members of the same community or family who see the traditional practice as evil, and thereby are willing and able to restrain the administrators of the practice. This becomes obvious because of adherence to culture for both the perpetrators and the victims. This theory was considered apt for this research and was therefore adopted alongside the Deviant Place theory earlier exposited.

Conclusion and Recommendations

There is no gainsaying that widowhood rites as practiced in Nigeria have stalled the actualisation of women's right in the parts of the country where they are upheld. The paper sought to identify the specific aspects of women's rights that widowhood rites defy. In this regard, the widowhood rites as a *rite de passage* was examined to appreciably unfold its component in a more analytic manner. The enablers of widowhood rites and rationale behind the practice as well as the specific women's rights as provided by the Constitution, such as the right to life, right to privacy, right to dignity of human persons, among others, that are being compromised by widowhood rites practices were expounded. The deviant place theory as well as the routine activity theory were both deployed to emphasise the rationale as

[532] Tierney, Criminology: Theory and Context 3rd Ed (Routledge, 2013)

well as the reasons for the persistence of the widowhood rites. On the basis of the scholarly arguments brought to bear in this paper, the following recommendations are suggested:

1. Government initiated or supported research: For the avoidance of doubt and speculations, the Nigerian government should sponsor nationwide research aimed at identifying the actual communities still involved in widowhood rites practices with a view to taking necessary steps to resolve the problem.

2. Intense awareness campaign: Inherent in every correct information is the power of emancipation that everyone who comes in contact with it could possess. Enlightenment campaign will help to enlighten women on the dangers associated with widowhood rites and will encourage them to seek legal assistance in situations where they are compelled to undergo harmful widowhood rites. These campaigns can be carried out by the Ministry of Women Affairs, Non-Governmental Emphasisings, Religious emphasisings, Community Development Groups (CDS) of the National Youth Service Corps (NYSC) as well as the National Orientation Agency (NOA), using Market squares in the affected areas, religious meeting centres, village squares, town halls, cultural festivals and Women emphasisings.

3. Activation of vicarious liability: Legal Responsibility should be put on local government chairmen, council members and traditional rulers for any violation of human rights on the account of widowhood rites administered within the circumference of their authority. This will help to increase the eyes watching to prevent the practice at least for the sake of personal legal exculpation

4. Women Empowerment particularly at the local level: The girl child and women should be empowered educationally, economically and spiritually. The duo of education and economic empowerment have the potential to aid women's ability to know and capability to secure legal assistance when their rights are being violated by any traditional practice whatsoever. The spiritual empowerment on the other hand, will help them to stand strong against any belief or spiritual forces that might be manipulated to hurt them when they refuse to submit to widowhood rites.

5. Exploration of the educational curriculum channel: Education has been a proven instrument of societal change and development. The ills of widowhood rites as well as other harmful traditional practices against women should be taught to all in schools beginning from primary to tertiary level. This could be incorporated into one of the compulsory general studies with the aim of orienting the society against the practice.

6. Government Sponsorship: Government should sponsor legal experts and lawyers with proven integrity maybe through the auspices of the Legal Aid Council of Nigeria to take up cases of women who are made to suffer any form of violence including widowhood rites particularly in rural areas; and wide publicity should be given on regular basis regarding such free services. The market squares as well as the religious meetings could be used as platforms for the dissemination of such information. Also, Barristers besides their stipulated salaries should be given additional allowances on the basis of the number of cases they are able to successfully follow through.

EXAMINING THE DEBATES SURROUNDING GAY RIGHTS IN AFRICA: A NIGERIAN PERSPECTIVE

Ibe Okegbe Ifeakandu*

Abstract

The gay rights activism which spread across Europe and America undoubtedly brought about tremendous changes in the legal regime of many countries across the world, Africa inclusive. Changes introduced into national laws allow lesbian, gay, bisexual, transgender, and intersexual (LGBTI) people to publicly express their gender orientation and embrace their gender identity, particularly in Europe and America. Based on this success, the LGBTI activists have intensified their advocacy efforts, pushing through boundaries of religion, culture, morality, etc. that hitherto stood against the actualisation of LGBTI rights to secure acceptance, using the instrumentality of the law. The success rate of LGBTI acceptance across Africa is limited, at least legally, as many countries continue to reject the idea of legalising these rights. Using the doctrinal approach, this paper examines the debates surrounding the full realisation of gay rights in Africa, particularly Nigeria. The paper begins by considering LGBT rights in terms of global efforts galvanised to press for recognition of these rights, especially gay marriage, to challenge the negative perception of these rights globally. This is followed with a discourse of the struggle to actualise LGBTI rights in Africa and Nigeria and the challenges impeding the

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enjoyment of such rights. The paper concludes with recommendations.

KEYWORDS: *Gay Rights, LGBTI, Homosexuality, Africa, Nigeria*

Introduction

According to Amnesty International (AI), "around the world, people are under attack for whom they love, how they dress, and ultimately for who they are" (Amnesty International,).[533] Debates around gay rights popularly known as lesbian, gay, bisexual and transgender (LGBT) peoples' Rights, have soared over the years amidst support for such rights; and resentments towards those claiming those rights, especially in Africa. The debates, it should be noted, are predicated on morality, religion, culture, social acceptance, as well as ethical and legal considerations, among others, all of which are convincing.

In relation to international human rights law, discourse on gay rights addresses a series of important questions which relates more generally to the emergence of the new human rights norm.[534]Examples of such questions include: what relationship might gay rights have with the existing legal framework? How do these rights overcome strong political, social, religious and cultural resistance from different corners of the world (Africa in

[533]Amnesty International, LGBTI Rights, <https://www.amnesty.org/en/what-we-do/discrimination/lgbt-rights/?utm_source=google&utm_medium=cpc&gclid=Cj0KCQiAhs79BRD0ARIsAC6XpaVpwAPqEkmN3V6yAS-0hLtAbCZ580GmgEDNOluW5HmqPsv3LQqIx8UaAvp2EALw_wcB> accessed 17 November 2021

[534]The concept of gay rights is generally considered to be a new norm in international human rights law

this context); and how do like-minded states and individuals as well as emphasisings work strategically to promote the wider recognition of this new norm, i.e., LGBTI?

This paper examines the phenomenon of gay rights with particular reference to the debates around why these rights should or should not be respected, promoted or protected to enable those to whom the rights accrue to enjoy them. The paper adopts the doctrinal research approach, making use of mainly secondary resource materials. For purposes of clarity and logic, the paper is discussed under seven subthemes. The paper begins by examining the concept of LGBTI rights in the international space and goes on to examine the debates surrounding these rights. The paper further assesses the status of LGBTI rights in some selected jurisdictions in Africa, and the situation in Nigeria before concluding with recommendations.

Gay Rights in the International Space

Efforts to forge a new legal regime for LGBT rights were galvanised in particular by two key developments in Europe and America. In the United Kingdom, for example, a government-appointed commission composed of eminent persons from the public and private sectors issued a report in 1957 (the Wolfenden Report).[535] The resulting public debates culminated in important

[535] The report concluded- "homosexual behaviour between consenting adults in private should no longer be a criminal offence". See the Wolfenden Report at <www.bl.uk> 8 December 2021

legal reforms and substantial (but incomplete/limited) decriminalisation of same sex conducts.[536]

In the United States of America (USA), a new social movement was launched around the same time.[537] It started in part with an uprising among gay residents in New York City in response to systematic police harassment,[538] with a flashpoint occurring at a gay bar, Stonewall Inn, in 1969.[539]Changes within the medical establishment emboldened these social changes, and especially the 1973 decision of the American Psychiatric Association[540] to no longer classify homosexuality as a mental disorder. This gave an essential impetus to social change both in the USA and across the world. With the creation of the Sexual Privacy Project (later renamed the Lesbian, Gay, Bisexual, Transgender and AIDS Project)[541] by the American Civil Liberties Union;[542] and the establishment of the Lambda Legal Defence and Education

[536] See for example the 1967 Sexual Offences Act.Under the Act, homosexual activity that is done in private no longer constitutes a crime. See "How 1967 Changed Gay Life in Britain" <www.amp.theguardian.com>accessed 2 March 2022
[537] See American Psychological Association, "History of Lesbian, Gay, Bisexual and Transgender" at <http://www.apa.org>accessed 2 March 2022
[538] See 'Gay Rights: Facts and Summary', <http://www.history.com> accessed 2 February 2022
[539] The following year on the anniversary of the "Stonewall Riots", the first Gay Pride marches took place in major cities of the USA. Neil Frizzell, "Feature: How The Stonewall riots started the LGBT rights movement" <http://www.pinknewsuk.org>accessed 2 March 2022
[540] See American Psychiatric Association, "Being Gay Is Just as Healthy as Being Straight" <http://www.apa.org>accessed 2 March 2022
[541] See: ACLU History: ACLU launces Project Dedicated to LGBT Rights" <www.aclu.org>accessed 9 April 2022
[542] More information of the American Civil Liberties Union can be found at <www.aclu.org>accessed 9 April 2022

Fund[543] in 1973, the foundation for LGBTI rights was firmly established.

These social changes soon acquired a transnational dimension, with several LGBTI organisations being formed in several countries with the primary objective of decriminalising same-sex conduct or relationships. Mobilising against anti-LGBTI rights has been immensely fruitful, as evidenced in the following: (a) the rapid decriminalisation of LGBTI rights globally, especially in developed countries; (b) recognition and effect given by the UN through several resolutions;[544] and (c) judicial backing in some cases such as the landmark case of *Dudgeon v. the United Kingdom,* [545]where the European Court of Human Rights, sitting in Strasbourg (Strasbourg court),[546] held in 1981 that Sodomy laws violated the right to privacy under the European Convention on Human Rights (ECHR).[547]

In terms of marriage, however, the Strasbourg court's 47 judges of the 47 countries unanimously proclaimed that there is no such

[543] Lambda Legal was founded in 1971. It is an American civil rights organization that focuses on LGBT people and people living with HIV/AIDS through impact litigation, social education and public policy work. See more at<www.lambdalegal.org>accessed 9 April 2022

[544]See, for example, resolution A. HRC/RES/32/2- Protection against violence and discrimination based on sexual orientation and gender identity; resolution A/HRC/RES/17/19-Human rights, sexual orientation and gender identity (adopted 17 June 2011) and also resolution A/HRC/RES/27/32 on the same issue; amongst others. See more at <http://www.ohchr.org> 12 April 2022

[545] 45 Eur. Ct. H.R (ser A) at 14 (1981)

[546]The European Court of Human rights is the first to recognize LGBT rights. This is in contrast to the Inter-American Court of Human Rights that decided the first case recognizing LGBT rights in 2012.

[547] The European Convention on Human Rights was opened for signature in Rome on 4 November 1950 and it came into force in 1953. It was the first instrument to certain of the rights stated in the Universal Declaration of Human Rights and made them binding.

thing as a "right to homosexual marriage" in relation to resolving the question of *marriage*.[548] The ruling, according to reports, is based on Articles 12 of the ECHR and 23 of the International Covenant on Civil and Political Rights (ICCPR), [549] which seeks to preserve the sanctity of the family as the natural and fundamental unit of society and is entitled to protection by the community and the state. By this ruling, the court clearly contradicts itself because if a ruling is to the effect that Sodomy laws violated the right of privacy under the ECHR, precluding "homosexual marriage" which also falls within the precincts of sodomy laws also violates the LGBTI to privacy and family life.

The Gay Rights Debates

Beyond decriminalisation, several countries in Europe have given effect to LGBTI rights via legislation.[550] This is amidst contentions on different levels.

For proponents of LGBT rights, the argument hinges on the following:

a) **Equality of all persons under the law**. Equality, as provided under human rights provisions, means equal rights. It includes the right not to be discriminated against on the grounds of religion, sex or sexuality, ethnicity, etc.

[548] Ibid

[549]The ICCPR was adopted via UN General Assembly resolution 2200A (XX) on 16 December 1966. It came into force on 23 March 1976 in accordance with Article 49 of the Covenant

[550]Netherlands was the first country in Europe to enact a law to provide for same-sex marriage in April 2001. Since then, several other countries have also enacted such laws. In 2003 for example, Belgium enacted same-sex marriage law in 2003, Spain in 2005 and many others have legitimized gay marriage. See Amnesty International UK, LGBTI rights, "Mapping anti-gay laws in Africa," <http://www.amnesty.org.uk>accessed 2 March 2022

To discriminate against anyone on basis of sexual orientation is tantamount to a violation of the rights of persons in this category. This is also the position of Human Rights Watch[551]which advocates for the rights of all persons, including the LGBTIs to be promoted and protected especially in Africa. According to the organisation, sexual orientation and gender identity are integral parts of ourselves and should never lead to discrimination or abuse. Instead, laws and policies that protect everyone's dignity and help people enjoy their rights fully should be adopted and effectively implemented.

Also, the Office of the UN High Commissioner for Human Rights (OHCHR), while condemning the arrest and mistreatment of LGBTIs in Africa, especially in Egypt and some other countries including Azerbaijan and Indonesia, noted that arresting people based on the actual or perceived sexual orientation or gender identity is arbitrary and violates international human rights law including the right to privacy, non-discrimination and equality before the law.[552] To enhance and lend support for LGBTI rights, the UN Foundation[553] partnered with Gap Inc. and Banana Island for the Gay Pride month 2018

[551] See Human Rights Watch, 'LGBT Rights' <http://www.hrw.org>accessed 2 March 2022

[552] See OHCHR. LGBT speeches and statements at <www.ohchr.org/issues/pages.html>accessed 2 March 2022

[553] The UN Foundation links the UN's work with others around the world, mobilizing the energy and expertise of business and non-governmental organizations to help the UN tackle issues including climate change, global health, peace and security, women's empowerment, poverty eradication, energy access and UN-US relations. See more at <http://www.unfoundation.org>accessed 2 March 2022

with focus on the Free and Equal Campaign of the UN Human Rights Office.[554] The purpose is to educate people and raise awareness and support for UN LGBT rights work across the globe. Over the years, there has been great support for the annual Gay Pride month by members of various groups from the entertainment industry, media, academia, etc., as they advocate for public acceptance of and respect for the LGBTI rights.

b) **Freedom of choice:** Proponents of LGBTI rights further argue that everyone has a right to freely choose who and how to love without the state interfering.

c) **In relation to marriage,** proponents of LGBTI rights contend that marriage is good, so everyone should be given the right and allowed to experience it irrespective of sexual orientation and or gender identity.

Those opposed to LGBTI rights hinge their argument on:

a) **Legal limitation**

Proceeding from the standpoint that rights are not absolute, some argue that acceding rights to LGBTI people on the basis of equality is unjust and out of context because if that is the case, incestuous relationships would have to be legalised too. For them, (a) rights are rather qualified, not absolute so that legalising LGBTI conduct constitutes "another step towards the mainstreaming of homosexuality

[554]See United Nations Foundation <www.unfoundation.org>accessed 2 March 2022

in society";[555] and (b) gay people should only be allowed to love themselves in secret or private without legitimising the conduct.

b) **LGBTI conduct undermines socio-cultural values, morality and religion**

It has been contended by many that LGBTI activities offend religious worldview of several people. Therefore, to legalise it simply would potentially insult/offend deeply held religious, social and cultural beliefs. Accordingly, religious leaders across religions and countries have raised their voices against LGBTI activities.

c) **In the case of marriage**

Where LGBTI conduct involves marriage, critiques debate that marriage is described and recognised as the union of a man and a woman.[556] To change this conception of marriage contradicts natural law, weakens the institution of marriage and the family's role in fostering peace and unity in society. Legalisation of LGBTI activities ultimately denies the central role of marriage as a step towards procreation. In the French context, the changes in the law will remove the terms "mother and father" from the civil code, thereby weakening the rights of heterosexual families. In 2014, Pope Francis expressed his opinion on LGBTI rights by stating as follows: "Let's not be naïve, this is not a

[555] See <http://www.debatingeurope.eu/focus/arguments-for-and-against-gay-marriage> accessed 20 April 2022

[556] See the case of *Hyde v. Hyde* (1886) L. R. I. P. & D. 130, where the court defined marriage as a union between a man and a woman. See also Sebastian Poulter, "The Definition of Marriage in English Law" (1979) *Modern Law Review* Vol. 42, Issue 4, pp. 369-488

simple political fight, it's an attempt to destroy God's plan".[557]He also emphasised that marriage can only be between a man and a woman.

LGBT Rights in Africa

Homosexuality is widely outlawed in many countries within the continent. Apart from South Africa where homosexuality is officially recognised,[558] gay rights are anathema in most African countries. The resultant effect is that homosexuals are usually discriminated against, abused and mistreated as second-class citizens by governments of some countries. This has understandably been a source of concern to the UN and the international community, especially countries that have legalised the conduct. On 29 January 2012 for example, Ban Ki-Moon, the then Secretary-General of the UN, called on African leaders to *inter alia,* respect gay rights, noting that laws against homosexuality perpetuate discrimination and violate the Universal Declaration of Human Rights (UDHR). [559] He also affirmed the international community's resolve to surmount the challenge of discriminating against LGBTIs in Africa.

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[557] Elisa Criado, "Pope Francis-the first year: From atheists to gay marriage, 12 months in his own words", Independent Newspaper, UK online <www.independent.co.uk> 12 July 2018. See also, Catholic Herald, "News: pope says marriage can only be between a man and a woman and 'we cannot change it' <http://catholicherald.co.ukw008000007c4dww.catholicherald.co.uk/news/2017/09/03/pope-says-marriage-can-only-be-between-a-man-and-a-woman-and-we-cannot-change-it/>accessed 20 April 2022

[558]Same-sex marriage has been legal in South Africa since the Civil Union Act came into force on 30 November 2006. See Estelle Nagel, "The Aftermath of Legalizing Gay Marriage in South Africa (Yes, America, this will happen to you)", Huff Post, 26 April 2013 <http://m.huffpost.com>accessed 20 April 2022

[559] Adopted on 10 December 1948 vide resolution A/RES/217 (III) during the 183rd meeting of the General Assembly. A copy can be obtained at <www.un.org/en/universal-declaration-human-rights/>accessed 9 May 2022

Not making any pretence of it, African leaders have unequivocally resisted pressures from across the world to adopt gay rights, and have also condemned what they consider offensive.[560] In the same vein, world leaders like the former President of USA, Barack Obama and David Cameroon of the UK, among others, had at various times called on African leaders to recognise and respect LGBTI rights, sometimes threatening withdrawal of aids. However, this move has been rejected and actualising gay rights remains a mirage in most African countries due to several factors ranging from cultural values, religious beliefs and social inclination.

LGBT Rights in Selected Jurisdictions in Africa

Although progress is being made in Africa in terms of recognising LGBTI rights, it remains a criminal conduct in several others. Countries that have legalised LGBTI in African include, Benin, Burkina Faso, Chad, Mozambique, Central African Republic (CAR), Djibouti, Equatorial Guinea, Democratic Republic of Congo (DRC), Congo Brazzaville, Cape Verde, Chad, Gabon, Guinea Bissau, Mali, Mozambique, Niger, Lesotho, Rwanda and South Africa (SA).

In several other African countries, LGBTI remains criminalised, attracting severe punishment in many countries. In Nigeria, particularly northern Nigeria under the Sharia Penal

[560]Marc Epprcht, 'Sexual Minorities, Human Rights and Public Health Strategies'*African Affairs,* (2012) 111(443) 223-243. See also, E. Jordan, 'The Challenges of Adopting Sexual Orientation Resolutions at the UN Human Rights Council'*Journal of Human rights practice* (2016) 8 (2) 298-310.

Code,[561]Criminal Code,[562]Mauritania, Sudan, and Southern Somalia,[563] LGBTI practice or conduct is punishable with a death sentence. In other countries where LGBTI[564] is illegal and punishable under the law, punishment is usually severe, attracting up to 14 years imprisonment with fine in some cases. Status of LGBTI rights in some specific African countries are highlighted below.

a) Kenya

In Kenya, LGBT rights movements achieved appreciable progress in their struggle to achieve the legalisation of LGBTI rights. However, the Constitutional Division of the Kenyan High Court's ruling in the case of *Gutri v. Hon Attorney General and Anor*[565]changed everything as it stalled the clamour for legal recognition of LGBTI rights as human rights. In that case, the petitioner sought the order of court compelling the Honourable Attorney General to, *inter*

[561] Sharia Law in 12 northern states criminalises same-sex intimacy between both men and women. See Human Dignity Trust, "Nigeria" at <http://www.humandignitytrust.org> accessed 28February 2022

[562]Section 214 CC. section 215 criminalises attempt to commit the offences prohibited under section 214. Section 217 criminalise gross indecency between men or procurement

[563] Article 409 of the Somali Penal Code, Decree No. 5/1962, effective 3 April 1964 punishes homosexuality with imprisonment for up to 3 years in some cases whereas in the southern Somali where Islamic courts rule, having imposed Islamic sharia law punishing homosexual acts with death penalty or flogging. See Pride Legal, "Somali LGBT Laws", at <http://www.pridelegal.com/lgbt-laws> accessed 28 February 2022

[564] African countries where LGBT is illegal include Uganda, Mauritius Botswana, Burundi, Mauritania, Cameroon, Comoros, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Morocco, Namibia, Nigeria, Senegal, Sierra Leone, Somalia, Ethiopia, Algeria, Angola, Zimbabwe, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia and Zambia. See Amnesty International UK, "LGBTI Rights: Mapping anti-gay laws in Africa" <http://www.amnesty.org.uk> accessed 22 March 2022

[565][2016] eKLR

alia, declare sections 162 and 165 of the Penal Code (PC)[566] to be unconstitutional and void because they criminalise "private consensual sexual conduct between adult persons of the same sex as mandated by Articles 2(4) and 23(3)(d) of the Constitution". To that end, LGBTI rights activists in the East African country of Kenya have described anti-gay laws as colonial relics which have lost touch with reality and should be jettisoned. The criminalisation of LGBTI as introduced by the colonial administration in Africa came by way of imposition of penal codes that punished actions "against the order of nature"—code for homosexual acts—with up to 14 years in prison. These would become the first anti-gay laws on the continent, laws that are now being targeted by African LGBTI rights activists who argue that *homophobia*, not homosexuality, was an import from the West.

b) Ghana

The situation of LGBTI in Ghana is more precarious because of socio-cultural perception and not so much about non-legalisation. For example, although LGBTI is criminalised *vide* section 104 (1)(b) of the Criminal Offences Act (COA),[567] that makes "unnatural carnal knowledge" illegal, authorities in Ghana have been humane in their handling of LGBTI issues. While describing the COA as a "colonial legacy that is rarely, if ever,

[566] (Disputed sections) Chapter 63
[567]See 1960 Criminal Offences Act (Act 29) of Ghana.

enforced…" Human Rights Watch (HRW)[568] observed that over the years, authorities in Ghana did not make attempt to follow the example of her neighbours to stiffen the penalties prescribed in the COA or take specific steps to "expressly criminalise sexual relations between women".[569]

Furthermore, some government agencies – Ghana Police Force (GPF) and the Commission on Human Rights and Administrative Justice (CHRAJ),[570] have, in the past, cooperated with LGBTIs, including through trainings, on how to ensure their protection.[571]In spite of this, LGBTIs are constantly subjected to violence, abuse, discrimination and extortion, etc., as a result of their sexual orientation and gender identity. Also, the fact that section 104 (1) (b) of the 1960 COA remain effective in the country has been viewed as tacit state approval for violence against LGBTIs.

In a report that highlights incidences of attacks against LGBTIs in Ghana, the HRW documented a horrific attack which occurred in August 2015 in Nima, Accra against a young man who was brutally assaulted by members of a

[568] Human Rights Watch, Ghana: Violence and Discrimination against LGBT People (2018) Human Rights Watch Report at <https://www.hrw.org/report/2018/01/08/no-choice-deny-who-i-am/violence-and-discrimination-against-lgbt-people-ghana>accessed 20 April 2022
[569]Ibid
[570] See more on CHRAJ at <http://www.chraj.gov.gh>accessed 20 April 2022
[571] Human Rights Watch, Ghana: Violence and Discrimination against LGBT People (2018) Human Rights Watch Report at <https://www.hrw.org/report/2018/01/08/no-choice-deny-who-i-am/violence-and-discrimination-against-lgbt-people-ghana>accessed 20 April 2022

vigilante group known as Safety Empire on mere suspicion of being gay.[572]

Socio-cultural and religious beliefs also account for the constant humiliation that LGBTIs face even in their family settings, as they are seen as source of embarrassment to the family who, according to HRW, also would not want to be stigmatised by the community.[573] This is even worse for lesbian women who depend on other family members for survival as they are sometimes chased out of their family homes,[574] or forced to undergo church deliverance in the case of Christian families.[575]The existence of the anti-gay law inhibits victims of anti-gay violence from reporting abuses to the police for fear of being punished for being gay. This also extends to non-gay who may have been victims of rape by gay men.

The HRW further documented the case of Felix, a young man from Kumasi who was raped by a man he met on social media in 2016. He was unable to report the rape to the police for fear of being punished for having "gay sex". The emphasising reckons Ghana to be a country of profound contradictions because it projects itself as a liberal democracy backed by "a constitution that guarantees fundamental human rights to all its citizens, a relatively responsive police force, and an independent national human rights institution", yet the country constantly rebuffs the

[572]Ibid.
[573]Ibid.
[574]Ibid.
[575]Ibid.

call by UN bodies to repeal its anti-LGBTI law that criminalises "unnatural carnal knowledge".

According to a survey conducted by Gallup International Association, and referenced by HRW, with an estimated 96% of its population claiming to "follow some form of religious belief system,"[576] Ghana's anti-gay stance might have been influenced by religious inclination. This is also true of several countries in Africa.

c) Uganda

On 26 October 2019, Miriam Berger reported about the arrest of 16 LGBTI activists in Uganda on charges of gay sex. The report stated further that the activists were arrested "at the sexual health organisation where they worked and lived and cited condoms, lubricants and anti-HIV medicines found there as evidence of a crime".[577] In addition to that, these activists were subjected to "forced anal examination" before they were released on bail.[578] Indeed, scenarios like these are reportedly common in Uganda because LGBTI is intolerable on legal, religious, social and cultural grounds. Legally, LGBT is criminalised and attracts harsh penalty, which can be up to life imprisonment. Like anti-gay laws of several other African countries, the anti-gay law in Uganda, which prohibits "carnal intercourse against the order of

[576] Ibid.
[577] See Washington Post at <https://www.washingtonpost.com/world/2019/10/26/uganda-arrested-lgbtq-activists-heres-where-else-gay-rights-are-battleground-world/> accessed 27 April 2022
[578]Ibid

nature",[579] is a colonial relic.[580] In 2014, the government of Uganda sought to toughen penalties for homosexuality through a bill tagged "Kill the Gays" prescribing capital punishment for homosexuality. But the bill was quashed due to pressure from the international community.

The extent to which LGBTIs are loathed in Uganda is expressed by what HRW tagged Uganda: Brutal Killing of Gay Activist.[581] On 4 October 2019, Brian Wasswa, a 28-year-old Ugandan LGBTI activist[582]was attacked and killed at his home in Jinja, a city in eastern Uganda. Two days after the horrific killing of Wasswa, LGBTIs, HRW and Amnesty International, among others, were eked by Ethics and Integrity Minister, Simon Lokodo's announcement of government's intention to introduce a bill that would criminalise the "promotion and recruitment" by gay people, and prescribe the death penalty for "grave" consensual same sex acts.[583]

The killing of Wasswa was just one out of several persons who have been killed in Uganda on account of their sexual orientation or gender identity. The precarious situation of

[579]Ibid
[580]Ibid.
[581]Human Rights Watch, Uganda: Brutal Killing of Gay Activist, available at <https://www.hrw.org/news/2019/10/15/uganda-brutal-killing-gay-activist>accessed 27 April 2022
[582]Ibid. Wasswa had worked since 2017 as a paralegal trained by Human Rights Awareness and Promotion Forum (HRAPF), a legal aid organization that supports vulnerable communities, including LGBT people. He also worked as a peer educator with The AIDS Support Organization (TASO), a Ugandan nongovernmental organization dedicated to HIV/AIDS prevention, treatment, and care, where he conducted HIV outreach to LGBT people.
[583]Ibid.

LGBTIs in Uganda is indeed precarious as it is pathetic. International human rights law's principles of *interdependence, interrelatedness and interconnectedness* of human rights are obviously ignored when it comes to the treatment of the LGBTI community and this cuts across several countries in Africa. There is therefore the need to rethink the issue of LGBTI rights and the need to protect the LGBTIs from marginalisation, molestation, stigmatisation and criminalisation.

d) Egypt

Egypt is one of the countries in Africa that finds same-sex relationships intolerable and occasions a series of human rights violations. The story of the arrest and detention of Seif Bedour, a 21-year-old and Ahmed al-Ganzoury portrays a grim picture of the precarious situation of LGBTs in that country. Younes, LGBTI rights researcher at Human Rights Watch[584]wrote that the circumstances of arrest and detention of Bedour and al-Ganzoury contradict human rights principles regarding arrest, searches and detention.[585]Bedour was arrested on suspicion of being gay at a police station where he accompanied a friend who had been arrested by the police.[586] Al-Ganzoury was also arrested at the same police station having been summoned by the police as the organiser of a party at Cairo's Fairmont

[584]RashaYounes, Egypt's Denial of sexual Orientation and Gender Identity, Ignoring LGBT Rights endangers People in Time of COVID-19 (2020), Human Rights Watch, at <https://www.hrw.org/news/2020/03/20/egypts-denial-sexual-orientation-and-gender-identity>accessed 27 April 2022

[585] Ibid

[586] Ibid

Hotel in 2014 that gave rise to police investigations.[587] Both men had their phones searched unlawfully, after which they were accused of engaging in same-sex activities and detained based on private pictures found in their phones. According to the report, both men remained in jail for months as their "pre-trial detention was renewed thrice in hearings they were not allowed to attend".[588] During the period of detention, both men were allegedly subjected to *torture, inhuman and degrading treatment*[589]in violation of international human rights treaties to which Egypt is a party.

Amnesty International's 2019 situation report on human rights in Egypt[590] described the reprehensible nature of Egypt's human rights regime that favour "unfair trials" death sentences, executions, and torture in "formal and informal places of detention".[591]The report further refers to conditions of detention as dire, while women "continued to face discrimination in law and practice";[592] and LGBTIs in detention are often "forcibly subjected to invasive anal and sex determination tests".[593]This is in addition to stifling the

[587] Ibid
[588] Ibid
[589] It was reported that prison guards forcibly shaved Bedour and al-Ganzoury heads, while prosecutors ordered them to undergo drug testing and forced anal exams. Egyptian authorities in a bid to get "proof" of same-sex conduct routinely carried this out. This constitutes a form of torture and sexual assault under international human rights law.
[590]Amnesty International, Egypt 2019, <https??www.amnesty.org> accessed 20 March 2022
[591] Ibid
[592]Ibid
[593]Ibid

rights to freedom of expression and of association for the LGBTIs. For example, in January 2019, a TV presenter, Mohamed al-Ghiety was convicted on two count charge of publicly expressing homophobic views; and for interviewing a gay man on TV. He was sentenced to a term of imprisonment for one year in addition to fine. In the same vein, Malak al-Kashef, a transgender woman and human rights defender, was arbitrarily detained in relation to a protest in February 2019. She was detained for four months in the all-male Mazra' at Tora prison and subjected to a forced anal examination at a government hospital, where she also suffered other forms of sexual assault by medical staff according to Amnesty International.[594]

Legally, there are no laws that specifically criminalise LGBTI conducts in Egypt. But authorities have relied on Articles 269 and 278 of the Penal Code of 1937; and Article 9 of Law 10/1961 to randomly arrest, detain and prosecute suspected LGBTIs. Article 269 of the 1937 Penal Code forbids incitement to indecency, providing that "whoever is found on a public road or a travelled and frequented place inciting the passers-by with signals or words to commit adultery shall be punished with a term of imprisonment for a period not exceeding one month…" with punishment increasing to six months and a fine of about 50 pounds if

[594]Ibid. see also, Amnesty International, Egypt Forcibly Disappeared Transgender Woman at Risk of Sexual Violence and Torture(Press release, 7 March and updated 11 March 2019), available at < https://www.amnesty.org/en/latest/news/2019/03/egypt-forcibly-disappeared-transgender-woman-at-risk-of-sexual-violence-and-torture/>accessed 4 April 2022

the offender, referred to as "the felon" commits the offence again within the first year of the first crime.

Article 278 criminalises scandalous act and provides that "whoever commits a scandalous act against shame shall be punished with detention for a period not exceeding one year or a fine not exceeding three hundred pounds". Further, Article 9 of Law 10/1961 on the Combating of Prostitution criminalises debauchery or prostitution and permits an arresting officer to subject suspects to medical examination. It is a crime under the Article for any person to permit the use of his premises or let his property be used for debauchery or prostitution. Punishment for the offence is between 3 months and 3 years and a fine between 25 LE and 300 LE in the Egyptian or between 250 Lira and 3000 Lira in Syrian administration.

Ethiopia

Ethiopia's criminal law criminalises same-sex conduct in Section II: Sexual Deviations of the Criminal code of the Federal Republic of Ethiopia, Proclamation No. 414/2004**.** While Articles 629 and 630 prohibit and punish *Homosexual and other Indecent Acts,* and *General Aggravation to the Crime,* Article 631 prohibits and punishes *Homosexual and other Indecent Acts Performed on Minors* Section 630 prescribes punishment ranging from a term of imprisonment for one year to fifteen years depending on the gravity of the offence.

> "…unfair advantage of the material or mental distress of another or of the authority he exercises over another by virtue of his position, office or

capacity as guardian, tutor, protector, teacher, master or employer, or by virtue of any other like relationship, to cause such other person to perform or to submit to such an act"[595]or the offender "makes a profession of such activities within the meaning of the law".[596]

Under situations provided in Article 630(2), punishment ranges from a term of imprisonment ranging from three years to fifteen years. Such situations include:

> "…criminal uses violence, intimidation or coercion, trickery or fraud, or takes unfair advantage of the victim's inability to offer resistance or to defend himself or of his feeble-mindedness or unconsciousness; or the criminal subjects his victim to acts of cruelty or sadism or transmits to him a venereal disease with which he knows himself to be infected; or the victim is driven to suicide by distress, shame or despair".

Under Article 631 involving minors, who are between the ages of thirteen and eighteen years, punishment ranges between three and fifteen years. For children below thirteen years, punishment ranges from fifteen years to twenty-five years.

Like several other countries in Africa, many Ethiopians

[595]See article 630(1)(a) of the Ethiopia Criminal Code
[596]Ibid, section 630 (1)(b)

are religiously inclined; and this informs their intolerance for LGBT conducts. For example, as reported by the British Broadcasting Corporation (BBC)[597] in June 2019, a planned visit by a US company that organises tours for gay people was vehemently opposed by Ethiopian church groups, including the Inter-Religious Council of Ethiopia who called on government not to allow the planned visit to take place. Reasons adduced by the religious groups to government include the intolerable visit to religious sites.[598]

Group members went as far as issuing threats while others continue to lobby government against homosexuality.[599] The report stated further that the "outcry over the planned Ethiopia trip was unprecedented in the company's history";[600] as it also "triggered a social-media storm, with many Ethiopians expressing outrage at the prospect of gay tourists visiting the country - and even calling for attacks against them and their straight allies. The fact that "homophobia had deep roots in the country"[601] has grave implications for LGBTIs. Thus, most LGBTI Ethiopians continue to hide their sexuality for fear of physical and psychological harm as well as exclusion.

[597] BBC, "Ethiopia religious anger over US gay tour plan" at <https://www.bbc.com/news/world-africa-48512407>accessed 27 April 2022
[598]Ibid
[599]MrNegash, a deacon of the Ethiopian Orthodox church has reportedly been lobbying against homosexuality in the country. BBC, "Ethiopia religious anger over US gay tour plan" at <https://www.bbc.com/news/world-africa-48512407>accessed 27 April 2022
[600]Ibid.
[601]Ibid.

LGBTI Rights in Nigeria

The situation of LGBTI rights in Nigeria remains in dire straits notwithstanding pressures from the international community calling on the government to protect persons from discrimination on the basis of sexual orientation and or gender identity. Nigeria is a largely conservative country where issues of gay rights are considered an anathema, offensive and inexcusable. Legal, social, moral, religious and cultural inclinations remain very strong factors in the non-acceptability of gay rights.

Legally, although the Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended provides for equality of rights, recognition of sanctity and dignity of the human person, and non-discrimination in section 17 and the right to dignity of the human person in section 34 (1) (a), right to privacy in section 37, right to freedom from discrimination in section 42 (1), the LGBTIs lack real protection from violence. This is in view of several legal provisions prohibiting gay relationship (*Sodomy*); and judicial pronouncements condemning sodomy. These legal provisions include section 284 of the Penal Code,[602]Section 81 (1)(a) (3) Armed Forces Act,[603] and section 16 (1), 32 (b), 87 (1)(b) of Matrimonial Causes

[602] This section prohibits intercourse "against the order of nature with any man, woman or animal", prescribing a maximum term of imprisonment of 14 years and a fine. Although this provision is not restricted to persons in gay relationship, it applies to them because of the nature of sexual intercourse that exists between them.
[603]The provision criminalizes sodomy for officers in the Armed Forces; and punishes the offence with a term of imprisonment for 7 years.

Act.[604]Section 217 Criminal Code prohibits gross indecency between men or procurement of or attempted procurement thereof with a penalty of 3years imprisonment.

In 2014, the Same-Sex Marriage (Prohibition) Act 2014[605] was enacted in Nigeria, following a similar law enacted by Uganda.[606] The law effectively "prohibits a marriage contract or civil union entered into between persons of same sex, solemnisation of same"; and also, registration of homosexual clubs, societies and organisations as well as public display of same-sex amorous relationship directly or indirectly, among others. Section 5 (1) prescribes punishment of 14-year imprisonment for same sex marriage and 10-year imprisonment for anybody that registers homosexual clubs, societies and organisations or make public show of same sex amorous relationship directly or indirectly.

This law is well received in Nigeria but Amnesty International condemned it for "criminalizing love"[607]

[604] The Matrimonial Causes Act lists sodomy as a ground for divorce in section 16 (1), and another ground where a spouse has been convicted- in Nigeria or elsewhere of sodomy. A person can also be joined as party in a divorce case where the person has allegedly committed sodomy with the party in a divorce case.
[605] The anti-LGBT rights law was signed by President Goodluck Jonathan in January 2014 to formally prohibit gay activities in Nigeria
[606] The anti-same sex marriage was passed in December 2013 effectively criminalizing homosexuality in Uganda. The UN noting that it violates human rights of persons has vehemently vilified this. See Amnesty International UK, LGBTI rights, supra, note 17
[607]Ibid

even as some brand it hypocritical.[608] The illegality of sodomy or homosexuality in Nigeria has also received judicial pronouncements in a number of cases, including *Magaji v. Nigerian Army*[609] where the Supreme Court upheld the conviction of the appellant for the offence of sodomy by both the Court Marshal and the Court of Appeal. It goes without saying that gay people can only exercise their right to privacy in their closets.[610]

In October 2020, a case against 47 men charged with public display of affection with members of same-sex was struck out by Justice Rilwan Aikawa of the Lagos High Court for "lack of diligent prosecution" as the case had been adjourned several times, causing undue delay arising from the prosecution's non-attendance in court.[611] The judge observed: *Listen, the court will not stop you from trying to present a case but you must do it properly and according to law. This is the last adjournment.* This warning is in line with section 396 (4) of the Administration of Criminal Justice Act, 2015 (ACJA) which allows an initial 5 adjournments for each party in the case and further adjournment (as the case may be) at intervals of not more than seven days including weekends under section 396 (5). The 47 men stood trial on 11 December 2017 for making a "public show of same-sex

[608]Minna Salami, "The hypocrites that we are", The Guardian Nigeria, 24 May 2017, <www.guardian.ng> 15 February 2022
[609](2008) LPELR-1814 (SC)
[610] Ibid
[611]New York Times, <https://www.nytimes.com/2020/10/27/world/africa/Nigeria-anti-gay-law.html> accessed 29 April 2022

amorous relationship" contrary to section 5(2) of Same Sex (Prohibition) Act, 2014. Apart from this unsuccessful effort, the 2014 anti-gay law has not, as yet, been put to the test, as no one has been convicted on it despite being in existence for approximately eight years.

On the basis of morality, culture and religion, several Nigerians have commended the anti-Same Sex Marriage Act, emphasising that gay relationships are against nature and God's commandments. For these people, accepting it is tantamount to rebellion against God. Religiously inclined people see it as unclean and unholy whereas those with moral inclination see it as indecent, immoral and purely against African culture. The resultant effect of these dispositions is violence against real and perceived LGBTIs in Africa generally and Nigeria specifically.[612]

Conclusion/Recommendations

Indeed, the LGBTs can freely express their sexual orientation in some developed countries even though some conservative elements remain opposed to LGBTI rights. In Africa and Nigeria however, legal provisions, socio-cultural and religious inclinations continue to pose serious challenges to the realisation of these rights. While gay rights are not being canvassed here, it is important to ensure that advocacy is engaged to enable the public

[612] In 2017 for example, a gay rights activist was violently attacked in Abuja for daring to speak up about gay rights. This is not an isolated case as real and or perceived LGBTs are often mistreated and sometimes arrested and imprisoned by the police. See Kasmira Gander, 'Gay in Nigeria: The Stark Reality for LGBT People in the West African country', Independent *UK*, Tuesday 23 May 2017

eschew violence against LGBTIs. There is also the need to balance interests of all persons in the society by adopting humane laws and policies without jeopardising cultural, religious or moral beliefs of any party while the limit of people actions within the framework of law are defined.

HUMAN RIGHTS EDUCATION IN NIGERIA: AN ANALYSIS OF NATIONAL HUMAN RIGHTS COMMISSION OF NIGERIA HUMAN RIGHTS EDUCATION APPROACHES

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Abstract

The international community has increasingly expressed consensus on the crucial contribution of human rights education (HRE) to the realisation of human rights as well as to the long-term prevention of human rights abuses and violent conflicts. HRE is widely considered to be a major tool for promoting social responsibility and a universal culture of respect for and protection of human rights. Many National Human Rights Institutions (NHRIs) like the National Human Rights Commission of Nigeria (NHRC) include HRE in their activities in an attempt to foster a sense of social change, yet NHRIs still grapple with how to effectively implement an HRE intervention that is sustainable and result oriented. In an attempt to provide resources and promote HRE, this paper examines the concept and models of HRE and analyse its potential for positive change. The paper considers that using an approach that is transformational and integrated into a community-based approach anchored on the principles of participation and

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empowerment and delivered through culturally appropriate channels, is effective for the promotion and protection of human rights. While growing support for the inclusion of HRE in the work of NHRIs has built a solid foundation, we must critically consider the challenges and future possibilities for an effective and participatory HRE. This paper argues that the use of the transformational human rights education model (THRED) offers a better prospect and will give the highest success rate in Commission's HRE approach.

KEYWORDS: *Human Rights Education, HRE Models, Transformational Action, Participation, Empowerment.*

Introduction

The United Nations Charter of 1945 and the Universal Declaration of Human Rights (UDHR) of 1948 require that all states recognise, establish, protect and enforce human rights at global, regional, national and local levels. Since their adoption, the recognition of the inherent dignity and the equal and inalienable rights of every person has forced the international community to recognise and assume its responsibility in the promotion of universal respect for and protection of human rights as well as to guarantee the indivisibility of human rights and their interdependence with peace and development.[613] The Sustainable

[613] In 1948 United Nations Educational, Scientific and Cultural Organization (UNESCO) created a committee which included leading intellectuals, philosophers and political scientists that sent out a questionnaire to a number of personalities (such as Mohandas Gandhi and Aldous Huxley) soliciting their opinions on the idea of a universal declaration of human rights. Based on responses received to the questionnaire a report was prepared which indicated that, despite cultural differences, Members States of the UN shared certain principles and common ideals. The results

Development Goals (SDGs) adopted by United Nations General Assembly in September, 2015 offers another crucial opportunity to promote development approaches that contribute to the protection and fulfilment of human rights, through domestic policy and resources. As a globally agreed blueprint for 2015-2030, the SDGs have become the major point of reference for development actors at all levels and will have a significant impact on the human rights agenda for years to come.[614] Human rights provide a "universally available set of standards for the dignity and integrity of all human beings".[615] The fulfilment of these standards, based on the principles of freedom, equality, solidarity, inviolability, inclusiveness, diversity, universality and participation, is directly linked to the possibilities of information, education and communication as a right. Article 19 of Universal Declaration of Human Rights affirmed the right to freedom of opinion and expressions, including the right to seek, receive and impart information.[616]

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of the survey facilitated the adoption of the Universal Declaration of Human Rights (UNDHR) on December 10, 1948 in Paris.

[614] Steven L. B. Jensen, S.L.; Corkery, A and Donald, K. (2015). Center for Economic and Social Rights

[615] Hamelink, C.J. (1994). The politics of world communication: a human rights perspective, London, Sage.

[616] UNDHR Article 19 states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers".

The UDHR of 1948 underscores the importance of human rights education (HRE) in the promotion of human rights culture in its Preamble.

> Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms…..[617]
>
> Now, therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.[618]

The preamble of the UDHR further declared that 'every individual and every organ of society, shall strive by teaching and education to promote respect for these rights and freedoms.[619] Article 19 of the Universal Declaration of Human Rights further

[617] Preamble to UDHR, para. 6
[618] Ibid @ 5 para.8
[619] Ibid @ 5 para.8

affirms that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". According to Andreopoulos and Claude, the UDHR conceptualise education as more than a tool to promote human rights:

> It is an end in itself. In positing a human right to education, the framers of the Declaration axiomatically relied on the notion that education is not value neutral. In this spirit, Article 26 [sic] states that one of the goals of education should be "the strengthening of respect for human rights and fundamental freedoms".[620]

While Article 26(1) deals with education as a general human right, Article 26(2) makes the development of the human personality and the strengthening of respect for human rights and fundamental freedoms part of the content of human rights education. Education as a basic human right cannot be any education. Its content, says the UDHR, ought to be built on a substantive understanding of the dignity of all human beings and an appreciation of the rights and freedoms to which human beings are entitled.[621]

> Education shall be directed to the full development of the human personality and to the strengthening of

[620] Andreopolous, G.J. & Claude, R.P. (Eds). 1997. *Human rights education for the Twenty-first Century*. Philadelphia: University of Pennsylvania Press.

[621] See the Universal Declaration of Human Rights, which was adopted by the United Nations (UN) General Assembly in December 1948,

> respect for Human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace" (Article 26 (2).[622]

Most core conventions have provisions that reinforce this obligation on states to use HRE to promote knowledge of human rights standards and principles in general, and the instruments they are written into, in particular. Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) not only mandates education as an economic right, but also, in a further elaboration of Article 26 of the UDHR, links it to the importance of developing the whole person and the ability to participate effectively in a free society:[623]

> The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups,

[622] Ibid @ 9

[623] Article 13 of ICESCR

> and further the activities of the United Nations for the maintenance of peace.

The ICESCR General Comment 13 of 1999 states that the role of education is both a human right in itself and an indispensable means of realising other human rights, adding that [education is a] means to empowering marginalised and vulnerable groups to lift themselves out of poverty and obtain the means to participate fully in their communities.[624] Elaborating on the broad understanding of education in Article 26 of the UDHR, the ICESCR sees education as a process of developing the person to become a moral agent who accepts his/her own dignity, respects the rights of others, and has the ability to participate in a free society and contributes to peace. This somewhat utopian understanding of the value of education underlines the fact that the ICESCR, with its emphasis on social justice, will be an exercise in futility if the poor and marginalised do not have the social skills and knowledge to exercise their rights.

The Convention on the Eradication of All Forms of Racial Discrimination (CERD)[625] also makes education a central obligation of each state party:

> States Parties undertake to adopt immediate and effective measures, particularly in the fields of **teaching**, **education**, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding,

[624] The Danish Institute for Human Rights (2012). The Human Rights Education Tool Box

[625] Article 7 of Convention on the Eradication of All Forms of Racial Discrimination (CEARD)

> tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.[626]

Regional instruments also emphasise the importance of human rights education in the promotion of human rights. For instance, Article 25 in the African Charter on Human and Peoples' Rights provides that state parties have the duty to promote and ensure human rights contained in the charter through teaching, education and publication.[627] The additional protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, Article 13, reads that education should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace.[628]

Human rights education (HRE) is one strategy for applying human rights to development theory, policy and practice.[629] HRE has been described as a human right,[630] a universal priority,[631] a

[626] Ibid @ 13
[627] See African Charter on Human and Peoples' Rights
[628] Ibid @ 11
[629] Stephen Marks, *Health, Development and Human Rights*, *in* HEALTH AND DEVELOPMENT: TOWARD A MATRIX APPROACH 124, 130 (Anna Gatti & Andrea Boggio eds., 2008).
[630] G.A. Res. 48/127, preamble ¶ 7, U.N. Doc. A/RES/48/127, (Dec. 20, 1993).
[631] *See, e.g.*, Robinson, *supra* note 3, at 80-82; Malcolm Langford, *A Poverty of Rights: Six Ways to Fix the MDGs*, 41(1) IDS BULLETIN 83-90 (2010); Office of the High Commissioner for Human Rights [OHCHR], Claiming the Millennium Development Goals: A Human Rights Approach, U.N. Doc. HR/PUB/08/3, at vii

global movement,[632] a transformative pedagogy,[633] and a strategy for development.[634] Building upon this strong international framework, many institutions and individuals have contributed, and are continuously committed to advancing respect of human rights and freedoms through HRE.[635]

In the 1970s, the United Nations Education Scientific and Cultural Organisation (UNESCO) promoted HRE, and social movements adopted human rights discourse to support legal campaigns for the realisation of human rights at the national and international levels.[636] The early approach to HRE was mostly through teaching *about* human rights (their history, mechanisms, and UN documents) rather than teaching *fo*r the practice of

(2008) [hereinafter OHCHR, Claiming the MDGs]; Ashwani Saith, *From Universal Values to Millennium Development Goals: Lost in Translation*, 37(6) DEVELOPMENT AND CHANGE 1167 (2006); Gillian MacNaughton & Diane F. Frey, *Decent Work, Human Rights and the Millennium Development Goals*, 7 HASTINGS RACE AND POVERTY LAW JOURNAL 303 (2010); Thomas Pogge, *The First United Nations Millennium Development Goal: A Cause for Celebration?*, 5(3) JOURNAL OF HUMAN DEVELOPMENT 377 (2004).

[632] *See* Felicia Tibbitts, *Human Rights Education*, *in* ENCYCLOPEDIA OF PEACE EDUCATION (2008), *available at* http://www.tc.columbia.edu/centers/epe/entries.html ("Human rights education (HRE) is an international movement to promote awareness about the rights accorded by the Universal Declaration of Human Rights and related human rights conventions, and the procedures that exist for the redress of violations of these rights (accessed Feb. 2018).

[633] 23 *See* Clarence Dias, *Human Rights Education as a Strategy for Development*, *in* HUMAN RIGHTS EDUCATION FOR THE TWENTY-FIRST CENTURY 51 (1997).

[634] Ibid at 20

[635] Ibid @ 9

[636]http://en.wikipedia.org/wiki/Human_rights_education#Human_rights_education_and_the_United_Nations

human rights and their realisation by individual and collective action.[637]

In 1993, the World Conference on Human Rights concluded in its Vienna Declaration and Programme of Action that states are duty bound "to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms". It mandated:

> Educational training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms… thus contributing to, *inter alia*, the prevention of human rights violations and abuses by providing people with knowledge, skills and understanding and developing their attitudes and behaviours, to empower them to contribute to the building and promotion of a universal culture of human rights.[638].[639]

The leading international network of HRE, the Global Coalition for Human Rights Education formed by NGOs in 2014 to strengthen the HRE compliance of states by raising awareness and urging action, integrating HRE into UN mechanisms, and monitoring the implementation of HRE commitments, called for 2020 to be the year of assessing the achievements of

[637] Bajaj, M., Cislaghi, B. and Mackie, G. (2016). *Advancing Transformative Human Rights Education: Appendix D to the Report of the Global Citizenship Commission.* Cambridge, UK: Open Book Publishers, 2016. http://dx.doi.org/10.11647/OBP.0091.13 (Accessed March, 2018)

[638] See http://www2.ohchr.org/english/law/pdf/vienna.pdf

[639] See http://www2.ohchr.org/english/law/pdf/vienna.pdf

governments, international institutions, and civil society in providing access to quality human rights education.

However, achieving the goals of HRE require innovative teaching strategies, with an emphasis dialogue, critical thinking and analysis of information and problem-solving. It is not simply enough for target group to learn about international, regional and national human rights law or to stay updated on current events of NHRCN. HRE content must be paired with teaching pedagogy that emphasises global responsibility and community, interconnectedness or social support, the re-humanisation of victims and perpetrators of human rights abuse, and potential for enacting solutions for positive change.[640]

The purpose of the paper therefore, is to examine the human rights education models of the National Human Rights Commission of Nigeria (NHRCN). The goal of this paper is not only to promote the understanding of HRE but to assess its challenge for the sustenance of human rights culture in Nigeria. The roles of National human rights institutions (NHRIs) in HRE have been emphasised in international legal framework. The first important framework is the Paris Principle,[641] a set of international standards which frames and guide the work of NHRIs. The United Nations Resolution 48/131 in 1993 stated that:

[640] Ibid @ 25

[641] Principles relating to the Status of National Institutions (The Paris Principles). Adopted by the United Nations General Assembly Resolution 48/134 of 20th December, 1993

> The General Assembly, (…) convinced of the significant role that institutions can play at national level can play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms (…..).
>
> A national institution shall, *inter alia* have the following responsibilities:
>
> F) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
>
> G) To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing awareness, especially through information and education and by making use of use of all press organs.[642]

In addition to the Paris Principle, UDHR provides a strong basis for HRE.[643] The Vienna Declaration and Programme of Action, and the World Conference on Human Rights re-affirmed the important and constructive role of NHRIs in HRE.[644] As an independent institution of accountability mandated to ensure that

[642] Ibid @ 17
[643] See Article 26(2) of the UDHR
[644] Segura, F. (2009) *Exploring Developed and Developing World Human Right Education initiatives at the Primary and Secondary School Levels*, macalester.edu

international and local commitments are upheld, the National Human Rights Institutions (NHRIs) undoubtedly have a role to play in human rights promotion and education.[645]

Conceptual Reviews

This section review concepts that are relevant to this paper for the purpose of clarity.

Human Rights Education (HRE)

Provisions on HRE have been incorporated into many international instruments, including the UDHR, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the UNESCO Convention Against Discrimination in Education, and the Vienna Declaration and Programme of Action.[646] HRE is crucial in the promotion, protection and enforcement of human rights and should not be underestimated as it represents a milestone towards a common vision of human dignity.[647]

Over the past seven decades, the theory and practice of HRE has come with differing parameters and convergence, but with broad consensus about its components. First is the agreement by practitioners and scholars that HRE must include both content

[645] Broadly defined as quasi-governmental, administrative institutions (neither judicial nor law-making), NHRIs have an on-going advisory authority in respect of human rights. See A. Corkery and D. Wilson (2014), 'Building Bridges: national human rights institutions and economic, social and cultural rights', in Riedel et al (eds.) Economic, Social and Cultural Rights in International Law: contemporary issues and challenges.

[646] Ibid @ 22

[647] See NHRC Bulletin (2017). Vol. iii. No. 10

and process related to human rights, such as the importance of using participatory methods for effectively teaching human rights.[648] Secondly, some literature discourse based on the need for HRE to include goals related to cognitive (content), attitudinal or emotive (values/skills), and action oriented components.[649] Amnesty International (AI) framework however, weaves together the process of HRE and their intended outcomes by highlighting three prepositions linking education and human rights in a comprehensive manner to include: a) education about human rights (cognitive); b) education through human rights (participatory methods that create skills for active citizenship); and c) education for human rights (fostering learner's ability to speak up and act in the face of injustices).[650]

However, the ongoing debates surrounding the definitions of HRE reflect varying conceptions of the field. The preamble to the Universal Declaration of Human Rights (UDHR) states that 'every individual and every organ and society, keeping this Declaration in mind, shall strive by teaching and education to promote respect for these rights and freedoms'.[651] Article 26 of the Universal Declaration of Human Rights, 1948 identifies first the right to education and second, the right to an education directed toward 'the full development of the human personality

[648] Tibbitts, F. (2005). Transformative Learning and Human Rights Education: Taking a Closer Look, 16 Intercultural Edu. 107.
[649] Ibid @ 37
[650] Amnesty International's Human Rights Friendly Schools Project , available at http://www.amnesty.org/en/human-rights-education/projects-initiatives/rfsp (accessed February, 2018
[651] General Assembly, *United Nations Decade for Human Rights Education*, resolution 49/184, (23 December 1994, A/RES/49/184).

and to the strengthening of respect for human rights and fundamental freedoms.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial and social groups and shall further the activities of the United Nations for the maintenance of peace".[652]

Emphasised in the United Nations definition of HRE is knowledge about human rights and tolerance/acceptance of others based on such knowledge. Most have argued however that the UN conceptualisation of HRE is directed at national policy makers, a top-down statement of what HRE is and should be. The UN definition largely reflects the role of international norms for ensuring social cohesion and peace.[653] In climes with history of dictatorship, HRE efforts are seen as both a political and pedagogical strategy to facilitate democratisation and active citizenship.[654]

The United Nations Decade for Human Rights Education[655] by the resolution of the UN General Assembly Plan of Action defined HRE as "training, dissemination and information efforts aimed at the building of a universal culture of human rights

[652] Ibid @ 20
[653] Flowers, N (2003). What is Human Rights Education?. In Bertelsmann, V (ed) (2003). A Survey of Human Rights Education. Garth Meintjes
[654] Magendzo, A.K(2004). Problems in Planning Human Rights Education for Re-engineering Latin American Democracies. In Human Rights Education for the 21st Century, Supra note 5, at 469
[655] Ibid @ 33

through the imparting of knowledge and skills and the moulding of attitudes and directed to:

> a) The strengthening of respect for human rights and fundamental freedoms; (b) The full development of the human personality and the sense of its dignity; (c) The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups; (d) The enabling of all persons to participate effectively in a free society; (e) The furtherance of the activities of the United Nations for the maintenance of peace.[656]

This definition is very broad. Since 1999 this definition has been regarded as the most comprehensive definition of human rights education. It seems that HRE must include human rights information on gender equality, friendship, indigenous peoples and racial, national, ethnic, religious and linguistic groups aimed at building universal culture of human rights. The use of words like 'enabling' and 'participate' is emphasised as the means for implementing HRE activities.

However, the Plan of Action states that the UN Decade for HRE "shall further be directed to creating the broadest possible awareness and understanding of all of the norms, concepts and values enshrined in the Universal Declaration of Human Rights,

[656] *See* Appendix, *Plan of Action for the United Nations Decade for Human Rights Education, 1995-2004: Human rights education – lessons for life*, para. 2.

the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and in other relevant international human rights instruments.[657] Practitioners in their recent articulations have expanded the definitions of what HRE should be and have cited a variety of goals and learners. On 19 December 2011 the UN Assembly adopted the UN Declaration on Human Rights Education and Training. Article 2 of the Declaration define HRE by providing that:

> Human rights education and training comprises all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms and thus contributing to, *inter alia,* the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding and developing their attitudes and behaviours, to empower them to contribute to the building and promotion of a universal culture of human rights.[658]

Several key points emerge from this definition. First, the Declaration clearly articulates the philosophy that HRE is about empowerment. Empowerment is an approach that describes equity in distribution of power and active grassroots participation

[657] Plan of Action for the UN Decade for HRE, *supra* note 36, para. 3.
[658] The Danish Institute for Human Rights (2012).

as the central guiding principles of learning.[659] Empowerment entails consciousness/conscientisation to promote creativity and critical reasoning as a way for participants in the learning environment to uncover the nature of their problems and their root causes of human rights violations and abuses in line with their socio-economic, political, cultural and historical context of their personal lives.[660] HRE requires participatory learning in order to transform learners into active and empowered citizens who respect and promote human rights.

A second key feature of this definition is that HRE is a preventative tool. This paper expressly acknowledges the potential of HRE to empower individuals to contribute to the prevention of human rights abuses through the building of a culture of human rights. Article 4 similarly acknowledges the preventative power of HRE through combating discrimination, racism, hatred and harmful attitudes and practices. Recognising that HRE is a valuable tool for addressing the root causes of human rights violations is a pivotal component of the definition of HRE.

Human rights education in the Plan of action for the first phase (2005-2007) of the World Programme describes HRE as:

> "education, training and information aiming at building a universal culture of human rights through the sharing of knowledge, imparting of skills and moulding of attitudes directed to: (a) The

[659] Freire, P (1970). Culture and Conscientisation. Harvard Educational Review, 40 (30)
[660] Freire, P (1983) Pedagogy of the Oppressed. New York Continuum.

> strengthening of respect for human rights and fundamental freedoms; (b) The full development of the human personality and the sense of its dignity; (c) The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups; (d) The enabling of all persons to participate effectively in a free and democratic society governed by the rule of law; (e) The building and maintenance of peace; (f) The promotion of people-centred sustainable development and social justice.[661],[662]

The definition is very close to the definition in the Decade for HRE. Only one more letter emerged, the last one asking for the promotion of people-centred sustainable development and social justice. HRE contains "[k]nowledge and skills – learning about human rights and mechanisms for their protection, as well as acquiring skills to apply them in daily life; [v]alues, attitudes and behaviour – developing values and reinforcing attitudes and behaviour which uphold human rights; [a]ction – taking action to defend and promote human rights." [663] HRE entails "human

[661] General Assembly, *United Nations Declaration on Human Rights Education and Training*, resolution 66/137, (16 February 2012, A/RES/66/137) Resolution adopted by the General Assembly on 19 December 2011.

[662] Readon, B. (2009). Human Rights Learning: Pedagogies and Politics of Peace, Paper presented on a lecture delivered for UNESCO Chair for Peace Education Master Conference at the University of Puerto Rico (Accessed January, 2018).
[663]General Assembly, *Revised draft plan of action for the first phase (2005-2007) of the World Programme for Human Rights Education* (2 March 2005, A/59/525/Rev. 1).

rights through education" [664] and "human rights in education" which is in the Plan of Action referred to as "a rights-based approach to education."[665]

United Nation, Education, Scientific and Cultural Organisation (UNESCO) with a long standing commitment to promoting Human Rights Education (HRE), broadly defines it as a learning and practice of human rights.[666] According to UNESCO, HRE:

> Allows (sic) people to participate in their communities and society in a constructive and respectful way for themselves and others. It aims to deliver outcomes such as personal and social growth, the respectful conduct of citizens toward each other and the provision of opportunities for learners to develop critical thinking and life skills. [667]

UNESCO definition highlights the role of participation and the provision of opportunities for critical thinking, including life skills amongst communities as ingredient for HRE. The definition also touched on the ability of HRE to deliver personal and social growth outcomes.

The United Nations Commission on Human Rights (UNCHR) defines HRE as:

> A long term and lifelong process by which all people at all levels of development and in all strata

[664] Ibid @ 42
[665] Ibid @ 42
[666] UNESCO (2008). Plan of Action: World Programme for Human Rights Education
[667] Ibid @ 22

> of society learn respect for the dignity of others and the means and methods of ensuring that respect in all societies….it significantly contributes to promoting equality and sustainable development, preventing conflict and human rights violations and enhancing participation and democratic process with a view to developing societies in which all human rights are valued and respected.[668]

The definition by UNCHR highlights the crucial relation between HRE and equality, sustainable development, democracy and the prevention of conflict and human rights violations. In essence, the key role played by education in the development of societies is here occupied with core human rights values and global citizenship ethic. Amnesty International (AI) underscores the need for grassroots level involvement or participation to impact awareness about human rights and conceptualised HRE not only as a mechanism for "development of respect for human rights', but also as tool which aims to empower target audience to defend and claim their rights. AI definition has more of an activist element and brings to the fore even more evidently the elements of active citizenship and its connection to HRE:

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[668] By
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&
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> Human rights education is a deliberate, participatory practice aimed at empowering individuals, groups and communities through fostering knowledge, skills, and attitude consistent with international human rights principles….its goal is to build a culture of respect for and action in the defence and promotion of human rights for all …Human rights education can also play a vital role in building social structures that support participatory democracies and the resolution of conflict, and can promote a common understanding of how to address political and social differences equitably and celebrate cultural diversity (AI, 2016). [669].[670]

The AI definition emphasises increasing the agency of individuals, groups and communities to claim their rights and to take responsibility for realising the rights of others. Both social change as an outcome, and learners becoming agents of this process of claiming their own rights and defending others' rights, are central in this definition. While the differences may be semantic and insignificant to some, approaches to HRE and models for characterising its outcomes and goals provide further clarity to the ways in which the educational reform is

[669] Amnesty International, National Human Rights Institutions, Amnesty International's recommendations for effective protection and promotion of human rights, October 2001 (accessed, Feb. 2018).

[670] Ramirez, F.O., David. S and Meyer, J.W (2007). The Worldwide Rise of Human Rights Education: School Knowledge in Comparative and Historical Perspective . CERC Studies in Comparative Education; Vol.18:2(Accessed January, 2018).

conceptualised and enacted. Over time, the state-centred concepts of HRE have gravitated towards those of the civil society actors.

Further, the Encyclopaedia of Peace Education also offers a clear explanation of the concept of HRE as 'an international movement to promote awareness about the rights accorded by the Universal Declaration of Human Rights (UDHR) and relevant human rights conventions, and the procedures that exist for the redress of violations of these rights'.[671] This definition calls upon horizontal ties (responsibilities among individuals) as well as governmental and supranational responsibilities.[672]

The Danish Institute for Human Rights (DIHR)[673] provides the following objectives for HRE:

1. Build knowledge, skills, values and attitudes;
2. Create action and change to build and promote a universal culture of human rights;
3. Clearly link and refer to the human rights system, instruments and standards;
4. Promote participation and empowerment;
5. Promote accountability and rule of law;
6. Promote non-discrimination, equality and the protection of vulnerable groups
7. Be learner centred;
8. Be contextualised, concrete and local;

[671] Readon, B.(2009). Human Rights Learning: Pedagogies and Politics of Peace, Paper presented on a lecture delivered for UNESCO Chair for Peace Education Master Conference at the University of Puerto Rico (Accessed January, 2018).
[672] United Nations World Conference on Human Rights, 1993, *Vienna Declaration and Programme of Action*, para. 33 of Section 1.
[673] Ibid @ 32

9. Apply interactive and participatory learning methodologies; and
10. Be well planned and managed.

Therefore, HRE should be understood as a lifelong learning process by which all people at all levels of development and in all areas of society learn respect for the dignity of others, and the means and methods of ensuring that respect in all societies. HRE should also be seen as a process of participation and empowerment for people to take action in the promotion and sustenance of human rights culture. In results, it becomes apparent from these definitions that HRE, whilst aimed at fostering a universal culture of human rights, should be seen as a process aimed at enabling or empowering all persons to participate effectively in a free society, thus emphasising the principle of active citizenship in human rights promotion, protection and enforcement of human rights.

Theoretical Framework

This study adopts the Tibbitts "pyramidal model" of HRE formulated in 2002[674] in which three distinct models creates pyramid with regard to "the size of the target populations they each deal with" and "the degree of difficulty for each of the educational programs."[675] The pyramid base contains the Values and Awareness Model; the centre contains the Accountability Model and on top there is a Transformational Model. These models represent "an idealised framework for understanding

[674] Tibbitts, F. (2002). Understanding What We Do: Emerging Models for Human Rights Education, 48:3/4 *International Review of Education*, Education and Human Rights , p. 167.
[675] IBID @ 57

contemporary human rights education practice" and they should clarify their link with social change.[676]

The Values and Awareness Model of HRE is to transmit basic knowledge of human rights issues and to foster its integration into public values. Public education awareness campaigns and school-based curriculum typically fall within this model.[677] The goal is to build a world that respect human rights through awareness of and commitment to normative goals put forward in the UDHR and other key documents.[678] Human rights topics found under this model may include history of human rights, information about key human rights instruments and mechanism for protection, and international and national concerns. The key pedagogical engagement is to attract the attention of the learner. These methods can devolve into a lecture-oriented approach. The model is focused primarily on content knowledge and thinking skills and does not directly relate to empowerment. This model has been critiqued for placing relatively little emphasis on the development of skills.[679] A fundamental challenge for this model is how to avoid the 'banking' model of education warned of by Freire.[680] Devoid of critical thinking and conscientisation, this model takes the risk of offering a superficial exposure to the human rights field, which in the worst case, can be experienced as primarily ideological.[681] Some examples of the Values and Awareness Model are the inclusion of human rights related lessons within

[676] Ibid @ 67
[677] Ibid @ 57
[678] See UDHR, 1948
[679] Ibid @ 57
[680] Freire, p (1994). Pedagogy of the Hope. New York; Continuum
[681] Freire, p (1983). Pedagogy of the Oppressed. New York; Continuum

citizenship, history, social science, and law-related education classes in schools, and infusion of human rights-related themes into both formal and informal youth programming (e.g. the arts, Human Rights Day, Human Rights School clubs and debates). Public awareness campaign involving public awareness and sensitisation, and advertising, media coverage and press releases, and community events and outreaches may also be classified under this model.

The Accountability Model (AM) is used by the professionals who are either monitoring human rights violations or who have responsibility to protect the rights of people.[682] The assumption under this model of HRE is that learners will be directly involved in the protection of individual and group rights.[683] Under this model, learners are expected to be directly or indirectly associated with the guarantee of human rights through their professional roles. HRE engagement with these target groups focuses on the ways in which their professional responsibilities involve either (a) directly monitoring human rights violations and advocating with necessary authorities, or (b) taking special care to protect the rights of people (especially vulnerable populations) for which they have some responsibility.[684] The provision of education programmes is to sensitise them about the nature of human rights violation and potentials within their professional role, not only to prevent abuses but to promote respect for human dignity.[685] Human rights training and topics are geared towards

[682] Ibid @ 57
[683] Ibid @ 57
[684] Ibid @ 57
[685] Ibid @ 57

these specialized areas, and leaner outcomes are towards content, as well as skill development. [686]

Human rights violation is a crucial component of the content of the AM. Programme that falls within the Accountability Model are the training on techniques for monitoring and documenting human rights abuses and procedures for registering grievances with appropriate national and international bodies.[687] Within this classification are in-service training for lawyers, prosecutors, judges, police officers, military and other para-military agencies, staff of ministries, departments and agencies (MDAs) that may include information about relevant constitutional and international law, professional conduct, supervisory and grievances mechanisms and consequences of violation.[688] Other professional groups like journalist, health and social service workers and vulnerable groups may also be the recipient of HRE programming under the Accountability model. According to Tibbitts, the AM is devoid of personal change since it is assumed that professional responsibility is sufficient for the individual having an interest in applying human rights framework.[689] Implicit in this model, however, is the goal of structurally based and legally guaranteed, norms and practices related to human rights. It is given within this model that social change is necessary, and that community-based, national and regional targets for reform can be identified.

[686] Ibid @ 57
[687] Ibid @ 57
[688] Ibid @ 57
[689] Ibid @ 57

The Transformative Human Rights Education (THRED) is a community-based approach to HRE.[690] The Transformational Model is connected to the word *empowerment.* The model is geared towards empowering individual and groups to both recognise human rights abuses and to commit to their prevention. The model targets children, youths and adults in formal or non-formal settings. It contains cognitive, affective and action-oriented elements that involve self-reflection and support within community of learners.[691] A contextualized and relevant curriculum is paired with participatory pedagogical activities to bring human rights to life and to foster in learners an awareness of global citizenship and a respect for human rights.[692] Transformative HRE exposes learners to gaps between rights and actual realities, and provokes group dialogue on the concrete action necessary to close those gaps. Learners engage in critical reflection, social dialogue, and individual and collective action to pursue the realisation of human rights locally, nationally, and globally.[693] Transformative HRE can have remarkable results for individuals and groups as related to UDHR.[694]

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690 Ibid @ 57

691 Freire, P (1970). Cultural action and Conscientization. Havard Educational Review, 40 (30)

692 White, S. A. (ed.) (1999) *The Art of Facilitating Participation: Releasing the Power of Grassroots Communication*. New Delhi: Sage.

693 Ibid @ 57

694 Universal Declaration of Human Rights, 1948 affirms that the right to education shall be directed towards 'the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial and social groups and shall further the activities of the United Nations for the maintenance of peace.

Empowerment[695] is central to the process of THRED and dependent upon sustained community support of some kind (e.g peers, family members, professional groups or others). An empowerment model for HRE need to have these supports build in through the project design and implementation process (support provided by the teachers/facilitators or sustained contact among the learners).[696]

The review highlights the model of HRE and their potential to the promotion of human rights culture. While UN agencies and member states take a very favorable view of national governments' independent adoption of comprehensive human rights content and pedagogy, scholars such as Cardenas[697] have a more skeptical perspective on the role of the state in advancing HRE that may work against its own interests:

> While in principle virtually everyone takes for granted the benefits of HRE, such endeavors can be potentially costly from the perspective of a state. Human rights education is inherently revolutionary: If implemented effectively, it has the potential to generate social opposition, alongside rising demands for justice and accountability.

[695] Servaes, J. (1999) *Communication for Development: One World, Multiple Cultures.* Cresskill, NJ: Hampton Press.

[696] Ibid @ 57

[697] Cardenas, S (2005) Constructing *Rights? Human Rights Education and the State,* 26 Int'l Pol. Sci. Rev. 363, 364 (2005).

Cardenas sees the state as resistant to incorporating HRE because of "rising demands" related to justice from those educated about human rights.[698] Other scholars in education, however, have suggested that the form of HRE, or any global education reform, that gets incorporated into national textbooks and local practice may be very different than that originally conceptualized since reforms often go through a process of "decoupling. [699] In other words, these scholars assert that by the time human rights content gets incorporated into textbooks, it may be altered such that it loses its activist-oriented approach, as human rights are presented as decoupled from the struggles that have achieved greater respect for rights. The following section assesses the human rights education approach of NHRCN.

Study Material and Methodology

This aim of this study is to assess the HRE activities of NHRCN. The study adopts documentary reviews. The use of documentary methods refers to the analysis of documents that contain information about the phenomenon being studied.[700] Documents tell us indirectly about the organisation that created them and their perception about the phenomenon under study. Documentary sources provide what Scott characterizes as mediate access. In this study, the research carefully reviewed documents that included NHRCN Act 1995 (as amended), Annual Reports, and State of Human Rights Situation in Nigeria reports and Journals amongst several other publications of the

[698] Ibid @ 79
[699] Ibid @ 57
[700] Denzin, N. and Lincoln, Y. (Eds) (2000). Handbook of Qualitative Research, London: Sage Publications.

Commission. Other documents interacted with by the researcher were NHRCN posters, handbills, flyers and bulletins.

About the National Human Rights Commission of Nigeria

The Commission was established by the National Human Rights Commission Act 1995 (as amended)[701]. This Act was reviewed due to some inadequacies and amended in 2010 through an Act of the National Assembly. The Act was passed by the National Assembly in 2010 and signed by the President in 2011 as the National Human Rights Commission Amendment Act 2010. The Commission is empowered by Act to:

> Deal with all matters relating to the promotion and protection of human rights guaranteed by the Constitution of the Federal Republic of Nigeria, the United Nations Charter and the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Discrimination Against Women, the Convention on the Rights of the Child, the African Charter on Human and Peoples Rights and other International and Regional Instruments on human rights to which Nigeria is a party.[702]

[701] Decree 22 of 1995, reprinted as CAP N46, LFN 2004
[702] Ibid @ 35

The Amendment Act provides the Commission with greater autonomy, expanded powers and functions. The National Human Rights Commission of Nigeria (NHRCN) Act 1995 as amended (2011)[703] expands the functions and powers of the Commission and confers the Commission with the independence to carry out these additional responsibilities. It also grants the Commission financial autonomy. The Preamble to the Act provides for the following:-

> Independence in the conduct of the affairs of the Commission; the funds of the Commission to be a direct charge on the Consolidated Revenue Fund of the Federation; the establishment of the Human Rights Fund and the recognition and enforcement of the awards and recommendations of the Commission as decisions of the High Court.[704]

The UN General Assembly has confirmed the principle of independence in many resolutions.[705] Experience has indicated that it is easier to provide for financial autonomy, independence and powers of human rights institutions in national legal documents than it is easier to implement such provisions. However, to ensure the provision of what is provided is something else. [706]

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[703] See the National Human Rights Commission Amendment Act, 2011

[704] Ibid @ 87

[705] See General Assembly Resolutions 54/176 of 17th December 1999, 52/128 of 12th December1997 and 50/176 of 22 December, 1995

[706] Sekaggya, M. (2004). Value of human rights Institutions: Human Rights Commission Process. Unpublished paper presented at the Regional Workshop on Human Rights Commission and Accountability in East Africa, organized by the East

The Functions of the Commission as Provided for in the Act

The NHRCN has three main functions. These are firstly, to promote the respect for human rights and a culture of human right; secondly to promote the protection, development and attainment of human rights; and thirdly, to monitor and assess the observance of human rights in the country in line with international standards.[707]

In order to be able to carry its mandate, the Commission has been granted wide powers under the law. These include the power to investigate and report on the observance of human rights; to monitor and take steps to secure appropriate redress where human rights have been violated; to carry research; and to educate. At the same time, the Commission has a duty to various tiers of government and its organs to offer advisory services, to examine legislative provisions against international human rights standard; the publication of reports and opinions on any rights violations it decides to take up and all sorts of contributions to the implementation of international human rights standards in Nigeria.

Discussion & Analysis of HRE Functions as Provided for in the NHRCN Act

The NHRC Act empowers HRE functions of the Commission as follow:

> a) Publish and submit, from time to time, to the President, National assembly, Judiciary, State and

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African Centre for Constitutional Development, Arusha. Margaret Sekaggya is a former Chair of the Ugandan Human Rights Commission and is currently a United Nations Special Rapporteur on the Situation of Human Rights Defenders.

[707] See the NHRC Act, 1995 (as amended).

> Local Governments, reports on the state of human rights promotion and protection in Nigeria; b) Organise local and international seminars and conferences on human rights issues for public enlightenment; c) collate data and disseminate information and materials on human rights generally; d) promote an understanding of public discussions of human rights issues in Nigeria; e) Undertake research and educational programmes and such other programmes for promoting and protecting human rights.[708]

The objective of the Commission under the provisions of the amended Act to is educate the public to be aware of human rights and make sure that human rights are protected, respected and fully enforced as well as the measures to be taken where they are found to have been violated.[709]

The HRE functions of the Commission are domiciled in a department specifically created for the purpose. Renamed as the Human Rights Education and Promotion (HRE&P) and upgraded to a full department in 2013 and headed by a Director, it is generally responsible for human rights education and promotion programmes of the Commission.[710] The activities of HRE&P are:

> a)To create public awareness and sensitise the general public on human rights issues through face-to-face interactions (village square meetings,

[708] Ibid @ 35
[709] See NHRCN Act 1995 (as amended)
[710] See NHRC (2016) Report

> erection of billboards, focus group discussions, seminars, lectures, workshops and other awareness creation activities); b) To organise Television/ Radio sensitisation and promotion programmes; c) To develop and publish Information Education and Communication (IEC) printed materials like flyers, posters, books and stickers; d) To organise outreach/grassroots activities like road walks, town-hall meetings and campaigns.[711]

The 2014 Annual Report provides for the activities of HRE & P to also include the following:

> a)To promote behaviour change and culture of respect for human rights to both public and private sectors; b)To develop a National Policy for Implementation of Phase 2 of the World Programme for HRE; c) To organise planning, coordinating and implanting of HRE for target groups like civil servants, security and law enforcements agents, teachers and educators; and d) To coordinate HRE activities in basic schools, colleges and tertiary institutions with regards to facilitate curriculum review, establishing human rights clubs in schools, promoting academic programmes on HRE at all educational levels, organising training of teachers and educator and

[711] See NHRC 2016 Annual Report

> coordinating the development of educational materials.[712]

In fulfilling the statutory requirement of Section (e), the Commission commenced the annual publication of reports on the State of Human Rights in Nigeria in 2006.[713] The State of Human Rights Reports is a comprehensive compilation of the human rights situation in Nigeria for each year under review. The reports highlight actual complaints received by the Commission and the actions taken to resolve those complaints. The themes of reports cut across violations of civil and political rights (CPR), Economic, Social and Cultural Rights (ESCR), including issues of sexual and gender-based violence, access to justice, and human trafficking. Since inception, these reports continue to be a reference point for human rights defenders, public enlightenment, and academic research. Professor Jadesola Akande's[714] statement underscores the need for the report:

> The revelations in this report should hopefully, discourage officials and agencies involved in these violations, from committing further violations and create an enabling environment for accessing redress.

However, the absence of an evaluation of the actual impact of the publication on human rights situation in Nigeria, especially by State actors which has become pervasive, still remains to be seen. [715] The publications are hardly sufficient to meet the increasing

[712] See NHRC (2014) Report
[713] See NHRC State of Human Rights Report-2011-2012
[714] Ibid @ 91
[715] Ibid @ 92

demand for wider information and impact on the human rights environment in Nigeria.[716] In the 2011-2012 report on Situation of Human in Nigeria, Angwe notes as follows:[717]

> The Commission recognises the general efforts of the Nigerian human rights community that continues to struggle, at times at great personal risk, and against massive countervailing entrenched interests in favor of impunity of State actors for brazen human rights violations, for accountability and justice for all.

The fulfilment of this statutory obligation by the Commission falls within the HRE Awareness and Value model. The absence of proof that violations have reduced has rendered this approach ineffective.[718] Impunity by state actors, especially security agencies, continue to be rife.

In order to facilitate the achievement of Section (f)[719] which provides for local and international conferences, the Commission has been organising local seminars and conferences. Most conferences and seminars or workshops organised by the Commission centred around training of security agencies to enhance their capacity in addressing human rights in daily operations. The Commission also ran in-house training for staff and research for youths on human rights awareness and protection.

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[716] See NHRC State of Human Rights Report, 2009-2010
[717] Ibid @ 91: Professor Angwe Bem, former Executive Secretary of NHRCN from 2011-2016
[718] Ibid @ 95
[719] Ibid @ 88

Posters, flyers and hand bills are used by the Commission to disseminate human rights-related messages, some of which include violation and abuses and means for seeking redress.[720] Printed IEC cited are used to increase awareness on domestic violence, indiscriminate killings, killing/abandonment of infants, battering and wife beating, summary execution and domestic violence. One popular poster is 'Human Rights begin When Human lives Begin', depicting the image of a mother and child. The posters are pasted boldly throughout the Commission's offices. The picture is simple but with multifaceted messages. Although the image portrayed a mother cuddling her child, the underlying message is telling people to show love. The message is also for people to understand that love is an ingredient in human rights protection. The printed materials contain the address of the Commission's office and telephone numbers for the purposes of those seeking for redress. However, such information is now limited as it is rare to find recent billboards and posters except at the offices of the Commission.

Sections (m) and (n) of the amended Act enjoins the Commission to promote an understanding of public discussions of human rights issues and to undertake research and educational programmes for promoting and protecting human rights in Nigeria.[721] In order to achieve this objective, the Commission interfaces with local and international organisations. Over the years, the Commission engaged the United Nations High Commission for Refugees UNHCR, Network of National Human Rights Institutions in Africa (NNHRIs), United Nations Commission on the Status of

[720] Ibid @ 63
[721] See NHRC Act, 1995 (as amended)

Women (UNCSW), Ford Foundation (FF), United Nations Development Programme , (UNDP), Open Society Initiative for West Africa (OSIWA), Canadian and Swiss Embassies amongst several others.[722] The aim of such engagement is to promote dialogue and consultation among critical stakeholders about human rights in Nigeria.

Pursuant to Section (m),[723] the Commission engaged in the use of interpersonal communication approach (IPC) (face-to-face interaction) across villages, communities, and in motor-parks to create awareness and educate target groups of their rights.[724] It is the conviction of the Commission that public awareness is crucial to the realisation of the enforcement, promotion and protection of human rights. According to Oti Anukpe Ovrawah, HRE remains an essential ingredient to the realisation of all human rights and fundamental freedoms. [725] She underscores the fact that HRE will significantly promote equality, prevent conflict, and encourage democracy and peaceful coexistence because it is a prerequisite for global peace. [726]

The Commission also participates in radio/television sensitisation programmes. These programmes are meant to create awareness and educate the citizenry on their duties and obligation to human rights promotion, protection and enforcement.[727] The programmes address various issues like female genital mutilation,

[722] Ibid @ 63
[723] Ibid @ 63
[724] Ibid @ 42
[725] NHRC Bulletin (2017). Vol.iii. No.10
[726] Ibid @ 49
[727] See NHRC (2014) Report

functions of and access to the Commission for victims of human rights violations, child abuse, women rights, domestic violence, and torture. The TV/Radio programmes of the Commission also consist of coverage, interviews and press conferences or releases.[728]

Findings

It seems reasonable to argue that HRE programmes of NHRC tend to focus on values, awareness and accountability which are crucial to building a universal culture of rights and fundamental freedoms. NHRCN's HRE approach combines elements that foster knowledge about universal human rights standards and instruments, with elements that target specific professional groups using training programmes to sensitise them to human rights within their professional settings. On the one hand, this model legitimises the human rights discourse in the Nigeria's general public, strives to prevent human rights violations by governmental bodies, and enhances the capabilities of various groups of professionals to assume responsibility for monitoring and protecting human rights.[729] These efforts are commendable, since complaints brought before the Commission, particularly from 2012 to date, have doubled.[730] While this may be seen as an indication of increased public confidence in the Commission, human rights profile is still low in Nigeria with attendant rise in

[728] Ibid @ 102
[729] Ibid @ 99
[730] Gavar, Aver is a Director at NHRCN. Her comments were contained in NHRC Newspaper Compendium (2015)

violations.[731] This means that the Commission needs to change the architecture of its HRE engagement.

However, the current NHRCN HRE model lacks empowerment for vulnerable populations to be more involved and active in defending their rights. It can be argued that these models are linear, top-down and lack critical thinking, communication skills, problem-solving and negotiation, all of which are essential for effective human rights activism and participation in decision-making processes."[732] On the other hand, this model reflects a strong belief in the legal system, while overlooking its role in maintaining longstanding inequalities and practices of discrimination. The model also legitimises some of the most oppressive authoritative organisations, especially when it comes to security and military forces.[733]

The weakness in the HRE may be attributed to the absence of an explicit and authoritative definition of the term 'human rights education' by the Commission in the Nigeria context. The Commission has failed to unpack the normative content of HRE, or provide a clear path for implementation. In order to be effective, 'the scope, reach, and content of norms of HRE must be made comprehensible to their beneficiaries, as well as to those who bear the responsibility of their implementation'. Nigerians are yet to have comprehensive information on what their basic

[731] Onwubiko , E. is the National Coordinator, Human Rights Writers Association of Nigeria. His views were contained in the NHRCN Newspapers Compendium (2015)
[732] Amnesty International, (1998). *SINIKO : Towards a Human Rights Culture in Africa* <www.amnestymena.org/en/Resources/EResources/ResourceView.aspx?Id=45>, visited on 24 May 2016, p. 7.
[733] Ibid @ 57

rights are and how to seek for redress.[734] The implementation of the HRE-School programme is hampered by the fact that the various documents are not easily available, and when they are, are not readable and understandable for children. Materials on the rights are few and where available are not child friendly.[735]

However, in developing countries like Nigeria, there is need for HRE to be associated with issues of sustainable development and social justice. The pedagogical nature of HRE requires technical skill for implementation. This has been an obstacle to the Commission's implementation of HRE. Many of the staff lack capacity to effectively perform their jobs.[736] The Commission's HRE emphasises civil and political rights, the issues of discrimination and promotes reforms to enhance the protection of individual rights. Therefore, we argue that from the characteristics of the Nigeria context, HRE is top-down with minimal or no participation of target audience. Like many NHRIs that have made HRE a high priority in their attempts to raise the general public awareness of human rights, NHRCN has invested in education in an effort to foster a culture of human rights. However, NHRCN's experience in promoting HRE resembles the global experience of many international organisations (e.g., UNICEF, UNESCO, HREA) in developing HRE programmes and materials.

Conclusion

For over two decades, NHRCN has done a lot to enhance its mandate of promoting and protecting human rights in Nigeria.

[734] Ibid @ 91
[735] UNICEF/Ministry of Women Affairs and Social Development, Kaduna State
[736] Soniyi, T. in NHRCN Newspaper Compendium (2015)

With the increase in state offices, the Commission's work has expanded and its visibility and accessibility to Nigerians has expanded. However, the human rights work of the Commission being social service in nature requires much more funding than provided.[737] Though human rights promotion and protection business is capital intensive, fiscal allocation to the Commission still remains insufficient for the volume of activities it undertakes, hence the need for improved funding for the Commission to implement a comprehensive HRE in line with global standard.

The work of NHRCN represents a unique case study of HRE in a deeply ethnocratic nature rather than a democracy. In this context, HRE tends to be associated with the consolidation of the rule of law and efforts to establish the legitimacy and acceptance of the state's authorities. This context hinders individual and institutional internalisation of the basic values of HRE. NHRCN needs to incorporate economic, social and cultural rights (ESCRs) alongside civil and political rights (CPRs) in HRE themes. The Commission would do well to also move away from the linear and top-down approach to facilitate critical thinking and problem solving skills in HRE. The Commission also needs to develop a national strategic action plan for HRE and build capacity of staff and institutions for effective implementation.

[737] Prof. Bem Angwe, former Executive Secretary of the Commission, NHRCN Report, 2014

AN ASSESSMENT OF NIGERIA'S FULFILMENT OF ITS OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Aliyu Ibrahim, Ph.D.[*]

Abstract

State parties to the ICCPR are under an obligation to submit periodic reports to the HRC for review on the level of their compliance with the treaty. However, some state parties shy away from submitting such reports. To compel the submission, the HRC introduced a procedure where it reviews a state's level of compliance in the absence of such report. It equally invites NHRIs and NGOs to submit reports on the level of compliance of states with their obligations under the treaty. Nigeria failed to submit its report for 18 years despite repeated reminders from the HRC. This article examined the effect of the reporting procedure of the HRC in the absence of a state's report and whether it has any impact on the compliance level of state obligations to the ICCPR. Nigeria was chosen for the study, as it has serially refused to comply with the HRC's request to submit its report but was 'forced' to participate in the review process by the HRC despite not presenting a report to the Committee. The study analysed relevant literature and the jurisprudence of the HRC to assess the effectiveness of the state reporting system as it relates to Nigeria. There is need for the NHRC and NGOs to exert pressure on the authorities to submit an objective report periodically to the HRC. It also recommends that the work of the HRC be disseminated within the territory of Nigeria so that

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the public will likewise participate in monitoring the fulfilment of Nigeria's obligations to the treaty.

KEYWORDS: *ICCPR, Human Rights Committee, National Human Rights Commission, Non-Governmental Organisations.*

Introduction

The United Nations (UN), was established in 1945, with one of its main objectives as the promotion and protection of human rights among member states.[738] The Universal Declaration of Human Rights (UDHR), was the first human rights instrument to be proclaimed by the UN, providing a catalogue of human rights agreed by all states after the horror of massive violations of human rights that occurred during the Second World War.[739] In 1966, two human rights treaties were adopted by the UN. They were: The International Covenant on Civil and Political Rights (ICCPR);[740] and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[741] These two Covenants, unlike the UDHR, are legally binding treaties for the states that are

[738] Article 1(3) of the Charter of the United Nations and Statute of the International Court of Justice, adopted in San Francisco on the 6th June1945, after the conclusion of the United Nations Conference on International Organisations and came into force on the 24 October 1945.
[739] General Assembly Resolution 217 A, in Paris on 10 December 1948.
[740] General Assembly Resolution 2200A (XXI).
[741] Ibid.

parties to them.[742] Of interest to this paper is the ICCPR which has 173 state parties.[743]

The ICCPR consists of the civil and political rights contained in the UDHR. The treaty safeguards an individual's rights from being infringed by the state party. These rights, which are justiciable, are referred to as "the first generation of rights" in human rights law.[744] Some of these rights include: gender equality;[745] right to life;[746] prohibition from torture;[747] right to liberty;[748] and freedom of opinion and expression[749] among others.

The implementation of the provisions of the ICCPR, consists of a combination of domestic and international laws. At the domestic level, state parties are mandated to ensure that individuals within their territories are given access to remedies where any of the rights contained in the treaty is violated.[750] At the international level, to monitor the implementation of the provisions of the

[742] Muhammad Tawfiq Ladan, *Materials and Cases on Public International Law* (Ahmadu Bello University Press, 2007) 173.
[743] See status of the ICCPR as at 28 March 2022 <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en> accessed 28 March 2022.
[744] B Simmons, 'Civil Rights in International Law: Compliance with Aspects of the "International Bill of Rights"'. Indiana Journal of Global Legal Studies [2009] (16) (2) 440.
[745] ICCPR (n 3) article 3.
[746] Ibid article 6.
[747] Ibid article 7.
[748] Ibid article 9.
[749] Ibid article 19.
[750] Dinah Sheldon, *Regional Protection of Human Rights* (Oxford University Press, 2008) 8.

ICCPR by state parties, the Human Rights Committee (HRC)[751] is established by the treaty. The HRC is mandated to hold three sessions annually,[752] and these sessions are regularly held either in Geneva or New York but can be moved to any other place after consultations with the Secretary-General of the UN.[753]

The HRC is described as the UN's "most important component in its entire human rights framework" due to its active supervision of the implementation of the treaty.[754] This paper will analyse the efficacy of the HRC by examining its impact on the protection of civil and political rights by Nigeria as a State party to the treaty.[755]

Supervisory Functions of the HRC

The HRC has the mandate to ensure state parties' implementation of the provisions of the ICCPR is compatible with its own interpretations.[756] To achieve this objective, it is vested with four responsibilities. First, it examines reports submitted by state parties to the ICCPR on the measures they have taken in the implementation of the ICCPR within their territories.[757] These reports should outline the successes and challenges states

[751] ICCPR (n 3) Article 28 (1).
[752] Rules of Procedure of the HRC rule 2.
[753] Ibid rule 5.
[754] H Tuomisaari, 'Guarding Utopia: Law, Vulnerability and Frustration at the UN Human Rights Committee' *European Association of Social Anthropologists* [2020] (28) (1) 38.
[755] Nigeria became a party to the ICCPR on 29 July 1993 <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx> accessed 23 February 2022.
[756] A Seibert-Fohr, 'Domestic Implementation of the ICCPR Pursuant to its article 2 para.2'. *Max Planck Yearbook of United Nations Law* [2001] (5) 457.
[757] ICCPR (n 3) article 40(1).

encounter in the course of implementing the ICCPR, and their submission is mandatory for every state party to the treaty.[758] While examining a state report, the HRC engages the representatives of the state in "constructive dialogue",[759] recommending steps to the state on how to improve on the implementation of the ICCPR.[760] Secondly, the HRC has jurisdiction to receive inter-state complaints of breaches of the ICCPR.[761] Thirdly, the individual complaints mechanism, where persons can submit "communications" (complaints) to the HRC against a state on any of their rights contained in the ICCPR that have been violated by any state party to OP1.[762] Finally, the HRC issues general comments, which are commentaries on the scope of rights contained in the ICCPR.[763] The focus of this paper is the mandatory periodic review of state parties' reports, as it relates to Nigeria.

State Reporting System

It is an obligation for each state to submit an initial report to the HRC for review one year after becoming a party to the ICCPR, and subsequently at the request of the Committee.[764] The HRC, as a matter of practice, asks for the submission of periodic reports

[758] Ibid article 40(2).
[759]Civil and Political Rights: The Human Rights Committee <www.ohchr.org/Documents/Publications/FactSheet15rev.1enpdf> accessed 19 October, 2021.
[760] N Ntlama, 'Monitoring the Implementation of Socio-Economic Rights in South Africa: Some Lessons from the International Community'. *Law, Democracy and* Development [2004] (8) 209.
[761] ICCPR (n 3) article 41.
[762] Adopted by the UN General Assembly Resolution 2200A (XXI) on 16 December, 1966, entered in to force on the 23rd March, 1976, article 1.
[763] ICCPR (n 3) article 40 (4).
[764] Ibid article 40 (1).

five years after consideration of the preceding report.[765] However, to simplify and make the reporting procedure more focused, the Committee has introduced an optional reporting procedure, in which the HRC prepares a series of questions referred to as List of Issues (LOIs) on particular provisions of the ICCPR which it requires the state to address on the level of implementation within its jurisdiction. These LOIs are sent to the reporting state party before it submits its state report, and it is then referred to as the "List of Issues prior to Reporting" (LOIPR). The response by the state party to the LOIPR that is sent to the HRC will satisfy the requirement of a state report under article 40 of the ICCPR. It should be noted that this procedure is optional as state parties can elect to undergo the review of their reports by submitting a state report under the regular procedure.[766]

The reporting procedure was criticised for its lack of an independent mechanism that will verify the reports submitted by the state parties, as some of them are self-serving and contain unsubstantiated facts. The reports totally exclude challenges of implementing the provisions of the treaty.[767] To remedy this deficiency, the HRC incorporated two emphasisings into the procedure. These are: The National Human Rights Institutions (NHRIs) and Non-Governmental Organisations (NGOs).

[765] T Buergenthal, 'The UN Human Rights Committee' Max Planck Yearbook of United Nations Law [2001] (5) 348.
[766] Focused Reports Based on Replies to Lists of Issues Prior to Reporting (LOIPR): Implementation of the New Optional Reporting Procedure (LOIPR Procedure): UN DOC CCPR/C/2009/I, Adopted by the HRC at its Ninety-Ninth Session held at Geneva 12-30 July 2010, para I.
[767] Dominic Mcgoldrick, The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights (Oxford University Press 1994) 79.

National Human Rights Institutions

These institutions are expected to participate in the reporting procedure, if they comply with the Paris Principles[768] which confer a broad mandate on NHRIs for the promotion and protection of human rights.[769] They also serve as a bridge between states and the UN by promoting the ratification and implementation of human rights treaties,[770] and make contributions in the reporting obligations of states before any UN organ or committee.[771] NHRIs that comply fully with the provisions of the Paris Principles are granted "A" accreditation status, and must operate independently of government interference with their activities.[772] Nigeria's NHRI, the National Human Rights Commission (NHRC)[773] is accredited with "A" status.[774]

The HRC recognises the importance of partnering with accredited NHRIs in the promotion and implementation of the provisions of the ICCPR at the domestic level,[775] as it is a bridge between the

[768] Principles relating to the Status of National Institutions (Paris Principles)', adopted by General Assembly Resolution 48/134 of 20 December 1993.
[769] Ibid principle 1.
[770] Ibid principle 3c.
[771] Ibid principle 3d.
[772] Global Alliance of National Human Rights Institutions: Accreditation < https://ganhri.org/accreditation/> accessed 26 November 2020.
[773] Established by the National Human Rights Commission (Establishment) Act 1995.
[774] GANHRI: As of 28 December 2021 GANHRI is Composed of 128 Members: 86 with "Ä" Status Accredited NHRIs and 32 "B" Status Accredited NHRIs and 10 with "C" Status (no accreditation) < https://ganhri.org/wp-content/uploads/2022/02/StatusAccreditationChartNHRIs_28.12.21.pdf > accessed 26 March 2022.
[775] Paper on the Relationship of the Human Rights Committee with the National Human Rights Institutions, adopted by the Committee at its 106th Session (15 October-November 2012) UN DOC NO: CCPR/C/106/3 para 1.

international and domestic human rights systems.[776] Consequently, it encourages accredited NHRIs to participate at all stages of the review of state parties reports, particularly the submission of alternative reports to that of the state parties on level of implementation of the provisions of the treaty. In addition, it provides follow-up reports on the level of compliance and issues the concluding observations to individual state parties after the review.[777]

During the sessions of the HRC, when it officially conducts its activities, it welcomes oral presentations from NHRIs on the status of the implementation of the ICCPR within the jurisdiction of the state.[778] Recently, officials of NHRIs held closed door meetings with members of the HRC prior to the review of individual state parties to furnish the committee with additional information on the level of compliance with the provisions of the treaty.[779] NHRIs continue to inspire confidence in their abilities to compile information on human rights violations by state parties and make it accessible to both national and international communities. This serves as a deterrent to state parties from infringing on the rights of individuals within their territories.[780]

[776] Ibid para 2.
[777] Ibid para 3.
[778] Ibid para 6.
[779] Report of the Human Rights Committee 2014, UN DOC NO: A/69/40 (VOL.1) paras 57-58.
[780] M R Welch, 'National Human Rights Institutions: Domestic Implementation of International Human Rights Law'. *Journal of Human Rights* [2017] (16) (1) 97.

Non-Governmental Organisations

As pointed out earlier, one of the major weaknesses of the reporting procedure is said to be the lack of an independent fact finding machinery that can check the veracity of state parties' reports.[781] The increasing involvement of NGOs in the monitoring of states' compliance and enforcement of human rights,[782] made the HRC to encourage these organisations to increasingly rely on the information supplied by NGOs during their closed door meetings with them, prior to the review of state parties' reports.[783]

NGOs have been making such enormous contributions to the activities of the HRC that in acknowledgement of that, the HRC refers to them as "the HRC's eyes and ears…in general (they have) been doing an excellent job",[784] and states have gradually come to accept the practice of incorporating the NGO's input into the reporting procedure of the HRC[785] against the state party concerned. NGOs are essential for the work of the HRC, as they operate within the jurisdictions of state parties, and also generate funds for their operations independent of the states, consequently,

[781] K Y Tyagi,'Cooperation between the Human Rights Committee and Non-Governmental Organisations: Permissibility and Propositions'. *Texas International Law Journal* [1983] (18) 286.
[782] Ntlama (n 27)212.
[783] I Lintel and C Ryngaert, 'Interface between Non-Governmental Organisations and the Human Rights Committee '..*International Community Law Review*[2013] (15) 365.
[784] Ibid 366.
[785] I Boerefijn, 'Towards a Strong System of Supervision: The Human Rights Committee's Role in Reforming the Reporting Procedure under Article 40 of the Convention on Civil and Political Rights'. *Human Rights Quarterly* [1995] (17) (4) 785.

it will be difficult to influence the organisations to submit reports that are not objective to the HRC.[786]

The Inputs of NGOs in the review process are essential, as they have also been submitting shadow reports to the HRC on the level of implementation of the provisions of the ICCPR by state parties before the review takes place. The organisations also, provide briefings to the members of the HRC on the eve of the review of a state party's report on the level of compliance with its obligations. After the review of the reports, NGOs are further mandated to monitor the implementation of the concluding observations issued to respective states and submit a follow-up report on the level of implementation to the HRC.[787] The mandatory review of state parties' reports is referred to as the HRC's 'pulse'.[788]

Forcing Nigeria's Hand: HRC's Adoption of LOIs in the Absence of Nigeria's State Report

The major hindrance to the reporting procedure of the HRC is the failure of state parties to submit their state reports – timeously or not at all – as required by the treaty.[789] As pointed out earlier, Nigeria is a state party to the ICCPR,[790] and in 1996, submitted its initial periodic report,[791] which contains information that

[786] G Rubagotti, 'Non-governmental organisations and the reporting obligation under the ICCPR'. *Non-State Actors and International Law* [2005] (5) 74.
[787] The Relationship of the Human Rights Committee with Non-Governmental Organisations 4 June 2012 UN DOC NO: CCPR/C/104/3 Para 3.
[788] Tuomisaari (n 17) 40-41.
[789] Report of the Human Rights Committee, 2019 UN DOC NO: A/74/40 para 60.
[790] Nigeria became a party to the ICCPR (n 22).
[791] Initial Report of State Parties' due in 1996: Nigeria. 02/26/1996 (state party report) UN DOC NO: CCPR/C/92/Add.1.

projects the then Military Junta in power as fulfilling all obligations to the treaty, especially in issues that had to do with right to liberty. [792] However, the report pointed out that freedom of opinion and expression,[793] were only restricted in the "overall interest of justice".[794] In the course of the review of the initial report, the HRC observed that the Nigerian report was "too general" and its contents look "meaningless as there is need for clarifications.[795] The Commission aldo raised concerns on the Nigerian Constitution not being supreme and the Military Junta having unchecked executive and legislative powers.[796] The delegation avoided responding to most of the queries raised by the HRC, but informed it of the establishment of a Paris Principles compliant NHRC.[797] The point raised by Mcgoldrick that the inability to have an independent mechanism to verify state reports within their territories is a setback to HRC's reporting procedure,[798] appears to hold water.

After the conclusion of the review of Nigeria's initial report, the State party was scheduled to submit its second periodic report on the 28 October 1999. It however failed to submit the report for more than 18 years despite repeated reminders.[799] Consequently, the HRC, adopted LOIs in the absence of Nigeria's report and slated the review of its level of implementation of the provisions

[792] Ibid paras 61-68.
[793] Ibid paras 145-154.
[794] Ibid para 153.
[795] Summary of Record of the 1494th Meeting at the Fifty-Sixth Session on Monday 1 April 1996 UN DOC NO: CCPR/C/SR.1494 para 16.
[796] Ibid para 24.
[797] Summary of Record of the 1495th Meeting at the Fifty-Sixth Session on Monday 1 April 1996 UN DOC NO: CCPR/C/SR.1495 4.
[798] Mcgoldrick (n 30) 79.
[799] Report of the Human Rights Committee 2018 UN DOC NO: A/73/40 16.

of the ICCPR, with or without the participation of the State party, analysing materials available to it.[800] This procedure has forced state parties to appear before the HRC. For instance, South Africa submitted its initial state report to the HRC for review on 26 November 2014, after it was informed by the Committee that its level of compliance with the ICCPR would be reviewed despite its failure to submit a report for 14 years.[801] Before the adoption of the LOIs, the HRC requested for alternative reports for possible inclusion in the LOIs, and some were submitted to it detailing Nigeria's implementation with some provisions of the ICCPR respectively.

Inputs of NGOs to the Reporting Procedure of the HRC

During Nigeria's initial review by the HRC, there was an allegation that some members of an NGO (civil liberties organisation) were intercepted by the operatives of the State Security Service on their way to witness the review of Nigeria's initial report, and had their passports confiscated.[802] The Chairperson of the HRC wrote a letter to the State party requesting an investigation into the alleged act.[803] The State party claimed not to have completed the investigation up to the time of the initial review of its report, resulting in the HRC criticising the conduct of the Nigerian Government as it viewed its failure to

[800] Rules of Procedure (n 15) rules 66-67.
[801] Report of the Human Rights Committee 2015 UN DOC NO: A/70/40 para 74.
[802] Concluding Observations of the Human Rights Committee on Nigeria's Initial Report 24, July 1996 UN Doc No.: CCPR/C/79/Add.65 para. 24
[803] Ibid

conduct a timely investigation on the matter as unwillingness to provide remedies to the members of the NGO.[804]

However, in the build up to the review of Nigeria's second periodic report, there were no such restrictions and NGOs submitted shadow reports on the level of implementation of some provisions of the ICCPR by Nigeria. For instance, it was observed that the NHRC lacks adequate funds to carry out its functions adequately, hence there is need to encourage the State party to increase its funding.[805] A coalition of NGOs led by Access to Good Health Initiative, also submitted a report to the Committee advocating for the legalisation of homosexuality, and calling on Nigeria to repeal all laws that criminalise same-sex.[806] The Coalition further implored HRC to persuade Nigeria to decriminalise abortion, as the restriction result in illegal and unsafe abortions that violate articles 2,3,6,7, 17 and 26 of the ICCPR.[807]

[804] Ibid,.

[805] Amnesty International Submission to the United Nations Human Rights Committee on Nigeria, Holding at the 126th Session, 1-26 July 2019 6 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fNGA%2f35128&Lang=en> accessed 21 November 2020.

[806] Ibid 7; Human Rights for Lesbians, Gays, Bisexual and Transgender (LGBT) Persons and Sexual Rights in Nigeria: Report Presented to the UN Human Rights Committee 126th Session, July 1-26 of 2019 < https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fNGA%2f35448&Lang=en> accessed 17 August 2022.

[807] Ipas: Supplementary Information for List of Issues for Nigeria, Scheduled for Adoption by the Human Rights Committee during Its 123rd Session, July 2018 1 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICO%2fNGA%2f30996&Lang=en> accessed 1 December 2020.

The attention of the HRC was equally drawn to the invocation of criminal defamation to detain journalists and bloggers for criticising government. This led to the advocacy for its abolition[808] and that of the death penalty.[809]

The Coalition also canvassed for the protection of women with disabilities,[810] while the massive violations of human rights in the *Boko Haram* conflict was a point of concern. On the former, the Coalition requested that HRC inquire on the steps taken by the State party to address it.[811] Issue of breach of minorities' right to freedom of religion was also raised. The body pointed out that the breach of religious freedom infringes on the rights to peaceful assembly and expression of these religious minorities[812] and

[808] Amnesty International (n 68) 12.
[809] Ibid 15.
[810] NGOs Submission to the Human Rights Committee for its Development of Nigeria's List of Issues in the Absence of a State Report (30 April 2018) 13. <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICO%2fNGA%2f31012&Lang=en> accessed 2 December 2020.
[811] International Alliance for Peace and Development: Briefing on Nigeria for the Human Rights Committee List of Issues in the Absence of the Second Periodic Report, 126th Session (1-26 July 2019) 6 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fNGA%2f34783&Lang=en> accessed 29 November 2020.
[812] Islamic Human Rights Commission on the Implementation of the International Covenant on Civil and Political Rights by Nigeria (Non-Reporting State) 126th Session (1 July to 26 July 2019) 11 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fNGA%2f34885&Lang=en> accessed 19 November 2020.

requested that HRC inquire from the State party on measures it had taken to improve the enjoyment of the right.[813]

It further urged the HRC to persuade Nigeria to impose the death penalty for the "most serious" of crimes only as provided under article 6 of the ICCPR, and provide information on when it will ratify OP2 that seek to abolish the death penalty altogether.[814] It also recommended to the HRC to prevail on Nigeria to prohibit all forms of corporal punishment for children in.[815] The incompatibility of laws that allow communication surveillance without providing adequate protection to the right to privacy was highlighted. As a result, the HRC was called upon to prevail upon Nigeria to amend the Cyber Crimes Act and incorporate more human rights safeguards into it.[816] These were most of the issues

[813] Human Rights Situation in the Federal Republic of Nigeria: Submission to the 126th Human Rights Committee by Christian Solidarity Worldwide (June 2019) 6 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fNGA%2f35125&Lang=en> accessed 15 October 2020.

[814] Advocates for Human Rights & The World Coalition Against the Death Penalty: Shadow report on Nigeria's Compliance with the ICCPR Suggested List of Issues Relating to the Death Penalty Submitted to the Task Force for the Adoption of List of Issues on 30 April 2018 para 24 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICO%2fNGA%2f31008&Lang=en> accessed 1 December 2020.

[815] Global Initiative to End All Corporal Punishment of Children: Briefing on Nigeria for Human Rights Committee Country Report Task Force, 123rd Session (July 2018) 4 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICO%2fNGA%2f31005&Lang=en> accessed 29 November 2020.

[816] Paradigm Initiative: Submission in Advance of the Review of Nigeria, Human Rights Committee 126th Session, 1-26 July 2019 2 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fNGA%2f35127&Lang=en> accessed 19 November 2020.

raised by the NGOs in their contributions prior to the review of Nigeria's report. However, it is observed that most of the contributions were made by mostly international human rights NGOs; and that local human rights NGOs did not submit reports to the HRC, which would have given it more perspectives on the level of protection of civil and political rights within the territory of the state.

NHRC: Closing the International Gap

As mentioned earlier, the NHRC was established in 1995,[817] with a mandate to promote and protect human rights contained in the Nigerian Constitution and other human rights treaties including the African Charter on Human and Peoples' Rights and the Universal Declaration of Human Rights, among others.[818] The ICCPR was not expressly mentioned in the Act. The NHRC had some restrictions that made it not to be independent. For instance, the Executive Secretary was appointed by the President on the recommendation of the Attorney General of the Federation.[819] Also, the Attorney General had powers to give directives to the Governing Council of the Commission in the exercise of its duties.[820] It is pointed out that the NHRC was established by one of the most reprehensive Military regimes in the history of Nigeria to "hoodwink" the international community into

[817] National Human Rights Commission Act (1995) Now CAP N46 Laws of the Federation of Nigeria 2004.
[818] Ibid section 5 (a).
[819] Ibid section 7 ((2).
[820] Ibid section 17.

believing it was working towards the improvement of human rights within its territory.[821]

When democratic rule was restored, the NHRC Act was amended,[822] and its mandate was strengthened by incorporating more treaties which it can promote and protect, one of which was the ICCPR.[823] The appointment of the Executive Secretary is to be made by the President, subject to confirmation by the Senate,[824] the Governing Council of the Commission was also freed from the shackles of the Attorney General, and it was instead mandated to submit to the President and the National Assembly an Annual Report of its activities in the preceding year.[825]

Another novel function of the NHRC introduced in the amendment Act is the power to award compensation for human rights violations which is enforced by the Federal or State High Courts as the case may be.[826] In 2014, the Commission awarded generous compensation to families of some individuals who were found and killed by security operatives in an uncompleted building in Abuja. Many others sustained injuries in the operation.[827] The security operatives alleged that the victims were members of *Boko Haram.* Those that did not lose their lives

[821] C O Okafor and C S Agbakwa, 'On Legalism, Popular Agency and "Voices of Suffering": The Nigerian National Human Rights Commission in Context'. *Human Rights Quarterly* [2002] (24) (3) 666.
[822] National Human Rights Commission (Amendment) Act 2010.
[823] Ibid section 5a.
[824] Ibid section 7 (1) c.
[825] Ibid section 17.
[826] Ibid section 22.
[827] Editorial, 'Apo Killings: NHRC has Done Well'*Blueprint* (21 April 2014) < https://www.blueprint.ng/apo-killings-nhrc-has-done-well/> accesed 10 August 2022.

denied the allegation, and insisted that they were squatters in the uncompleted building.[828] An attempt to quash the award by security agencies was refused by a Federal High Court.[829] The Nigerian Government finally complied with the order of the NHRC in 2018, and it paid the compensation to the beneficiaries in full as directed by the Commission.[830] This has given the work of the NHRC a big boost by making the general public develop more confidence in its ability to protect the human rights of the citizenry.

The NHRC did not submit a report to the HRC in the build-up to the review of Nigeria's second periodic report, hence the HRC did not have the benefit of the Commission's insight in terms of the level of its independence in accordance with the Paris Principles, and the level of compliance of Nigeria with the provisions of the ICCPR.

Adoption of LOIs in the Absence of Nigeria's Second Periodic Report

The failure of Nigeria to submit its periodic report to the HRC forced the Committee to adopt LOIs in relation to the implementation of the state's obligations to the treaty.[831] It sought

[828] A Balal and R Mutum and M A Krishi, 'Nigeria: Human Rights Commission to Investigate Apo 7 Abuja Killings' NewsRescue.com (23September 2013) < https://allafrica.com/stories/201309231622.html > accessed 25 December 2015.
[829] Tobi Soniyi,'Nigeria: Court Okays NHRC's Decision in Apo Killings' *AllAfrica.com* (29 November2015) <http://allafrica.com/stories/201511302219.html> accessed 25 November 2016.
[830] Alex Enumah, 'FG Pays N135m Compensation to Victims of Apo 8 Killings by the DSS' *Thisday* (26 April 2018) < https://www.thisdaylive.com/index.php/2018/04/26/fg-pays-n135m-compensation-to-victims-of-apo-8-killings-by-dss/> accessed 15 August 2022,
[831] List of Issues in the Absence of the Second Periodic Report of Nigeria (28 November 2018) UN DOC NO: CCPR/C/NGA/Q/2.

information on various aspects of Nigeria's level of implementation of the provisions of the ICCPR. For instance, the applicability of the provisions of the ICCPR before the Courts of Nigeria despite not being domesticated by the National Assembly in conformity with Section 12 of the Nigerian Constitution, [832] and the level of compliance of the NHRC with the Paris Principles.[833] The HRC also requested for information on the excessive use of force by security agents, which leads to extra judicial killings in some instances as well as the specific steps taken to reform the Special Anti-Robbery Squad (SARS).[834] Of concern to the Committee was condition of Nigeria's detention centres,[835] safeguards against arbitrary detention and fair trial rights in Nigeria.[836] Of equal interest were the level of protection of religious minorities,[837] and the status of criminal defamation as it relates to the prosecution of journalists, bloggers, human rights defenders that criticise the government[838] and the abolition of polygamy.[839] The HRC also requested for information on some controversial issues, which include the legalisation of LGBT rights in Nigeria.[840] The failure of Nigeria to submit a report to the HRC to study before it adopted the LOIs, has prevented it from formulating issues based on the submission of the state. This is a major drawback to the reporting procedure as its main objective is for the Committee to engage states on the level of

[832] Ibid para 1.
[833] Ibid para 2.
[834] Ibid para 10.
[835] Ibid para 16.
[836] Ibid para 17.
[837] Ibid para 21.
[838] Ibid para 22.
[839] Ibid para 6.
[840] Ibid para 5.

implementation of the provisions of the treaty and how it can be improved upon. Nigeria, in response to the LOIs issued by the HRC, submitted a nine page reply to the issues raised by the Committee,[841] it acknowledges that the ICCPR has not been domesticated in accordance with the procedure provided under Section 12 of the Nigerian Constitution. It however, argued that the provisions of the treaty have been largely incorporated in the State party's laws, and an instance was given of Chapter IV of the Constitution, which protects the Fundamental Rights of all individuals.[842] However, there are some provisions of the ICCPR that are not captured in the Constitution. For instance the ICCPR prohibits imprisoning persons because of their inability to fulfil contractual obligations,[843] but state parties have enacted laws that not only infringe on this right but criminalises it.[844] Hence, its domestication will enable individuals enjoy the rights fully as provided by the treaty.

On the effectiveness of the NHRC, the HRC was assured that it has presence in 36 states of the Federation and the Federal Capital Territory, Abuja. The Commission has also complied with the Paris Principles and enjoys 'A' status ranking by GANHRI.[845] In the case of the battle against the *Boko Haram* insurgency, the state party informed the HRC that its troops use

[841] List of Issues in the Absence of the Second Periodic Report of Nigeria: Replies to the List of Issues (12 April 2019) UN DOC NO: CCPR/C/NGA/Q/2/Add.1.
[842] Ibid para 1.
[843] ICCPR (n 3) article 11.
[844] S 381 Penal Code Law of Northern Nigeria (CAP 89 Laws of Northern Nigeria, 1963) prescribes one month imprisonment or fine or both for a person that breaches the terms of contract of service, this provision is *impari materia* with all the penal codes in the various states of Northern Nigeria.
[845] Replies to the List of Issues (n 104) para 6.

minimal force in its operations and all reported misconduct are investigated and those found culpable are sanctioned.[846]

In reply to the issue of the legalisation of gay rights, it was pointed out to the HRC that majority of Nigerians strongly resist homosexuality, as it goes against national values, hence it cannot be legalised.[847] However, the state party did not respond to the issues related to freedom of expression and pre-trial detention in its replies to the HRC, which failed to give the Committee an idea on the level of compliance with the provisions of the treaty by the state relating to these issues.

HRC's Review of Nigeria's Implementation of the ICCPR in the Absence of its State Report

As noted earlier, Nigeria failed to send a State report to the HRC, but sent a delegation to participate in the review of the implementation of its obligations to the ICCPR.[848] It is observed that one of the main drawbacks of the reporting procedure of the HRC is the lack of awareness within the territories of state parties. In many instances, it is the Foreign Affairs Ministry that is saddled with the responsibilities of preparing the state report and engaging the Committee. All other Ministries like that of Justice take a back seat and are only consulted. The general public is hardly informed, with the result that there is a high level of lack of awareness of the process within the domestic

[846] Ibid paras 14-15.
[847] Ibid para 24.
[848] List of Delegation/Participants 7 June 2019 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fLOP%2fNGA%2f35223&Lang=en> accessed 23 November 2020.

jurisdictions of states.[849] The Nigerian delegation, with the Permanent Secretary of the Federal Ministry of Justice as a member, was also led by the Permanent Secretary of the Federal Ministry of Foreign Affairs.[850] However, publicity was not given to the impending review in the Nigerian press or by the Government. For that reason, there were no visible debates in the public sphere on the performance of the state regarding the protection of civil and political rights within Nigeria. In fact, the review was reported by a few foreign media outlets.[851]

Nigeria's failure to submit a report to the HRC was pointed out to the delegation as another setback to the process, as it robbed the State of the opportunity to present the successes and challenges it encounters in the implementation of its obligations, which would have put the Committee in a better position to recommend ways of addressing the challenges.[852] This has made the review less effective as it was the HRC that took the initiative and not the State, which if it had, would have made the reporting process more effective.

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[849] J Sarkin,,'The 2020 United Nations Human Rights Treaty Body Review Process: Prioritising Resources, Independence and Domestic State Reporting Process Over Rationalising and Streamlining Treaty Bodies'. *The International Journal of Human Rights* [2020] 12.

[850] List of Delegations/Participants (n111).

[851] Human Rights Committee Reviews the Situation of Civil and political Rights in Nigeria *African News* (9 December 2019) <https://www.africanews.com/2019/07/05/human-rights-committee-reviews-the-situation-of-civil-and-political-rights-in-nigeria//> accessed 12 November 2020.

[852] Human Rights Committee Reviews Situation of Civil and Political Rights in Nigeria (4 July 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24792&LangID=E> accessed 11 October 2020.

During the review, the HRC raised some issues of concern regarding Nigeria's implementation of the ICCPR, the use of torture by the infamous Special Anti-Robbery Squad (SARS) to extract confessional statements from suspects in violation of the Anti-torture Act of 2017.[853] The delegation did not respond to the issue of SARS, it rather informed the HRC that detainees had a right to challenge the reasons for their detention.[854] When the delegation was requested to provide information why Nigerian prisons were overcrowded, it informed the Committee that new prisons were being constructed to accommodate inmates, especially in urban areas.[855]

On criminal defamation, the HRC declared that it was hampering freedom of expression, and therefore should be repealed from the penal laws of state parties.[856] When the Commission inquired what steps Nigeria was taking to comply with its general comment, especially as it relates to journalists, the delegation merely responded that Nigeria has a free press, and avoided addressing the issue of decriminalisation of defamation.[857] The delegation refused to respond to some questions from the HRC. For instance, it failed to give information on the effectiveness of safeguards against arbitrary arrest and detention available to individuals within its territory.[858]

[853] Human Rights Committee 126th Session: Consideration of Country Situations in the Absence of Reports, Pursuant to Rule 70 of the Committee's Rule of Procedures (Continued) 4 July 2019 UN DOC NO: CCPR/C/SR.3614 para 3.
[854] Ibid para 25.
[855] Human Rights Committee (n 115).
[856] General Comment No. 34, Adopted by the HRC at its 102nd Session 12 September 2011 UN DOC NO: CCPR/C/GC/34 para 48.
[857] Human Rights Committee (n 115).
[858] Human Rights Committee 126th Session (n 116) para 7.

In its concluding observations to the second periodic review of Nigeria,[859] HRC observed that these its Concluding observations are "the mainstay of treaty body's work" as they are the assessment of the HRC tailored to country specific reports which had been reviewed by it. HRC further expressed its reservations on the level of state compliance with its obligations to the treaty.[860] The International Court of Justice (ICJ) for instance, had cited with approval the concluding observations of the HRC issued to Israel, and ruled that the provisions of the ICCPR are applicable to the acts of a state party done outside its territory in pursuance of its jurisdiction.[861]

It issued many recommendations to Nigeria on how to improve human rights within its territory. For instance, it suggested that the excessive use of force by security agents should always be investigated and those involved prosecuted.[862] It also recommended that acts of torture should be curtailed,[863] while alleged human rights violations in the *Boko Haram* Conflict should be investigated and those found culpable sanctioned.[864] On Freedom of Religion, the Commission recommended that it should be guaranteed to all without distinction.[865]

[859] Human Rights Committee: Concluding Observations on Nigeria in the Absence of its Second Periodic Report 19 July 2019, UN DOC NO: CCPR/C/NGA/CO/2.
[860] K Mechlem,'Treaty Bodies and the Interpretation of Human Rights'. *Vanderbilt Journal of Transnational Law* [2009] (42) 923.
[861] International Court of Justice 'Western Sahara: Advisory Opinion of 16 October 1975' (1975) *ICJ Reports*; 179-180 <http://www.icj-cij.org/files/case-related/61/061-19751016-ADV-01-00-EN.pdf> accessed 15 October 2020.
[862] Concluding Observations on Nigeria (n 122) para 27.
[863] Ibid para 33.
[864] Ibid para 31.
[865] Ibid para 45.

Regarding Freedom of Expression, HRC identified criminal defamation as a hindrance to its exercise in Nigeria, and urged the state party to repeal it from its legislation.[866] Nigeria is mandated by the HRC to disseminate information on the activities of the Committee, including the concluding observations and provisions of the treaty to the general public within its territory.[867] For a state that refuses to submit its periodic report for review, only time will tell if it will comply with the request of the HRC to promote the protection of the provisions of the ICCPR within its territory. Nigeria is expected to submit its third periodic report to the HRC by 26 July 2025.[868] The review of the state's civil and political rights without its input, will perhaps, prompt it to submit the report in accordance with the request of the HRC.

Conclusion

Nigeria as a State party to the ICCPR, defaulted in submitting its second periodic report for more than 18 years. That compelled HRC to schedule the review of Nigeria's level of compliance with the treaty despite its refusal to submit a report and this forced the State party to send a delegation to participate in the process. It appears that in the case of Nigeria there was no publicity of the impending and outcome of its second periodic review. Majority of Nigerian citizens have no idea of the existence of the HRC and what it does, if they did. Otherwise, it would have provoked debates in the public space and encouraged stakeholders in human rights protection to monitor government implementation of its obligations to the ICCPR. The locally

[866] Ibid para 47.
[867] Ibid para 52.
[868] Ibid para 54.

domiciled NGOs appear not to have known that Nigeria's report was up for review, as it is mostly NGOs that are domiciled in the west that submitted alternative reports to the HRC regarding Nigeria. Futhermore, the NHRC despite having an "A" status failed to submit a shadow report to the HRC, which would have provided more insight into Nigeria's human rights record. The failure of Nigeria to submit a report also affected the dialogue between its delegation and the HRC.

Nigeria as a party to the ICCPR should be submitting its reports timely, as it is a mandatory for member states to so do. Equally, there is virtually no awareness of the work of the HRC in Nigeria, hence the Government fails to fulfil its obligation of submitting a report when due, as it is not pressured by the public. The HRC needs to be more visible and should hold its review process in the African continent. Conducting the reviews in New York and Geneva will continue to make it invisible to those in Nigeria and other African states but holding some of its reviews within the African continent will pressurise states to ensure they submit their reports timeously. Local human rights NGOs should participate also by sending alternative reports to the HRC, this will also add pressure on the state parties to prepare an objective report. The NHRC should be encouraged to also prepare and submit shadow report on Nigeria's implementation of its obligations to the ICCPR and also partner with NGOs to pressurise the state authorities to submit an objective report to the HRC and monitor the implementation of the concluding observations by the state party for a more human rights compliant Nigeria.

VACCINE NATIONALISM AND THE ACCESS OF LOW-INCOME COUNTRIES TO COVID-19 VACCINES: THE NIGERIAN EXPERIENCE

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Abstract

The outbreak of infectious diseases in the last century has necessitated the development of vaccines, and arrangement for access to vaccines to overcome the outbreak. The outbreak of COVID-19 in December of 2019 put the entire international community on a clock to develop a vaccine and to make same available to as many individuals as possible across the world within the shortest possible time, regardless of where they live. The development of vaccines requires important and expensive human capital, infrastructure for manufacturing, transportation, and storage such as reliable cold chains and power grids. These are facilities which come easily to developed nations but are unavailable or least available to developing and underdeveloped countries. This paper reviews Nigeria's vaccine manufacture capacity, steps being taken by the country to access vaccines manufactured abroad and its COVID-19 vaccination campaign; discusses the challenges posed by the lack of capacity to

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manufacture vaccines locally; paucity of funds to purchase vaccines manufactured abroad and the impact of multilateral and bilateral arrangements on these processes. The paper makes recommendations on actions the country and other African countries can take to mitigate or remove these challenges posed and ensure vaccine independence, thereby improving preparedness for future pandemics.

KEYWORDS: *Vaccine Nationalism, Access to Vaccines, Low-Income Countries.*

Introduction

The COVID-19 outbreak was first reported from Wuhan, in Hubei province, China, in December 2019. It was declared a pandemic in March 2020. As of 7th October 2021, there were 236,132,082 confirmed cases while there has been more than 4,822,472 deaths and a total of 6, 262,445,422 vaccine doses had been administered according to the WHO.[869] The outbreak has affected every sphere of life from global commerce to education, employment, and travel.

Response to pandemics usually take the form of public health guidelines and non-pharmaceutical interventions, in the long and short term and the need to innovate on pharmaceutical interventions such as vaccines. This was the case during the H1N1, Swine flu, and Ebola Virus Disease outbreaks and currently the COVID-19 pandemic's interventions.

[869]WHO Coronavirus (COVID-19) Dashboard, <WHO Coronavirus (COVID-19) Dashboard | WHO Coronavirus (COVID-19) Dashboard With Vaccination Data> accessed 8 October 2021

Pharmaceutical and non-pharmaceutical interventions involve cost and logistics which in most cases overwhelm poor countries both financially and institutionally.

Again, in the race to contain outbreaks, countries go all out in a bid to protect their populations. This can take the form of protectionism approaches to non-pharmaceutical interventions such as hoarding personal protective equipment (PPEs), facemasks, sanitisers of all kinds and eventually vaccines as soon as one is finally approved for use in populations. At the onset of the COVID-19 pandemic outbreak, non-pharmaceutical interventions were a matter of which countries could manufacture the necessities and whether there was enough in the source countries before shipping to countries unable to manufacture. Several countries including Nigeria overcame the need to import these supplies as the pandemic raged on. At the arrival of the news of the development of vaccine candidates for the coronavirus, it was greeted with much hope by countries within the World Health Organisation (WHO). However, this was soon replaced by anxiety regarding capacity to manufacture and store these vaccines for immunisation. A few countries made efforts to secure access to the vaccine even before they were available for testing. The push has been termed 'vaccine nationalism'.[870] Vaccine nationalism has been defined as the effort by countries to prioritise their domestic needs at the expense of others'[871].More

[870] Harry Kretchmer, Vaccine Nationalism – and how it could Affect us all'<Coronavirus: What is vaccine nationalism, how it affects us? | World Economic Forum (weforum.org)> accessed 10 October 2021

[871] Yasmeen Serhan, 'Vaccine Nationalism is Doomed to fail' The Atlantic(8 December 2020) <Vaccine Nationalism Is Doomed to Fail - The Atlantic> accessed 8 October 2021

importantly, the vaccine is seen in many quarters as more effective in curbing the impact of the pandemic when compared with non-pharmaceutical interventions such as hand washing, sanitising, face coverings, and social distancing.[872]

Vaccine nationalism notionally is not novel.[873] According to David Fidler, vaccine nationalism is indeed 'business as usual' in global health work.[874] When the 2009 H1N1 influenza pandemic raged, there was no cooperation in international health work, as prosperous countries acquired preventive vaccines before it was made available to low-income countries. This was also the case with vaccines for small pox, polio and medications for HIV/AIDS.[875] This apparent indifference to the need of pharmaceutical and non-pharmaceutical interventions availability in developing and low-income countries led to countries such as China and India into taking bold, efficient steps to rise above the challenge of dependency during pandemics.[876] In the current pandemic of COVID-19, China and India remain important sources of vaccines to multilateral and bilateral arrangement for acquisition of vaccines against the virus. Unfortunately, in the

[872] Olufunmilayo Habibat Obadofin, Improving Cold-Chain Capacity for Vaccine Distribution in Nigeria'<Improving cold-chain capacity for vaccine distribution in Nigeria — Features — The Guardian Nigeria News – Nigeria and World News> accessed 8 October 2021

[873]Harry Kretchmer, Vaccine Nationalism – and how it could Affect us all'<Coronavirus: What is vaccine nationalism, how it affects us? | World Economic Forum (weforum.org)> accessed 10 October 2021

[874]David Fidler, Vaccine nationalism's Politics'<Vaccine nationalism's politics (science.org)> accessed 10 October 2021

[875] David Fidler, Vaccine nationalism's Politics'<Vaccine nationalism's politics (science.org)> accessed 10 October 2021

[876] David Fidler, Vaccine nationalism's Politics'<Vaccine nationalism's politics (science.org)> accessed 10 October 2021

case of the COVID-19 outbreak, the 'business as usual' attitude is still the practice among developed countries. The scale of the outbreak of Covid-19 led to the establishment of COVAX.[877] However, without a commitment from the developed countries who indeed will make donations under the collaboration and follow access schedules to ensure equitable and effective distribution of the vaccines – COVAX is doomed to either fail or make minimal impact in improving access of low-income countries to the vaccines needed to roll back the outbreak and open up their fledgling economies. A map below shows the impact of bilateral arrangements by developed nations on vaccine availability.

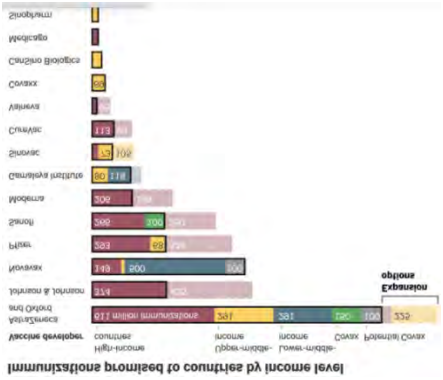

Figure 1[878]

[877] COVAX - COVID-19 Vaccines Global Access; It is the vaccines pillar of the Access to COVID-19 Tools (ACT) Accelerator. The ACT Accelerator is a ground-breaking global collaboration to accelerate the development, production, and equitable access to COVID-19 tests, treatments, and vaccines<COVAX (who.int)>accessed 24 July 2022

[878] Image by new York times cited in Harry Kretchmer, Vaccine Nationalism – and how it could Affect us all'<Coronavirus: What is vaccine nationalism, how it affects us? | World Economic Forum (weforum.org)> accessed 10 October 2021

From the above chart of vaccine availability, it is apparent that even if COVAX can acquire all the vaccines available to it, without the participation and indeed donation of excess vaccines in the control of developed nations, low-income countries dependent on the facility will not access the vaccine in enough time to roll back the disruptions caused by the pandemic. More importantly, even if the developing nations were somehow able to access funding to buy more vaccines, there are less vaccines available for purchase because the manufacturers are tied down by the huge demands already placed on them by the developed nations in their quest to provide for their populations first.

Vaccine nationalism has the potential to delay or completely upend international, regional, and national efforts and campaigns and cause a situation where low-income countries like Nigeria are unable to access vaccine for their teeming populations; a situation that COVAX was created in the first place to avoid.[879] As at January, 2021 when Canada had administered about 570,000 doses of COVID-19 vaccine, only one country in Africa – Guinea – had administered 25 doses of the vaccine.[880]

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[879]Akindare Okunola, COVID-19 vaccine nationalism Puts World on Brink of 'Catastrophic Moral failure': WHO Chief' Global Citizen January 18 2021<COVID-19 Vaccine Nationalism Puts World on Brink of 'Catastrophic Moral Failure': WHO Chief (globalcitizen.org)> accessed 8 October 2021

[880]Akindare Okunola, COVID-19 vaccine nationalism Puts World on Brink of 'Catastrophic Moral failure': WHO Chief' Global Citizen January 18 2021<COVID-19 Vaccine Nationalism Puts World on Brink of 'Catastrophic Moral Failure': WHO Chief (globalcitizen.org)> accessed 8 October 2021; COVID-19 Vaccination in Canada <https://health-infobase.canada.ca/covid-19/vaccine-administration/>accessed 24 July, 2021

This paper is divided into five parts. The first part being the introduction, part two will give an overview of Nigeria's vaccine capacity both with regards to manufacture, storage and administration. Part three will review international and regional arrangements/agreements for vaccine access and Nigeria's relationship and role in these arrangements, while part four will chart a path towards amelioration of the factors impeding vaccine security for Nigeria and its African counterparts, and part five is the conclusion.

Overview of Nigeria's Vaccine Capacity

Nigeria currently lacks capacity to produce human vaccines. This has not always been so. Between 1940 and 1991, Nigeria was manufacturing a few human vaccines in export quantities and quality.[881] The then Federal Vaccine Production Laboratory, Yaba, Lagos, Nigeria was manufacturing large quantities of routine vaccines against smallpox, rabies, and yellow fever even for export to neighbouring African countries such as Cameroon, Central Africa Republic, and a few other countries within West Africa.[882] In order to restart production, the Federal Government shut down the Laboratory in 1991, to reactivate and upgrade facilities which never materialised till date. Instead of reactivating and upgrading the existing facility as planned by the administration in power at the time, another administration in

[881]Ayodamola Owoseye, Nigeria's vaccine Production Centre remains comatose despite govt assurances' the premium times (December 24 2017<Nigeria's vaccine production centre remains comatose despite govt assurances | Premium Times Nigeria (premiumtimesng.com)> accessed 11 October 2021

[882]Ayodamola Owoseye, Nigeria's vaccine Production Centre remains comatose despite govt assurances' the premium times (December 24 2017<Nigeria's vaccine production centre remains comatose despite govt assurances | Premium Times Nigeria (premiumtimesng.com)> accessed 11 October 2021

2005 incorporated the Biovaccines Limited as a special company to restart vaccine production in Nigeria under a joint venture agreement between the Federal government of Nigeria and May and Baker Plc to start local manufacture of vaccines at the Yaba facility.[883]Within this new agreement, the Federal Government retains 49 percent of the shareholding while May and Baker Plc will hold 51 percent.[884]The new arrangement was supposed to provide technology for building and developing national capacity for research and local manufacturing of basic vaccines needed by the country to increase immunisation and mitigate reliance on vaccine importation.[885]Also, under this joint venture, the Federal Vaccine Production Laboratory was to be resuscitated in collaboration with the Federal Ministry of Health (FMoH) and the National Primary Healthcare Development Agency (NPHDA) to enable the production of affordable vaccines for the country and its immediate African neighbours.[886]

Unfortunately, the arrangement made under the joint venture agreement did not materialise. However, it was revived through a Memorandum of Understanding (MoU) which was ratified by the

[883]Yusuff Moshood, vaccine Production, Nigeria's Rocket Science'<Vaccine production, Nigeria's rocket science - Healthwise (punchng.com)> accessed 11 October 2021

[884]Editorial, Reviving Vaccine Production in Nigeria' vanguard (24 January 2021) <Reviving vaccine production in Nigeria - Vanguard News (vanguardngr.com)> accessed 11 October 2021

[885]Editorial, Reviving Vaccine Production in Nigeria' vanguard (24 January 2021) <Reviving vaccine production in Nigeria - Vanguard News (vanguardngr.com)> accessed 11 October 2021

[886] Editorial, Reviving Vaccine Production in Nigeria' vanguard (24 January 2021) <Reviving vaccine production in Nigeria - Vanguard News (vanguardngr.com)> accessed 11 October 2021

Federal Executive Council (FEC) and executed in 2017.[887] Under the MoU, Bio Vaccines Nig. Ltd was authorised to again, do what it was indeed created to do – 'build local manufacturing capacity, develop a research and development centre for vaccines and commence local production of vaccines,' by 2019 this time around.[888]At the time the MoU was signed, the vaccines in view were, tetanus, BCG[889] vaccine, inactivated polio vaccine (IPV), human papillomavirus vaccine (HPV), yellow fever vaccine (YFV), hepatitis B vaccine (HBV), and measles-rubella vaccine (MRV), some of which were vaccines manufactured in the country in the not too distant past.

The prevarication and constant change in focus and policy thrust continues to hamper the ability of government policies to turn into real progress. The not-so-appropriately justified shutdown of a vaccine manufacturing plant, the lack of political will to continue a plan to revitalise and upgrade the vaccine manufacturing capacity, and the complete introduction of a new joint venture agreement all go to show how successive administrations in Nigeria have handle medical governance. This in turn makes a mockery of laws and policies that are otherwise

[887]Yusuff Moshood, vaccine Production, Nigeria's Rocket Science'<Vaccine production, Nigeria's rocket science - Healthwise (punchng.com)> accessed 11 October 2021

[888]Yusuff Moshood, vaccine Production, Nigeria's Rocket Science'<Vaccine production, Nigeria's rocket science - Healthwise (punchng.com)> accessed 11 October 2021

[889] BCG or **bacille Calmette-Guerin**, is a vaccine for tuberculosis (TB) disease. Many foreign-born persons have been BCG-vaccinated. BCG is used in many countries with a high prevalence of TB to prevent childhood tuberculous meningitis and miliary disease<https://www.cdc.gov/tb/publications/factsheets/prevention/bcg.htm>accessed 24 July 2021

elegantly passed and well intentioned, leading to a complete comatose sound initiatives that should better the lives of the citizenry. Until there is a cultural change from this lack of focus and continuity, policies and enabling laws and business arrangements will make for nothing, or much worse, lead to a waste of meagre resources.

Access to COVID -19 Vaccine

Vaccination for COVID-19 began in the developed world in mid-2020, however, vaccination for African countries did not begin until 10 January 2021 when Seychelles administered the first dose on the continent from a gift of 50,000 doses of the China Sinopharm vaccine donated by the United Arab Emirates Government.[890] The first vaccines under the WHO's COVAX facility on the continent were received by Ghana.[891] The shipment consisted of 600,000 doses of the AstraZeneca vaccines.[892] Across Africa, vaccination campaigns went into full gear with the vaccines received under COVAX, AVATT and other bilateral arrangements. As of 8th October 2021, 49 African countries had

[890]Jehran Naidoo, 'Seychelles Becomes the first African Country to roll out COVID-19 Vaccine' <Seychelles becomes first African country to roll out Covid-19 vaccine (iol.co.za)> accessed 8 October 2021

[891]Stephanie Busari and Eric Cheung, Ghana Becomes the Country to receive COVID Vaccine Through COVAX Program'<Ghana becomes first country to receive Covid-19 vaccine through COVAX program - CNN> accessed 8 October 2021

[892] Stephanie Busari and Eric Cheung, Ghana Becomes the Country to receive COVID Vaccine Through COVAX Program'<Ghana becomes first country to receive Covid-19 vaccine through COVAX program - CNN> accessed 8 October 2021

received vaccines under COVAX, 47 countries through bilateral arrangement and 31 countries through AVATT.[893]

Nigeria, the most populous African country received its first batch of COVID-19 vaccines under the COVAX facility on 2ndMarch 2021.[894] This initial shipment was made up of 3.9 million doses of the AstraZeneca COVID-19 vaccine from the Serum Institute of India.[895] The use of the vaccine received on 2nd March began on 5th March 2021, marking the beginning of COVID-19 vaccination in Nigeria.

After its vaccination campaign was well under way with the earlier received batch of doses from COVAX, Nigeria received batches of COVID-19 vaccines from a few countries and programmes. The United States donated 4 million doses of Moderna vaccine through COVAX, 177,600 doses of single shot Johnson and Johnson vaccine was purchased from the African Vaccine Acquisition Trust (AVAT), an initiative of the African Union and 1,292,640 doses of AstraZeneca vaccine alongside safety boxes and syringes donated by the United Kingdom[896].

[893] Africa CDC, Africa CDC Vaccine Dashboard, <COVID-19 Vaccination – Africa CDC> accessed 8 October 2021

[894]Leon Usigbe, Nigeria: COVID-19 Vaccine Rollout Kicks Off in Africa's most Populous Country', Africa Renewal (6 April 2021) <Nigeria: COVID-19 vaccine rollout kicks off in Africa's most populous country | Africa Renewal> accessed 8 October 2021

[895]Leon Usigbe,Nigeria: COVID-19 Vaccine Rollout Kicks Off in Africa's most Populous Country', Africa Renewal (6 April 2021) <Nigeria: COVID-19 vaccine rollout kicks off in Africa's most populous country | Africa Renewal> accessed 8 October 2021

[896]PATH, What is the Vaccine Cold Chain, <Everything you need to know about the vaccine cold chain | PATH> accessed 8 October 2021

These supplies enabled the start of the second phase of vaccinations across the country.[897]

Cold Chain Capacity (Storage/Transport)

An important component of vaccine rollout in any given health care system is cold chain capacity. Cold chain has been defined by the WHO as a series of links designed to preserve vaccines within WHO recommended temperature ranges, from the point of creation to the point of vaccination.[898]Cold chains are made up of storage and transportation equipment such as cold rooms, refrigerators, freezers, cold boxes, and vaccine carriers that comply with WHO prescribed performance standards.[899]

Vaccines are biological products, and as such require protection from light, heat, cold or freezing to ensure they retain potency throughout the value chain as they travel from manufacturer to administration.[900] Vaccine quality is maintained using a cold chain that adheres to prescribed temperature requirements.[901]Generally, vaccines as biological creations require extreme cold temperatures at first innovation. Improving temperature requirements in vaccines takes time and that is one thing COVID-19 did not give manufacturers as it needed to reach

[897] Kenni Ndili, Nigeria: Now we have more COVID-19 Vaccines in Nigeria- Time to Deliver' <Nigeria: Now We Have More Covid-19 Vaccines in Nigeria - Time to Deliver - allAfrica.com> accessed 8 October 2021

[898] WHO, The vaccine Cold Chain, <IIP2015_Module2.pdf (who.int)> accessed 8 October 2021

[899]Unicef, what is a Cold Chain'<What is a cold chain? | UNICEF Supply Division> accessed 11 October 2021

[900]PATH, What is the Vaccine Cold Chain, <Everything you need to know about the vaccine cold chain | PATH> accessed 8 October 2021

[901]PATH, What is the Vaccine Cold Chain, <Everything you need to know about the vaccine cold chain | PATH> accessed 8 October 2021

administrators as soon as possible. This meant that countries with established and reliable cold chains and power grids will most benefit from the vaccines before versions requiring less temperature regimen are manufactured. This is where health equity becomes an issue with cold chain in the vaccine value chains. This was the reason why AVAT chose to manufacture the Johnson and Johnson vaccine under the initiative as it required less levels of temperature to preserve the vaccine.

Historically, cold chain capacity has been lacking in Nigeria. According to Ophori *et al,* this is due to focus on polio eradication, which is more dependent on freezers; poor maintenance of existing cold chain equipment; and poor management of cold chain equipment.[902]They further posited in their study that 47 percent of cold chain equipment in the federating states were broken down and some supplied (donated) equipment have yet to be installed.[903] The general culture of lack of maintenance for public infrastructure must be surmounted for Nigeria to rise above its poor emergency and response capacity, as existing or already acquired important equipment are left to waste away unused.

Low-income countries like Nigeria in most cases have unreliable power grids incapable of supporting vaccination campaigns

[902]Endurance Ophori et al, CurrentTrends in immunisation in Nigeria: prospects and Challenges' Tropical Medicine and Health Vol. 42 No. 2,2014,67-75 <tmh-42-67.pdf (nih.gov)> accessed 8 October 2021

[903] Endurance Ophori et al, Current Trends in immunisation in Nigeria: prospects and Challenges' Tropical Medicine and Health Vol. 42 No. 2,2014,67-75 <tmh-42-67.pdf (nih.gov)> accessed 8 October 2021

requiring extreme temperatures for storage and distribution.[904] This meant that they must wait for versions needing less extreme temperature storage requirements. Even when they do have these storage facilities, they are too few and far behind to be of significant use to an effective vaccine campaign in a pandemic that is not age specific like the COVID-19 pandemic.

COVID-19 Vaccine Rollout Mechanism

Unlike what obtained in the past regarding vaccination where health workers were dispatched across the country to schools, religious centres and homes, COVID-19 vaccination is currently restricted to persons 18 years of age and above who must register through an electronic platform to get vaccinated.[905] Vaccines are dispatched to state health facilities pre-qualified for storage capacity. State and local vaccine accountability officers were appointed to monitor management and utilisation of these vaccines and withdrawal where expiration occurs for proper disposal.[906] The COVID-19 vaccination campaign commenced in phases with health care workers prioritised. The electronic databased utilised for preregistration is also used to track recipients of first doses to ensure that they are reminded to return

[904] PATH, What is the Vaccine Cold Chain, <Everything you need to know about the vaccine cold chain | PATH> accessed 8 October 2021

[905] Leon Usigbe, Nigeria: COVID-19 Vaccine Rollout Kicks Off in Africa's most Populous Country', Africa Renewal (6 April 2021) <Nigeria: COVID-19 vaccine rollout kicks off in Africa's most populous country | Africa Renewal> accessed 8 October 2021

[906] Leon Usigbe,Nigeria: COVID-19 Vaccine Rollout Kicks Off in Africa's most Populous Country', Africa Renewal (6 April 2021) <Nigeria: COVID-19 vaccine rollout kicks off in Africa's most populous country | Africa Renewal> accessed 8 October 2021

for the second dose at the appropriate time.[907]The use of this mechanism of pre-registration must be sustained as it will aid in collecting important data that will be most beneficial for future vaccination campaign planning and execution.

As of 1st September 2021, Nigeria had vaccinated only 1.3 percent of its population (fully and partially) while the current vaccination rate elsewhere in the world is 39.5percent (partially and fully vaccinated).[908] This is far from the initial aspiration of the health system to vaccinate 20percent of priority population by end of 2021.

Nigeria and Multilateral Arrangements for Vaccine Access

Notwithstanding the need for Nigeria to develop its vaccine production capacity and reduce overdependence on vaccines from the west, the point must be made that the key to Vaccine Access for countries with weak vaccine production capacity is a robust multilateral arrangement system that will prioritise safety of all humans. The multilateral arrangement system is also crucial to ending Vaccine inequity across regions.

International Vaccine Arrangements

Nigeria is a beneficiary of the COVAX Facility. The COVAX vaccine-sharing scheme is a global collective led by a coalition of

[907]Leon Usigbe,Nigeria: COVID-19 Vaccine Rollout Kicks Off in Africa's most Populous Country', Africa Renewal (6 April 2021) <Nigeria: COVID-19 vaccine rollout kicks off in Africa's most populous country | Africa Renewal> accessed 8 October 2021

[908] Leon Usigbe,Nigeria: COVID-19 Vaccine Rollout Kicks Off in Africa's most Populous Country', Africa Renewal (6 April 2021) <Nigeria: COVID-19 vaccine rollout kicks off in Africa's most populous country | Africa Renewal> accessed 8 October 2021

WHO, GAVI[909], the Vaccine Alliance and the Coalition for Epidemic Preparedness Innovation (CEPI), to assist low-income nations acquire COVID-19 vaccine for their populace.[910] Under the COVAX Facility arrangement, Nigeria has received delivery of the COVID-19 vaccine. On March 2, 2021, the Country received nearly 4 million doses of the AstraZeneca/Oxford vaccine, manufactured by the Serum Institute of India (SII), Mumbai via the COVAX Facility. This was said to be a historical step towards the equitable distribution of COVID-19 vaccines globally.[911]

Regional Vaccine Arrangements

Nigeria as a regional cooperating country in Africa is a member of the African Union (AU). The Union, in an unprecedented move, established a platform for the acquisition of vaccines for its member states. The platform – African Vaccine Acquisition Trust (AVAT) – was setup with ten members drawn from within the Continent to achieve herd immunity for the continent through a pooled fund from within its members and through the Africa Export, Import Bank – Afrexim Bank.[912] AVAT is aimed at

[909] Gavi is co-leading COVAX, the vaccines pillar of the Access to COVID-19 Tools (ACT) Accelerator. This involves coordinating the COVAX Facility, a global risk-sharing mechanism for pooled procurement and equitable distribution of eventual COVID-19 vaccines <https://www.gavi.org/covid19>accessed 24 July 2021

[910]Akindare Okunola, COVID-19 vaccine nationalism Puts World on Brink of 'Catastrophic Moral failure': WHO Chief' Global Citizen January 18 2021<COVID-19 Vaccine Nationalism Puts World on Brink of 'Catastrophic Moral Failure': WHO Chief (globalcitizen.org)> accessed 8 October 2021

[911]UNICEF, COVID-19 Vaccines shipped by COVAX arrived Nigeria (02 March, 2021)<https://www.unicef.org/nigeria/press-releases/covid-19-vaccines-shipped-covax-arrive-nigeria> accessed 19 November 2021

[912] UNECA, Africa Announces the rollout of 400million vaccine doses to the African union Member States and the Carribean' <Africa announces the rollout of 400m

supplementing efforts under COVAX to attain a 60 percent vaccination level for Africa as advised by Africa CDC.[913]

The Trust signed an agreement with the giant vaccine manufacturer Johnson and Johnson to acquire 220 million doses of the Johnson and Johnson single dose vaccine. Several reasons were adduced by the Trust for the choice of this vaccine under the pooled fund arrangement. These range from temperature requirements, cost of administration, being a single dose vaccine and most importantly, it is partly produced in Africa at the Aspen Pharmacare facility in Gqeberha, South Africa. In addition, the vaccine has a comparably long shelf life.[914] This is an important benchmark as this will be the first time the Union is galvanising efforts to acquire vaccines to protect AU citizens.[915] The pooled fund acquisition efforts are supported by a tripartite partnership between the World Bank, the AU and the AVAT Task Team. Also, UNICEF, under the initiative will assist in procurement and

vaccine doses to the African Union Member States and the Caribbean | United Nations Economic Commission for Africa (uneca.org)> accessed 15 October 2021

[913]Unicef, The Africa union's African vaccine acquisition Trust AVAT initiative' <The African Union's African Vaccine Acquisition Trust (AVAT) initiative | UNICEF Supply Division> accessed 15 October 2021

[914] UNECA, Africa Announces the rollout of 400million vaccine doses to the African union Member States and the Caribbean' <Africa announces the rollout of 400m vaccine doses to the African Union Member States and the Caribbean | United Nations Economic Commission for Africa (uneca.org)> accessed 15 October 2021

[915] UNECA, Africa Announces the rollout of 400million vaccine doses to the African union Member States and the Caribbean' <Africa announces the rollout of 400m vaccine doses to the African Union Member States and the Caribbean | United Nations Economic Commission for Africa (uneca.org)> accessed 15 October 2021

delivery of vaccines to AU member states and will provide additional logistic support to countries that may need them.[916]

Since inception, the Trust has procured in concert with its partners, 12,000 doses of the J and J vaccine to AUC and embassy staff in association with the government of Ethiopia,[917]108,000 doses to Botswana[918] and Ethiopia,[919]52, 800 doses to Sierra Leone,[920]Ghana[921] and Nigeria[922] received 177,600.

As of September 23, 2021, the AU through its AVAT Initiative in association with its partners and UNICEF had delivered 4.4 million doses out of the planned 400 million Johnson and

[916]Unicef, The Africa union's African vaccine acquisition Trust (AVAT) initiative'<The African Union's African Vaccine Acquisition Trust (AVAT) initiative | UNICEF Supply Division> accessed 15 October 2021

[917] African Unionj, African vaccine acquisition Trust delivers 12,000 doses of COVID-19 vaccine to the African union' <African Vaccine Acquisition Trust delivers 12 000 doses of COVID-19 vaccine to the African Union | African Union (au.int)> accessed October 15 2021

[918]Unicef, African vaccine Acquisition Trust Delivers 108,000 doses of COVID-19 vaccine to Botswana'<African Vaccine Acquisition Trust delivers 108,000 doses of COVID-19 vaccine to Botswana | United Nations Economic Commission for Africa (uneca.org)> accessed 15 October 2021

[919]UNECA, 108,000 doses of covid-19 vaccine delivered to Ethiopia'<108,000 doses of COVID-19 vaccine delivered to Ethiopia | United Nations Economic Commission for Africa (uneca.org)> accessed 15 October 2021

[920] AVAT, African Vaccine acquisition Trust Delivers 52,800 doses of COVID-19 vaccine to the Republic of Sierra Leone' <Sierra-Leone-Press-Release-Draft-edited_02082021.pdf (dhse.gov.sl)> accessed 15 October 2021

[921] Jonas Nyabor, Ghana Takes Deliveryof 177,600 doses of Johnson and Johnson Vaccine'<Ghana takes delivery of 177,000 doses of Johnson & Johnson vaccine (citinewsroom.com)> accessed 15 October 2021

[922] The Borgen Project, the US and COVID-19 Programs in Nigeria'<African Vaccine Acquisition Trust (AVAT) - The Borgen Project> accessed 15 October 2021

Johnson COVID-19 vaccines to 26 member countries according to Dr. Nkengasong, the African CDC Director.[923]

Interestingly, the choice of Johnson and Johnson by AVAT was predicated on several issues including the fact that the vaccine will not require very cold temperatures for storage. Many Countries under the AU, such as Nigeria still grapple with power generation issues and cold chain equipment shortage. As the continent stirs itself towards vaccine security for its members, these issues must be addressed in a sustainable manner to ensure that progress made in the way of manufacturing capacity is not further hampered by lack of storage and transportation capacities.

Recommendations

An issue as important as rolling back the impacts of the Covid-19 pandemic on global and national economies has undoubtedly attracted suggestions as to its remedy. Recommendations as to the way forward to ameliorate the impacts of vaccine nationalism on the effort to overcome the pandemic will review these suggestions and identify which the authors believe will deliver a holistic and faster relief to the international community and national economies.

The Director General of the World Trade Organisation, Dr Ngozi Okonjo-Iweala, a Nigerian, posited in June 2021, that 'it is now clear that over-centralisation of vaccine manufacture capacity is

[923] African Union, Africa CDC has now Distributed 4.4million J&J vaccines to AU Member States a Total of 400million to be Distributed'<Africa CDC has now distributed 4.4 million J&J vaccines to AU member states A total of 400 million to be distributed | African Union> accessed 15 October 2021

incompatible with equitable access in a crisis'.[924] She went on to add that 'regional production hubs, combined with open supply chains will benefit public health preparedness'. The DG of WTO couldn't be more correct. In the face of vaccine nationalism, waiting on the West has been the undoing of the return to normalcy or the opening of African economies including Nigeria. More importantly, the authors want to humbly extend her position which is clearly predicated on the unfortunate financial situation of African countries. Better still, African countries should aspire like India and China to break free from waiting on the West for crisis management in public health care emergency situations. A long-term plan and investment well executed – an attribute which is sorely lacking in the running of most low-income countries – will lead the countries out of leaving the wellbeing of their populace in the hands of wealthy countries who time without number have differed to the need of their citizens for good reasons.

Government agencies and the federal government as an entity must commit to consistency in its policy formation and implementation. More importantly, a change of administration must not result in a complete and total change of policy and institutional framework for long-term arrangements such as vaccine production and security.

Nigeria has been noted as a nation that finds it difficult to maintain service and replace dilapidated public infrastructure.

[924] Abiola Olasupo, Nigeria, South Africa, Others considered as vaccine production hubs-WTO' The Guardian(21 June 2021)<Nigeria, South Africa, others considered as vaccine production hubs - WTO — Nigeria — The Guardian Nigeria News – Nigeria and World News> accessed 11 October 2021

This is also evident in the vaccine value chain as important equipment that make up the chain is left to waste away, not maintained when it breaks down and not installed altogether after it is received as donation. Governmental agencies must work to remove all impeding factors to its responsibility to service, replace unserviceable equipment or install donated equipment in order to improve public health emergency capacity of the national health system.

The importance of data cannot be overemphasised in an economy as robust as Nigeria with an asset many nations only aspire for through large immigrant population. The current use of online platforms must not be relegated to COVID-19 vaccine roll-out alone. This must continue to be deployed substantially across the world and indeed Nigeria when such situations arise, as data generated will be used to improve on planning and future vaccine roll outs.

The importance of infrastructural development and systemic upgrades particularly regarding power generation cannot be overemphasised. A country with a pedigree like Nigeria's must do whatever it takes to rid itself of power outages no matter how short. A country with a teeming youthful population the size of several economies continues to waste its potential from its lack of direction in leading its people out of power problems. Even when vaccine manufacture arrangements can function properly, vaccines need to be stored in some form of cold chain no matter how rudimentary. This will require a stable national power grid, functional even in the remotest parts of her borders. Several policies and reforms are being made in Nigeria's power sector, but more efforts need to be made to overcome power outages and

national grid collapses. Privatisation of the government owned National Electric Power Authority (NEPA) now Power Holding Company of Nigeria (PHCN) into regional privately owned distribution companies was pursued in the sector and there was much hope when this was done. However, the initiatives in the power sector are yet to yield sustainable results. .

There is also need for private sector engagement to address cold chain deficits experienced at different points in the vaccination value chain.

Conclusion

The need for vaccine security and reliable access to pharmaceutical and non-pharmaceutical protocols for the protection of the health and safety of citizens in health crisis remains an important goal. Countries must rise to this challenge by making long-term investments in the health sector to ensure readiness with infrastructure, supply chain and human capital development. As the battle against COVID-19 evolves across the globe, especially in Europe, Nigeria must not rest on her oars but brace up for eventualities. The low susceptibility of the Nigerian population to the virus and the low rate of infection compared to the West should not make the country complacent especially bearing in mind the mutating potential of the virus. Nigeria should use its low infection window as a leverage to enhance its Vaccine production capacity and deliberately review its policies in this regard. More importantly, Nigeria must find avenues to ensure that policies are consistent for the long-term in a particular direction to ensure that meagre resources are not wasted on reinventing the wheel often to no end.

AN EVALUATION OF EQUALITY RIGHTS AND THE RIGHTS OF WOMEN TO INHERITANCE IN NIGERIA

B. O. ALLOH*

Abstract

This article examines equality rights and the rights of women to inheritance in Nigeria. Equality rights is about equal protection of the rights of individuals, whether male or female. In Nigeria, the whole issues surrounding equality rights, actually arose from the gender bias of traditional human rights conceptions, which never served women's interest, but discriminated against women. The researcher adopted the doctrinal method of research. The objective of this article is to reveal that under most customary laws, women have no inheritance right, except when they institute actions in courts to assert their inheritance rights. This article concludes that sex discrimination is still a legally tolerated norm under Nigerian customary laws and that it is only when women constitute 50% of the institutions that make our country's laws, that they can be assured of laws that will truly reflect their interests. It is recommended that the legislature should pass new laws to outlaw sex discrimination in all areas of law.

KEYWORDS: *Equality, Women, Rights, Inheritance.*

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Introduction

Women have been subjected to discriminatory treatment in terms of their rights to inheritance in Nigeria. Most of such women have never taken the advantage of seeking protection of the courts against such discriminatory acts by applying for a declaration that such acts are illegal and against equality rights of citizens. Black's Law Dictionary[925] defines equality to mean the condition of possessing substantially the same rights, privileges, and immunities, and being liable to substantially the same duties. It is the quality or state of being equal.[926] It is obvious that inequalities exist in Nigerian society. Inequality in Nigeria is linked, among others, to the patriarchal society that Nigeria practices. However, there are instances when women applied to the courts against illegal acts of discrimination.[927] Section 42(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for the rights of all Nigerians to freedom from discrimination.

The National Policy on Population and Sustainable Development (2003) affirms the protection of women's inheritance rights. But family settings are sometimes breeding grounds for the propagation of gender imbalance. In fact, the rights of women are more profoundly infringed behind the closed door of family relations, to the extent that, right from birth, certain privileges are accorded to the new born purely on the basis of sex. It must be

[925] Henry Campbel Black, Black's Law Dictionary (St. Pauls: West Publishing Co.) 1990, Sixth Edition, p. 536.
[926] Bryan A. Garner, Black's Law Dictionary, Eight Edition, (St. Pauls: Thomson West) 2004, p.576.
[927] Colev. Cole (1898) / NLR 15

stated that property rights of women are not immune from this infringement.

Property right is the right to own, acquire, manage, enjoy and dispose of tangible and intangible property, including land, houses, money, bank account, livestock, crops and persons.[928] The ownership of property determines one's wealth and wealth governs one's ability to care for one's self and one's family. Property thus satisfies the basic needs of women. Inheritance of property leads to economic development of a person, which is a crucial factor in the realisation of all other rights that are conferred by law. The prevention of women from inheriting property in certain circumstances will result in an inability to benefit from the plethora of rights and privileges conferred by law. This is because enforcement of these rights is sometimes a reflection of the economic power of the claimant. Denial of women's property rights is a clear discrimination against them. Discrimination against women is defined by Article 1 of CEDAW[929] as:

> Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital

[928] QXA "Women's Property Rights in Sub-Saharan African". www.hrw.org/compaigns/women/property/html in B. Owasanoye, "Research Project on Impact of Cross – Cultural and Inter-Religious Marriages on Widowhood in Nigeria: Analysis of findings on Property Rights of Widows. "Being paper presented at Public Education Workshop on Impact of Cross-Cultural and Inter-Religious Marriages organised by Human Development Initiatives and the Department of Sociology, University of Lagos on the 28th day of September, 2004.

[929] Convention on the Elimination of Discrimination against Women.

> status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Some international instruments that frown at the discrimination of women include, but are not limited to:

(i) The African Charter on Human and Peoples' Rights;
(ii) The Convention on the Elimination of all forms of Discrimination Against Women;
(iii) Vienna Declaration and Program of Action and
(iv) The Universal Declaration of Human Rights of 1948.

Under the 1999 Constitution of the Federal Republic of Nigeria[930], certain rights have been accorded to the citizenry[931], but women are still facing discrimination, because laws are not applied equally to men and women, especially in relation to inheritance rights of women. Therefore, this article examines equality rights and the rights of women to inheritance in Nigeria.

Conceptual Clarifications of Equality, Inheritance and Women's Rights

The understanding of equality, inheritance and women's rights in this article is necessary if not fundamental. Analysis of these key words is to contextualise the concepts of equality, inheritance and women's rights within the meaning and intent of this article.

[930] As amended
[931] Chapter IV of the 1999 constitution of the Federal Republic of Nigeria, as amended.

Equality

Equality means that no person should be denied equal protection of the existing laws of a country. It prevents the application of unjust and inhumane laws which includes sex-based laws which are mostly unjust. Equality also means that men and women are equal before the law. Equality does not permit sex discriminatory laws. The concept of equality can also be termed the concept of equal protection of the rights of citizens. That is, the rights of the citizens should be given equal protection. In the United States, equal protection of the citizens is derived from the Equal Protection Clause of the Fourteenth Amendment to the Constitution. The key language in the amendment provides that "No State shall… deny to any person within its jurisdiction the equal protection of the laws. The Equal Protection Clause is generally used to combat discriminatory laws and practices and its principal concern has been with discrimination directed against African Americans.

Equality can be said to be the fact of being equal in rights, status, and advantages. For instance, believing in equality between men and women is aimed at eliminating discrimination on grounds of sex or marital status, to promote equality of opportunity between the sexes. It is about the promotion of equal opportunity between men and women generally and the total elimination of discrimination on ground of sex. Equality of inheritance rights is that the division of property should be done equitably so that those entitled to it shall share it equally. It is about equal treatment of persons to the extent that there must be no discrimination in relation to persons. The popular notion of "justice" is based, however, on a sense of equality, either distributive or corrective. On specific manifestations of justice in

the sense of distributive and corrective equality, the following should be noted:

(i) Redress for wrongdoing has to be proportionate to the injury.

(ii) In the exercise of judicial or quasi-judicial powers, the rules of natural justice should be observed. Thus it was stated by the House of Lords that the rules of natural justice apply equally to final and preliminary hearings.[932]

(iii) Distributive justice requires equal distribution of benefits among equals. Thus, in the case of *Nagle v. Feilden*[933], the Court of Appeal insisted that the refusal by the Jockey Club to grant a trainer's licence to a woman was contrary to public policy.

(iv) Distributive justice also requires equality of burdens as of benefits. Thus, in the case of *Roberts v. Hopwood*,[934] the House of Lords invalidated a welfare scheme introduced by a local authority on the ground that expensive social experiments should not be introduced by local authorities at the expense of one's section of the community.

(v) The need to ensure equality of treatment for all persons is a justification for the doctrine of precedent.

[932] Wiseman and Another v. Borneman and Another, [1969] 3 ALL E. R. 275, disapproving Parry-Jones v. Law Society. [1968] 1 ALL E. R. 177
[933] [2952] 2 ALL E. R. 394
[934] [1925] A. C. 578

The removal of special advantages and disadvantages of certain individuals and bodies is another example of the leaning towards distributive equality.[935]

In order to achieve equality, the courts tend to lean on the side of the under-dog. The courts, therefore, should no longer consider themselves the watchdogs on government, but be ready to assist. They have been less ready to countenance covenants in restraint of trade between employer and employee than between vendors and purchasers, who are on a more equal footing. Thus it was stated by Scrutton L. J. that, "it is now well established that the courts will view restraints of trade which are imposed between equal contracting parties for the purpose of avoiding undue competition and carrying on trade without excessive fluctuations and uncertainties with more favour than they will regard contract between master and servant in unequal position of bargaining.[936] In the case of *Hivac, Ltd. v. Park Royal Scientific Instruments, Ltd*.,[937] an important decision was reached wherein inequality was not involved and the employee's obligation to act fairly by his employer was taken into account.

Hart refers to the implications of what he calls the approximate equality between human beings. He recognises that no universal system of natural law or justice can be based upon the principle of impartiality, or that of treating like cases alike.[938] Hart remarks that the idea of impartiality is "unfortunately compatible with

[935] *Taniilin v. Hannaford*, [195-0] 1 K. B. 18.
[936] English Hop Growers, Ltd. v. Dering [1928] 2 K. B. 174, at p. 180
[937] [1946] Ch. 169; [1946] 1 ALL E. R. 350.
[938] Dennis Lloyd, Introduction to Jurisprudence with Selected text, Second Edition (London: Stevens & Sons) 1965, p. 63.

very great iniquity".[939] In the case of *Brown, v. Board of Education of Topekea*,[940] the United States Supreme Court concluded that:

> In the field of public education, the doctrine of "separate but equal" has no place. Separate education facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

Moreover, in the case of *Shelly v. Kraemer*,[941] the court held that the judicial enforcement by state courts of racial covenants restricting the use or disposition of property violates the equal protection clause of the 14th Amendment.

Inheritance

Inheritance can be said to mean property to be inherited or inherited; that is regarded as a heritage. Inheritance can also be said to mean to inherit, that is to receive by legal succession or will from one's parents by genetic transmission. Inheritance has been defined to mean property received from an ancestor under the laws of intestacy or property that a person receives by bequest or devise.[942] Bequest is the act of giving personal property by

[939] Ibidat p. 64
[940] 347 U.S. 483; 98L. ed. 873 (1953).
[941] 344 U.S. 1 (1948).
[942] Bryan A. Garner Black's Law Dictionary, Eighth Edition (St. Paul: Thomson West) 2004, p. 799.

will.[943] That is personal property disposed of in a will. While devise means to give (property) by will.[944] To inherit means to receive (property) from an ancestor under the laws of intestate succession upon the ancestor's death.[945]

Mozley & Whiteley's Law Dictionary[946] defines inheritance as a perpetuity in lands or tenements to a man and his heirs and that the word is mostly confined to the title to lands and tenements by descent. It is the devolution of property on the death of its owner, either according to the provisions of his will or under the rules relating to intestacy or property that a beneficiary receives from the estate of a deceased person.[947] Inheritance also means the money, property, etc. that you receive from somebody when they die. That is, the fact of receiving something when somebody dies. It is when you receive something from somebody when they die. Inheritance is also defined as that which is inherited or to be inherited. That is, property which descends to an heir on the intestate death of another. It also means an estate or property which a person has by descent, as heir to another, or which he may transmit to another, as his or her heir.[948]

Women's Rights

Women's rights can be said to be rights and entitlements claimed for their benefit in societies all over the world. In some countries,

[943] Ibid, p. 168.
[944] Ibid, p. 484
[945] Ibid, p. 798.
[946] John B. Saunders, Mozley & Whiteley's Law Dictionary, Ninth Edition (London: Butterworths) 1977, p.171.
[947] Elizabeth A. Martin, A Dictionary of Law, fourth Edition Oxford: Oxford University press) 1997, p. 233.
[948] Henry Campbel Black, M. A., Black's Law Dictionary, Sixth Edition (St. Paul: West Publishing Co.) 1990, p. 783.

these rights are institutionalised or supported by law, custom and behaviour. While in some other countries, women's rights may be ignored or suppressed. Women's rights have been said to differ from broader notions of human rights, through claims of an inherent historical and traditional bias against the exercise of rights by women and girls in favour of men and boys.[949] Women's rights can be understood through the lens of a deeply rooted and entrenched patriarchy in the world. The Nigerian woman is subjected to discrimination. The subjection of women under some customary laws in Nigeria was a cardinal principle and the rule of inheritance was traced through males to the exclusion of females. This was the same situation in India. Thus, the description of a good wife in Hindu scriptures is "a woman whose mind, speech and body are kept in subjection, acquires high renown in this world, and, in the next, the same abode with her husband…"[950]

In Athens, women's consent in marriage was not generally thought to be necessary and she was obliged to submit to the wishes of her parents, and received from them her husband and her lord, even though he was a stranger to her, because she had no knowledge before marriage.[951] The subjection of women was also common in Rome, where a woman could not exercise any civil or public office. She could not be a witness, surety, tutor or curator. She could not adopt or be adopted or make will or contract. [952]

[949] Hosken, Fran P. Toward a Definition of Women's Rights in Human Rights Quarterly, Vol. 3. No. 2 (1981) pp. 1-10.
[950] Ibid
[951] Ibid
[952] Lookwood, Bert B (ed) Women's Rights: A Human Rights Quarterly, Reader John Hopkins University Press (2006) p. 3.

Under the English Common Law, all real property held by the wife at the time of marriage became a possession of her husband, who was entitled to the rent from the land and to any profit which might be made from operating the estate during the joint life of the spouses. The English courts later devised a means to forbid a husband transferring real property without the consent of his wife, but retained the right to manage it, receive the money which it produced and had the right to spend it as he saw fit. [953] The husband was in complete control of the wife's personal property. In the late nineteenth century, there was a great change, starting with the Married Women's Property Act in 1870, which was amended in 1882 and 1887, respectively. These Acts gave married women the right to own property and to enter into contract. Before the advent of Islam, women in Saudi Arabia had no property right and were regarded as chattels, subject to being inherited.[954] Widows were inherited and subsequently married off to their stepsons or other male relatives in the family and were stripped of their property and inheritance. [955] However, the advent of Islam liberated women and positioned them on equal footing with men as human beings. Women were given rights equal to those of men as contained in the Quran as follows:

> For Muslim men and women, for believing men and believing women, for devout men and the devout women, for true men and women, for men and women who are patient and constant, for men

[953] Ibid

[954] Khaled Abou Elfadl (2007) The Great Theft: Wrestling Islam from the Extremist, Harper Collins Publishers, p, 271.

[955] Alhabdan, S., (2015), Domestic Violence in Saudi Arabia, Thesis and Dissertations paper 27, Retrieved on 12/12/2016 from www.respository.aw.indiana.edu/etd.

> and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's praise; for them Allah has prepared forgiveness and great reward. [956]

Perhaps, the greatest changes Islam brought to women was the condemnation of female infanticide and in the area of economic rights of women. Moreover, there was strong condemnation of the Arab practice of female infanticide [957] and women were allowed to own and dispose of their property. Women were also allowed to inherit. They were given rights as human beings with equal rights accorded to them with men; thus, raising their dignity, freeing them from the inhuman and degrading treatment of being inherited. [958]

Equality of Rights

Equality rights is about equal protection of the rights of individuals, whether male or female. The National Policy on Women (2003) is one of the most direct efforts of the government to bring the provisions of section 17(2) in Chapter II of the Constitution[959] into reality. The section states that every citizen shall have equality of rights, obligations and opportunities before the law. In the United States, the relevant doctrine is generally referred to as "equal protection" and it is derived from the Equal Protection Clause of the Fourteenth Amendment to the

[956] Quran 33:35
[957] Quaran 81:9
[958] Quran 4:19 – 20
[959] 199 Constitution of the Federal Republic of Nigeria, as amended.

constitution. The Equal Protection Clause which is generally used to combat discriminatory laws and practices provides that "No State shall… deny to any person within its jurisdiction the equal protection of the laws."[960] The aim of the Equal Protection Clause is to prohibit discrimination and the courts have interpreted the phrase, "no state shall deny any person the equal protection of the law", to mean in effect, "no state shall deny any person the protection of equal laws". In other words, a state legislature may not treat its citizen differently. The state, therefore, must pass laws that apply equally to the citizens and must not single out any one group for favoured treatment over another group. This led some states in the United States to adopt equal rights provisions in their constitutions and amending the equal protection provisions in their constitutions to apply to "persons" instead of "men".

Generally, all human beings have equal rights. Some states have affirmed the equality of persons in constitutional and legislative reform which has made more women to move into the public sphere. However, the measure of equality seems to be the measure of men, without considering the fact that women are not men and are also no less human than men. The whole issues surrounding equality rights of men and women actually arose from the gender-bias of traditional human rights conceptions, which never served women's interests. Thus, Atsenuwa states, on the equality of women, that:

> As more States affirm the equality of women in Constitutional and legislative public sphere, it became obvious to women that the acceptance of

[960] The Rights of Women, op. cit. p. 1.

> this assumption of liberation as underpinning human rights resulted in human rights becoming a manifestation of gendered social construction of reality much to women's disadvantage… The measure of equality was the measure of men. But women are not men… But no less human for that reason. The gender-bias of traditional human rights conceptions could not serve women's interests. This is not the same things as saying that women are seeking special treatment. The discourse on women's rights as human rights can thus be described as a gendered critique of traditional human rights. [961]

Atsenuwa's statement sums up the position of women and their rights in Nigeria. But under the Nigerian Constitution, the supposed gender neutrality prevents the application of human rights to areas that affect the right of women to inherit property. The fact remains that there should be no discrimination on the ground of sex. The interest of women in inheriting property should be protected. This is because the inheritance of property gives to the person who inherited the right of ownership of the property and the conferment of wealth. Thus it was stated by Wilson that "The ownership of property determines one's wealth; wealth governs one's ability to care for one's self and to care for

[961] Ayodele Astenuwa, Human Rights Protection of Vulnerable and Marginalised Groups in A. O. Obilade & C. Nwankwo (Eds.) Text for Human Rights Teaching in Schools, Lagos: Constitutional Rights projects (CRP), 1999 p. 16.

one's family. Property thus satisfies the basic needs of food, clothing and shelter."[962]

In Nigeria, women are given less recognition under the traditional community and this situation has affected women generally, despite the international recognition of women as people with fundamental human rights. Various international conventions and declarations reflect the rights of women to freedom from discrimination. The truth is that globally, the recognition of women as people with fundamental human rights has been an issue on the front burner of the international legal regime for decades.[963] Notable among these international conventions and declarations are the Convention on the Elimination of Discrimination Against Women (CEDAW) 1979,[964] the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights[965], the International Covenant on Civil and Political Rights,[966] the International Covenant on Economic, Social and Cultural Rights 1966,[967] the Convention on the Nationality of Married Women,[968] and the Nairobi Forward-Looking Strategies for Advancement of Women (1985).[969] The

[962] E. L. Wilson, "Women's Right in Law and Practice: Property Rights" in Women in Law (A. O. Obilade Ed.), Southern University Law Centre & Facility of Law, University of Lagos, 1993.
[963] 1976 – 1985 was a period declared as the International Decade for Women's Rights, with a plan of action, goal of equality, development and peace.
[964] Described as the Women's Bill of Rights, with a preamble and 30 articles.
[965] Adopted and Proclaimed by G. A. Res. 217A (III) of December, 1948.
[966] G. A. Res. 2200A (XXI), 21 U. N. GAOR Supp. (No. 16) at 52, U. N. Doc. A/6316 (1996), 999 U. N. T. S. 171.
[967] G. A. Res. 2200 A (XXI), 21 U. N. GAOR Supp. (No. 16) at 49, U. N. Doc. A/631(1966), 993 U. N. T. S. 3. ry 3rd 1976.
[968] It was opened for signature and ratification by G. A. Res. 1010 (XI) of 29th January 1957 and entered into force 11th August 1958 in accordance with Article 6.
[969] http://www.un.org./womenwatch/confer/nfls/

Beijing Platform of Action[970] also provided an agenda for achieving gender equality and empowerment of women. The United Nations Development Programme has, among its objectives of gender equality, the giving of economic and social value to women's capacities and work to enhance their participation in social, political and economic development. The status of women defines the degree of women's access to material resources (including power, knowledge and prestige) within the family, in the community and society.

Equality exists where there are no sex discriminatory laws contained in the constitution of a country. Where there are sex-based laws in a legal system, then there is no equality of rights in such society. This is because sex-based laws are mostly unjust and inhumane laws and lead to inequality of the application of laws to individuals in the society and community. In the United States case of *Frontiero v. Richardson*,[971] the court invalidated the requirement that women in the military prove their husbands' dependency in order to get medical and housing benefits, while men received them automatically for their wives. In this case, the court's sweeping language was that "women's legal status was once like that of slaves;" "romantic paternalism" has "put women not on a pedestal, but in a cage". However, this sweeping language was never accepted by the full court. In the case of *Peper v. Princeton University Board of Trustees*,[972] the New Jersey Supreme Court affirmed that the change from "men" to "persons" in the 1947 constitution granted women "rights of

[970] It was adopted at the fourth World Conference on Women in 1995.
[971] 411 U. S. 677 (1973)
[972] 77 N. J. 55, 78 (1978)

employment and property protection" equal to those enjoyed by the men. In the case of *Roctker v. Goldberg,*[973] the court upheld Federal law that provided that men but not women must register for the draft. In the case of *Michael M. v. Superior Court of Sonoma County,*[974] the court upheld California Statutory rape law which makes boys and men but not girls or women criminally liable for consensual sex with an opposite-sex partner who is under the age of 18. Moreover, in the case of *Geduldig v. Aiello,* the court upheld California law that provided workers disability benefits to all disabled men, but not to women workers disabled by childbirth.

Depriving a woman of her right to inherit property is discrimination of the most conspicuous kind. This is shown by the way some family members and some community leaders openly brag that women have no inheritance rights. In some communities, they are prevented from inheriting their parents' properties and also prevented from inheriting their husband's property if married. Such situation is outright discrimination because a woman is a being created by GOD just like men who are given wide privilege of inheritance. Women have equal rights as men. These rights are contained in the constitution of various countries. The rights contained in the constitution[975] of Nigeria are applicable to men and women equally. Therefore, a woman whose right has been infringed has the right to seek for redress in the courts of law. However, while many women have begun to fight against inequality or discrimination, many others do not

[973] 453 U. S. 57(1981)
[974] 450 U. S. 464 (1981)
[975] 1999 constitution of the Federal Republic of Nigeria as Amended.

fully understand the mechanisms used to discriminate or the legal weapons available to attack them. To some extent, the courts have enabled women to mount a major and systematic attack on discriminatory inheritance practices in Nigeria. [976]

It must be stated, however, that much of the discrimination women have faced, while rooted in custom and stereotypes, was also supported and reinforced by the legal system itself. In the United States, the first women's right convention was called by Elizabeth Cady Stanton and Lucretia Mott at Seneca Falls, New York, in 1848. One of their major concerns was a legal system that profoundly discriminated against women. They detailed these unjust laws in the Declaration of Sentiments adopted by the convention. At that time, the law, they observed, deprived all women of the right to vote, the "first right of a citizen". Laws also prohibited women from engaging in many occupations and professions, including the practice of law.[977] The law was, in fact, harsh to the married woman as in Nigeria. It deprived a married woman of all rights, rendered her 'civilly dead'. The law also gave the husband ownership of his wife's property, including the wages she earned, and full guardianship of their children, including the right to beat her. Technically, the husband owned the wife's personal property outright, which included the right to use or lease it and to keep any rent or profits from it for himself.[978] It must also be mentioned that most of such unjust and inhumane laws are no longer applicable to women whose

[976] In the case of *Mojekwu v. Mojekwu (1997) 7*NWLR at p. 283, the court held the Oli-ekpe custom of Nnewi repugnant to natural justice equity and good conscience.
[977] Bradwell v. Illinois, 83 U.S. 130 (1873).
[978] Susan Deller Ross, Isabelle Katz Pinzler, Deborah A. Ellis an Kary L. Moss, The Right of Women (Illinois: Southern Illino8is University Press) 1993, pp. XIII & XV.

marriage was contracted under the provision of the Marriage Act.[979]

In times past, such discriminatory laws and practices were so prevalent that there appeared to be little chance that courts would invalidate them. Even in the United States, some of such discriminatory laws and practices were said to have still been in existence in the 1970s. Thus, it was stated that:

> Into the 1970s there continued to be laws that mandated a woman could not work extra hours to earn overtime pay when a man could, that a husband should have sole control over property owned jointly with his wife, that a working wife could be denied fringe benefits when a working husband got those benefits automatically, that a young woman was entitled to parental support only until she turned eighteen while a young man could receive such payments until the age of twenty-one, or that a woman had to take her husband's name upon marriage.

It was further stated that:

> Government officials could and did decide that female high-school students had to take homemaking and could not play on the tennis or football team, that a girl who ran away from home was a juvenile delinquent but the boy who did so was a normal, high-spirited kid, and that a poor woman who wanted to enter a government

[979] Laws of the Federation 2004, Cap. M6.

> training program had to wait until all poor men had the chance to do so.[980]

Flowing from the above, it is clear that there has not been equality of the application of laws in most parts of the world. This is because laws have always been applied in favour of men. Moreover, the above situation made United States women activists in the 1970s to seek the Equal Rights Amendment (ERA) to the United States Constitution. The ERA was designed to do away with all sexually discriminatory laws and practices and proclaimed that "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex".[981] The ERA gained political momentum with the rebirth of the feminist movement and was approved by the United States Congress in 1972, but was officially declared dead, after failing by a narrow margin to gain ratification by the necessary thirty-eight states. [982] However, as a result of the pressure of the women's movement in society, the United States Supreme Court ruled that many of the sex discriminatory laws that were not in favour of women are unconstitutional. For example, in the case of *Kirchberg v. Feenstra,*[983] the United States Supreme Court invalidated Louisiana statute which made husband "head and master" with sole control of community property owned jointly with his wife. The United States Supreme Court also invalidated Missouri law that gave all working husbands, but only some working wives, death benefits for their surviving spouse in the

[980] Ibid, pp. XIII - XIV
[981] Susan Deller Ross, Isabelle Katz Pinzler, Deborah A. Ellis an Kary L. Moss, The Right of Women (Illinois: Southern Illino8is University Press) 1993, pp. XIV.
[982] Ibid.
[983] 450 U. S. 455(1981).

case of *Wengler v. Druggists Mutual Insurance Co.* [984] Moreover, in the case of *Stanton v. Stanton,* [985] the United States Supreme Court invalidated Utah law under which parental support was paid for young women only up to the age of 18 but for young men up to the age of 21. The invalidation by the United State Supreme Court of those sex discriminatory laws brought equality of such rights to the United States legal system.

Finally, the Quran established equality between men and women in many places[986] and explained that men and women are created the same as follows: "O mankind! Reverence your guardian – Lord, who created you from a single person, created of like nature, his mate, and from them twain scattered (like seeds) countless men and women". [987] The principle of equality between men and women was further established by the prophet when he said: All people are equal as the teeth of a comb. There is no claim of merit of an Arab over a non-Arab, or a white over a black person, or a male over a female. Only God-fearing person merits preference with God".[988]

The Right of Women to Inheritance in Nigeria

In Nigeria, three different systems of law operate simultaneously in respect of the right of women to inheritance. This legal pluralism is more pronounced in the area of laws regulating family relations and inheritance. Thus, the applicable laws in Nigeria are the English common law and legislations, local

[984] 446 U. S. 142 (1980)
[985] 421 U. S. 7(1975); 429 U. S. 501(1977).
[986] Quran 3:194, 9:71, 48:5, 5:37, 40:30
[987] Quran 4:1
[988] Quran 4:3

statutes, customary and Islamic laws which co-exist. However, women's right to inherit the property of their deceased husband in Nigeria, in the first instance, applies based on the form of marriage contracted by the women and then, with respect to the inheritance rights of women to their parent's property, the customary law to which their parents were subjected will be the applicable law. A woman's inheritance rights to property therefore depends on whether the woman was married under the provisions of the Marriage Act,[989] in which case her right of inheritance will be governed by the provisions of the Matrimonial Causes Act; [990] whether the woman was married under customary law, in which case, her inheritance right will be subject to the customary law that is applicable in the locality from which her husband originated; and whether she was married under Islamic law, in which case her inheritance rights will be subject to Islamic law of succession, [991] and finally, whether the property to be inherited is her parents' property, in which case, the applicable customary law will be the customary law to which her parents were subject.

In another instance, different systems of law will also apply to determine whether a woman can inherit the property of a deceased person. In order to determine the system of law that will be applicable in respect of the property of a deceased that can be inherited by a woman, it will be necessary to find out whether the deceased died testate or intestate, that is whether the deceased wrote a will in his or her lifetime. Where the deceased died

[989] Laws of the Federation 2004, Cap M6.
[990] LFN 2004, Cap. M7
[991] Olugbemi Fatula and Beauty Alloh, An Overview of Succession and Inheritance in Nigeria (Fountain Quarterly Law Journal, Ministry of Justice, Ado Ekiti) p. 116.

intestate, the questions that will come to mind are: Was the deceased a Moslem? Was the deceased subject to customary law? or was the deceased subject to English law, that is statute. The deceased, for example, will be subject to customary law, if he celebrated his or her marriage under customary law as mentioned earlier. The rights of a woman to inheritance shall now be examined below.

Inheritance Rights of Women Married Under the Act

A woman who is married under the provisions of the Act[992] can inherit from her husband even where no will is made by the deceased husband. This is because a woman who is married under the Act[993] is entitled to all the advantages enjoyed by women married under English law. This is irrespective of the culture or tradition of a woman's husband, so far as they were married under the Act. It is taken by the law that the man who married under the Act must have decided that his affairs should be governed by the statute. A woman married under the Act who is therefore subjected to any discriminatory treatment has a right to seek protection of the court against such acts and to apply for a declaration that such acts are illegal.

The effect of a marriage celebrated under the Act is therefore to oust any customary rule of succession and thereby cause the property of the deceased to devolve on his surviving spouse and children, to the exclusion of persons who would have been entitled to inherit under customary law. A woman who married under the Act will be able to inherit her deceased husband's

[992] Marriage Act, LFN 2004, Cap. M6
[993] Ibid.

property because the rule is that English law, as opposed to customary law, will regulate the distribution of her deceased husband's property. In the case of *Cole v. Cole,*[994] the deceased died intestate after contracting a monogamous marriage with the surviving spouse in Sierra Leone. The deceased was survived by the wife who was the defendant in this case and a child who was a lunatic. He was also survived by a brother who sought from the court a declaration that he was the heir of the deceased brother's estate and a trustee of his deceased brother's child under customary law. That his deceased brother's estate must be governed by customary law. It was the claim of the defendant that English law should govern her deceased husband's estate and not customary law, since the monogamous marriage contracted negated the application of customary law of inheritance. It was then held by the court that English law should apply to the property of a deceased who contracted a monogamous marriage and died intestate. However, the property that shall be subject to English law where a deceased dies intestate, and married under the Act, must be such that the deceased could have been able to dispose by will and does not include the undivided share in family property. This is because undivided share of family property the deceased was entitled to can only be governed by customary law of the deceased's spouse. A woman married to a deceased who has such interest in undivided family property cannot inherit such property, whether married under the Act or not. Moreover, the property right of inheritance of a woman married under the Act is limited to the property of her deceased husband that has been specifically partitioned and was vested in

[994] (1898) INCR 15

him during his lifetime. In such a case, the woman will have right of inheritance because of the application of English law, which is applicable to marriages celebrated under the Act.[995] In the case of intestacy, the inheritance rights of a woman married under the Act[996] shall be governed by the Administration of Estate Laws[997] or other local statutes applicable in Nigeria. Where a Nigerian marries under customary or Islamic law, customary or Islamic law applies to the distribution of his or her estate on intestacy. Marriage therefore plays a key role in the determination of property rights in the family context.

Inheritance Rights of Women Married Under Customary Law

In Nigeria, customary law varies from one locality to another. As a result, there is no single customary law that is applicable to the different ethnic localities and to the inheritance rights of women married under customary law. Thus, each locality has its own distinct customary laws that are applicable to the different communities, under which women have no right of inheritance over their deceased husbands' property, except where their deceased husbands made valid wills where property was bequeathed to them. A woman married under customary law can, therefore, inherit under her deceased husband's will.

In the past, women married under most customary laws had no rights of inheritance over their deceased husbands' property. Under most customary law systems, wives were regarded as

[995] Marriage Act, Cap. M6, LFN 2004.
[996] Ibid.
[997] The Administration of Estate Law Cap. 1 Laws of Western Region 1959 applies to states in the former Western Region except where the state has enacted a local equivalent as in Lagos, State which now has the Administration of Estate Law, Cap l, Laws of Lagos State 2003.

property, who ought to be inherited by a member of their deceased husbands' families.[998] Thus it was stated as follows: "In the case of a Yoruba customary law, the wife herself is often regarded as property and she is generally not expected to entertain any expectations vis-à-vis her late husband's property especially in southern Nigeria."[999] Moreover, in the case of *Ogunkoya v. Ogunkoya*,[1000] the Court of Appeal held that wives are regarded as chattels who are inheritable by other members of the family of the deceased under certain conditions.

Moreover, a woman married under customary law was not allowed to inherit her deceased husband's property where the latter dies intestate. This fact is supported by the case of *Akinnubi v. Akinnubi*,[1001] where a man died intestate, that is, without writing a will in his lifetime. His brothers were granted letters of administration and the wife of the deceased applied to the court against the action of the Probate Registrar. It was held by the Supreme Court that a widow could not inherit her deceased husband's property nor could the woman be appointed administratrix of her husband's estate. Furthermore, under Ibo custom, wives were not also allowed to inherit their husband's property. This was because of the customary notion that women are property and are therefore object of inheritance. They were in

[998] This is the position of the Yoruba customary law.
[999] Olugbemi Fatula & Beauty Alloh, "An Overview of Succession and Inheritance, Op. cit. at p. 119; see S. O. Akintola, A. 'A Focus on Female Discrimination and Seclusion in Nigeria," 2004, Ife Juris Review, vol. 1, part 2, at pp. 315 - 317
[1000] Suit No. CA/L/46/88, p. 56 (unreported).
[1001] (1997) 2 NWLR, 144

fact, regarded as strangers. Thus, in the case of *Nazianya v. Okagbue*,[1002] it was stated by the Supreme Court that:

> Under the native law and custom of Onitsha, a widow's possession of her deceased husband's property is not that of a stranger and however long it is, it is not adverse to her husband's family and does not make her owner; she cannot deal with the property without the consent of the family. She cannot by the effluxion of time claim the property as her own, if the family does not give their consent. She has, however, the right to occupy the building or part of it, but this is subject to good behaviour.

Flowing from the above, a widow was not allowed to inherit her deceased husband's property. Her interest in her deceased husband's property was only possessory as was held in the case of *Nzekwu v. Nzekwu* [1003] that, the interest of the widow in her deceases husband's house is possessory and not proprietory, so that she cannot dispose of it. It is important to note however, that the above can no longer be said to be the current law based on the decision of the Supreme Court in the case of *Anekwe v. Nweke,*[1004] where the defendants/appellants, in response to a suit filed by a widow who had six female children, averred that "under Awka native law and custom, a married woman without a male issue cannot contest title to land of her late husband with the male member(s) of her late husband's family." Thankfully, the

[1002] (1963) All NLR 358 S. C.
[1003] (1989) 2 NWLR 373
[1004] (2014) 9 N.W.L.R. (Pt. 1412) 393

Supreme Court was emphatic in its denunciation of that custom. Thus, in the words of Ogunbiyi, JSC, quoted *in extenso*:

> I hasten to add at this point that the custom and practices of Awka people upon which the appellants have relied for their counter claim is hereby outrightly condemned in very strong terms. In other words, a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilised and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society. Any culture that disinherits a daughter from her father's estate or wife from her husband's property...should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom. For a widow of a man to be thrown out of her matrimonial home, where she had lived all her life with her late husband and children, by her late husband's brothers on the ground that she had no male child, is indeed very barbaric, worrying, and flesh skinning... The repulsive nature of the challenged custom is heightened further in the case at hand where the widow of the deceased is sought to be deprived of the very building where her late husband was buried. The condemnation of the appellants' act is in the

> circumstance without any hesitation or apology.[1005]

But the fact remains that, a woman married under customary law may not inherit her deceased husband's property, if she fails to go to court to contest her right to the inheritance of the intestate estate of her deceased husband, where she is being deprived under native law and custom.

Inheritance Rights of Women Married Under Islamic Law

Under Islamic law, a woman that is a wife as well as a daughter can inherit. But a woman can only inherit half of what a male counterpart inherits under Islamic law. Under Islamic law, a wife whose husband died without making a will is entitled to one-quarter of his estate after all debt, funeral expenses and other charges have been settled. Where there are children or grandchildren, the wife's share is reduced to one-eighth and if the wives that survived the deceased are more than one, they will all share the one-quarter or one-eighth if there are children or grandchildren, as the case may be. It has been stated that, a woman who has changed her religion may be disinherited. [1006]

Inheritance Rights of Women to their Parents Property

Women have been deprived from their inheritance under most customary laws operating in Nigeria. For instance, under the rule of primogeniture [1007] which is practised among the Binis of Edo State of Nigeria, the deceased's property vests in the eldest son

[1005] Ibid at pp. 421-422
[1006] Olugbemi Fatula and Beauty Alloh, Op. cit., p. 122, see n.62
[1007] Primogeniture occurs when all the properties which rightly belong to the deceased intestate becomes as a matter of customary law vested in the eldest son.

who had performed all the burial rites and not on the eldest daughter. This is also the position even where the eldest son has women who are far older than him. Another instance is seen in the Northern states of Nigeria where the ultimogeniture[1008] rule is in operation. Under this practice, the youngest son succeeds to the property of the deceased exclusively, whether there are women born by the deceased who are far older than him. The customary practice of primogeniture and ultimogeniture are not fair practices. They are repugnant to natural justice, equity and good conscience and are discriminatory practices against women's inheritance rights in Nigeria. It is also important to mention that the customary rules of primogeniture and ultimogeniture are inconsistent with section 42 of the constitution.[1009] It is, therefore, submitted that the said rules should not be enforced by the courts in view of the fact that they are inconsistent with the provisions of the constitution[1010] of Nigeria.

However, women have inheritance right under some customary laws. For instance, under the Yoruba custom, a woman can inherit from her parents. This is also the situation among the Urhobos and the Itsekiris of Delta State of Nigeria.

Inheritance rights in Ibo land were based on the principle of primogeniture. That is, it is the eldest son known as "Okpala" or "Diokpa" that inherits the deceased father's property even in cases where there were women that were born before the first son. A daughter can however inherit her deceased father's

[1008] ultimogeniture is the practice that enable the youngest son of the deceased to succeed to the property of the deceased exclusively.
[1009] 1999 constitution of the federal Republic of Nigeria as Amended.
[1010] Ibid, section 42, as Amended.

property under Ibo customary law where she agrees to remain unmarried in order to raise sons for her father to save the lineage from extinction. This practice is known as the "nrachi" or Idegbe institution. In such a situation, the daughter, as an "nrachi" or "idegbe", is entitled to inherit both movable and immovable property of her deceased father's estate. Where she bears sons and daughters, it is only her sons that will inherit after her in accordance with the rule of primogeniture. However, the courts have invalidated such customary practices. Women can now inherit their parents' property under customary law through testate and intestate succession. But this right of inheritance is mostly available to women who institute action in court in case of any form of disinheritance caused by any customary law. For instance, the Court of Appeal in the case of *Mojekwu v. Mojekwu*[1011] had to decide whether a custom of the Ibo people known as Oli-ekpe, was a fair custom. Under that custom, a woman, that is, a daughter or a wife, cannot inherit a man's estate; but allows a distant male relation to inherit a deceased's estate in place of a brother to the deceased. In that case, the Oli-ekpe wanted to inherit the estate of the deceased to the exclusion of the daughter of the deceased. It was held by Justice Nikki Tobi (as he then was) that the Oli-ekpe custom is repugnant to natural justice, equity and good conscience. The court of Appeal decision, therefore, grants women inheritance rights to their father's estate in Ibo land. The decision in *Mojekwu's* case has promoted the rights of women to inheritance in Nigeria. The promotion of the rights of women to inheritance in Nigeria is

[1011] (1997) 7 NWLR at p.283

further buttressed by the case of *Mojekwu v. Ejikeme*[1012] which affirmed the decision of the Court of Appeal that a female child can inherit from a deceased father's estate in Ibo land. The court stated as follows:

> By section 42(1) of the Constitution of the Federal Republic of Nigeria, 1999, a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person, be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria or other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject. In the instant case, the fact that the appellants were born out of wedlock was immaterial; that cannot be used against them in inheriting the estate of the deceased. As blood relations, the property of the deceased should devolve on the appellants. Also, the Nnewi custom relied upon by the respondents, which permitted them to inherit the estate of the deceased merely because he had no male child surviving him, is repugnant to natural justice, equity and good conscience. Such a custom clearly discriminated against Virginia, the daughter of the deceased and is therefore

[1012] (2000)5 NWLR (pt. 657) p. 402

> unconstitutional in the light of the provisions of section 42 of the Constitution of the Federal Republic of Nigeria, 1999.

The above decision is a major advancement of the rights of women to inheritance in Nigeria.

Conclusion and Recommendations

This paper has examined equality rights and the rights of women to inheritance in Nigeria. It is hereby submitted that Nigerian courts should establish more precedents in re-engineering laws that relate to women's inheritance rights in Nigeria. On the part of Nigerian women, they must be determined to seek legal redress to address cases of disinheritance and discrimination against them. It is submitted that customary laws that deny women the right to inherit their deceased husband's property or daughters the right to inherit their parents property should be discarded by all the communities in Nigeria, as such customary practices are incompatible with the constitution[1013] and are repugnant to natural justice, equity and good conscience.

This article concludes that sex discrimination is still a legally tolerated norm under Nigerian customary laws and that it is only when more women are elected as legislators that women can be assured of laws that will truly reflect their interests. The achievement of such a goal may finally give to women the equal status in society that was hoped for in 1848 by Elizabeth Cady Stanton and Lucretia Mott.

The article therefore recommends the following:

[1013] 1999 Constitution of the Federal Republic of Nigeria, as amended.

(i) The legislature should pass new laws to outlaw sex discrimination in all areas of law.

(ii) Old laws should be amended to eliminate sex discriminatory provisions in our laws.

(iii) Government agencies should seriously enforce laws against discrimination on women.

(iv) Women activists in Nigeria should seek Equal Rights Amendment (ERA) to the 1999 Constitution (as amended).

(v) Women should strive to increase their representation on all of the nation's courts and legislative bodies.

IMPACT OF NIGERIAN LEGAL SYSTEM ON THE ADMINISTRATION OF SOCIAL JUSTICE: A CRITICAL ANALYSIS

BY

Dr Dennis Ude Ekumankama*

Abstract

In modern societies there are laws, rules and regulations and corresponding system of enforcement. Nigeria had centuries ago adopted the received English law, enacted several legislation and the Constitution with a view to regulating all kinds of human activities. Apropos, the Nigerian Legal system consists of all the laws and the Constitution made to serve different purposes including the establishment of organs of government, institutions that constitute the fulcrum for the prescription of rights, duties, obligations and remedies arising from any breach. On the part of the government certain basic amenities are expected to be provided for the citizens as guaranteed under chapter II of the 1999 Constitution of Nigeria known as fundamental objectives and directive principles of state policy. Complementing the provisions of chapter II are the federal character principles and the social objectives injected into the Constitution, all designed to enthrone justice, equality, equity, fairness, access and opportunity to participate in governance etc. This paper has therefore, with the aid of case law and statutory provisions critically examined the performance of the organs and

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institutions of government in relation to the administration of social justice in Nigeria. In another breadth the paper looked at the impact of government policies in ensuring that the parameters of social justice are reasonably applied by government, institutions as well as individuals. Finally, the impact of large scale corruption in all the facets of Nigerian Society as an impediment in the administration of social justice was examined. Government policies should be fashioned or modeled towards captivating the good of the people in all ramifications.

KEYWORDS: *Legal System, Social Justice, Human Rights, Government Policies, Corruption.*

Introduction:

Social Justice occupies a critical position in the life of every human being in any contemporary society and it is sacrosanct with fundamental human rights. A legal system which consists of laws, Constitution, rules and regulations as well as the institutions established thereof are meant to propel the dynamics of their operations to meet the various channels of social justice administration. Thus, federal, state and local government apparatus and government policies should as a matter of priority place social justice on a front burner of governance at all times.

The level of corruption in Nigeria is devastating, monstrous and alarming to the extent that the economy of the Nation is eroded and that puts a question mark as to how the proposed social objectives in the constitution can be maintained. Furthermore, there is the need to strictly adhere to the Federal character principles enshrined in the Constitution for the benefits of Nigerians no matter who is involved. This requires treating

everybody equally no matter the geographical area he or she belongs or by virtue of the circumstances of his or her birth. Accordingly, government policies should be fashioned towards captivating the good of the people in all ramifications. Corruption must be fought frontally because it depletes the economy, impairs integrity, renders the country economically impotent and hamstrung, thereby denying citizens the provision and enjoyment of social amenities.

From the decided cases examined in this paper it does appear that much is still needed to be done under the system to achieve the required goal of effective administration of social justice in Nigeria. The effect of corruption on the administration of social justice in Nigeria is heartrending, and nothing seems to be done to improve on the situation. The interplay between social justice and government policies, fundamental human rights: principles of federal character, impact of corruption and the provisions of the 1999 Constitution of Nigeria as well as possible solutions to the problem have all been articulated in this paper.

Conceptual Clarifications

Law

The Black's Law Dictionary[1014] defines law thus:

> "That which is laid down, ordained or established. A rule or method according to which phenomenon or actions co-exist or follow each other. Law in its generic sense is a body of rules

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[1014] See Black's Law Dictionary (with pronunciations) Sixth edition, Centennial Edition (1891-1991) Page 884

> of action or conduct prescribed by controlling authority and having binding legal forces: That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law. Law is a solemn expression of the will of the superior power of the state".

A careful deduction from the definition or meaning of law as postulated by the learned authors of Black's Law Dictionary shows that the traditional system which encapsulates norms and culture, ethos and mores of the people are accommodated by the above definition of law. Looking further to proffer the definition or meaning of a legal system, the same conclusion applies to the effect that the received English laws, native customs, whereby the chiefs and traditional rulers as arbiters were engaged in adjudication processes. The modern ways of life has also necessitated the introduction of modern legal system hence we now have a legion of laws to carter for vagaries of human activities for purposes of ensuring that there is justice, equity and unity. It is worthy of note that the received English law did not abolish the native laws and customs except those which the colonial masters christened repugnant to natural justice, equity and good conscience. The native laws and customs which are not affected by the repugnancy test still remain part of the legal system till date in Nigeria. Unfortunately most of the English laws they introduced and coerced Nigerians to assimilate are still with us while the English men have for decades ago jettisoned them. The application of the repugnancy test was prominent in

the case of *Edet Vs. Esien*[1015]. The facts of the case where a man married a woman under the native law and custom, paid bride price which is the major symbol and ingredient of traditional marriage in the area. The woman later left the husband and in the process became pregnant for her new lover. The husband claimed ownership of the child on the ground that the tradition allows that since the bride price had not been returned to him. The court, applying the repugnancy test, held that the custom which allowed a man who is not the natural father of a child to claim ownership of the child was repugnant to natural justice, equity and good conscience. That was a celebrated case at that time. However, the rationale behind the decision and application of the repugnancy test is that it seems to cure the possibility of rendering the child a bastard or putting the issue of paternity in question at the time the child has grown up to adolescence. The truth now is that the repugnancy test introduced into Nigeria by the whites as essentially the ambit of the customary law in those affected areas where the practice was predominant, like, the South South and some parts of the South East of Nigeria. Again one thing that is certain and indeed consoling is that societal changes have also ushered in new laws including the amendments of the 1999 Constitution of the Federal Republic of Nigeria up to the fourth alteration. Other reforms have been embarked upon to wit: The amendment of the Electoral Act in 2022; Administration of Criminal Justice Act in 2015, the Evidence Act 2011; the Proceeds of Crime (Recovery and Management) Bill 2022 and so on.

[1015] 1932) II NLR47

Legal System

A legal system has been defined by Ese Oghene Ofejiri Malemi[1016] as follows:

> The term "Legal System" means the law, personnel of the laws, courts, and the administration of justice system in a given state, country or geographical entity. Essentially, a legal system is composed of the above four elements. Therefore, Nigerian legal system is the laws, courts, personnel of the law and the administration of Justice System in Nigeria.

In concluding on this aspect of the paper one finds safety in saying that a legal system of a country consists of the laws, rules and regulations, native laws and customs that are set out by the appropriate institutions or bodies to so do for operations in given society like Nigeria. The parameter and mechanism in the administration of social justice would therefore be anchored on these elements of a legal system. A healthy and positive legal system is a sine qua non for the attainment justice through law. Which is an instrument for the enthronement of justice, fairness, equity, social security, unity and above all an effective administration of social justice.

Social Justice:

"Social justice is known to us to mean fair treatment and equal opportunity for all to enjoy social amenities and all the facets of

[1016] Ese Oghene Otojiri Malemi, The Nigerian Leaugue System (Test and Cases) 1999, Page 2.

social life"[1017]. It concerns the obligations and responsibilities of citizens to the State and vice versa. In other words, the State owes certain obligations to its citizens, while the citizens in turn are expected to perform certain roles. The end is to achieve common good.

[1018]Savon Barttey proposed what we described as "isms" representing abuse of the concept. According to him, "social injustice is an act that violates one's rights based on factors out of their control. As a result, these violations are labeled "isms" of the world (i.e. racism, sexism, ageism, classism, ableism and heterosexism. Change-makers have done their best to fight this oppression by: promoting diversity; educating the public on oppression; and having an inclusive mindset. However, the long-lasting change falls on agencies that are responsible for public policies". Bartley went further to postulate that there are four principles which helps define social justice namely: human rights, access, participation and equity. Consequently, human rights and social justice can be described as inseparable pair.

The Corporate Finance Institute (CFI)[1019] team in an updated comment made a further in road on the position when they declared on the 8 day of May, 2022 thus;

> *"The concept of social justice first arose in the 19th century during the industrial revolution as attempts were made to promote more egalitarian societies*

[1017] Ekumankama, D.U., The Law and Development of Local Development of Local Government in Nigeria, 1996, Makurdi, page 58.

1018

[1019] CFI-corporatefinanceinstitute.com

> *and reduce the exploitation of certain marginalized groups due to the vast disparity between the rich and poor at the time. Social justice initially focuses on uses such as the distribution of capital property and wealth due to the extreme levels of inequality and economic distress prevalent at the time, resulting from the European social class structure. Today social justice has shifted towards a stronger emphasis on human rights and improving the lives of disadvantaged and marginalized groups that have historically faced discrimination in society".*

In a way supporting the illuminating declaration of CFI (supra), the past President of Ontario Regional Council Jim Paddon[1020] said: *"The society opposes discrimination of all kinds and strives through charity to foster new attitudes of respect and empathy for the weak, for people of different culture, religious and ethnic origins, thus contributing to the peace and unity of all the peoples of the word"*

We find solace in concurring with all the scholars and social justice proponents as painstakingly presented above. With the amalgam of social justice and human rights, it is clear that one cannot exist without the other. The collection of human rights as enshrined in the 1999 Constitution of the Federal Republic of Nigeria extensively supports the assertion which is the same posture adopted in modern jurisdictions. On the part of the State, it is her duty to provide good roads, good drinking water, good

[1020] SSVP Ontario Social Justice - SSVP.on.ca

health care delivery, proper education, good shelter, full employment opportunities, etc. These are the basic things needed to make life meaningful. On the other hands, citizens should pay taxes and rates, obey laws and discharge their responsibilities.

Having said this, the critical issue is that government should be fair in the distribution of resources to the people. The dignity of man is founded on his worth, on value and fair treatment by neighbors as well as government. In an illuminating comments by a proponent of social justice:

> *"A man is worth whatever is his due. Justice is thus founded on worth and value. Every human being is a valuable creature of God. He is a sacred being, an inviolable entity. Justice is therefore, a sort of indebtedness. It is a debt we owe the other person, because of his worth, his humanity. The Bible commands us to love one another, but justice asks that if we cannot love him, at least, we do not injure him. Anything that constitutes an injury to our neighbour is thus an act of injustice. The law cannot compel us to love our neighbour, but it can prevent us from injuring him"*[1021].

In another breadth, Osita Eze[1022] is of the view that the functions of Government should include:

[1021] The Honourable Justice Chukwudifu Oputa: Oputa: Government, Law and the Challenge of Social Justice". Being paper presented at the National Seminar on "The Law and Local Government Administration in the Third Republic" at Port Harcourt International Airport Hotel, Omagwa, Port Harcourt, 13th- 15th May, 1991.

[1022] Eze, Osita: "Constitutional, Legal and Politics Functions of Local Government Councils" Being a paper presented at a Seminar/Workshop on the Administration of

- The principles of democracy and social justice which recognizes the sovereignty of the people.
- The economic policy that ensures that maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity…
- Principles of social order – based on equality of rights, sanctity of the human person, just and humane conditions of work, safeguard of the health, safety, and welfare in employment, adequate medical care facilities for all person, equal pay for work without discrimination based on account of sex (or circumstances of birth)….etc..;
- Educational policy that ensures the provisions of equal and adequate educational facilities at all levels which should be free, depending on available resources and their proper management and that
- Political action should avoid discrimination inter alia on the basis of sex, religion, place of origin or which part of the local government the individual or group(s) comes from.

Local Government under the Laws, at Concorde Hotel, Owerri, 22nd 23rd August, 1991.

The above principles enunciated by Eze, apply to all tiers of government, be it local, state or federal. It is hoped that the background given under this introductory part of the paper makes the subject clearer. We will now proceed to consider the legal and institutional framework involved in the administration of social justice in Nigeria.

Constitutional and Legal Framework

Section 14 (1) of the 1999 Constitution provides that the Federal Republic of Nigeria shall be based on the principle of democracy and social justice. Furthermore, Section 14 (2) makes the provision for security and welfare of the people to be the primary purpose of government.

Social Objectives

The makers of the 1999 Constitution had taken into consideration the need for a new social order to complement its section 14 (1) (supra). Accordingly, section 17 provides as follows:

(1) The State social order is founded on ideals of freedom, equality and justice.

(2) In furtherance of the social order

(a) Every citizen shall have equality of rights, obligations, and opportunities before the law.

(b) The sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced

(c) Governmental action shall be humane

(3) The State shall direct its policy towards ensuring that

(a) All citizens without discrimination of any group whatsoever, have the opportunity for securing adequate

means of livelihood as well as adequate opportunity to secure suitable employment.

(b) Conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life.

(c) Health, safety, and welfare of all persons in employment are safeguarded and not endangered or abuseed.

(d) There are adequate medical and health facilities for all persons.

(e) There is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever, etc.

Section 18 makes it mandatory for government to direct its policies towards ensuring that there are equal and adequate educational opportunities at all levels. This does not give exclusive right to government on matters concerning education. Other persons or organisations have rights to provide similar or different educational facilities like government. The general idea is to even complement the efforts of government and to create sufficient room for competition and performance. This is the position taken by some courts in Nigeria. In *Okogie Vs A.G of Lagos State*,[1023] the court held that the running, management and operation of private schools would reasonably be construed as being activities concerned directly with production, distribution, and exchange of wealth in which every Nigerian citizen could

[1023] Okogie (Trustees of Roman Catholic Schools) & ors V.A.G of Lagos State (The private school case)(1981) i.n.c.l.r 218

engage[1024]. In *Pierce Vs. Society of Sisters of the Holy Nature of Jesus and Mary,*[1025] the comment was that government's attempts to provide equal and adequate educational opportunity must not prejudice an individual running a private school or citizens bringing up their children in the best tradition and manner they think fit.

Although, these are vital provisions that are expected to safeguard the dignity of human person, it is unfortunate to note that the provisions are not justiciable. In other words, failure of government to provide for them does not entitle a citizen to seek for a remedy in the court of law. Section 6 (6) (c) of the Constitution provides as follows:*"The judicial process vested in accordance with the foregoing Provisions of the section shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution".*

"Section 6 (6) (c) clearly supports the view that the provisions in Chapter II of the Constitution are not justiciable.

Apparently, Chapter II of the Nigerian Constitution constitutes an attempt to domesticate the provisions of the International

[1024] See the 1999 constitution made simple, 3rd Edition, by Law Quest Publishing Company Ltd Pages 54 – 56.
[1025] 268, US.510 1925

Covenant on Economic, Social and Cultural Rights, as declared by the United Nations.

Part II, Article 2 of the Covenant prescribes for economic and social rights without discrimination of any kind as to race colour, sex, language, religion, political or other opinion, National or social origin, property, birth or other status.

Part III Article II (i) declares that "the state parties to the Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The question is to what extent will the provisions of Chapter II of the Constitution remain unjusticiable. Under the Military there is no doubt that nobody will be talking about justiciability. The situation should however be different under the democratically elected government, whose principal actors and operators swore to uphold the provisions of the Constitution. Even before being elected as ruling parties, the Political Parties entered into contract with the people when they anchored their campaign manifestos or objectives to comply with the provisions of Chapter II of the Constitution.

This proposition is no more novel as Nigerian courts are becoming more liberal, in their approach in situations where there is breach, or an attempt to breach the provisions of Chapter II[1026].

[1026] See the following cases:
Badejo Vs. Federal Ministry of Education (1990) 4 NWLR (Part 143) 354 and Chief Gani Fawehinmi Vs. Col. Akilu (1990). 10 S.C. 1. Compare with Shugaba Vs.

Nigerian courts should join their foreign counterparts and make economic and social rights justiciable. The following foreign cases are relevant:

i) Mottini Jain V. State of Kamataka[1027]

i) Coralie V. Union Territory of Delhi [1028]

Be that as it may, the point being made here is that politicians should know that politics is about power, how to win and how to retain it. To retain power entails satisfying the people that elected those who are in power. Accordingly, Chapter II of the Constitution should be strictly taken as a guide and standard for assessing political actions at all tiers of government. The problem of this great country lies in the hands of Nigerians, and not foreigners. Nigerians are the sole architects of their destiny.

Honourable Justice Oputa[1029] echoed this position when he said:

> *"The fault dear countrymen are not in our stars, but in ourselves. It is not in our previous constitutions, but in our failure to cultivate obedience to law culture. If all of us have learnt the lesson and acquired the virtue of reverence to law, respect for and reverence to the existing social laws, then we can correct our social and economic mistakes within the parameters of any existing Constitution".*

Ministry of Internal Affairs (1981) NCLR H59. Archbishop Okogie & Co. Vs. A.G. Lagos State (1981) 1 NCLR 218 and Adewole Vs. Jakande (1981) 1 NCLR 262.

[1027] AIR (1992) Supreme Court 1964 (APP.6)
[1028] AIR (1981) SUPREME COURT 746 (APP.5)

[1029] Oputa, Chukwudifu, Supra.

We think that a word is enough for the wise. It is for the political class to hear and save Nigerians from unnecessary agony of large-scale unjust treatment and poverty.

Social Justice and Government Policies

At one time or the other successive governments of Nigeria have fashioned out socio-economic policies aimed at instituting a healthy social order. For instance, general Ibrahim Babangida's regime recognised the need to pursue social justice through economic recovery when he said:

> *"Whatever is imposed by the Structural Adjustment Programme (SAP), and we know that there is hardship, but whatever hardship there is, is adequately matched by the determination of this administration to continue with an imaginative social programme not only to ease off the burden of SAP, not only to hasten economic recovery, but to pursue social justice for which we unwaveringly stand".*

The social programme experimented by that administration under the Structural Adjustment Programme (SAP) were the Primary Health Care Scheme, the Better Life for Rural Dwellers, the Educational Scheme for Normadic People, and the Mass Literacy. In order to realise the dividend of these programmes the Directorate of Food, Roads and Rural Infrastructure (DFRRI), the Peoples Bank, National Commission for Women and Task Force on Mass Road Transportation (Mass Transit) were established. For lack of space, no attempt is made in this paper to analyse the efficacy of these programmes in promoting social justice. Be that

as it may, there were no reasonable successes recorded, hence their quick extinction. In 1987, General Olusegun Obasanjo, one of the strong critics of SAP had this to say:

> *"Adjustment is part of the process of existence of any human being or human institution. It is part of our daily experience. But adjustment must have human face, human heart and milk of kindness and must not ignore what i call human survival and dignity, issues of employment, food, shelter, education and health",*[1030]

Other programmes like Operation Feed the Nation (OFN) and Green Revolution which aimed at enhancing agricultural activities in Nigeria had been experimented. During his time, President Obasanjo announced his economic blueprint consisting of the following policies for economic recovery:

- Accelerated privatization;
- Governance and institutional reforms;
- Administration of justice to bring in elements of transparency.,
- Accountability and anti-corruption;
- Public sector reform[1031]

According to the President, the essence of the reforms is to ensure micro-economic stability. Although programmes on fight against human trafficking, Universal Basic Education, health care

[1030] Being part of a lecture delivered by General Obasanjo at the Nigeria Institute of International Affairs (NIIA) and published in Sunday Times, 29th March, 1992.

[1031] President Obasanjo unveils economic agenda: "The Guardian, Friday, October 24, 2003, front page.

delivery, poverty alleviation, etc. are already put in place, effort should be made by government to ensure that the benefits are felt by the people. Whatever programme is adopted by government, the crucial thing is to achieve results devoid of injustice. Let there be policies that will enhance the standard of living of Nigerians at all levels.

Social Justice and Fundamental Human Rights

The Fundamental Human Rights which are copiously enshrined in Chapter IV of the 1999 Constitution of Nigeria, though wider in content bears root from the provisions of the Articles of the Magna Carta of June, 15, 1215.

Article 12 of the Magna Carta provides: "No scutage or aid shall be increased in our kingdom except by the common council of our kingdom."

Article 30- No free man shall be taken or imprisoned or dispossessed, or outlawed or banished or in any way destroyed, nor will go upon him, or send upon him, except by the legal judgment of his peers or by the law of the "Land".

Article 40: To no one will we sell, to no one will deny, or delay right or Justice. Lastly, Article 61 provides:

> *"And we will obtain nothing from any one, either by ourselves or by another by which any of these concessions and liberties shall be revolved or diminished, and if any such thing shall have been obtained, let it be invalid and void, and we will neither use it by ourselves or by another".*

The bed rock of the promises of the Magna Carta sterns from the fact that the church of England operated an absolutely a united force that preached justice for all to enjoy irrespective of who you are. Various Constitutions of modern States are fashioned or modeled to attune with the spirit of the Magna Carta as the authorities may deem fit for their domestic operations. Looking at some cases may be helpful at this point to appreciate the fundamental impact of the Magma Carta. A case in hand is that of *Liversidge Vs. Anderson*[1032]. Here Liversidge was detained in prison under the Defence Regulations during the second world war. He instituted an action against the Anderson who was the Home Secretary then. In giving his dissenting judgment, Lord Atkins expressed in no mincing words the critical position of human rights in the following words:

> *" In view with apprehension the attitude of judges who on a mere question of construction, when face to face with claims, involving the liberty of the subject, show themselves more executives minded than the executives. In this country, amidst the clash of arms, the laws are not silent. They may be changed but they speak the same language in war as in peace. It was always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified by laws".*

[1032] (1942) A.C 2008

Chapter IV of the 1999 Constitution which adopted wholly the fundamental human rights provisions of the 1979 Constitutions clearly provides safeguards on right to life; right to dignity of human person; right to personal liberty; right to fair hearing; right to freedom of thought, conscience and religion; right to private and family life; right to freedom of expression and the press; right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination; right to acquire and own immovable property anywhere in Nigeria and right to compulsory acquisition of property.

Responding to the similar provisions in the 1979 Constitution, Justice. Belgore said:

> *"They are formidable list which if flowered to the letter would have made this country a heaven on the earth. One great advantage of these provisions is the awareness they have brought to the people of their rights. Regrettably, they have not made the people realize their obligation to one another to the state. If each person, each group, each government channeled every action to be guided by the provisions of the Constitution, then there would be human rights and social justice. The 1979 Constitution opened the gate to a flood of litigation on human rights and one cannot say such was a bad sign, it was a sign that people were conscious of their rights as much it was a beginning of the laying*

> *down of a solid foundation of social justice for the country"*[1033]

From the above declaration of the Belgore, it is not in doubt that human rights greatly constitute the corner stone of social justice. Infact both are inseparable and there are sacrosanct. Supporting Belgore are a plethora of cases concerning breach of fundamental rights in Nigeria[1034].

The justification for this statement can be mirrored to the fact that the right to life[1035], for instance, cannot stand without adequate opportunity to enjoy the highest attainable standard of physical and mental health. In the same vein the right to dignity of human person[1036] cannot be upheld without guaranteeing the right to good standard of living.

Unfortunately, social security has not been adequately addressed by any government in Nigeria.[1037] The ugly effects of poverty have, to a high extent, denied citizens of Nigeria the capacity to

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[1033] See Hon. Justice M.B. Belgore, Human Rights as the corner stone of social justice in a Journal of Contemporary Legal Problems Vol. No. , October 1990 pp75 – 76.

[1034] See the following cases:

a. Alhaji Abibatu Magaji and others Vs. Board of Castrons and Excise and others (1989) 3 N.C.L.R 552.
b. Jenebu Ojonye Vs. Aleyi Adegbudu (1983) 4 N.C.L.R 492
c. Cop, Ondo State V. Obolo (1989) 5 NWLR (pt. 120) 130, Abiola V. Federal Republic of Nigeria (1995) 7NWLR (Pt. 405) 1 etc.

[1035] See Section 33 of the 1999 Constitution.

[1036] See Section 34 of the 1999 Constitution.

[1037] See Ekumankama, D.U. "Control of Economic Crime in Nigeria". Being a workshop paper delivered at the 21st International Symposium on Economic Crime held on 10. September, 2003 at Jesus College, Cambridge, United Kingdom. In that paper lack of social security was linked to the Cause of economic crime in Nigeria.

perceive and enforce their human rights as enshrined in the Constitution. In *Carolie Vs. Union Territory of Delhi* [1038]the court held thus: *"The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head".* Carolie' s case has broadly established the inseparable relationship between human rights and social justice.

Social Justice and Federal Character Principles

One of the fundamental rights of the citizens of Nigeria is the right to Freedom from discrimination[1039]. Sub-section 42(2) provides: *"No citizen of Nigeria shall be subjected to any disability, or deprivation merely by reason of the circumstances of his birth".*

We do not intend to embark on a contest or to join issues with the popular critics on the real notion of Federal Character which has become common usage in Nigeria. But for purpose of this paper, it does appear that the principle of Federal Character as provided in the Constitution[1040] is in conflict with the right to freedom from discrimination. Federal Character is simply an importation into the Constitution the principle of preferential treatment or reverse discrimination[1041].

[1038] AIR (1981) Supreme Court 746 (App.5). Also referred to in the Nigerian Bar Journal August 2001 page 91.

[1039] See Section 42 of the Constitution.

[1040] See Section 14(3), 153 (1) (c) and Third Schedule of the 1999 Constitution.

[1041] See Chris O. Uroh: "On the Ethics of Ethnic Balancing in Nigeria: Federal Character Reconsidered in Federalism and Political Restructuring in Nigeria.

The protagonists of this principle believe that it will ensure fair play, equity and justice in the distribution of available human and natural resources. But it is also clear that over the years various sectors of government have adopted the quota system in recruitment and promotion of public servants. The same quota system has dominated the admission procedure of educational institutions. Some States have for this purpose earned the status of "educationally advanced States" while others are branded "educationally disadvantaged States". The operation of the system is that those from educationally advanced states are expected to score higher marks than those from backward States. In other words the whole essence is to give more opportunities to those from backward States to meet up with those from "advanced States". Is it therefore a crime to come from educationally advanced States of Nigeria? This is clearly a contravention of Section 42(2) of the Constitution reproduced above.

It is therefore advocated here that the principle of federal character should not be applied to the detriment of Nigerians but rather to ensure real equitable distribution of resources. In doing that, integrity, proficiency, hardwork, excellence and professionalism should not be compromised at all.

Social Justice and Corruption

Corruption has been defined as an act done with intent to give some advantage inconsistent with official duty and the rights of

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Spectrum Books Limited, Ibadan. (ed Kunle Amuwo, Adigun, A.B., Agbaje Rotimi, T. and Suberu Georges Herault) at page 192.

others. To be corrupt is to spoil, taint, vitiate, deprave, debase and morally degenerate.

In his inaugural speech as the President of Nigeria, Olusegun Obasanjo vehemently condemned corruption when he said:[1042]

> *"Corruption, the greatest single bane of our society today, will be tackled head on all level… One of the greatest tragedies of the Military rule in recent time is that corruption was allowed to grow unchallenged and unchecked even when it was glaring for everybody to see*[1043].

In 1966 Major Chukwuma Nzeogwu made a categorical statement to justify the coup which ushered in Military rule in Nigeria:

> *"My dear countrymen, no citizen should have anything to fear so long as that citizen is law abiding and if that citizen has religiously obeyed the nature of laws of the country and those set down in every heart and country conscience since October 1, 1960. Our enemies are the political profiteers, the swindlers, and the men in the high and low places that seek bribes and demand ten percent. Those that seek to keep the country divided permanently so that they can remain in office as Ministers or VIPs at least, the tribalists, the nepotism, those that make*

[1042] See Black's Law Dictionary Sixth Edition page 345.

[1043] Chief Obasanjo made the Statement on Saturday May 29th 1999 at Abuja, Nigeria and which was published in the radio, Television and newspapers.

> *country look big for nothing before the international circles, those that have corrupted our society and put the Nigerian political calendar back by their words and deeds.*[1044]

In 1984, Major General Mohammadu Buhari had to lament on the state of corruption in Nigeria in the following words:
"While corruption and indiscipline have been associated with our state of under-development, these twin evils in our body politic has attained unprecedented heights in the past four (4) years.[1045]

To fight against corruption government enacted the Corrupt Practices Decree No. 38 of 1975 and recently the Corrupt Practices and Other Related Offences Act 2000; the Economic and Financial Crimes Commission (EFCC). Corruption destroys development plans thereby denying citizens of their right to enjoy certain basic amenities. For instance, many contracts have failed in Nigeria while monies paid for them are not recovered. Monies belonging to Government is stolen and deposited in foreign banks by way of money laundering and illicit foreign currency transactions, thereby denying Nigerians from partaking in the God given resources.

Corruption depletes the economy of the nation and renders government incapable to provide the basic amenities needed by her people. Corruption has made very few Nigerians to be comfortable while majority are suffering. Nigerians should,

[1044] See Adewale, A: "WHY WE STRUCK" Evans Brothers Nigeria Published Ltd., Ibadan (1981) page 81.

[1045] See Sunday Punch, January 1st, 1984 page 2.

therefore join hands to ensure that if not totally eradicated corruption should be minimised for the good of all us. It is everybody's right to fight against corruption so that a virile social order will be enthroned in the body polity.

Conclusion

This topic, Impact of the Nigerian Legal System on the Administration of Social Justice is not only relevant to Nigeria but mostly all developing countries. A legal system that does not adequately recognise nor provide a robust social order to carter for the various segments of the society as well as individuals is doomed to fail. This is because merely providing for fundamental human rights in the Constitution without the corresponding application of the rules and regulations made pursuant thereto may not facilitate the implementation of social justice. We find solace to arrive at this conclusion due to the fact that human rights are in all intents and purposes the corner stone of social justice. Therefore, the various indices and elements that would conduce for a virile and potent society must be pursued. to wit:

Finally, we like to say that under this concluding aspect of the paper Government functionaries should adopt a political will that support good governance, government integrity and anti-corruption.

Recommendations

a) Observance of the Federal Character principles enshrined in the Constitution.
b) Observance of the fundamental human rights to the letter as a conner stone of social justice.

c) Respect for the rule of law as a twin child of social justice

d) Fighting corruption to ensure a healthy economy that would sufficiently make basic amenities to reach the people.

e) Enforcement of laws, orders of court and any constituted authority as basic factors that would support and or promote positive administration of social justice in our country.

f) Government should as a matter of priority real out model policies that are people - oriented and proactive that provides succor to the people.

BALANCING SECURITY AND HUMAN RIGHTS PROTECTION IN COUNTER-TERRORISM OPERATIONS IN NIGERIA

BY

Tony Ojukwu, SAN *

Okay Benedict Agu **

Abstract

The article discusses how to strike a balance between security concerns and human rights protection in counter-terrorism operations in Nigeria. This is in view of allegations of gross human rights violations by security personnel taking part in counter-terrorism operations in the Northeast of Nigeria. The article relies on primary and secondary materials to argue that the counter-terrorism activities geared towards the protection of the citizens from terrorist activities of Non State Armed Groups (NSAGs) such as Boko Haram should include respect for human rights as an aspect of counter-terrorism measures. In conclusion, the article observes that Nigeria must ensure that all human rights recognised under the Constitution and international human rights instruments are not derogated from during counter-terrorism operations. It recommends among others, that Nigeria should prioritise the protection of civilian population against flagrant violation of their rights by NSAGs and address the concerns of economic, social and cultural rights of victims of terrorist activities in the country.

KEYWORDS: *Counter-Terrorism, Counter-Insurgency, Human Security, Human Rights, Nigeria.*

Introduction

The advent of terrorism in Nigeria which is characterised by the use of unconventional warfare to instil terror on the civilian population, cause carnage and undermine the ability of the Nigerian Government to provide security and public utilities to her people, prompted the Nigerian Government to develop, adopt and deploy counter-terrorism or counter-insurgency measures in a bid to prevent terrorist activities, win the war and stem the tide of terrorism in Nigeria.[1046]These counter-insurgency measures come in various forms including military, political, legal, social and economic actions geared towards protecting the civilian population, maintaining security, restoring law and order, countering terrorist ideologies, eliminating insurgents/terrorists and winning the trust and confidence of the people in the conflict prone areas especially in North East, Nigeria.

In the course of implementing counter-terrorism measures in Nigeria as well as in any other part of the world, concerns have arisen on how to manage their impact on the enjoyment of the human rights of not only the civilian population, but also by the

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[1046] T G Yola,' History of the Insurgency in North-Eastern Nigeria' *The Nigerian Voice*, (9 June 2015). Available at <https://www.thenigerianvoice.com/news/181982/history-of-the-insurgency-in-north-eastern-nigeria.html> Accessed on 8 October 2021.

insurgents as stipulated in International Human Rights and Humanitarian Laws.[1047]

Although, the counter-insurgency measures of the Nigerian Army have yielded positive results, the successes recorded have also however been tainted by reported allegations of gross human rights violations. Some of the documented reports of these violations include the Baga Incident Report released by the National Human Rights Commission of Nigeria.[1048] This reported cases of extra-judicial killings, displacements, arbitrary arrest and detention. Other Reports by International Non-Governmental-Organisations (INGOs) have also indicted the Military for serious human rights violations[1049] against women, such as sexual violence, rape, torture and inhuman and degrading treatment.

The central question for investigation under this article is whether the respect for human rights should form an integral aspect of the counter-insurgency measures of Nigeria. Also, to what extent

[1047] A A Izinyon, 'Counterinsurgency: Is the Quest for Human Rights Distraction or a Sine Qua Non?' Paper presented at the 55th Annual Conference of the Nigeria Bar Association (NBA) at the International (ICC) Abuja Conference Centre *The Vanguard* (September 3 2015) Available at <https://www.vanguardngr.com/2015/09/counter-insurgency-is-the-quest-for-human-right-detraction-or-sine-qua-non/> accessed 8 October 2021

[1048] Nigerian National Human Rights Commission, 'The Baga Incident and the Situation in the North-East Nigeria: An Interim Assessment and Repor't, June 2013. Available at <https://www.nigeriarights.gov.ng/download.php> Accessed on 8 October 2018

[1049] Amnesty, 'Nigeria: Starving Women Raped by Soldiers and Militia who claim to be rescuing them' Available at <https://www.amnesty.org/en/latest/news/2018/05/nigeria-starving-women-raped-by-soldiers-and-militia-who-claim-to-be-rescuing-them/> Accessed on 12 October 2018.

should human rights be restricted or derogated from during counter-insurgency operations?

The article starts with this Introduction, followed by the Operational Definition of Terms to aid the understanding of the discourse. It thereafter discusses Security and Counter Terrorism Measures by the State as well as the Protection of Human Rights in Counter- terrorism Operations. Further, it discusses Derogations from Human Rights in Counter-terrorism Operations and Human Rights Challenges in that context. Furthermore, the article treats the rights to fair hearing, privacy, association and the rights against discrimination as issues of concern in counter terrorism operations. A brief Conclusion and Recommendation segments bring the discourse to an end.

Operational Definition of Terms

To aid the understanding of the discourse, we shall attempt to give a working definition of the terms: Human Rights, Counter-terrorism or Counter-insurgency under the immediate following segments.

Human Rights

Human rights are rights inherent to all human beings, irrespective of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. They comprise moral principles or norms that describe certain standards of human behaviour. They are regularly protected as natural and legal rights in local and international law. These rights are universal, indivisible, interrelated and interdependent. They range from right to life, right to freedom of association and assembly, right to dignity of human person, right not to be subjected to

cruel, inhumane and degrading treatment, right to food, right to basic health care, right to security and right to development amongst others.[1050]

It is noteworthy that a commonly accepted approach by scholars recently is to classify human rights into generations that comprised three tiers of rights. In this way, the first generation of rights are civil, political rights, economic, social and cultural rights; the second generation rights are social and cultural rights; whilst the third generation rights comprise rights to peace, development, a safe and healthy environment, sufficient and safe food for all as well as the use of natural resources.[1051]There is also an emerging proposition in recent time to have a fourth generation right comprising the rights related to information technology.[1052]

In point of fact, the first-generation rights comprised 'negative rights' proclaimed by the Universal Declaration of Human Rights[1053] generally without any classification. These rights require that States do not meddle with the liberties of

[1050]Office of the United Nations High Commissioner for Human Rights Fact Sheet on Human Rights, Terrorism and Counter-Terrorism, published July, 2008. Available <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjKr-2y2YPeAhUnPewKHbxOAEIQFjAAegQICBAB&url=http%3A%2F%2Fwww.refworld.org%2Fdocid%2F48733ebc2.html&usg=AOvVaw2CXMSd580lDAlNvJirB35L> Accessed on 8 October 2021.

[1051] F Pocar, 'Some Thoughts on the Universal Declaration of Human Rights and the "Generation" of Rights' available at https://www.stu.edu/Portals/law/docs/human-rights/ihrlr/volumes/10/10-3%20Pocar.pdf accessed 23 August 2022.

[1052] ibid

[1053] UN General Assembly, Universal Declaration of Human Rights, GA Res217 (III) Doc A/RES/217 (III) (Dec. 10 1948)

individuals.[1054] Worthy of note also is the fact that the International Covenant on Civil and Political Rights include also the first generation rights, whilst, the International Covenant on Economic, Social and Cultural Rights include the second generation rights.[1055]

In Nigeria, Human Rights are protected and guaranteed under Chapters II and IV of the 1999 Constitution of the Federal Republic of Nigeria respectively. These Chapters provide for economic, social and cultural rights by way of the Fundamental Objectives and Directive Principles of State Policy[1056]as well as civil and political rights respectively.

Counter-terrorism / Counter-insurgency

Counter-terrorism and Counter-insurgency are simply those military, paramilitary, political, economic, psychological, legal and civic actions taken by a government to defeat insurgency or terrorism.[1057] They comprise comprehensive civilian and military efforts taken to simultaneously defeat and contain insurgency and terrorism as well as address their root causes. Community policing

[1054] K Vasak, 'A 30 Year Struggle; the Sustained Efforts to Give Force of law to the Universal Declaration of Human Rights available at<https://unesdoc.unesco.org/ark:/48223/pf0000048063> accessed 23 August 2022.

[1055] F Pocar (n 6) ibid.

[1056] See, sections 13 – 20. However, the provisions of Chapter II are non-justiciable pursuant to section 6 (6) (c) which provides that the judicial powers vested in the courts '…shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

[1057]Army Field Manual 3-24 Published in 2006 by the Headquarters, Department of the US Army. Available at <https://www.hsdl.org/?abstract&did=468442> Accessed on 12/10/18

has been adjudged as a pillar of the coordinated measures to prevent terrorism; it mainstreams policing into respect for human rights and the law in counter terrorism operations.[1058] According to the United Nations, States should continually take actions in about seven priority areas to counter-terrorism. These include dialogue and conflict prevention; strengthen good governance, human rights and rule of law; engage communities and empower the youths; mainstream gender equality and empower women; involve in education, skill development and facilitate employment.[1059] This is to create an environment of human security which is defined under the immediate following segment.

Human Security

Human Security as a term fostered by the United Nations Development Program (UNDP), means 'freedom from fear and want.' Since its introduction in 1994, the approach to human security shifted from territorial security to people's security.[1060] It emphasised the importance of everyone's right to freedom from fear, freedom from want and freedom from indignity. It also highlighted the close connection between security, development

[1058] OSCE ODIHR, 'Preventing Terrorism and Radicalization that Leads to Terrorism: A Community Policing Approach'(Organization for Security and Cooperation in Europe Vienna 2014) available at <https://www.osce.org/files/f/documents/1/d/111438.pdf> accessed 22 September 2022.

[1059] United Nation, 'Plan of Action to Prevent Violent Extremism' available at <https://www.un.org/sites/www.un.org.counterterrorism/files/plan_action.pdf> accessed 25 August 2022.

[1060] United Nations Development Programme, 'New threats to human security in the Anthropocene' (Special Report 2022) 3. Available online at <https://hdr.undp.org/system/files/documents//srhs2022pdf.pdf> accessed on 22 September 2022

and the protection and empowerment of individuals and communities. The Commission on Human Security (CHS)[1061] also emphasised this position, stating that human security connotes protecting people from critical and pervasive threats and situations. These positions have changed the traditional perspective of security that focused primarily on the safety of states from military aggression to one that focuses on the security of the individuals, their protection and empowerment. They amplify the intersection between security, development and human rights.

It is instructive that the National Security Strategy (NSS) 2019[1062] has a broad and crosscutting approach to human security as it underscores the central role of security to development. It emphasised the complementarity of security and the well-being of citizens[1063] and stability of the state. Just like the position of the UNDP and CHS, the NSS 'reflects the contemporary paradigm shift away from the state-centric focus of security to one which is comprehensive and emphasises human security'. Furthermore, the NSS sets an agenda for Nigeria to achieve prosperity and

[1061] CHS was established in January 2001 in response to the UN Secretary-General's call at the 2000 Millennium Summit for a world 'free from want' and 'free from fear.' The Commission consisted of twelve prominent international figures, including Mrs. Sadako Ogata (former UN High Commissioner for Refugees) and Professor Amartya Sen (1998 Nobel Economics Prize Laureate), See, 'Commission on Human Security' available at < https://archive.unescwa.org/commission-human-security> accessed 22 September 2022.

[1062] Office of the National Security Adviser, National Security Strategy (2019) available online at <https://ctc.gov.ng/wp-content/uploads/2020/03/ONSA-UPDATED.pdf> accessed 0n 22 September 2022

[1063] This position is reflected in section 14 (2) (b) of the Constitution of the Federal republic of Nigeria 1999 as amended which provides that the security and welfare of the people shall be the primary purpose of government.

sustainable development by recognising the need to '...harness economic opportunities arising from her human and natural resource endowments'.[1064] It therefore accentuates the perspectives of economic security, energy security, labour security, health security, food security, education security, environmental security and national security[1065].

Terrorism

Terrorism has different definitions[1066] for different bodies, organisations and government agencies. This makes it difficult to give a suitable universal definition as each definition given tends to suit each subject's own particular role, purpose or bias.[1067] It must be stated that the occurrence of terrorism has a global reach, so counter-terrorism measures will not be effective unless all countries cooperate in agreeing to the characteristics of terrorist groups and their activities.[1068]

According to the United Nations General Assembly (UNGA)[1069] terrorism includes:

> Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes

[1064] Ibid 37
[1065] Ibid.
[1066] The Head of the UN Counter-Terrorism Committee Executive Directorate once remarked that "the fact that there was not a universal definition of terrorism presented a challenge.
[1067] G Bruce, Definition of Terrorism Social and Political Effects (2013) Journal of Military and Veterans' Health, *21*(2), 26-30
[1068] Ibid
[1069] 8th Plenary meeting of United Nations General Assembly UN/A/RES/49/60 (9th December 1994) https://www.un.org/documents/ga/res/49/a49r060.htm

> are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them

Similarly, the United Nations Security Council (UNSC) in its resolution 1566, [1070]referred to acts of terror as:

> …criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organisation to do or to abstain from doing any act…

Ajayi gave a description rather than definition of terrorism which he considers to be a value-laden concept that is difficult to capture in a single definition. In his words, 'terrorism is from the word "terror" which conjures the image of fear and trepidation. He stated that the sole aim is to instil fear, gain sympathy and submission and takes the form of hijacking of commercial aircraft, kidnapping, assassination, gun attack, arson and frontal assaults on important state institutions.[1071]

[1070] Adopted by the Security Council at its 5053rd meeting on 8th October 2004. https://www.un.org/ruleoflaw/files/n0454282.pdf accessed 22September 2022.

[1071]A I Ajayi, 'Boko Haram' and terrorism in Nigeria: Exploratory and explanatory notes, (2012) *Global Advanced Research Journal of History, Political Science and International Relations Vol. 1(5), 103-107,* available online at <https://garj.org/garjhpsir/index.htm ; http://augustusconsulting.co.za/bhubhuzz/uploads/2015/01/Boko-Haram-and-Terrorism-in-Nigeria-by-Ajayi.pdf>accessed 16 September 2022

It is to be noted that these positions above merely described or mentioned acts that constitute terrorism rather than a definition of terrorism. In the same vein, the International Convention for the Suppression of Terrorist Bombings failed to adequately define the word 'terrorist'. The Convention merely covered an aspect of terrorism where it listed acts of violence as terrorism if they are 'resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or abstain from doing any act'.[1072] However, for our present purpose, terrorism connotes the act of the destruction of properties and killing of people to score political, economic, social and religious points. It will be worthwhile at this juncture to take a look at the nature, history and strategy of *Boko Haram,* Nigeria's foremost terrorist organisation that necessitated government of Nigeria's counter terrorism measures.

Boko Haram and Terrorism in Nigeria

Boko Haram is a phrase coined from two words, *'Boko'* (Hausa word for 'book') and *'Haram'* (Arabic word meaning 'forbidden,' 'ungodly,' or 'sinful'). It therefore literally means 'book is sinful,'[1073] but fundamentally, it operates to prohibit or outlaw

[1072] UN Ad Hoc Committee on Terrorism 2001 Informal texts of article 2 of the draft comprehensive convention Document A/C.6/56/L.9. 2001 session of the Working Group of the Sixth Committee.

[1073]A I Ajayi, "Boko Haram" and Terrorism in Nigeria: Exploratory and Explanatory Notes', (2012) *Global Advanced Research Journal of History, Political Science and International Relations Vol. 1(5), 103-107,* available online at <https://garj.org/garjhpsir/index.htm >accessed 16 September 2022; ND Danjibo, 'Islamic Fundamentalism and Sectarian Violence: The 'Maitatsine' and 'Boko Haram' Crisesa in Northern Nigeria (2009) Peace and Conflict Studies Paper Series, Institute of African Studies, University of Ibadan.

Western education, culture and modern science, while advocating strict adherence to pure Islamism.[1074]

Origin/History

Religious activism is a thing very common in Northern Nigeria. This can be traced back from the very beginning when Uthman Dan Fodio spearheaded the very first jihad in early 18th century.[1075]The politicisation of religion due to the inability or unwillingness of the ruling elites to separate politics from religion has prepared ground for the emergence of different sects of Islam propagating various ideologies of varying degrees of activism. *Boko Haram* therefore originated from the desire of the sect known as *Jama'atuAhlis SunnaLidda'awatiwal-Jihad* (People committed to the propagation of the prophet's teaching and Jihad) to Islamise Nigeria by whatever means at its disposal and at whatever human cost. Thus, their involvement in terrorist activities in actualisation of this desire has been carried out in Northern states and the Federal Capital Territory.[1076] In terms of objective, *Boko haram* is rooted in the Maitatsine uprisings of the early 1980s, but it seems to be more in tune with Taliban in terms of its organisational planning, armed resistance and *modus operandi*. Thus, it is believed that the sect metamorphosed into a terror group when one Mustapha Modu Jon, commonly called Mohammed Yusuf, assumed the leadership of the group, and consequently radicalised it and opened it to foreign collaboration, especially with the Al-Qaeda in Islamic Maghreb (AQIM). Under

[1074] Ibid, 103.
[1075] Ibid, 104; G Ajayi, 'Government and Religious Patronage in Contemporary Nigeria (1980-1989): Implications for the Stability of the Nation' (1990) *Zeitschrift fur Afrika Studies (ZAST)* 7(8), 55-65.
[1076] Ibid, 103

him, the group stepped up its activism and intensified the propagation of an extreme Islamic doctrine which sees Western education and democracy as corruptive and immoral, before he was captured and killed extra-judicially while in police custody in 2009.[1077] Against the expectation of the authorities that his death would result in the extinction of the group as happened in the Maitatsine case, the followers spread and multiplied to launch the *Boko Haram* insurgency activities as we have come to know it today.[1078]

Strategy

Before 2010, *Boko Haram* had no apparent strategy on how to achieve its objectives in Northern Ngeria.[1079]It occasionally used guerrilla tactics of hit-and-run to harass and oppress Nigerians in its area of operations. Its weapons were rudimentary: clubs, machetes, Molotov cocktails, knives, swords and locally made guns. Boko Haram militants sometimes shot sporadically from 'okada' (local slang for motorcycle) at their targets– both civilians and police officers–before speeding away.[1080]As at 2004, external links like Al-Qa'ida in the Land of the Islamic Maghreb (AQIM) has been involved in the strategy in terms of financial support and militarisation of the Boko Haram movement. For instance, AQIM handled their training in combat, weapons handling and use of

[1077] Ibid 104, see also, Sunday Tribune, 12 February 2012.
[1078] Ibid 105
[1079]Marc-Antoine Perouse de Montclos, 'Nigeria's Interminable Insurgency: Addressing the Boko Haram Crisis,' *Africa Programme, Chatam House,* (2014) 11.
[1080] ibid 43; 'Spiraling Violence: Boko Haram Attacks and Security Forces Abuses in Nigeria,' Human Rights Watch (HRW), 2012, available online at www.hrw.org/sites/ default/files/reports/Nigeria1012webcover.pdf accessed 18 September 2022.

Improvised Explosive Devices (IEDS). From trainings acquired from AQIM, members of Boko Haram were able to show dexterity in handling of weapons and manufacture of 'dirty bombs' through IEDS.[1081] An anonymous government source also revealed that an Algerian terrorist group transferred 40 million Naira to Boko Haram in Nigeria but the said source failed to reveal the bank(s) involved and the receivers (i.e. the contact links) perhaps for security or political reasons.[1082] Some powerful figures and sophisticated guerrilla fighter strategists are behind the group given "the evidence of economic power and strategic sophistication in Boko Haram… their total method of war, from the economic value of their weapons and vehicles, to the deadly refinement of their combat strategy and the effective combination of propaganda of obfuscation and terror in line with deadly military attacks."[1083] Implicitly thus, the manipulation of religion, poverty, and political intrigues are strong factors in stoking the embers of terrorism; seen in this context as a war unleashed by the oppressed against an oppressor (real or imagined). Unfortunately, the greatest causalities in this deadly war are the innocent impoverished masses that do not have the wherewithal to secure themselves and their properties. This and the unprovoked attacks on churches and Christians by the terrorists, ostensibly to actualise the complete islamisation of the North, makes *Boko Haram's* terrorist activities unjustifiable and criminal, given the secular status of Nigeria.

[1081] M Dearn, 'Boko Haram: Nigeria's Terrorist Insurgency Evolves' *Codewit World News* (2011) 1
[1082] Ajayi (n25) 105
[1083] ibid

Security and Counter-Terrorism Measures by the State

States have the positive obligation under International Human Rights Law (IHRL) to protect lives and properties, maintain security and protect her citizens from terrorist attacks[1084]. The Nigerian Constitution[1085] provides that the security of lives and properties shall be the primary purpose of Government. This stems from the general duty of states to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognised as part of states' obligations to ensure the respect for the right to life, property and right to security in general.

The Federal Government of Nigeria's ability to uphold its primary responsibility of maintaining security and protecting lives and properties has come under very intense scrutiny as a result of the terrorist activities of the *Boko Haram* Sect in North East Nigeria. These terrorist activities have unfortunately claimed the lives of over 20,000 Nigerians since 2009 and led to the displacement of over 2.4 Million people in the North-East.[1086] The resultant effect of this, is the huge humanitarian crisis and large scale violation and abuse of civil and political rights such as right to life, freedom of movement, liberty, right not to be subjected to torture, cruel,

[1084] I Taylor, 'States Responsibility and Counter-terrorism' (2016) Ethics and Politics Journal, Vol. 9 Issue 1, 2016. Available at: <https://www.tandfonline.com/doi/full/10.3402/egp.v9.32542> Accessed on 8 October 2021.

[1085] Section 14(2), (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

[1086] IOM, 'Nigeria – North East – Displacement Report 41 (June 2022) available at < Human Rights Watch 2018 World Report. Available at < https://displacement.iom.int/reports/nigeria-north-east-displacement-report-41-june-2022?close=true> accessed 23 September 2022.

inhuman and degrading treatment, right to dignity of human person as well as economic, social and cultural rights of the people in North-East Nigeria. In recognition of its duty to provide security and safeguard lives and properties in the face of *Boko Haram* activities, the Terrorism (Prevention) Act 2011 was enacted by the National Assembly and same was subsequently amended in 2013.

This was followed by the declaration of a State of Emergency in Borno, Yobe and Adamawa States on 14th of May, 2013 by former President, Dr. Goodluck Jonathan. All these steps paved way for the launching of the Counter-Terrorism and Counter-Insurgency measures against the *Boko Haram* Sect by the Nigerian Military as a way of pushing back terrorism/insurgency, maintaining security and safeguarding the sovereignty of Nigeria. In addition, in 2014, the government of Goodluck Jonathan implemented the National Counter-Terrorism Strategy (NACTEST). It was slightly revised in 2016 by President Buhari. The strategy established a comprehensive approach to terrorism that aims to address its root causes. It certainly reflects global best practices. The NACTEST is a very elaborate strategy which is the result of a global reflection on terrorism in Nigeria.

It is pertinent to note that countering of terrorism or insurgency on its own could present grave challenges to the protection and promotion of human rights. It therefore follows that in deploying counter-terrorism measures to protect individuals within their jurisdiction, states must as a matter of necessity ensure that the measures taken to combat terrorism must themselves also comply with the states' obligations under International Law, in particular

International Human Rights, International Humanitarian law and Refugee Laws.

Protecting Human Rights in Counter-Terrorism Operations in Nigeria

With the advent of terrorist and insurgency activities in Nigeria by the *Boko Haram* Sect and the subsequent counter-insurgency and counter-terrorism operations of the Nigerian Military, the Office of the Prosecutor of the International Criminal Court in 2013[1087] categorised the conflict between the Military and the *Boko Haram* Sect in the North-East as an armed conflict of non-international character. It is debatable if this categorisation can still stand in view of the fact that the *Boko Haram* Sect has pledged allegiance to other international terrorist groups such as Al-Qaeda and ISIS.[1088] However, International Human Rights and International Humanitarian Laws provide for the protection of persons in armed conflict irrespective of whether the conflict is of international or non-international character. These laws are reflected in a number of treaties, including the four Geneva Conventions and their two Additional Protocols, as well as a number of other international instruments aimed at reducing human suffering in armed conflict. Indeed, Common Article 3 of the Geneva Conventions provides that in the case of armed

[1087]Report on Preliminary Examination Activities 2013", which in the main, focused on conflicts, genocide and crimes against humanity in 10 countries, including Nigeria. Available at< https://www.icc-cpi.int/OTP%20Reports/otp-report-2013.aspx>. Accessed on 13 October 2021.

[1088] BBC News, Nigeria's Boko Haram pledges allegiance to Islamic State. Published on BBC News website on 7th of March, 2015. Available at <https://www.bbc.com/news/world-africa-31784538> Accessed on 13 October 2021.

conflict not of an international character**,** the parties to the conflict shall protect persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and that those placed *'hors de combat'* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.[1089] The Common Article 3 of the Geneva Conventions further prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognised as indispensable by civilised peoples. Furthermore, Article 15 of the UN Vienna Declaration and Programme of Action (1993)[1090] calls upon states and all parties in armed conflicts to strictly observe international humanitarian law, as set forth in the Geneva Conventions of 1949 and other rules and principles of international law, as well as minimum standards for protection of human rights, as laid down in international conventions. It also reaffirms the right of victims to be assisted by humanitarian

[1089] D A Elder, 'The Historical Background of Common Article 3 of the Geneva Conventions' *Case Western Reserve Journal of International Law* (1979) (11) (1) 58 available online at <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1940&context=jil> accessed 13 May 2022

[1090] Adopted at the World Conference on Human Rights on 25th June, 1993 available online at <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action> accessed on 21 September 2022

organisations, as set forth in the Geneva Conventions of 1949 and other relevant instruments of international humanitarian law, and calls for the safe and timely access for such assistance.

In view of the above, it follows that in carrying out counter-terrorism operations, the Nigerian Military must at all times adhere strictly to human rights and humanitarian laws as that is the only way its counter-terrorism operations can be said to be effective. The point has been noted and adopted by the international community as evidenced in the United Nations Global Counter-Terrorism Strategy.[1091] In this strategy, member nations agreed and 'resolved to take measures aimed at addressing the conditions conducive to the spread of terrorism, including lack of rule of law and violations of human rights, and to ensure that any measure taken to counter terrorism comply with their obligations under international law, in particular, human rights law, refugee law and international humanitarian law'.[1092]

Also, in his 2006 report titled: *'Uniting Against Terrorism: Recommendations for a Global Counter-terrorism Strategy'*,[1093] the United Nations Secretary-General described human rights as essential to the fulfilment of all aspects of a counter-terrorism strategy and emphasised that effective counter-terrorism

[1091] UN, Office of Counter-Terrorism, 'UN Global Counter-Terrorism Strategy' available online at <https://www.un.org/counterterrorism/un-global-counter-terrorism-strategy> accessed 13 May 2022
[1092] ibid
[1093] United Nations General Assembly Sixtieth Session, Agenda 46 and 120 – A/60/825 of 27th April, 2006.

measures and the protection of human rights were not conflicting goals, but complementary and mutually reinforcing ones.

Against this backdrop, it is easily discernible that any counter-terrorism operation, strategy or measures that do not conform with the rule of law, human rights law, humanitarian law and refugee law amongst others, or which is riddled with gross human rights violations such as unlawful and prolonged detention without trial, torture, extra-judicial killings, inhumane and degrading treatment, rape and sexual gender based violence, etc. would not only be ineffective in tackling terrorism, but would also gain global condemnation and seriously damage the reputation and relationship of the country in the international community.

It must be pointed out that fighting terrorism and at the same time fulfilling states' obligation of respecting human rights could be complicated in certain circumstances, particularly as the terrorists or insurgents do not have regard or respect for human rights. The carnage and destruction which are regular features of insurgency and terrorist attacks sometimes draw the irk of the Government or Military authorities, prompting them to retaliate in like manner or use excessive force and in the process, human rights of innocent civilians may be violated. A typical example of this is the Baga incident where it was reported that there were high civilian casualties as a result of counter-insurgency operations.[1094]

[1094] M Segun. 'Dispatches: What Really Happened in Baga, Nigeria?' available online at <https://www.hrw.org/news/2015/01/14/dispatches-what-really-happened-baga-nigeria> accessed 14 May 2022

It is therefore important that the counter-insurgency strategy or Rules of Engagement of the Armed Forces are comprehensive enough to anticipate situations like this and provide for the proper Code of Conduct for personnel of the Armed Forces as well as effective redress mechanism for personnel whose conduct may violate human rights in the course of carrying out counter-insurgency operations. Furthermore, there are three fundamental features relating to human rights in the situation of counter-terrorism and human rights law: the outlook of the victims of terrorist attacks; the outlook towards the suspects of terrorism and perpetrators of terrorism; and the outlook of society confronted with terrorism.

Outlook of the Victims of Terrorist Attacks

The view of the victims of terrorist attacks is mainly one of phobia – the irrational fear, prejudice and discrimination against all persons of the same religious and ethnic background as the terrorists and it is usually directed at a real or imagined threat. This subjects innocent persons to all manner of discrimination and/or even violence, as is the case with *Boko Haram* and their victims having Islamophobia.[1095] There is also a glaring perception of a total failure of government on two angles: failure to provide adequate security for the victims to prevent a possible attack even in situations of prior warning; and failure to provide adequate support to victims or their means of recovery from the trauma of an attack to avoid a situation of irreparable damage

[1095] O P C Wariboko, 'Prospects of Islamophobia in Nigeria and its dangers' (2015) *Journal of religion and human relations*, *7*(1), 42-52, available online at <file:///C:/Users/HP/Downloads/119647-Article%20Text-330045-1-10-20150720.pdf> accessed 19 September 2022

where lives and properties were lost.[1096] There is also the victim's struggle to have their voices heard, their needs supported and their rights upheld.[1097]

Outlook Towards the Suspects of Terrorism and/or Perpetrators of Terrorism and Society Confronted with Terrorism.

For the society and the people confronted with terrorism, the outlook is one of great feeling of insecurity and failure of the authorities to prioritise prosecution of those responsible for the terrorist atrocities.[1098] This feeling is strengthened by the recent 5 July 2022 Kuje Prison attack by *Boko Haram* terrorists and the release of about 64 Boko Haram suspects in prison custody despite the presence of 65 well-armed operatives according to the Minister of Interior, Rauf Aregbesola[1099] and despite the fact that the Department of State Services (DSS) shared 44 intelligence reports before Kuje Prison attack, according to the Deputy Speaker of the House of Representatives, Idris Wase.[1100]

[1096] United Nations Office on Drugs and Crime (UNODC) Terrorism Prevention: Victims of Terrorism, available online at <https://www.unodc.org/unodc/en/terrorism/expertise/victims-of-terrorism.html >accessed 19 September 2022

[1097] The United Nations Office of Counter-Terrorism (UNOCT) International Day of Remembrance of and Tribute to the Victims of Terrorism, available online at <https://www.un.org/en/observances/terrorism-victims-day > accessed 20 September 2022

[1098] Human Rights Watch, 'Nigeria: Flawed Trials of Boko Haram Suspects, available online at <https://www.hrw.org/news/2018/09/17/nigeria-flawed-trials-boko-haram-suspects> accessed 20 September 2022

[1099] Vanguard Newspapers online, September 6, 2022, available online at <https://www.vanguardngr.com/2022/09/kuje-prison-attack-65-well-armed-operativesa-were-on-guard-aregbesola-tells-reps/amp/>accessed 20 September 2022

[1100]<https://www.vanguardngr.com/2022/07/dss-shared-44-intelligence-reports-before-kuje-prison-attack-deputy-speaker/amp/> accessed 20 September 2022

Derogation from Human Rights in Counter-Terrorism Operations

While carrying out counter-terrorism measures, states have the obligation to promote and protect human rights. However, it is a notorious fact that when a state faces threats to its national security as a result of terrorist activities or insurgency, it tends to adopt measures that may lead to the usurpation of civil and political liberties which the state had previously pledged to uphold.[1101] Such threats unfortunately provide the Governments with the excuse to enhance their powers, dismantle democratic institutions, and trample on human rights of civilians in the conflict zones. Interestingly, international human rights treaties such as the International Covenant on Civil and Political Rights contain provisos that enable the Government to derogate from certain rights especially during emergencies.[1102]

The Nigerian Constitution[1103] also contains these provisos which empower the Government to restrict or derogate the enjoyment of certain fundamental human rights in the interest of public safety,

[1101] E M Hafner-Burton and others, 'Emergency and Escape: Explaining Derogations from Human Rights Treaties' (2011). Available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2947&context=faculty_scholarship> accessed on 10 October 2018

[1102] Article 4 (1) of the International Covenant on Civil and Political provides: 'In the time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the state parties to the present covenant may take measures derogating from their obligations under the present covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. However, Art. 4 also places restrictions on the occasions and the rights that derogation is allowed. See, Art, 4 (2), 11, 15, 16 and 18.

[1103] See section 45

public morality, public order or public health. The powers of states to derogate certain human rights in the interest of public safety and order especially during emergencies or as a result of acts that threaten the sovereignty of a Nation has been judicially interpreted as being legitimate. In the case of *R v. Secretary of State for Home Affairs,*[1104] the erudite Lord Denning held that: 'when the state is in danger, our cherished freedoms and even the rules of natural justice, have to take second place.' This principle enunciated by Lord Denning has also received judicial blessing from the Supreme Court of Nigeria in the case of: *Alhaji Mujahid Dokubo - Asari v. Federal Republic of Nigeria*[1105] wherein the Supreme Court affirmed the decision of the Court of Appeal which held that:

> Where National Security is threatened or there is the real likelihood of it being threatened, human rights or the individual right of those responsible take second place. Human rights or individual rights must be suspended until the National Security can be protected or well taken care of. This is not anything new. The corporate existence of Nigeria as a united, harmonious, indivisible and indissoluble sovereign nation is certainly greater than any citizen's liberty or right. Once the security of this nation is in jeopardy and it survives in pieces

[1104] Reported in (1977) IWLR 766

[1105] Delivered by the Supreme Court of Nigeria on the 8th of June, 2007 in Suit No. SC/208/2006. Available at <http://www.nigeria-law.org/Alhaji%20Mujahid%20DokuboAsari%20v%20Federal%20Republic%20of%20Nigeria.htm> Accessed on 10 October 2021.

> rather than in peace, the individual's liberty or right may not even exist.

Some scholars have argued that the above referenced provisos and principles are antithetical to democratic norms and may be subject to abuse by security agencies, while carrying out counter-insurgency measures, thereby paving the way for systematic violation of human rights. For instance, Mosabala in an Article[1106] stated that:

> Despite being a signatory to these instruments, there are varying worrisome human rights violations in Nigeria. In recent years, the measures adopted by states to counter terrorism have in themselves often posed a serious challenge to human rights and rule of law. This is so because even the Constitution which was supposed to protect, has appeared to some degree, perpetuating human rights violations due to the clauses that permit derogation of rights.
>
> An arduous impediment to enjoyment of human rights especially under the state of emergency as the case in some parts of the northeast Nigeria can be traced to some provisions in the Nigerian Constitution. Section 41(1) of the Constitution provides a foundation for justifying invalidation of fundamental human rights. With such a foundation prepared, Section 45 of Nigerian's Constitution of

[1106] T D Mosabala, 'States Response to Terrorism and its Implications for Human Rights' (2016) Global Journal of Human-Social Science Vol. 16 Issue 6 Version 10.

> 1999 indicates a provision for derogation clause. These provisions are worrisome as they somewhat rather than promote, perpetuate human rights violation as they may be subject to abuse. Worrying also is their availability to the character of the Nigeria security agencies, the police and the army in particular.

However, within any circumstances, states should be able to strike a balance between upholding the protection of human rights of its citizens and the maintenance of the governmental order that is very important to guarantee the protection of human rights.[1107] This position was acknowledged in the UN Fact Sheet 32 where it was stated that:

> States can effectively meet their obligations under international law by using the flexibilities built into the international human rights law framework. Human rights law allows for limitations on certain rights and, in a very limited set of exceptional circumstances, for derogations from certain human rights provisions. These restrictions are specifically conceived to provide states with the necessary flexibility to deal with exceptional circumstances, while at the same time complying with their obligations under international human rights law.

[1107] E Richardson and C Devine, 'Emergencies End Eventually: How to Better Analyse Human Rights Restrictions Sparked by the Covid–19 Pandemic Under International Covenant on Civil and Political Rights' (2021) Michigan Journal of International Law Vol 42 Issue 1 110 available online at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2103&context=mjil> accessed 20 June 2022.

Flowing from above, it must be noted that any counter-terrorism operation or strategy that seeks to restrict or derogate human rights must satisfy the pre-conditions as prescribed by law. These conditions which must be met conjunctively include:

a. that such restrictions must be backed by a written law in existence;
b. that the restriction be done for the purpose of safeguarding public safety, public order, public health, etc., and
c. that the restriction must be reasonable in a democratic society.[1108]

Any restriction not in accordance with these conditions will be adjudged unlawful. Anything short of the above standard would only amount to flagrant violation of human rights[1109].

Human Rights Challenges in the Context of Counter-Terrorism Operations in Nigeria

This segment addresses some specific and emerging human rights concerns and how the Nigerian Military and other law enforcement agencies can balance their Constitutional duty of securing the

[1108] Human Rights Committee, general comment No. 31, para. 6, and Siracusa Principles on the limitation and derogation of provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex). See also section 45 of the 1999 Constitution of Nigeria (as amended)

[1109]Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights–Human rights: a uniting framework" (E/CN.4/2002/18, annex, paras. 3 (a) and 4 (a)); Council of Europe, *Guidelines on human rights and the fight against terrorism* (2002), Guideline III; and Inter-American Commission on Human Rights, "Report on terrorism and human rights" (OEA/Ser. L/V/II.116, Doc. 5 rev. 1 corr., para. 53).

nation in the face of terrorism and insurgency; while also ensuring that Nigeria fulfils her obligation of protecting and guaranteeing human rights. Some of the emerging human rights concerns will now be considered below:

Right to Life

The protection of the Right to life is provided in major Human Rights Treaties including the Universal Declaration of Human Rights, African Charter on Human and Peoples Rights, International Covenant on Civil and Political Rights amongst others. The Nigerian Constitution under section 33 provides that the right to life cannot be intentionally taken away by anybody or authority except in pursuance to an execution of a court sentence in which that person has been found guilty. The section under reference further provide instances where the right to life can be derogated to include where the life is taken in the defence of any person or property from unlawful violence; or in order to effect a lawful arrest or prevent the escape of persons from lawful custody; or for the purpose of suppressing a riot or insurrection. In all of these instances, the constitutional provisions make it clear that the circumstances that could lead to the derogation of the right to life must in all cases be reasonably permitted by law and use of force must in all circumstances, be proportional to the alleged threat. Hence, Nigerian troops operations should guide against any deliberate or targeted policy aimed at the use of non-proportionate force to perpetrate wanton killing of civilians or elimination of suspected insurgents as an alternative to arresting, prosecuting and bringing them to justice without a sentence of execution by a court of competent jurisdiction. Thus, the arbitrary killing of unarmed civilians or elimination of terrorists in Nigeria in circumstances that

are unlawful should not for any reason be used as a deterrent or punishment for persons who engage in acts of terrorism or who conceal information about insurgency or terrorist activities as this goes against accepted human rights standards and norms.[1110]

A clear case that readily comes to mind where it would seem that arbitrary killing was used as a form of punishment or deterrent is the extra-judicial killing of Yusuf Mohammed,[1111] the founder of the *Boko Haram* Sect by the Nigerian Police while he was in custody as well as the killing of 8 unarmed squatters by the officials of the Department of Security Services (DSS) in 2013 at an uncompleted building in Apo, Abuja on the allegation that they were suspected *Boko Haram* members[1112]. There are also other reported cases of extra-judicial killings and high civilian casualties during counter-insurgency operations as reported by the National Human Rights Commission[1113] and other organisations.

In consequence, concerted efforts must be made by the Military authorities as part of its counter-terrorism strategy to properly train their men and officers on the Rules of Engagement as well as on several and different scenarios that they may encounter in the

[1110] United Nations Report of the Human Rights Committee, General Assembly Official Records, Fifty-Eight Session, Supplement No. A/58/40 (Vol. 1), Para 85 (15). Accessed on 11/10/2018

[1111]Ja'afar Ibrahim, 'Extrajudicial Execution of Muhammad Yusuf and Legality of Boko Haram.' available at<http://www.gamji.com/article8000/NEWS8754.htm> Accessed on 13 October 2021.

[1112] Report by African Television Authority titled: APO 8: NHRC Visits Scene of the Killings. Available at <http://www.aitonline.tv/post-apo_8__nhrc_visits_scene_of_the_killings>. Accessed on 11/10/18.

[1113]Nigerian National Human Rights Commission, 'The Baga Incident and the Situation in the North-East Nigeria: An Interim Assessment and Report, June 2013.

course of engaging the *Boko Haram* Sect as to prevent arbitrariness and abuse of power that may lead to the violation of the right to life. The strategy must also include clear policies for redress and accountability measures on the part of the military officers whose actions may run contrary to the Rules of Engagement, Human Rights and Humanitarian Law.

Right Against Torture, Cruel, Inhuman and Degrading Treatment

The use of torture and other cruel, inhuman or degrading treatment or punishment in eliciting information from terrorists or as a form of punishment for the carnage and destruction they may have caused is prohibited under international law. The Anti-Torture Act 2017 also prohibits any use of torture by law enforcement agents in their operations.[1114]

There is no justification for indulging in acts of torture, cruel or inhuman treatment against *Boko Haram* terrorists or civilians suspected to be members or connected to members of the *Boko Haram* Sect as a means of eliciting information, a confession to the commission of the crime or for sheer mischief and punishment. It does not matter that a state is under imminent danger or that a particular terrorist poses grave security risk. This position was re-echoed by the International Criminal Tribunal for the former Yugoslavia in the case of *Prosecutor v. Furundžija*[1115] wherein it was held that:

[1114] Section 3

[1115]Case No IT-95-17/1-T, (1999) 38 ILM 317, (2002) 21 ILR 213, [1998] ICTY 3, ICL 17 (ICTY 1998), 10th December 1998, United Nations Security Council [UNSC]; International Criminal Tribunal for the former Yugoslavia [ICTY]; Trial Chamber II [ICTY] at paragraphs 144 and 145. Available at

> the prohibition of torture laid down in human rights treaties enshrines an absolute right, which can never be derogated from, not even in time of emergency (on this ground the prohibition also applies to situations of armed conflicts). This is linked to the fact that the prohibition on torture is a peremptory norm or *jus cogens*. This prohibition is so extensive that States are even barred by international law from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. These treaty provisions impose upon States the obligation to prohibit and punish torture, as well as to refrain from engaging in torture through their officials.

Also, the Human Rights Committee[1116] while commenting on the need to eschew torture held that:

> The State party should recognise the absolute nature of the prohibition of torture, cruel, inhuman or degrading treatment, which in no circumstances can be derogated from. Such treatments can never be justified on the basis of a balance to be found

<http://opil.ouplaw.com/view/10.1093/law:icl/17icty98.case.1/law-icl-17icty98> Accessed on 12/10/2018

[1116] United Nations: Report of the Human Rights Committee. General Assembly Official Records, Sixtieth Session
Supplement No. 40 (A/61/40) . 76(15).

> between society's interest and the individual's rights under article 7 of the Covenant. No person, without any exception, even those suspected of presenting a danger to national security or the safety of any person, and even during a state of emergency, may be deported to a country where he/she runs the risk of being subjected to torture or cruel, inhuman or degrading treatment.

The Nigerian Military and other law enforcement agencies involved in the counter-terrorism operations in the North East have been accused[1117] of indulging in acts of torture, cruel, inhuman and degrading treatment on *Boko Haram* detainees as well as on girls and women in the internally displaced camps. These acts of inhuman and degrading treatment are in the form of starvation and dehydration of *Boko Haram* detainees in overcrowded cells which often times lead to death[1118] and sex for food overtures for women and girls in internally displaced camps.[1119] Although these allegations have been denied by the Military[1120] and remain largely

[1117]Human Rights Council: Report of the United Nations High Commissioner for Human Rights on Violations and Abuses committed by Boko Haram and the Impact on Human Rights in the affected Countries. Thirteenth Session, Agenda Item 2, Advanced Unedited Version, 29th September, 2015 (A/HRC/30/67). See also: Amnesty International, Nigeria: Starving Women Raped by Soldiers and Militia who claim to be rescuing them. Available at<https://www.amnesty.org/en/latest/news/2018/05/nigeria-starving-women-raped-by-soldiers-and-militia-who-claim-to-be-rescuing-them/> Accessed on 12 October 2021.

[1118]ibid

[1119] ibid

[1120]Thisday Newspaper, 'Borno IDPs Officials, Military Deny Amnesty International Rape Allegation'. Reported on 2 June 2018. Available at <https://www.thisdaylive.com/index.php/2018/06/02/borno-idps-officials-military-deny-amnesty-international-rape-allegation/> Accessed on 12 October 2021.

unsubstantiated, it is important that the counter-terrorism strategy of the Military must incorporate a mechanism that would ensure timeous and proper investigation into these kind of allegations with a view to punishing erring officials who may be culpable for such infractions, if any. That way the Military would not only be seen as protecting and safeguarding human rights in its counter-insurgency and counter-terrorism operations, but also seen as an entity willing to enforce human rights and prevent re-occurrence of violations.

Right to Liberty and Prolonged Detention Without Trial

Section 35 of the 1999 Constitution of Nigeria guarantees the right to personal liberty and provides that every person shall be entitled to his personal liberty. However, the section also provides for the circumstances under which this right may be deprived an individual. Some of the circumstances include:

(a) Execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

(b) By reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

(c) 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.

Section 35(4) of the 1999 Constitution also provides that any person who is arrested upon reasonable suspicion of his having committed a criminal offence or to prevent his committing a criminal offence shall be brought before a court of law within a reasonable time (i.e. within 24 hours if there is a court within a radius of 48 kilometres and if not within a period of two days); and if he is not tried within a period of two or three months, he shall be released either unconditionally or upon such conditions as are necessary to ensure that he appears for trial at a later date.

In the context of persons arrested in connection with acts of terrorism in Nigeria, Section 27(1) of the Terrorism (Prevention) (Amendment) Act, 2013 provides that:

> The court may, pursuant to an ex-parte application, grant an order for the detention of a suspect under this Act for a period not exceeding 90 days' subject to renewal for a similar period until the conclusion of the investigation and prosecution of the matter that led to the arrest and detention is dispensed with.

The implication of the above provisions is that a person suspected to be a member of the *Boko Haram* Sect or suspected to have committed any offence related to terrorism as enshrined in the Terrorism Prevention Amendment Act cannot be detained beyond the constitutional period permitted under section 35 of the Constitution without a valid order of court. The question that readily comes to mind is how often does the Military and other law enforcement agencies comply with the above provisions of the law relating to the right to personal liberty and access to justice? It is a notorious fact that the counter-terrorism efforts of the military and other law enforcement agencies in the North East of Nigeria

has led to the capture, arrest and detention of several suspects allegedly for participating in terrorism and other related violence in the North-East by security agencies. Most of the suspects have been detained for years at several facilities across the country without court trial to serve the end of justice. It was only in 2017, when the mass trials of these suspects began.[1121] The observation of these trials by the National Human Rights Commission and other Civil Society Organisations revealed that although the trials were fair, most of the suspects had been in pre-trial detention for several years[1122] in violation of their right to liberty and without valid court orders as provided under section 27 of the Terrorism Prevention Amendment Act. It has however, been acknowledged that as part of its efforts to counter terrorism, a state may lawfully detain persons suspected of terrorist activities, as with any other crime. But, if a measure involves the deprivation of an individual's liberty, strict compliance with human rights norms as enshrined in extant legislations and due process is essential. 'Any such measures must, at the very least, provide for judicial scrutiny and the ability of detained persons to have the lawfulness of their detention determined by a judicial authority.'[1123] This point was duly noted in the Report of the Special Rapporteur on the

[1121] Reuters World News, 'Nigeria set to start mass trial of Boko Haram suspects behind closed doors'. Reported on 9th October, 2017. Available at <https://www.reuters.com/article/us-nigeria-security-trial/nigeria-set-to-start-mass-trial-of-boko-haram-suspects-behind-closed-doors-idUSKBN1CE1X7> Accessed on 13 October 2021.

[1122]Punch Newspaper Editorial, Trial of Boko Haram suspects: Lessons for judiciary' Available at <https://punchng.com/trial-of-boko-haram-suspects-lessons-for-judiciary/> Accessed 13 October 2021.

[1123] UN Fact Sheet 32

promotion and protection of human rights and fundamental freedoms while countering terrorism[1124] which provides thus:

> Giving powers of arrest, detention and interrogation to intelligence agencies is not as such a violation of international law, provided these agencies comply with all relevant human rights standards regarding arrest and detention and with domestic constitutional and other provisions prescribed for ordinary law enforcement agencies.

Thus, to ensure that the detention of persons connected with terrorism and insurgency in Nigeria comply with human rights laws as well as extant legislations, it is pertinent that part of the counter-insurgency and counter-terrorism strategies should involve a strategic and coordinated partnership between the military, other law enforcement agencies and the Office of the Attorney General to ensure that court orders are obtained where there is need to detain persons arrested in connection with terrorism beyond the constitutionally permitted period in order to aid the conclusion of investigation.

Other Relevant Rights

There are other relevant rights to be considered in relation to counter-terrorism measures. These include right to fair trial, the right to privacy, right to freedom of association and freedom from discrimination.

[1124]M Scheinin, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. Advanced Edited Version of the Human Rights Council, Tenth Session, Agenda Item 3, 4th February, 2009 - (A/HRC/10/3), para. 37.

Right to Fair Trial in Relation to Counter-Terrorism

In relation to counter-terrorism, the right to fair trial is critical for ensuring that anti-terrorism measures are effective and respect the rule of law. For instance, under the Basic Human Rights Reference and Guidelines Concerning the Right to Fair Trial and Due Process in the Context of Countering Terrorism requires, Guideline 1 provides for all individuals to have effective access to justice, regardless of nationality, statelessness, or other status. Guideline 12 requires the provision of effective remedies to the person whose rights to fair trial have been violated. It further provides for compensation in cases where a conviction has resulted from a miscarriage of justice.[1125]

Right to Privacy in Relation to Counter-Terrorism

In relation to right to privacy, counter-terrorism activities necessitate the employment of privacy-investigative techniques and intelligence gathering measures that are in conformity with international standards. In 2013, the United Nations General Assembly unanimously adopted Resolution 68/167 entitled *Right to Privacy in the Digital Age.* The preamble of the resolution specifies that 'unlawful or arbitrary surveillance and/or interception of communications, as well as unlawful or arbitrary collection of personal data, as highly intrusive acts, violate the rights to privacy and freedom of expression and may contradict the tenets of a democratic society'. It further notes 'that while concerns about

[1125] CTITF 'Basic Human Rights Reference Guide: Right to A Fair Trial and Due Process in the Context of Countering Terrorism', (October 2014) CTITF Publication Series, available online at< https://www.ohchr.org/sites/default/files/newyork/Documents/FairTrial.pdf> accessed 20 September 2022.

public security may justify the gathering and protection of certain sensitive information' States must ensure that they fully comply with their existing obligations under international human rights law in the context of countering terrorism.[1126]

Right to Freedom of Association in Relation to Counter-Terrorism

Freedom of association is protected by Article 22(1) of the International Covenant on Civil and Political Rights (ICCPR), which provides that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. The Right to Freedom of Association in relation to counter-terrorism enjoins states to ensure that counter-terrorism activities align with the right to freedom of association as protected under or in conformity with the law. Therefore, any form of counter-terrorism legislation or restriction of an otherwise legitimate activity(ties) regarding freedom of association such as through the restriction or prohibition of the formation or registration of associations, is viewed as an excuse to silence critical or diverse voices and is therefore a violation of the right.[1127]

[1126] United Nations Office on Drugs and Crime (UNODC), E4J University Module Series: Counter Terrorism, 'Module 12: Privacy, Investigative Techniques and Intelligence Gathering,' <https://www.unodc.org/e4j/zh/terrorism/module12/key-issues/surveillances-and-interception.html> accessed 20 September 2022.

[1127] United Nations Office on Drugs and Crime (UNODC), E4J University Module Series: Counter Terrorism, 'Module 13: Non-Discrimination and Fundamental Freedoms,' available online at <https://www.unodc.org/e4j/en/terrorism/module13/key-issues/freedom-of-association.html> accessed 20 September 2022

Right to Freedom from Discrimination in Relation to Counter-Terrorism

Just like freedom of association, both the ICCPR and the UNODC document made provisions guaranteeing the right to freedom from discrimination. The ICCPR under Article 2, provides that:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In addition, Article 26, ICCPR provides that 'all persons are equal before the law and are entitled without any discrimination to the equal protection of the law'.[1128] In relation to counter-terrorism, the question of the right to freedom from discrimination is raised particularly during profiling. Profiling has been defined as the systematic association of sets of physical, behavioural or psychological characteristics with particular offences and their use as a basis for making law-enforcement decisions.'[1129] Thus, any use of law enforcement powers in counter-terrorism efforts, e.g., where persons are considered 'suspect' for the sole reason of belonging to certain ethnic or religious communities, is likely to violate human rights on grounds of discrimination. In addition, it risks having a

[1128] Ibid, available online at < https://www.unodc.org/e4j/en/terrorism/module13/key-issues/principle-of-non-discrimination.html> accessed 20 September 2022

[1129] Ibid, General Assembly Report 4/26, para.33.

significant negative impact on the prevention and investigation of terrorist offences in the sense that it stigmatises an entire group as a suspect community and thereby alienates them from the law enforcement process as mistrust is built between the police and the community (ties) which ultimately hampers the gathering of intelligence towards counter-terrorism law enforcement.[1130]

Conclusion

The activities of the *Boko Haram* Sect in North East Nigeria has no doubt caused tremendous damage to our country and has had devastating effect on the enjoyment of fundamental human rights. In pushing back terrorism and insurgency activities through counter-terrorism measures, the Military and other law enforcement agencies must strive and ensure that the obligation to protect the country against terrorism must be strategically balanced with the obligation of Nigeria to respect human rights and uphold principles of rule of law. As stated by late Kofi Annan, effective counter-terrorism and counter-insurgency measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing ones. Accordingly, the defence of human rights is essential and must together with the need to provide security be the central focus of all aspects of our counter-terrorism and counter-insurgency strategy.

It is therefore axiomatic that the respect for human rights is an integral aspect of the counter-terrorism strategy of Nigeria. Accordingly, state actors must ensure that all the human rights recognised under the Constitution and those recognised by the

[1130] Ibid

international and regional instruments are not restricted or derogated from during counter-insurgency operations. Security and Counter Terrorism Measures by the State as well as the Protection of Human Rights in Counter-insurgency Operations should be in a manner suggesting that both the victims and the suspects are guaranteed their rights to fair hearing, privacy, association and the rights against discrimination.

Recommendations

In view of the above discourse, counter-terrorism strategy of Nigeria needs to prioritise the protection of civilian population against flagrant violation of human rights by the *Boko Haram* Sect as well as address the economic, social and cultural rights of victims of terrorism. Second, it is important for the relevant counter-terrorism law enforcement agent to prevent torture, rape, sexual violence, arbitrary arrest, extra-judicial killings, unlawful arrest and detention in contravention of international human obligations. Third, effective performance of the operation requires increasing the capacity of law enforcement agents to conduct prompt, thorough and technologically driven investigations and accelerate judicial trial processes. Fourth, it is suggested to incorporate and strengthen human rights monitoring mechanisms counter-terrorism operations in collaboration with National Human Rights Commission and other relevant stakeholders.

Also, there is need to provide continual training for security forces and Civilian Joint Task Forces in order to mainstream human rights norms into counter-terrorism operations and Rules of Engagement of law enforcement agencies.

Overall, the counter-terrorism operation must develop strategic and coordinated partnership between the military, other law enforcement agencies and the Office of the Attorney General to ensure that court orders are obtained where there is need to detain persons arrested in connection with terrorism beyond the constitutional provision in order to aid the conclusion of investigation. Finally, it must also develop effective accountability and complaint treatment mechanism for law enforcement agents to serve as deterrent for arbitrary abuse of power and recklessness of officials while carrying out counter-terrorism operations.

SOCIO-CULTURAL RIGHTS OF WOMEN AND WIDOWHOOD RITES IN NIGERIA: A CALL FOR PROPER HUMAN RIGHTS EDUCATION

Emily I. Alemika[*] and Kubans Dandaso[**]

Abstract

This paper examines the socio-cultural rights of women and widowhood rites in some parts of Nigeria and discusses how the widows can be educated to know their human rights. Nigeria has the highest population in Africa, the population being 217,639,871, as of Tuesday, October 4, 2022, based on Worldometer elaboration of the latest United Nations data. Women worldwide including Nigerian women, continuously suffer one form of discrimination or the other, chiefly, the rural dwellers that are deep-rooted in obnoxious socio-cultural and religious practices. Even though Nigeria is a signatory to CEDAW and scores of several other international provisions on human rights, Conventions and Covenants and regional provisions, and has enacted a Violence Against Persons Prohibition law, it is the argument of the paper that the country

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is yet to implement provisions of international and domestic laws that directly address these obnoxious socio-cultural practices, especially widowhood rites. It is the finding of the paper that several factors militate against effective protection of the rights of women, widows inclusive. Thus, they are subjected to some unpleasant rites such as shaving of hair, wearing of mourning clothes, sitting on the floor, etc. It is further the finding of the paper that the customary practices are barbaric, atrocious, backward, immoral and abusive of women's human rights. The paper concludes among others that widowhood practices amount to discriminatory, inhuman and degrading acts, with deep-rooted negative psychological and emotional effects on widows. The paper equally recommends that there is need to overhaul the Nigerian legal and social institutions, hence, the call for the enactment of a Widow Protection Act that will ban obnoxious widowhood rites with stiffer penalties in order to comply with International and Regional Conventions and Treaties ratified by Nigeria.

Keywords: *Socio-cultural Rights, Widowhood, Widowhood Rites, Human Rights Education.*

Introduction

Tradition is a way of life. In Africa, traditions are strong and deep-rooted in what people do or say. Africans engage in numerous tradition or cultural practices, some of which are tied to birth, puberty, marriage, fertility or death to mention but a few. Even though some of these practices are harmful, they continue to be practiced. This is due to the fact that these traditional practices are deemed as 'our forefathers'' heritage, hence, their continuity. Some of these harmful traditions and practices include

widowhood rites, female genital mutilation, preference of male child above girl child, and so on. Sadly, most of these beliefs and customs promote inferior status of women among male domination. The focus of this paper is on widowhood practices (which are not only harmful but also violate the rights of women); and the important role of Human Rights Education for the total eradication of these harmful practices.

In view of this, the paper is divided into various parts. Part one is introduction. Part two deals with the conceptual clarifications while part three discusses human rights principles and the protection of women's rights. Part four concerns widowhood practices and the plight of women. Part five examines the widowhood rites in some Nigerian communities, i.e. Yoruba and Igbo land. Part six evaluates the legal framework for human rights and widowhood practices in Nigeria. Part seven is the potential role of Human Rights Education while Part 8 is the recommendation and part 9 concludes the article.

Conceptual Clarifications

Central to the understanding of this paper is the understanding of some key concepts such as widowhood, widowhood practices and human rights education.

a. **Widowhood/Widow**

The Prohibition of Infringement of Widows' and Widowers' Fundamental Rights Law of Enugu State,[1131] defines widow to 'mean any female person married under native law and custom, or under the Marriage Act or any other law

[1131] 2001

recognised in Nigeria, whose husband has died and has not remarried'. In similar vein, widow has been defined to 'mean a woman who has lost her husband by death and not remarried'.[1132]

The widow bears the responsibilities and challenges of the immediate family which was formerly borne by herself and the husband, all alone. Widowhood entails the observance of certain rites by the woman.[1133] The woman becomes a widow when the man with whom she had planned her life is no longer available to share and shape the hopes and the dreams of years ahead. She becomes helpless as she commences a lone journey full of uncertainty.[1134] She is seen as a liability, powerless, voiceless and vulnerable. [1135] According to Boulding,[1136] a widow is like a melancholy bird that sits wailing all night, increasing her distress without redeeming features. She can also be seen as a woman who is done with her wedding affirmation of "till death do us path". Hence, widowhood can be described as a bye-product of every enduring marriage which ends with a spousal (husband) bereavement.[1137] The term widowhood is the state of being a widow. It involves a physical break in the family relationship,

[1132] The Widows (Prohibition) Law, 2003 of Imo State.
[1133] Nwogu, M.I.O., (2015) The Legal Anatomy of Cultural Widowhood Practices in South Eastern Nigeria: The Need for A Panacea, *Global Journal of Politics and Law Research*, Vol. 3 (1) p. 80
[1134] Oreh, C.I. Igbo Cultural Womanhood Practices: Reflections on Inadvertent Weapons of Retrogression in Community Development, being an 80th Inaugural Lecture delivered at the University of Nigeria Nsukka, available at <https://www.unn.edu.ng> accessed 4 October 2022
[1135] Ibid
[1136] Boulding, R (2009) *Women and Stress,* New York, Haper
[1137] Oreh, C.I., op. cit

and it is ranked by widows as the most distressing and devastating event in life.[1138] According to Oreh,[1139] the transition from wifehood to widowhood happens so suddenly and swiftly that in one minute, a woman who is a wife transits to a widow. In the same vein, a widow is also a woman who has been deprived of her legal husband as a result of death. The legality here means that a woman in an illegal union or relationship with a man cannot be classified as a widow after the death of the man with whom she was living. However, this depends largely on the belief and tradition of the community in focus.[1140] This is because in some areas a woman whose bride price has not been fully paid or paid at all still goes through the widowhood rite, especially when she been seen living with the man for months or years.[1141]

b. **Widowhood Rites**

In every African society, any bereaved spouse has to undergo rites upon bereavement, although there are some cultural variations in the form they take. Widowhood rites are described as a social obligation for women, associated with given institutionalised religio-cultural norms.[1142] It is also a

[1138] Ibid
[1139] Oreh, C.I. op cit
[1140] Ikpeme, N.J., (2020) Widowhood Rites and Social Stigma: Examining the Process of Re-integration and Attitude of Community Members, *International Journal of Social Sciences and Humanities Reviews*, Vol 10 (3), 274 at 275
[1141] Ibid
[1142] Afolayan, G.E. (2020) Widowhood Practices and the Rights of Women: The Case of South-Western Nigeria, available at <https://www.researchgate.net/publication/280312514> accessed on 4 October 2022

period "when a widow is expected to be grieving or mourning the loss of a beloved one, precisely a husband".[1143]

Nwoga[1144] opines that widowhood rites are certain socio-cultural practices referred to as:

> Sets of expectation as to the actions and behaviour by the widow, actions by others towards the widow and rituals performed by or on behalf of the widow from the time of death of her husband. Later phase of these practices may include issues of inheritance, the state of the widow and marriage or remarriage of the widow.

Oreh[1145] expresses that widowhood practices can be seen as socio-cultural practices encompassing burial rites, mourning rituals, inheritance rights of the widow, her expected behaviour towards others and other peoples' behaviour towards her arising from the death of her husband. Agumagu[1146] observes that a widower has no traditionally laid down laws governing his mourning rites. This period which is supposed to be a quiet and private time as the widow strives to accept her loss, has been turned into a period of agony, anxiety, pain and insecurity for the widow in Igbo land. This is because it is usually a period the widow is subjected to

[1143] Samuel, G.C.E (2011) Emergent Issues on Widowhood Practices in Igbo Culture: Between the Video Screen and Reality, *Unizik Journal of Arts and Humanities*, pp. 184-193

[1144] Nwoga, D.I. (1989). Widowhood Practices. The Imo State Experience in Widowhood Practices in Imo State. Proceedings of Better Life Programme for Rural Women Workshop. Owerri: Government Press

[1145] Oreh, C.I., op. cit

[1146] Agumagu, J (2007) The Nigerian Woman and Widowhood Challenges and Constraints. *African Journal of Philosophy and Public Affairs*, Vol. 10 (1)

psychological, social, physical and emotional torture as a result of her bereavement.

Widowhood rite which is an old tradition in some communities in Nigeria is a purification ceremony where a widow is put through stages of rituals for the following reasons:

i. To prove her innocence in the death of her husband
ii. To mourn her husband according to traditional demands
iii. To appease her husband's soul to go to the spirit world in peace
iv. To make the spirit of the dead happy to favour the family and the community he has left behind
v. To maintain the cultural beliefs and practice of the people.[1147]

Aikhiobare[1148] summarises the impact of widowhood rites on the victims by stating that the rites represent the 'social death' of the widow while exposing her to different forms of discrimination, depression and stigma. It erodes her self-esteem and leaves her with an enduring feeling of guilt and shame. Women are therefore a lot more on the receiving end with regards to the complete performance of the rite. The reason for this difference is captured by Chima[1149] and

[1147] Ikpeme N.J. op. Cit. p. 276
[1148] Ibid
[1149] Chima, I.M. (2006) Psychological Rehabilitation of Widows through Counseling and the Use of Therapeutic Strategies, in NAWACS, *Journal of Women Academics* Vol. 1 (1) pp. 206-215

Adeyinka.[1150] They explain that such gender disparity with regards to the rite is due largely to the fact that many Nigerian communities are patrilineal, and there is a strong support for the highly hallowed position of a man. Men are seen as the strong pillars in the society. Women therefore suffer a lot of discrimination in marriage because of their gender.[1151] Under the Igbo customary laws for instance, a woman becomes a widow (otherwise known as *Nwanyi Isi Mkpe* or *Ekpe)* upon the death of her husband.[1152] She is addressed as such because she is a woman without a head; her deceased husband being her head is no more.[1153] This situation is the same in all the patriarchal societies of Nigeria made up of about two hundred million people, about two hundred and fifty ethnic groups, six geopolitical zones, thirty six States and the Federal Capital Territory, Abuja, where women are regarded as chattels that can be inherited and or, as appendages to their husbands.[1154] Consequently, there are in existence some dehumanising cultural practices known as widowhood rites.[1155] Thus, upon the death of a man, his wife is subjected to the rituals of

[1150] Adeyinka, A (2000) Wives of the Graves: A Study of Widowhood Rites and Wife Inheritance in Ondo and Ekiti States, Rights and Widowhood Rites in Nigeria, Ibadan: Polygraphics Venture

[1151] Eweluka, U.U. (2002) Post Colonial Gender Customary Injustice: Widows in African Societies, *Human Rights Quarterly*, May Vol. 14 (2)

[1152] Ihekwuaba, N and Amasiatu, A, (2016) Influence of Widowhood Practices on the Psycho-Social and Physical Health of Widow in Selected States of South-Eastern Nigeria, *European Journal of Research and Reflection in Educational Sciences* Vol. 4, No. 6, p. 49

[1153] Ibid

[1154] Olarewaju, O. (2019) Gender Identity and Justice in Nigeria: An Appraisal of Women in Lagos State, *The Journal of Social Encounters*, Vol. 2 (1) p. 73

[1155] Ajaiyi, A. Et al (2019) Gender Violence and Human Rights: An Evaluation of Widowhood Rites in Nigeria in (ed) Amaoo, E, Covenant University Discourse on Sustainable Development, Cogent Arts and Evaluation of Humanities (

widowhood rites in order to prove her innocence over the death of her husband.[1156]

c. **Human Rights Education**

Human rights education is all learning that develops the knowledge, skills, and values of human rights. The United Nations (UN) has defined Human Rights Education (HRE) as "training, dissemination, and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes which are directed to:

(a) The strengthening of respect for human rights and fundamental freedoms;
(b) The full development of the human personality and the sense of its dignity;
(c) The promotion of understanding, respect, gender equality, and friendship among all nations, indigenous peoples and racial, national, ethnic, and religious and linguistic groups;
(d) The enabling of all persons to participate effectively in a free society;
(e) The furtherance of the activities of the United Nations for the maintenance of peace".[1157]

During this Decade, the UN is urging and supporting all member states to make knowledge about human rights available to everyone through both formal school system and

[1156] Onwuejeogwu, M. (1981) *An Igbo Civilization of Kingdom of Nri Kingdom and Hegemony* (London Publishing Corporation), p. 52
[1157] United Nations Decade for Human Rights Education (1995-2004)

through popular and adult education.[1158] Human rights education declares a commitment to the human rights expressed in the Universal Declaration of Human Rights of 1948. It asserts the responsibility to respect, protect, and promotes the rights of all people and affirms the interdependence of the human family. It also promotes understanding of the complex global forces that create abuses, as well as the ways in which abuses can be abolished and avoided.

Human Rights Principles and the Protection of Women's Rights

Human rights are those rights that belong to every individual, man, woman, boy, girl, infant or elderly because he or she is a human being. The Universal Declaration of Human Rights (UDHR)[1159] provides for socio-economic, cultural, and political rights. These rights apply to all people everywhere. Cranston[1160] further defines human rights as 'certain deeds which should never be done, certain freedom which should never be invaded...something of which, no one may be deprived without a great affront to justice'. Eze[1161] on the other hand, defines human rights as, "Demands or claims which individuals or groups make on society, some of which are protected by law and have become

[1158] Anbu, S, Human Rights Education: Educating One to Know Their Rights, available at <https://www.researchgate.net/publication/340087972 > accessed 5 October 2022

[1159] 1948

[1160] Cranston, M. (1967) Human Rights: Real and Supposed in (ed) Rapheal. *Political Theory and the Rights of Man* (London: Bloomington)

[1161] Eze, O.C. (1984) *Human Rights in Africa: Some Selected Problems* (Lagos: NIALS/Macmillan Nigeria Publishers)
P.5

part *ex lata* while others remain aspirations to be attained in the future. Human rights are based on the principles of respect, dignity and equality.

Human rights are universal and inalienable, indivisible, interdependent and interrelated and therefore apply to women as much as men. The universality comes from the realisation that everyone is born with and possesses the same rights regardless of race, country, colour, gender, religious, cultural or ethnic background, or any circumstance whatsoever, including widows' circumstances. Human rights are inalienable in the sense that they can never be taken away from an individual. Thus, no person may be divested of his or her human rights save under clearly defined legal situations. Indivisibility means, one cannot be denied a right because one decides that it is less important or non-essential. The interdependence of human rights is because all rights, political, civil, social, cultural and economic, are of equal importance and none can be fully enjoyed without others. Human rights are interdependent in that all human rights are part of a complementary framework because each human right entails and depends on other human rights.[1162] Violating one such right affects the exercise of other rights. For example, the right to life presupposes respect for the right to food and good standards of living.

As adumbrated above, women's rights which are also human rights are to be adequately protected. Thus, under UDHR, it provides that 'no one shall be subjected to torture or to cruel,

[1162] Ibid

inhuman or degrading treatment or punishment'.[1163] It provides further that 'every person has the right to freely participate in a community's cultural life'.[1164] Thus, no coercion is permitted to enable women go through obnoxious widowhood rites. Thus, the implication is that no cultural practices should be forced on any individual based on sex. Consequently, the widowhood rites imposed on women in Nigeria amount to an infringement of women's rights. Furthermore, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) establishes international standards of equality between men and women. The Convention which has been ratified by Nigeria since 1986 brings to the fore the commitment of the Nigerian government to eradicate all forms of discrimination against women in civil, social, cultural and political rights. Thus, discrimination against women violates the principles of equality of rights and respect for human dignity.[1165] The Convention provides that education, economic empowerment of women and participation of women in policy shall be on equal footing with the men.[1166] It further recognises the influence of culture and other practices that apportion stereotyped roles to girls and women in contradiction to that of boys and men. It recognises that as discriminatory tradition that should be eliminated from the polity as it maintains in its Article 5 (a).[1167]

At the regional level, the African Charter on Human and People's Rights 1981 addresses human rights in Africa in general, the

[1163] Article 5
[1164] Article 27
[1165] Preamble to CEDAW
[1166] CEDAW, Articles 7, 10 and 14
[1167] Nwogu, M.I.O., op. Cit p. 87

rights of women inclusive. Art. 5 recognises the individual's rights to dignity. It provides that every individual shall have the right to the respect of the dignity inherent in a human to the recognition of his legal status with no distinction or discrimination. Similarly, the African Women's Protocol which is germane to our subject of discourse, defines discrimination to include (any) distinction, exclusion or restriction or differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women regardless of their mental status, of human rights and fundamental freedoms in all spheres of life (Art.2). Art. 3 provides that "every woman shall have the right to respect as a person and to the free development of her personality, while Article 20 (1) (a) specifically enjoys African governments to take appropriate measures in order to ensure that women are not subjected to inhuman, humiliating, and degrading treatment. Human Rights Education is required to make all these provisions more meaningful and effective.

Having identified the copious legislation, conventions, protocols and treaties entered into or adopted by Nigeria, a critical analysis suggests that there is evidence of sufficient provisions especially at the international level to address the plights of women globally, the Nigerian women inclusive. However, even though Nigeria has ratified most of these laws and Conventions, it is yet to properly implement them to alleviate the challenges facing women in the country from actualising the protection and promotion of their rights. Having considered some obnoxious widowhood rites in Nigeria, it can safely be concluded that they all violate the widows' rights to their dignity of human persons,

personal liberty, right to family and peaceful coexistence. Therefore, their rights are infringed upon with impunity in the rural communities especially, the illiterate ones.

Widowhood Rites and the Predicament of Women

Widowhood rites which are associated with burial of a husband are a common practice across African nations. It is a widely held belief among Africans that such rites create peaceful passage for the deceased husband to the great beyond. Sadly, these obnoxious practices, which are only directed at widows, still subsist in this modern civilisation and era. As shown in various research reports,[1168] certain principles have only succeeded in modernising the rites, but have not eradicated them. The harmful practices directly associated with widowhood rites include but are not limited to a wife being the prime suspected killer of her husband; shaving of hair and sleeping with the corpse of the dead husband in a locked room for a period of time. In some cases, widows are compelled to sleep with a High Priest as part of the rituals for cleansing and protections from perceived harms to the widow and her children; wear black/white clothes through the period of mourning; sleep or sit on the floor or mat; refrain from bathing

[1168] Manala, M. 'African traditional widowhood rites and their benefits and/or detrimental effects on widows in a context of African Christianity'. *HTS Teologiese Studies/ Theological Studies* [2015] (71) (3)4; N.V. Pemunta & M. F. Alubafi, 'The social context of widowhood rites and women's human rights in Cameroon' *Cogent Social Sciences* [2016], (2) (1234671) 11; Ayodele, J.O. 'Gender victimization: A study of widowhood practice among the Ogu people of Lagos' *SAGE* [2014]5 ; Grace Reuben-Etuk, *Violence Against Women*. (Lamert Academic Publishing, 2019); Nwogu, M. I. O. 'The legal anatomy of cultural widowhood practices in south eastern Nigeria: The need for a panacea.' *Global Journal of Politics and Law Research*. [2015]. (3) (1) 83; C. Merton, (2016). Widowhood rites in Ghana. *Social Studies* https://www.virtuakollage.com/2016/08/widowhood-rites-in-ghana.html?m=1. Acessed July 2021

for a number of days; put in seclusion and made to swear with husband's corpse, stay indoors; wail or cry loudly in the morning and night. Most often, the widows have no option than to go through the ordeal for fear of threats from the male folk and members of her deceased husband's immediate family. They may also be ostracised from friends, the community and the entire society.

While some of these excesses may have reduced drastically due to education and the influence of Christian religion and perhaps urbanisation, the practices still subsist, especially among the rural dwellings in some parts of Nigeria. Amaka opines that 'Culturally, widowhood burial rites involve varying degrees of 'physical hardship; deprivation, ritual contamination, emotional instability, socio-economic and psychological trauma.' She concludes that 'widowhood practices involve dehumanising rites and rituals which only women are mandated to follow.'[1169] Eweluka[1170] notes that the country law permits and perpetuates the discrimination on the basis of gender, especially in family relation.

Olakitike[1171] expresses that these widowhood practices vary from one place to another and many of them violate the woman's

[1169] Amaka Elochukwu, Widowhood Practices in Nigeria and the Abuse of Women's Rights in Nigeria (29 March 2021) <https://www.rightsofequality.com/widowhood-practices-in-nigeria-and-abuse-of-womens-right/#> accessed 7 July 2022

[1170] Eweluka, U.U. (2002) Post-colonialism, Gender, Customary injustice: Widows in African Societies, *Human Rights Quarterly*, Vol. 24, (2) , 99. 2002

[1171] Olakitike, O. (2018) Cruelty in the Name of Culture, Pulsewire Magazine, <http://www.worldpulse.com/user/1265/journal> accessed Sept 2, 2021

human rights. This is because from time immemorial, societies across the globe have been male dominated and still remain so, especially in Africa. Hence, Nwosu[1172] opines that the disorganising and traumatic experience that accompanies death of husbands tends to be greater on women (widows) than it is on men (widowers). For instance, while the wife immediately becomes the prime suspect for her husband's death, a man who outlives the wife is immediately offered an appropriate substitution for new wife to comfort him upon the loss of his wife. According to Nwanegbo,[1173] 'in some places, the widow will be taken to an isolated place where she will be served food in a broken earthen pot, while her hair will either be left unkempt or be completely shaven off. In other places, ten men will have to lie with the widow after her husband's death and she has to weep loudly very early each morning and call her husband by his name. The mourning period varies from one ethnic group to the other, but normally lasts between seven days to one year as the case may be. With education and Christian beliefs, some of these ordeals have been reduced to the barest minimum. Suffice it to say that the culture has assumed a new dimension, whereby at the demise of husbands, widows are faced with callous practices of relatives-in-law descending on them to dispossess them of tangible property acquired by the couple even before burial.

It is sad to add that often, most of the ordeal is perpetrated by women from the husbands' side, who at best are also potential

[1172] Nwosu, M.I.O. (2008) The Domestic Application of Feminist International Human Rights Treaties in Nigeria. *1 (1) Journal of Women and Minority Rights (JMWR)*. Consortium of Female Lawyers in Academic, pp. 66-80

[1173] Nwanegbo, N.A., (1996) *Challenge of Widowhood*, (Enugu, Sonnie Organisation Ltd) , pp 11-13.

widows or widows that have gone through similar ordeals, all in the name of tradition. This calls for human rights education (HRE) to target both the victims and the perpetrators, especially among the rural dwellers or at grass roots.

Widowhood Rites in Some Nigerian Communities

With over two hundred and fifty ethnic groups in Nigeria, the implication is that there can be as many types and forms of widowhood rites in the country. These practices exist across the nation, but with variations in their forms and extent to which they are applied. Fundamentally, the rationale behind these obnoxious widowhood rites is hinged on the following:

(i) Declaration of the widow's innocence or guilt of possible cause of the death of the husband;
(ii) The rites are proof of love and honour for the late husband by the widow;
(iii) Preparation of the widow for an independent life;
(iv) Severance of the living widow and her children for a proper reintegration into their community.

The list is not exhaustive, as Ogamba confirms, "It is almost a common syndrome that widows are accused of being responsible for their partners' deaths",[1174] hence, widows readily make themselves available not only to establish their innocence, but to prove their love and honour for their deceased husbands. The combination of both love for their husbands and the psychological fear of being held responsible for the death of their husbands makes it more complex to convince widows on the need

[1174] Ogamba, E. (2001) *The Widow's Plights* (Rhyce Kerex Publishers) pp. 15-20.

to resist the age long obnoxious practices. However, we submit that human rights education (HRE) will go a long way, especially, if taken at grassroots level to counter the practices that have caged widows psychologically and emotionally.

As it is practically impossible to address the practices in the over 250 ethnic groups in the country, the focus of this paper is on widowhood rites as practiced in Yoruba and Igbo tribes in Nigeria.

Widowhood Rites Among the Yorubas of South West Nigeria

Communities in Yoruba land are transitional because they are characterised by influences and variations in cultural practices and perceptions. They are bound by economic and social relations such as trade, religion, education, social values and beliefs.[1175] While Yoruba communities can be branded as being receptive to social changes, certain customary practices have survived this transition. The widowhood rite is one of those traditional practices. Various socio-cultural beliefs and practices revolving around widowhood practices have supposedly continued in these modern communities.[1176]

Widowhood practices among the Yoruba ethnic group in South-Western Nigeria, are partly characterised by human greed, superstitious beliefs and religion. A recent finding by Oyeniyi reveals that the intensity of these practices could also be characterised by the social status of the widows. Notwithstanding, these are geared towards the persecution of the widow.[1177]

[1175] Afolayan, G.E. op. Cit p. 30
[1176] Ibid
[1177] Ibid, p. 31

Widowhood rites are observed across different Yoruba communities and across different categories of people of different ethnicities. A widow is expected to express her sorrow over losing her husband by wearing black clothes, weeping and often falling into the ready hands of others surrounding her to prevent her from injuring herself.[1178] She is also expected to go into seclusion seven days during which she is not expected to take a bath or change her clothes. As a sign of severing bonds between her and her late husband, she may be expected to leave her hair unkempt or scrapped with razor blade or shave it off completely, depending on the type of practice prevalent in such community. Similarly, the mourning period varies from one community to another. During the period, she is to sit on the bare floor or a mat at best,[1179] while in some cases, she is expected to eat from broken plates and cook with broken pots. At the end of the mourning period, the final rites are performed on the widow. This include being 'washed' (bathed) in the night after having the final wailing and being subjected to some rituals which are expected to finally put the spirit of her departed spouse to final rest. This is followed by the 'outing' which involves change of dresses and being led to the market to mark the formal end of her mourning. In some Yoruba communities, widows may have to go into the thick forest at night and recite some incantations for the purpose of "cleansing".

[1178] Adeyemo C. Wuraola. (2016) Widowhood and its harmful practices; causes, effects and the possible way out for widows and women folk. World Journal of Educational Research http://dx.doi.org/10.22158/wjer.v3n2p380 accessed July 2021
[1179] Ibid

Arinsola and Ige[1180] also noted that after the wailing period, widows experience several degradations and deprivations. Among the Yorubas, the widow may be accused of killing her husband and therefore can be asked to swear with either the Holy Bible or the Holy Quran. Ogamba also noted that at the end of the mourning period, the widow is inherited by a male relative of her husband, just like the rest of the man's property. The process is called *osupo* in Yoruba language. But this has been affected by modernisation, education, Christianity and high level of exposure of the woman in modern times, as some widows who fall under the above influences now refuse to be inherited like a property by the relative of the dead husband. These obnoxious practices call for proper human rights education (HRE) to expose both the victims and the perpetrators to the fact that human rights instruments both at national and international levels abhor the practices and that violation of these rights attract both international sanctions and legal action.

The effects of these obnoxious practices on the widows are numerous. The health and social consequences stand out conspicuously. Shehu *et al,*[1181] Sossou[1182] and Nzewi[1183] posit that the health consequences of these experiences are stressful and devastating for the widows' well-being. They can even be

[1180] Ibid

[1181] Shehu, R.A., Onasanya, S.A., Uthman, H.A. and Baba, D.A. (2010) Health Implications and Educational Media Strategies of Widowhood Practices in Niger State, Nigeria. *Pakistan Journal of Social Sciences*, 7 (2), pp. 101-105

[1182] Sossou, M.A. (2002). Widowhood Practices in West Africa: The Silent Victims, *International Journal of Social Welfare*, 11 pp. 201-209

[1183] Nzewi, E. (1989) Widowhood Practices: The Imo Experience. Proceedings of the Better Life Programmes for Rural Women Workshop, Owerri Government Publication, Nigeria

deadly, depending on the kinsmen, communal peculiarity and form of the rituals in a particular Yoruba community. Parks[1184] and Adler *et al* [1185]explain that a widow can become isolated and suffer emotional and mental problems due to problems and hardship experienced by her in the course of this ordeal.

Widowhood Rites Among the Igbos of South East of Nigeria

The Igbo people constitute one of the largest ethnic groups in Nigeria. Located between latitude 5 and 7 degrees east, in South-eastern Nigeria, they occupy a continuous stretch of territory of about 25,280 square kilometres. In Nigeria presently, the Igbos inhabit the entire Imo, Abia, Anambra, Enugu and Ebonyi States, while a significant number of them are in Delta and Rivers States. There is a high rate of widowhood among the Igbo, mainly due to large age differences between husbands and wives especially in traditional society and secondly, as a result of the Nigeria-Biafra civil war between 1967 and 1970.

Nwanegbo[1186] makes elaborate submission on widowhood rites as practiced among the Igbo people. He observes that in some parts of Igbo land, when a man dies, the wife will tie a wrapper over her chest without a blouse. She must not talk to anybody and will not take her bath until her husband is buried. After the burial, the *Umada* (duaghters of the man's ancestors) will come to shave her hair, bathe her in an open compound, her only privacy being

[1184] Parkes, C.M. (1995) *Widowhood, A Natural or Cultural Tragedy*. (Enugu: Nueuik Publishers Nigeria Limited)
[1185] Adler, N., Boyee, W. And Chessney, M (1993) Socio-economic Inequality in Health: No Easy Solution. *J.AM Med. Assoc*. 269, 3140-3145
[1186] Nwanegbo, N.A. (1996) *Challenge of Widowhood* (Enugu: Sonnie Organization Ltd.) pp. 11-13

the *Umuada* that surround her. Apparently oblivious of the tragic loss which every widow suffers on the death of her husband, callous in-laws conspire to apply vicious burial rites to dehumanise the embattled widow.[1187] They confront her with questions on how and when the deceased husband died, the circumstances that led to his death, what she did to save him from dying and the depth or warmth of her contact with the late husband's family before his death. Where the explanations are not satisfactory, the widow must drink the water used in bathing the corpse of her husband to prove her innocence. Subsequently, widows are required to provide expensive items like a white goat and two jars of palm wine for purification purposes to the female members of their husbands' lineage who make and implement decisions on every matter concerning widows. Adeyemo[1188] further opines that in the interval, 'the widows are forbidden to touch any object including themselves to avoid defilement'; are given a piece of stick to scratch their bodies, while their food is also cooked in old pots rather than those normally used for cooking for other members of the family. Also, they sleep on old mats placed on wooden planks which are burnt at the end of the mourning period. If a woman dies during the one-year mourning period, she is perceived as being responsible for her husband's death.[1189] There is also the ritual seclusion known as *Ino na nso*. This practice involves the widow being confined in the most stringent manner because she is regarded as defiled and unclean.

[1187] Ibid

[1188] Adeyemo, C. (2016): Widowhood and its harmful practices; causes, effects and the possible way out for widows and women folk. *World Journal of Educational Research* , also available at <http://dx.doi.org/10.22158/wjer.v3n2p380> accessed 5 October 2022

[1189] Ibid

She does not enjoy the company of other free human beings until she is purified. The widow's hair is shaved, symbolically debasing her by removing her feminine glory to make her feel incomplete or less womanly since her duties as a wife are no longer useful. A widow may also be subjected to forceful marriage known as *Nkuchi nwanyi* in which she is remarried to her husband's younger brother or a close relation. Thus, the widow is assured that she will not be disinherited of her husband's property or driven out of her matrimonial home.

What has been described above are some of the most important components of widowhood rituals among some of the Igbo communities of Eastern Nigeria. They are adopted for the purpose of meeting the varied needs of the dead, their living relations and dependants. They arise, from the strong sense of communion between the living and the dead which forms a basic ingredient of the cosmology of Igbo people. This sense of spiritual union makes those in the beyond and on this side of the grave so mutually interdependent that what affects the one either adversely or favourably, also affects the other in precisely the same manner.

On the other side, the use of these rituals must also be understood in the context of protecting the widow, her family and the society as a whole. We must, however, explore how far this protection goes. Does it apply to other aspects of the widow's life during and after the period of mourning?

These and many others are the unspeakable practices women suffer under the guise of widowhood rites which though they

violate the rights of women still beg for the intervention of proper human rights education in Nigeria.

On the whole, widowhood rites are practices that ignore the natural demand of sympathy and comfort for a bereaved person. They defy the natural grief that grips a newly widowed woman to heap more pain on the victim.[1190] The widow is not given the comfort and support she badly needs in her period of mourning. She is left alone to grapple with the pain of losing her loved one and suffer the trauma of coping with a barrage of abuses, accusations and negative labels.[1191] Kubler-Ross captures the emotional challenges every grieving individual goes through in her work on grieving,[1192] identifying the model of grief stages as: shock, denial, anger, bargaining, depression, testing and acceptance. These are unconscious emotional tasks faced by grieving individuals and their ability to scale each stage successfully is a strong determinant of their progress to a healthy recovery from grief.[1193] In the Igbo society as in many other societies, human greed exists in many families and the death of a male member of the family offers an opportunity to the other males of the family to increase their holding of the scarce and inelastic commodity – land. The commodity now in question can expand to other items of property.[1194] It is "acquisitiveness which basically controls the treatment of widows", writes Nwoga. All

[1190] Ikpeme, N.J. op. Cit p. 278
[1191] Ibid
[1192] Gregory, C (2019) The Five Stages of Grief, An Examination of the Kubler-Ross Model, Psy.com, available at <http://www.psycom.depression/central/grief > accessed on 6 October 2022.
[1193] Ibid
[1194] Korieh, C.J., op. cit

the activities in widowhood rites serve the same purpose and all the mystification, rituals and superstitious sanctions are geared to the oppression of the widow.

Legal Framework for Human Rights and Widowhood Practices in Nigeria

The fundamental rights as enshrined in Chapter IV of the Nigerian Constitution include the right to life, dignity of human person, personal liberty, fair hearing, private and family life, freedom of thought, conscience and religion, freedom of expression, freedom from discrimination, freedom to acquire and own immovable property anywhere in Nigeria, and such property cannot be compulsorily taken over except under certain conditions. Section 34 of the Constitution provides that every individual is entitled to respect for the dignity of his person. It states further in paragraph (a) of subsection (1) that no person shall be subjected to torture or to inhuman or degrading treatment.

Section 42 of the Constitution concerns right to freedom from discrimination. It provides thus:

> *(1) A citizen of Nigeria of a particular community, ethnic group, place, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-*
>
> *(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or*

> *restrictions to which citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject;*

The fundamental rights of the widows are grossly infringed upon by those obnoxious widowhood rites as adumbrated in South Western and Eastern Nigeria. Their rights to life, dignity of human persons, equality and freedom from discrimination as enshrined in the Constitution of the Federal Republic of Nigeria[1195] are breached. Samuel[1196] posits that widowhood rituals are inherently gender based because a widower has no strict customary laid down laws governing mourning rites. Widowhood practices in their diverse ways are discriminatory, perpetuate inequality and dehumanise womanhood.

Nigerian citizens are allowed to enforce the above stated rights where they are breached.[1197] It is only the High Court that has jurisdiction to entertain matters relating to the violation of fundamental human rights. In addition, there are other laws enacted by various State Houses of Assembly that protect human rights and prohibit the obnoxious, anachronistic, archaic and harmful widowhood rites.[1198] In particular, section 3 of the

[1195] 1999 (as amended)
[1196] Samuel, G.C.E. (2011) Emergent Issues on Widowhood Practices in Igbo Culture: Between the Video Screen and Reality, *Unizik Journal of Arts and Humanities*, 184-193.
[1197] Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 46
[1198] See the Prohibition of Infringement of a Widow or Widower's Fundamental Rights of Enugu State, 2001; Malpractices Against Widows and Widowers (Prohibition) Law of Anambra State of 2005; The Laws of Ebonyi State of Nigeria, 2009 in force on the 23rd Day of October, 2009, Vol. One (i) Cap 1-Cap 33, has Chapter 2 of it titled "Abolition of Harmful Traditional Practices Against Women

Anambra State Law, 2005 provides that the fundamental human rights as enshrined in the Constitution are inalienable and accrue to every widow or widower. S. 4 (1) of the Anambra State Law provides that, 'No persons shall compel a widow or widower:

a) To vacate his or her matrimonial home on the ground that he or she has no male child or no child at all
b) To drink the water used in washing the corpse of the late spouse or to perform any type of ritual in order to establish innocence of causing the death of the late spouse;
c) To sleep either alone or on the same bed or to be locked in the room with the corpse of the late spouse;
d) To remain in compulsory confinement after the death of the spouse for any given period;
e) To compulsorily wear mourning cloths of any make or otherwise adopt any life style indicative of being in mourning for any given period from the date of the death of the late spouse;
f) To compulsorily sit on the bare floor or be naked during any period of the spouse's burial rites;
g) To be remarried to a relative of the late spouse;
h) To shave the hairs on the head or any other part of the body;
i) To desist from receiving condolence visits from sympathisers during the period of mourning;

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and Children in Ebonyi State"; Widows (Protection) Law, 2003, Imo State (Law No. 12)

j) To weep and wail loudly at intervals at any time after the death of the late spouse;
k) To put ashes on the head;
l) Not to see the corpse of the late spouse;
m) To perform any act which contravenes the fundamental human rights provisions as enshrined in the constitution;
n) To visit any shrine and or perform any other rituals.
o) To forsake his or her personal hygiene. [1199]

Similarly, S. 4(3) states that a widow or widower should not be forcefully dispossessed of any property acquired or used by the couple during the lifetime of the deceased spouse. But this is subject to the provisions of the Marriage Act, Succession and Administration of Estate Act or any customary law not repugnant to natural justice, equity and good conscience. Consequent upon the above provision, section 5 of this law also provides thus:

(1) Any person who discriminates, contravenes or conspires with, aids, counsel, procures or assists another person to contravene the provisions of section 4 of this law commits an offence and shall be liable on summary conviction to a fine not exceeding N20,000.00 (twenty thousand Naira) or to a jail term not exceeding six months imprisonment or to both such fine and imprisonment.
(2) Any institution, group or organisation which is found to have contravened, or which aids, counsels, procures or assists any person to contravene any of the provisions of section 4 of this law commits an

[1199] Widows and Widowers (Prohibition) Law of Anambra State 2005.

> offence and shall on summary conviction be liable to a fine not exceeding N50,000.00 (fifty thousand naira) or be proscribed until the fine is paid.

Furthermore, section 6 provides for enforcement, thus, vesting the Magistrate Court with the jurisdiction to summarily try any offence under this law. And appeals shall lie as of right against any decision of the Magistrate Court to the High Court, up to the Supreme Court.

An appraisal of the above state provisions against widowhood practices brings to the fore the fact that the legal framework in place, although it is not national, can be said to be appropriate in addressing the issue where widowhood rites are mostly practiced. These laws intend to reduce and/or eradicate completely the degrading and inhuman treatment and maltreatment of widows in the South Eastern part of Nigeria. However, the problem is that of recognition and awareness by the general populace, and enforcement as well as contravention of the traditional culture of widowhood rites.

The Nigerian case of *Mojekwu v. Mojekwu*,[1200] seems to have changed the tide with respect to women's right to land and inheritance of property from the estate of their deceased husband or father. The Court of Appeal held as unconstitutional and contrary to democratic value an age long Igbo Customary law and in this case, *Oli-Ekpe* custom of Nnewi under which males and not females inherit their father's property. However, in an appeal

[1200] (1997) 7 NWLR (pt. 512), p. 283

to the Supreme Court in the same case of *Mojekwu v. Iwuchukwu*,[1201] it held that the rules of procedure precluded the Court of Appeal from determining whether *Oli-Ekpe* was repugnant since neither of the parties to the case brought the validity of the custom as a legal issue before the court. The Supreme Court, per Uwaifo, JSC, held thus: "In the present case, because of the circumstances in which it was done, I cannot see any justification for the court below to pronounce that the Nnewi native custom of "*Oli-Ekpe*" was repugnant to natural justice, equity and good conscience".

Although, the case of Mojekwu constitutes a major advancement to women's human rights in Nigeria and Africa, international law was not the basis for the court's decision but rather, the repugnancy doctrine.

Apart from government and judicial interventions on confronting obnoxious widowhood rites in Nigeria, the House of Representatives has introduced a bill seeking to end degrading widowhood practices. The bill seeks to amend the Violence Against Persons (Prohibition) Act 2015. The bill proposes to amend six sections of the Act to safeguard widows from "violent and evil customary practices, denial of property rights, rape, forced marriages and all other dehumanising acts that undermine the dignity of the widow". The bill also introduces two new sections – sections 38 (a) and 39 (b) – which read: In addition to the rights guaranteed under the Constitution or any other international human rights instrument to which Nigeria is a signatory, a widow shall have the right to:

[1201] (2004) 4 S.C. (pt. II), 1

(a) Continue to live in the matrimonial home after the death of her husband and where she remarries, she shall retain the matrimonial home if it belongs to her or she inherited it and shall not be forcefully evicted;
(b) Inherit from the property of her late husband or in-laws where the property is jointly owned".

In addition, the proposed law recommends designating May 23 as a national day for the prevention of discrimination against widows, women and girls.

Accordingly, the bill, when passed will be recorded in history as one of the most important legislations passed by the current ninth assembly. It will succeed in metaphorically giving to the widows in Nigeria what can be described as "the widows' mite."[1202]

Potential Role of Human Rights Education

In spite of all efforts to create and array human rights legal instruments, covenants, treaties and conventions to address the human rights of women in particular, literacy is still very low in Nigeria and many African countries where the human rights efforts are most needed; especially, at the grass roots level. People who do not know their rights are usually victims of rights abuse. Such people lack the capacity to advocate for their rights. Norms and treaties are only words on papers if they are not practicable at national level where right norms and treaties are met with the stiff opposition of the distinct local culture and practices, and malfunctioned legal systems practices. Ignorance

[1202] Reps consider bill to end, penalise degrading widowhood practices in... <www.premiumtimesng.com> accessed 7 October 2022

of many people in most developing countries results in the denial and abuse of rights. But with a concerted programme of Human Rights Education, all hope is not lost regarding the way forward for the actualisation of the rights of women, including the rights of Nigerian widows under consideration;

The teaching of Human Rights Education (HRE) is informed by the deliberate efforts of the UN Declaration of Human Rights Education and Training.[1203] Human rights education comprises all educational, training, information, awareness raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms. HRE contributes to the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding, and by developing their attitudes and behaviours to empower them to contribute to the building and promotion of a universal culture of human rights. The United Nations, therefore, has deliberate plans globally to emplace educational measures to sensitise the populace on human rights. Awareness of rights allows common people to defend their rights and of importance is the inculcation of a culture of human rights as part of social, political and economic life. Accordingly, human rights education is all learning that develops the knowledge, skills and values of human rights.

[1203] Created in 23 March 2011 for the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding and developing their attitudes and behaviours, to empower them to contribute to the building and promotion of a universal culture of human rights." This Declaration was adopted by the UN General Assembly on Dec. 19, 2011.

The UN-DHRET also asserts that human rights education encompasses education about human rights, which includes providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection, through human rights. This includes learning and teaching in a way that respects the rights of both educators and learners, and for human rights-empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others. This shows a separate approach to the teaching of human rights, with the most important objective being to empower learners on human rights. The teaching of human rights in schools is very important in sensitising the young ones on human rights. In buttressing the importance of the schools in the promotion of human rights, the OSCE Office for Democratic Institutions and Human Rights states that: school systems play a central role in preparing young people to understand, cherish and claim human rights. In conjunction with this responsibility, teachers and all associated educational personnel need to be educated in human rights issues and the ways in which they can be inculcated in schools. Of importance is ensuring that the teachers are effectively prepared to facilitate human rights education. Once teachers understand and appreciate the issue of human rights, they will be in a position to effectively facilitate learning that promotes human rights.

Human rights education teaches both about human rights and for human rights. Its goal is to help people understand human rights, and take responsibility for respecting, defending, and promoting human rights. An important outcome of human rights education is empowerment, a process through which people and communities

increase their control of their own lives and the decisions that affect them. The ultimate goal of human rights education is people working together to bring about human rights, justice, and dignity for all.

It is in view of the above that pursuant to the suggestion of the World Conference, the United Nations General Assembly, in its resolution[1204] proclaims the 10-year period beginning on 1 January 1995 as the 'United Nations Decade for Human Rights Education'. On 10 December 2004, the General Assembly of the United Nations proclaimed the World Programme for Human Rights Education to advance the implementation of human rights education programme in all sectors. Building on the achievements of the United Nations Decade for Human Rights Education,[1205] the World Programme seeks to promote a common understanding of the basic principles and methodologies of human rights education to provide a concrete framework for action and to strengthen partnerships and cooperation from the international level down to the grass roots.[1206] Unlike the specific time frame of the decade, the World Programme is structured around an ongoing series of phases, the first of which covers the period 2005-2009 and focuses on the primary and secondary school systems.[1207]

In the context of article 26 UDHR, the right to education is also understood as a right to Human Rights Education. It is the aim of

[1204] Resolution 49/184 of December 1994
[1205] (1995-2004)
[1206] Anbu, S, (2012) Human Rights Education: Educating One to Know Their Rights, available at https://www.researchgate.net/publication/3400887972 accessed 8 October 2022
[1207] Ibid

Human Rights Education (HRE) to inform people about their rights, to sensitise them for the idea of Human Rights and to promote the requirement of competences which empower the people to defend their rights.[1208] The right to education is further covered by the CRC,[1209] the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[1210] the international Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,[1211] and the Convention on the Rights of Persons with Disabilities.[1212] The right to education and Human Rights Education are linked together and cannot be treated separately. The right to education is an overarching/empowerment right which empowers individuals for the full development of their human personality and participation in society. The right to education is further closely linked with the right to development as education is considered a powerful tool for combating poverty.[1213]

Strategies for Implementing Human Rights Education

The WPHRE proposes four stages to facilitate the planning, implementation and evaluation of human rights education in the school system.

[1208] Motakef, (2006) available at http://www.institut-fuer-menschrechte. De/webcom/show_shop/_c-488_nr-50/i.html (01.09.2008)
[1209] Articles 28-30
[1210] 1979, article 10
[1211] (1990) articles 12, 30 and 45
[1212] 2006, article 24
[1213]Emmert, S, (2010) Education in Terms of Human Rights, Proce, Procedia Social and Bevavioural Sciences-International Conference on Educational Psychology (ICEEPSY), available at www.sciencedirect.com accessed on 7 October 2022

The first stage is concerned with the provision of guidelines to assist member states in implementing the plan of action. This they do by addressing the question: Where are we? They also help to provide guidelines on how to collect information and on how to analyse among others good human rights practice existing at national and regional levels, historical and cultural backgrounds that may influence right education in the school system, determine which measures and components of human rights education exist already, achievements and shortcomings of the obstacles to initiative undertaken within United Nations Declaration of Human Rights Education, 1995-2004.[1214] The second stage is the setting of priorities and development of national implementation strategy. Hence, the plan of action here is to address the question, where do we want to go and how? WPHRE helps by defining a mission statement which in this sense is the main goal for implementing human rights education in the school system and fixing objectives of human education.[1215] The third stage concerns the implementation of human right education. According to the world programme for human Rights Education (plan of action 2005-2007) this is implementation and monitoring the implementation using fixed milestones.

The final stage is the evaluation. Evaluation addresses the question, how did we get there? Here the plan of action advises

[1214] Edinyang, S.D, Effiom, V.N and Ubi, I.E., (2013) Strategies for Implementing Human Rights Education in Nigeria, *Global Journal of Education Research* Vol. 12, p. 27
[1215] Ibid

that we adopt evaluation as a method of accountability and a means to learn to improve a possible next phase of activities.

In addition to the above, there is the Nation Action Plan[1216] for the promotion of human rights put in place by Nigeria. It is the response of the government of Nigeria to the recommendation of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna, Austria in 1993. This requested that:

> *Each state considers the desirability of drawing up a national action plan identifying steps whereby the state would improve the protection and promotion of human rights*

Thus, the Nigerian Action Plan is an integral and systematic national strategy to help realise the advancement of human rights in Nigeria. It is an audit of the human rights situation in Nigeria, identifying areas of need of protection and improvement. In addition, it is a commitment to concrete measures that can be adopted to build and entrench a culture of human rights for the enjoyment of all.

The Goals of Human Rights Education

The aims of HRE curriculum as perceived by the UN Decade for Human Rights Education[1217] are to enhance knowledge and understanding of human rights, foster attitudes of tolerance, respect, solidarity and responsibility, as well as develop awareness of how human rights can be translated into social

[1216] National Action Plan for the Promotion & Protection of Human Rights in Nigeria, 2006
[1217] 1995-2004 (UNDHRE)

reality.[1218] HRE does not simply aim to teach students, whether children, adolescents, or adults, about human rights norms and laws, but also endeavours to promote appreciation for human rights as a fundamental ethical and legal basis of society, and teach the value of human rights enforcement. Human rights education also fosters the attitude and predisposition to uphold human rights for all members of society. Eckeman, *et al* assert that HRE sheds light on the important protections achieved by human rights, and documents the tragic outcome when the deal was largely absent or abandoned. Thus, HRE is important as far as it contributes to the prevention of human rights violations and abuses by providing persons with knowledge, skill and understanding, and by developing their attitudes and behaviour to empower them to contribute to the building and promotion of a universal culture of human rights.[1219]

In this sense, HRE contributes to the long-term prevention of human rights abuses and violent conflicts, the promotion of equality and sustainable development and enhancement of participating in decision making process within a democratic system. HRE promotes an understanding of the complex global forces that create abuses as well as the ways abuses can be abolished and avoided.[1220] Widows are bound to benefit tremendously under the principles whereby some of these HRE are adopted in Africa, and indeed in Nigeria where the obnoxious widowhood rites are prevalent

[1218] See (Panda 2001). and Eckmann et al. (2009)
[1219] UNDHRE 2011: Art. 2, para. 1
[1220] CHRR.2004/71 para. 4

We are of the view that, since HRE engages the heart as well as the mind; it challenges students to ask what human rights mean to them personally and encourages students to translate caring into informed, non-violent action. In this respect, one can say HRE facilitates peace and development and will help to reduce the prevalence of widowhood rites practice in the Nigerian society, especially if HRE is incorporated into the Nigerian educational curriculum as well as its entire democratic system. As a result of the heterogeneity of the contemporary Nigerian societies, the country is confronted with crises and conflicts too enormous to solve, yet it must comply with increasing global standard on human rights protection and promotion. Hence, the socio-cultural practices, traditional, religious, philosophical, and national legal incoherence can no longer guarantee a normative consensus on human rights without hitches. Within this context, only the HRE can provide the baseline that enables citizens to engage with controversial socio-cultural issues such as widowhood rites and the political issues acting as clogs impeding the wheel of progress of human rights protection, especially in a developing country like Nigeria.

HRE provides multicultural and historical perspectives on the universal struggle for justice and dignity. It aims at developing an understanding of common front to make human rights a reality in every society as well as helping to develop the communication skills and informed critical thinking that are essential to a democracy. Moreover, HRE develops capacity for respecting, protecting and fulfilling the rights of others. Even though the implementation of human rights education continues to lag behind in Nigeria, the goals envisioned by international human

rights programmes and initiatives, HRE has assumed unprecedented importance at both the national and international levels.

With these arrays of qualities of HRE, we can safely assert that if everything to remedy or safeguard the rights of widows in Nigeria seems to have failed, we have an anchor in HRE that is steady and sure to redress the plight of widows and indeed the absolute protection and promotion of the rights of Nigerian women in general.

Recommendations

Based on the critical examination of the various provisions of human rights instruments and law and the analysis of the predicament of women regarding the widowhood rites, cultural practices and the rationale behind them in Nigeria, the following recommendations are made:

Government must ensure that laws enacted, have clear structures of implementation at the grass root. Obsolete laws on widowhood practices, particularly the customary laws, now require radical modifications in the 21st century demands.[1221]

Women education should be pursued vigorously to empower them with knowledge about how to assert their rights. Departments of Adult Education in collaboration with the Agencies for Mass Literacy, Adult and Non-Formal Education should develop programmes on Probate Education to sensitise the entire polity on the rights of the widows.[1222] Therefore, human

[1221] Oreh, C.I., op. Cit pp. 80-81
[1222] Ibid

rights education and advocacy at all levels, especially at the grass roots, is of paramount importance, and a must, particularly for better understanding of these rights among the rural women. This will prepare the women to uphold their rights at all costs. There is need for a strong, less politically inclined institutional framework that will truly address women's problems, especially in the area of socio-cultural and economic emancipation and total liberation of women at the grass roots level in Nigeria; especially in the area of widowhood rites practices which should be totally eradicated.

There is need for HRE implementation and evaluation committee for regular evaluation of human rights in all respects for effective implementation of provisions of law especially where law already exists to protect widows from obnoxious widowhood rites; while national enactment is being advocated to reflect all forms of practices of discriminations against women in Nigerian Society. Making HRE part of curriculum development at all levels, from elementary to tertiary institution especially, at the grassroots level. The National Human Rights Commission in collaboration with other governmental organisations such as Federal Ministry of Women Affairs and Social Development have greater roles to play using HRE to take some of its activities seriously at the grass root level concerning widowhood rites practices. Instructive and articulating provisions should be included where the practices are still prevalent.

There is need for some Non-Governmental Organizations (NGOs) with similar contents and forms to carry out some rigorous campaign and advocacy and provide for the rights

initiative education, as well as the training of the would-be staff of the various organisations handling women's rights with particular focus on widowhood rites in Nigeria. HRE in Nigeria will serve as a conduit for promoting human rights generally and the rights of women and widows in particular.

Conclusion

The focus of this paper are the socio-cultural rights of women and widowhood rites in Nigeria with particular reference to the advancement of their human rights through education. Widowhood rites practices in Nigeria generally and in Yoruba and Igbo land in particular are clear indications of gender inequality. This inequality is shown in the inhuman treatments and injustice meted out on widows but not on widowers.[1223]

It is no exaggeration that the predicaments of women worldwide are legion. Like rape, child abuse, trafficking and domestic violence, widowhood rites constitute gender-based violence and pose a major challenge to women in Nigeria and Africa as a whole. In spite of the provisions of human rights instruments at the international, regional and national level to protect and promote the rights of women in all ramifications, the practices instead of reducing, keep assuming new dimensions every day. Therefore, it is no exaggeration to assert that there is need for HRE to create the much-needed awareness about the various provisions of CEDAW, the Constitution, state laws and local edicts for the protection and promotion of women's rights

[1223] Mathias, B.A. (2015) Widowhood Practice in Eastern Nigeria: A Comparative Study of Imo and Anambra States, available at <https:///www.researchgate.net/publication/280884257 > accessed 8 October 2022

generally. Effective human rights education (HRE) will not only provide knowledge-based information about human rights and the mechanisms that protect them, but enable people at grass roots level to develop the skills needed to promote, defend and apply human rights in daily life.

ORGANIC STRUCTURES OF GOVERNMENT AND THE ROLE OF JUDICIARY UNDER THE 1999 CONSTITUTION OF NIGERIA: AN ANATOMICAL DISSECTION

BY

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Abstract

This paper is anchored on an anatornical dissection of the role of an independent judiciary under the 1999 Constitution of Nigeria. The first thing this paper seeks to ascertain is whether the judiciary is actually independent in Nigeria. What are the expectations of the judiciary vis-a-vis other organs of government. In what way has the concept or theory of separation of powers impacted in the performances of the judiciary. The paper also looked at the various parameters that support judicial independence and the extent of its attainment including mode of appointment of judicial officers, remuneration and welfare package, termination of appointments of judicial officers etc. Criticisms abound on whether the judiciary in Nigeria are doing well in the discharge of those onerous functions and what is needed to complement its efforts based on identified challenges and constraints in executing its constitutional mandate. The need to restore the judiciary as a guardian of the Constitution through the exercise of its powers with independence, impartiality and in a fair and open manner is critical. How far have the courts

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carried out their unlimited powers of control over the activities of the legislative and executive.

KEYWORDS: *Separation of Power, Judicial Independence, Socio-Economic Vices, Challenges and Constraints.*

INTRODUCTION:

The Federal Government of Nigeria is composed of three arms namely: The legislature, the executive and the judiciary. Their powers are vested on them by the 1999 Constitution of Nigeria. The three arms are at the center in the management of the affairs of government and the society at large. The legislative powers, as contained in section 4 of the Constitution, are to make laws for the peace, order and good governance. On the other hand section 5 provides for the powers of the executive which extends to the execution and maintenance of the Constitution and all laws made by the National Assembly. The judicial powers as enshrined in Section 6 of the Constitution gives powers to the courts to interpret laws and apply them in the adjudication of cases between persons and or government. The judiciary primarily settles conflicts, protects the rights of the individuals as well as protect the Constitution, hence the general comment that the judiciary is the guardian of the Constitution. The concept of separation of power among the organs of government is designed to ensure that there is no fusion of power in one arm or that there is no conflict in the execution of their functions. As independent and separate the organs may appear, this paper had ventured a meeting point of their relationship. For instance, while it is the responsibility of the judiciary to control the activities of the legislature and the executive, it is the executive that enforces the

judgments and orders of the court. It is also the executive that provides the infrastructure that houses the judiciary and even participates in making appointments of judicial officers. We think that the major area that the judiciary applies its sledge hammer rather than compromise is on the control of arbitrary, ultra viral and abuse of powers by the executive and legislature that leads to recklessness and lawlessness. It is only an independent judiciary that can effectively control the excesses of the other two arms of government. It takes many basic elements for the judiciary to be properly tagged independent. In the situation we find ourselves in Nigeria, can it be rightly asserted that the Nigerian judiciary is independent in the true sense of it? Using case law, an attempt has been made in this paper to identify the level of performances that can be rightfully ascribed to the judiciary in discharging its control powers over the other arms of government. However, a lot still have been done in this direction to ensure that the judges are courageous enough to discharge the functions without fear or favour. This is more so, not to succumb to the whims and caprices and the overbearing powers and influence of the executives who constantly interfere and post a threat to the judiciary.

The Organs of Government

One basic feature of the 1999 Constitution of the Federal Republic of Nigeria (as shown in the first, second, third and fourth alterations) is the clear adoption of the distribution of constitutional powers and functions of government among the three arms namely:- the legislative powers, executive powers and the judicial powers. Section 4 of the Constitution provides that the legislative powers are vested in the National Assembly at the

Federal Government level and the House of Assembly at the State level. Sub-section 4 (10) states that the legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly for the Federation which shall consist of the Senate and a House of Representatives. Similarly, sub-section 4 (6) states that the legislative process of the state of the federation shall be vested in the House of Assembly of the State.

On the other hand, the executive powers of the federation as enshrined under section 5 (1) shall be vested in the President and may, subject to the provisions of any law made by the National Assembly, be exercised by him either directly or through vice president and ministers of the government of the federation or officers in the public services of the federation. Sub-section (2) thereof provides that the executive powers of the state shall be vested in the Governor of the state and may subject as aforesaid and to the provision of any law made by House of Assembly, be exercised by him either directly or through the Deputy Governor and commissioners of the government of the state or officers in the public services of the state.

Sections 6(1) of the same Constitution of the Federal Republic of Nigeria copiously provide that the judicial powers of the federation shall be vested in the court to which the section relates, being courts established for the federation.

The Constitution has in furtherance to the powers so vested in the three arms of government prescribed the scope and limitations towards the exercise of these powers. Having identified these features that had remained paramount since the era of the 1979 Constitution to the time of the various alterations of the 1999

Constitution (the latest in 2022), this paper has ventured to address the problems in line with the structure set out above.

The Concept of Separation of Power

Simply put, the powers of the Federal Republic of Nigeria are divided into three, namely: The Legislative Powers, the Executive Powers and the Judicial Powers. It was the great French Jurist, Philosopher and Political Scientist, Montesquieu[1224] who, in his immortal words and wisdom advocated that there should be three organs of government which should be separate and independent. He said:

> *'Political Liberty is to be found only when there is no abuse of power. But constant experience shows us that every man invested with power is liable to abuse it, and to carry his authority as far as it will go... to prevent this abuse, it is necessary from the nature of things that one power should be a check on another. When the Legislative and Executive Powers are united in the same person or body there can be no liberty. Again there is no liberty if the judicial power is not separated from the Legislative and Executive. There would be an end of everything whether of the nobles or of the people if the same person were to exercise all the three powers.'*

[1224] Retrieved from: https://www.supremecourt.uk

This wise and eloquent theory was propounded in 1748 and adopted by the Convention of 1787 mainly to preclude the exercise of arbitrary power with a view to avoiding tyranny and totalitarianism. Thus in *Myers V. United States*[1225], Justice Brandeis of the United States Supreme Court gave the rationale for the separation of powers in the following illuminating words:

> *"The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction (between the three arms of government) but, by means of the distribution of the governmental powers among three departments, to save the people from autocracy".*

It is pertinent to note that under the Westminster model of Government which was replicated in the Constitutions of 1922-1963 of Nigeria, the Judiciary was treated as mere appendage of the Executive and called judicial departments. We also like to note that it was the 1979 Constitution that for the first time introduced the separation of powers of the three bodies under a Presidential system of government. Under Part II of the 1999 Constitution (as amended), Section 4 vested the Legislative Powers on the National and State Assemblies, while under Section 5 the Executive Powers of the Federation and the States are vested on the President and Governors respectively. The Judicial powers of the Federation are vested on the courts

[1225] See 272 U.S 52, 293.

established by the Constitution under section 6. However, it should be noted that other courts established by the State Houses of Assembly are also empowered to exercise judicial functions.

This is because questions always asked create doubt on whether there is true separation of power. Such veiled questions are supported by the fact that in the exercise of their powers there is genuine need to overlap for purposes of effective coordination and checks. It is not easy to see a water-tight compartment of government. To support this view Professor Nwabueze in his book said:[1226] *"These seek to make the separation of powers more effective by balancing the powers of one agency against those of another through a system of positive mutual checks exercised by the governmental organs upon one another".*

For instance the appointment of the Chief Justice of Nigeria, the Justices of the Supreme Court, Justices of the Court of Appeal, Chief Judge and other Judges of the Federal High Court are appointed by the President on the recommendation of the National Judicial Council and confirmed by the Senate.[1227] From these provisions of the Constitution it is clear that the Executive, the Legislative and those who constitute members of the National Judicial Council participate in the appointment of Federal Judges. Similar procedure is adopted in the appointment of State Chief Judges and other High Court Judges made by the Governor on the recommendation of the National Judicial Council subject to confirmation by the House of Assembly of the State.[1228] While the

[1226] (Constitutionalism in the Emergent States at page 20)
[1227] (See sections 231 (1) (2), 238 (1) (2) and 250 (1) (2) of the 1999 Constitution of the Federal Republic of Nigeria
[1228] (See Sections 273. (1) (2) of the 1999 Constitution).

Legislative arm makes laws, the President and Governors, as the case may be, assent by signing the bill into law. The Judiciary interprets the laws made by the Legislative arm and may even declare a law unconstitutional, null and void. The conclusion we draw from the Constitutional provisions is that the three arms of government cannot be kept in water-tight compartments. What should be pursued rather is that each organ must operate within the limit of the powers allocated to it within the Constitution so as to be independent in relation to the performance of its basic functions. Since the effect and intendment of separation of power is to enthrone positive checks and balances among the three arms, and on the other hand, to bestow the needed independence of the Judiciary, we will consider the other related issues under independence of the judiciary.

The Imperatives of True Judicial Independence

The Judiciary is the guardian of the Constitution and of course the entire gamut of the Rule of Law. Its independence is a necessity. The radical pillar of judicial independence as can be seen in the preceding parts of this paper is separation of power which encourages checks and balances among the three organs of government. Powers are conferred on the judge by the Constitution so that he may exercise it with independence and impartiality. It also supports the concept of the rule of law that all executive, administrative, legislative and judicial actions should be backed by the authority of law which shall not be administered arbitrarily. Furthermore, justice should be accessible to all and should be conducted in a fair and open manner by an independent and impartial judiciary.

It is also imperative that all extrinsic and unnecessary pressures are removed to ensure the desired level of independence. We will go on to highlight these imperatives of judicial independence for better understanding of the matter.

Appointment of Judicial Officers

We are bold to say that Judges should not be appointed on grounds of sentiments but qualification, capability and integrity. In this regard we advocate that there should be synergy between the Bar and the Bench in nominating or recommending persons who should be appointed as judges. This collaboration is essential when we call to mind the numerous sharp practitioners emerging in the legal profession. Let the right persons be appointed please. When the foundation is weak the building is bound to collapse.

Considering and putting on the front burner the rising concern in appointing people who are not fit or proper into the bench, Anthony Aniagolu, had this to say:

> *"Nowadays the appointment of bad judges, in different parts of the country, is now taking centre stage among the constraints of the Judiciary. No more special scrutiny is exercised in the appointment of some judges. In earlier days people frown at the appointment of candidate regarded as not sufficiently knowledgeable in law, or weak, generally in their commitment to the Law. Nowadays candidates who are known to be openly corrupt, manage to secure appointments as judges. Some appointments are now made on the basis of*

> *sex gratification, with the result that something immorality has now entered the judiciary*[1229]*."*

Aniagola has our support as it is common knowledge that corruption has gradually penetrated into the main fabric of the judiciary. It has to be gotten right from the beginning of engagement to ensure that the right persons are appointed into the bench. It was in response to the failing situation as expressed by the Justice of the apex court (supra), that in 2022 the Nigeria Bar Association, calling for expression of interest for purposes of appointing 16 (Sixteen) justices for the Court of Appeal, emphasized on strict adherence to Rule 4 (4) (1) (a), (b) and (d) of the National Judicial Council guidelines for appointment of Judicial Offices for superior courts of record. The rule requires that a letter of good standing from the chairman of the applicants Branch confirming that he or she possesses the qualities set out in the Rule must be obtained by the applicant.

As good as these pre-requisites are spelt out on paper, our worry is the constant negative tendencies of Nigerians trying to cut corners. It is noteworthy that similar conditions precedent have been provided in other rules as well as Laws, but clogs are always found in the wheels of enforcement to the effect that wrong persons are given the opportunities to serve as judges even to the detriment of the right candidate. Many factors are brought into play like nepotism, bribery and corruption and religious bigotry etc. This is very important because a judge who was employed

[1229] (See Hon. Justice Anthony Anigolus, JSC (Rtd)"Constraints in the Administration of Justice" published in the Report of All Nigeria Judges conference held between 1st – 5th November, 1999, at the international conference centre, Abuja.

through such unwholly beliefs and sentiments will not be of good standing to make positive pronouncements in his or her court when confronted with similar situation for adjudication. We therefore join to advice that the process of appointment of judges of both superior and inferior courts should be handled within the realm of high ethical standards. To do this successfully we suggest that intensive investigation into the character of the applicants must be carried out no matter what it may cost the National Judicial Council. In addition, the members of the National Judicial Council charged with the responsibility of appointment and removal of judges must be men of proven integrity and high moral standards. Doing this, would be a step in the right direction that would positively put the judiciary in a proper perspective. The above position as established regarding the appointment of judges, it also imperative to warn the appointee – judges that failure to go through the process of engagement as laid down does not constitute a license or passport for misbehavior. How a judge was appointed must never be an excuse for lack of integrity otherwise the consequence would be dismissal as appropriate. Thinking aloud along this line Akinola Aguda said thus; "It does not matter how a judicial officer was appointed, it remains for him to insulate himself from the influence external to him in the discharge of judicial functions. For he should remember that the dreadful day of God's judgment shall surely come to every individual (whether or not he believes in such divine judgment) and he will be adjudged as to whether or not he had permitted himself to be influenced in his judicial work by political and administrative superiors or that he failed" [1230].

[1230] Hon Justice Akinbola Aguda Speaking at and induction Course for newly

His Lordship said it all leaving nothing to be added as the whole essence that a judge should free himself from influences of personal gain or partisanship, political, religious, or ethnic bias.

Who a Judge he should be

- **Good conscience.**

The Judge should be one that is not capable for any other reason like ignorance, corruption, favouritism, prejudice, fear, favour and other factors that aid compromise in delivering a just decision. His conscience should be guided by good reasoning and be his.

- **Bold**

A Judge must be completely independent with nothing to influence or control him but God and his conscience. Lord Atkin in *Liversidge V. Anderson*[1231] said: **"**Amid the clash of arms the laws are not silent, they speak the same language in war as in peace. Judges are no respecter of persons and they stand between the subject and any attempted encroachment on his liberty alert to see that every conceived action is justified by law". Churchill also said: "The only subordination which a judge knows in his judicial capacity is that which he owes to the existing body of legal doctrines enunciated in years past by his brethren on the bench... and to laws passed by Parliament which have received the Royal assent!"

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appointed Judges and Kadis at Abuja between 19th 23rd July, 1995

[1231] (1942) A.C. 206 at 244

Diligence in discharge of Judicial responsibilities

Quick dispensation of justice is evidence of independence of the conscience of a judge. Justice delayed is justice denied. Once a case is pending for long, it gives the public the opportunity to suspect foul play or lack of transparency. In *Cop V. Amf Agbaje*[1232] the Western, State Court of Appeal said:

> *"In this connection, we note with great satisfaction and approval, the expeditious and swift manner in which the matter was dealt with by the learned Judge, Aguda, within six days he had heard and determined the matter. This is as it should be, for the Law says so. An application for Habeas Corpus should always be dealt with expeditiously by the courts. Any unnecessary delay in hearing and determining applications of this nature, defeats the very ends of Justice."*

Adequately remunerated Judiciary and good welfare package

An independent judiciary certainly must be one that enjoys good welfare package. Reasonable salary and allowances. Good cars and houses. It is often forgotten by the lawyers that it is the duty of the legal profession to ensure the independence and adequately remunerated judiciary. We want to use this opportunity to remind the Bar Association that it has been their traditional responsibility to fight for the comfort of the judiciary. It is not for the judges to pursue their welfare. The conditions under which Nigerian Judges work are still very poor and as a matter of urgency should be enhanced. Without overemphasizing this point, how can a councilor respect a magistrate or even a High Court Judge if the

[1232] (1969) 1 NMLR 176 at 185

councilor earns higher than the judicial officer. Or worse still the councilor is riding a healthy car while the judge has a car that will always break down. Independence also relates to recognition and respect of the Judge. Churchill, in expressing satisfaction with the popular feeling about British Judges, said: *"There is nothing like them in our land. They have to interpret the law according to their learning and conscience. They are distinguishable from the great officers of state and other servants of the Executive, High or Low and from leaders of commerce and industry. The British Judiciary with its tradition and record is one of the greatest assets of our race and people".*

On the need to constantly improve on the welfare package of judges Hon. Justice Mohammed Bello CJN (as he then was):

> "The ever changing pattern of life and upward movement of prices with the attendant high economic pressures on society cannot but be adversely felt by us. They must be addressed by government. I make bold to say that the ivory tower in which judges live imposes heavy constraints on the capacity to withstand economic pressures and upward movement of prices. As such constant and frequent reviews of their conditions of service to counter the adverse economic pressures and the provisions of materials for the

> discharge of their duties must be a pre-occupation of government."[1233]

Self-Accounting

The yearning has been that the judiciary be self-accounting. Self-accounting will only make any meaning if there is proper budgeting which must allocate good funds to take care of all heads of expenditure (Capital and Recurrent) for the smooth running of the judiciary. The situation calls for the Attorneys-General at the Federal and State levels to properly advise the executive. Unfortunately, the Attorneys-General fail to do what they should do for fear of being sacked.

Enforcement of Court decisions

While it is often advocated that the powers of the courts must be invoked with extreme caution the Executive should not in any way impede the enforcement of judicial decisions. It is an exercise in futility for a judge to go through the whole process of hearing only to discover that the decision is not enforced. One does not need to waste time here because our legal books are replete with numerous instances of failure to enforce judgments as a result of Executive or Legislative interference. The decision of the court includes judgment, decree, order, conviction, sentence or recommendation.[1234] .

Unfortunately, the judiciary does not have any form of independent force of its own to conduct enforcement of its decisions. It therefore all the time relies on the coercive powers of

[1233] Hon. Justice Mohammed Bello, CJN (1993) in his opening address at the 1993 all Nigerian Judges conference held in residential hotel, port Harcourt between 15th – 20th November, 1993).

[1234] See section 318 on the 1999 Constitution on interpretation

the State to enforce its decisions. Such powers are with the Executive who may refuse to release them to the courts if they are affected by the decisions. Truly the judiciary have neither force nor will; neither sword nor the purse but only the judgment. It is the duty of the Attorney-General at the Federal or State levels to advise the Executive to always obey court orders. In the Ojukwu's case (supra) Uwais, said:

> *"it is a matter of grave concern that the Military Government of Lagos State should be seen to disregard a lawful order issued by a Court of Law. If governments treat court orders with levity and contempt, the confidence of the citizen in the courts will be seriously eroded and the effect of that will be the beginning of anarchy in replacement of the rule of law. If anyone should be wary of orders of court, it is the authorities; for they, more than anyone else, need the application of the rule of law in order to govern properly and effectively."*

We do appreciate the fact that the situation is not the same under a democratic setting. Violation is not too common now. But in some cases judges do nott care whether their decisions have been enforced or not. On the other hand the Executives do summon judges to their offices directing them on how to give their ruling or not to authorise execution processes. This is very common even now with election cases. Again, this depends on the conscience of the Judge. A Judge should have two salts: the salt of wisdom, lest he becomes insipid, and the salt of conscience lest he becomes devilish. We shall say more about enforcement as a major challenge to the judiciary.

Judicial Ethics

- Free in thought and to deliver independent judgment.
- Should not pervert justice, not partial, not accept bribe not subvert the course of righteousness; sound in reasoning, valid and rightful; not abuse his power but to uphold right and fairness.
- A man of constant learning and research to know the latest position of the law.
- Of high moral standards and honesty.
- Courageous and firm at all times.
- Show high level of maturity, prudence, confidence and rational in responding to issues.
- Not the talking judge who takes over the arena.
- Be conscious of the fact that he is not the trader in the market who can dress or talk carelessly with little or nothing to protect. The judge has a lot to protect in order to be who he is and to distinguish himself from other members of the society.
- Not easily emotional and disparaging in his response to issues in court.

Termination of Appointment of Judicial Officers

We have talked about appointment of judicial officers as a fundamental or basic foundation from which the good and bad judge emerges. Thus, if a person of questionable character is enrolled as a judge to decide between parties and issues in dispute and even as in criminal cases condemn persons to death, then the society is at risk. In that case the substratum of the independence of the judiciary is knock off the bottom.

Similarly, if judges are indiscriminately dismissed or their appointments terminated contrary to measured rules and regulations, then independence is a mirage. The Constitution provided a maximum retirement age of 70 years for the Justices of the Supreme Court and Court of Appeal while Judges of the High Court, Grand Kadis may retire at a maximum age of 65[1235]. Having been duly appointed, no judicial officer shall be removed before his age of retirement except as otherwise stipulated in the Constitution. Accordingly, Section 292 (1) of the Constitution provides, "A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances:

In the case of :

(i) Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President Customary Court of Appeal of the Federal Capital Territory, Abuja by the President acting on an address supported by two third majority of the Senate;

(ii) Chief Judge of the State, Grand Kadi of the Sharia Court of Appeal or President of Customary Court of Appeal of a State by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State, praying that he be so removed for his inability to discharge the functions of his office or appointment

[1235] (see sections 291(1)&(2) of the 1999 Constitution)

> (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct;

In any case, other than those to which paragraph (a) of this subsection applies, by the President or as the case may be, the Governor acting on the recommendation of the National Judicial Council that the Judicial Officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.

At least, the Constitution has clearly stated the circumstances that may lead to the removal of a Judicial Officer and the process of removal. It is anticipated that these copious constitutional provisions would, to high extent, guarantee security of tenure and protection against arbitrary removal of Judicial Officers and so remove the fear of insecurity by most judges. Security of tenure is an essential ingredient of the independence of the Judiciary and must be given serious consideration and attention at all times to ensure sustenance. We do not have problem with removal in the event of infirmity of mind or body. Problems arise in cases of misconduct or contravention of the Code of Conduct.

Under the Third Schedule made pursuant to Section 153 the National Judicial Council have the powers to recommend to either the President or the Governor of a State as the case may be concerning the removal of Judicial Officers under them as stipulated earlier in this paper. We must state here that for the process of removal of a Judicial Officer not to be faulty as to affect the independence of the judiciary depends on the integrity, conscience and wisdom of the members of the National Judicial

Council. In most cases removal of Judicial Officers are based on acts of misconduct like bribery and corruption or making obnoxious orders that bring disrepute to the judiciary. Whatever the reasons are, all we can say here because of lack of time and space is that the National Judicial Council should be extremely careful not to be carried away by emotion and desire to make news or just to give the impression that the judiciary is doing cleansing for good image laundering. Let the real bad ones be shown the way out and for very grave misconduct. Where a Judge as a human errs in a circumstance that pose no threat to the image of the judiciary nor cause any injury to any person such judicial officers should be properly advised not removed.

Furthermore, since the hearing of petitions against judicial officers by the National Judicial Council is a quasi-judicial proceeding, we also advise that the principle of prove beyond reasonable doubt should guide the decisions of the Council at all times.

Judicial Control on the Legislative and Executive

(a) Checks on Legislature:

A bold judge is capable of providing a check on the Legislative and Executive. He requires great sense of responsibility and impartiality to check the excesses of the Legislature. For instance in *AG of Bendel State V. A.G. of the Federation*[1236] the Supreme Court of Nigeria had no difficulty in declaring as null and void a Revenue Allocation Bill which was rushed through the House of Representatives and the Senate without full compliance with

[1236] (1981) 10.S.C.I.

relevant provisions of the Constitution notwithstanding that it had been assented to by the President. In this celebrated case, the Chief Justice of Nigeria (CJN), Fatayi-Williams made a landmark pronouncement on the uninhibited role of the courts in controlling the excesses of the legislature in appropriate cases. The CJN, relying on section 4(8) of the Constitution had this to say:

> *"It is the Constitution that gives power to the Legislature to make laws and the Constitution sets down in some detail the procedure for exercising that power. Therefore any challenge to the procedure adopted by the legislature in exercising that power must be adjudicable by the judiciary which is the only institution of governance that has the right, the power, and the wherewithal to perform that function even if section 4(8) of the constitution were not there."*[1237]

On his part, Bello in the same case aptly and succinctly put it this way:

> *"I would endorse the general principle of Constitutional law that one of the consequences of the separation of powers, which we adopted in our Constitution, is that the court would respect the independence of the legislature in the exercise of its legislative power and would refrain from pronouncing or determining the validity of the internal proceedings of the legislature or the mode of exercising its legislative powers.*

[1237] Ibid

> *However, if the Constitution makes provisions as to how the legislature should conduct its internal affairs or to the mode of exercising its legislative powers, then the court is duty bound to exercise its jurisdiction to ensure that the legislature comply with the constitutional requirements."*[1238]

Section 4(8) of the 1999 Constitution provides as follows:

> "Save as otherwise provided by this Constitution, the exercise of the legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of court of law and of judicial tribunals established by law and accordingly, the National Assembly shall not enact any law that oust or purports to oust the jurisdiction of a court of law or a judicial tribunal established by law."

We find solace in the bold approach of the apex court Justices in this matter with the legislative force of section 4(8) of the 1999 Constitution (as altered). Hitherto, it has been a near fear syndrome by members of the Bench that the legislature is supreme and so untouchable even in the face of the accepted and assimilated doctrine of separation of powers in the Constitution. The Supreme Court's posture in this case under consideration has considerably nailed the so called fear of legislative supremacy to bring the matter to its conclusion.

[1238] Ibid

Having said all this in applaud of the steps taken by the judiciary, the caveat we would place on it as always from different scholars is that the courts should avoid being antagonistic neither with the legislature nor the executive. Working in a harmonious atmosphere, the three arms of government remains the best approach in a developing society without compromising the operation of the rule of law. The case of *Lakannni V. Attorney-General for Western Nigerian*[1239] is an example of a situation where the executive being unsatisfied with the decision of the Supreme Court immediately passed a legislation to neutralize the decision and to ensure that it is enforced. This may not be a good example since it was under the military rule in Nigeria. The situation cannot be the same under the civil (democratic) rule. It is therefore, the undoubted duty and responsibility of the judiciary (judge) to interpret and uphold the Constitution against any Legislative error. In the same vein, Justice Akinola Aguda further had this to say:

> "it seems clear to me in those circumstances that a judiciary which refuses to provide a check on the legislature's exercise of legislative powers when viewed along relevant provisions of the written constitution will be abandoning its social, political and moral responsibility, and thus compromising its impartiality and its independence to the detriment of the health of the nation. But the exercise of the power requires the greatest sense of responsibility and impartiality by the Judiciary"[1240].

[1239] (1994) 4 ESCLR 713)
[1240] Justice Akinola Aguda (Supra)

On the other hand, the Courts should not interfere with the internal procedures of the Legislature as it will amount to imposing its powers on another house. We must confess that the judiciary has not done too well in the area of legislative control either due to lack of interest or that litigants hardly challenge laws passed in error or a total misunderstanding or lack of knowledge about the principles of separation of power vis-a-vis the conduct of checks and balances.

(b) Checks on the Executive:

It is the responsibility of the judiciary to check the constant abuse of power and executive recklessness. It is true that the Executive appoints judges under the Constitution but that is not enough to cause judges to compromise their constitutional responsibilities. It is absolutely not acceptable for a judge to dance to the yearnings or desires of the executive on the ground that he was appointed by the Chief Executive. On this point reference is made to the brave words of Hon Justice Akinola Aguda, (supra) he said:

> *"It does not matter how judicial officer was appointed, it remains for him to insulate himself from' the influences external to him in the discharge of his judicial functions. For he should remember that the dreadful day of God's judgment shall surely come to every individual and he will be adjudged as to whether or not he had permitted himself to be influenced in his judicial work by political and administrative superiors or that he failed to free himself from influences of personal*

> *gain or partisanship —political, religious or ethnic bias!"*

Honestly, the above proposition by Justice Aguda remains strong in our jurisprudence today as it is often chanted that the exercise of the powers of the judiciary as a check on the Executive is not antagonistic nor a subjugation of the Executive by the Judiciary but a positive demonstration of judicial independence and impartiality. Accordingly, a bold judge should be able to condemn wrongful actions of government (executive). One or two examples where the court has successfully condemned the activities of the Executive done in excess of its powers will be of help here. In the celebrated case of *Shugaba Darman V. The Fed Ministry of Internal Affairs & Ors*[1241] the courts condemned in totality the act of the Minister of Internal Affairs in the 2nd Republic who unconstitutionally deported a political opponent to a neighboring country without due regard to his fundamental human rights. The court ordered the plaintiff to return to Nigeria and was in addition awarded damages. Another case was *Ojukwu V. Governor of Lagos State*[1242] where the court condemned the action of the Lagos State Government which forcefully took over Ojukwu's properties despite pending application for injunction not to do so. It was a clear example of Executive lawlessness in which Ojukwu was restored to the status quo ante by the court. There is a plethora of cases along this line showing the boldness of the judges over executive recklessness.

[1241] (1981) 2 NCLR 549
[1242] (1985) 2NWLR 805

Honestly, it has become a matter of serious concern and consideration in many jurisdictions including Nigeria that the judiciary should rise to its challenge and responsibility to ensure that the Executive keeps within the area allocated to it in the Constitution regarding the general scheme of governance. We will recall here that the common law rule limiting the application of mandamus to persons other than the crown or servants does not apply in Nigeria. An example is the case of *Bashir Alade Sh1tta-Ben V. Fed Public Service Commission*[1243] The use of mandamus in many cases on ground of locus standi or no standing to sue. As the country continue to grow physically and spiritually the general attitude of litigants and judges themselves are changing concerning the issues of locus standi. The posture being taken now is to allow people access to court and be heard without rationing justice. Thus in *Adesanya V. President of Nigeria,*[1244] Fatayi Williams CJN said:

> *"I take cognisance of the fact that Nigeria is a developing country with multi-ethnic society and a written Federal Constitution where rumour-mongering is the pastime of market places and the construction sites to deny any member of such society who is aware or believes, or is led to believe.... that any law passed by any of our legislative Houses whether Federal or State, is unconstitutional, access to a court of law to air his grievance on the flimsy excuse of lack of sufficient*

[1243] (1981) 1 S.C. 40 at 57-58.
[1244] (1981) 5 S.C.112

> *interest is to provide a recipe for organized disenchantment with the judicial process."*
>
> *"In the Nigerian context, it is better to allow a party to go to court and to be heard than to refuse him access to our courts. Non-access, to my mind, will stimulate the free for all in the media as to which law is constitutional and which law is not. In any case, our courts have inherent powers to deal with vexatious litigants of frivolous claims. To re-echo the words of Learned Hand, if we are to keep our democracy, there must be one commandment- thou shall not ration justice."*

From the foregoing, courts should be prepared to listen to litigants except in cases of clear busy body or meddlesome interlopers. Therefore, appropriate cases of mandamus shall lie against an officer who fails to perform his public duty. In the same manner and spirit, the court should in appropriate cases issue orders of certiorari, prohibition and Habeas Corpus applying the various principles laid for them including the exercise of powers of judicial review. All these are applied with a view to sustaining the rule of law and maintaining law and order in the society.

The Judiciary and Its Responses to the Socio-economic Vices and Developmental Problems of Nigerian Society

"The work done by judges of England is not now as glorious as it was, their opportunities are not what they used to be, there are no great constitutional questions for English judges to decide such as still have to be considered by the supreme court of a federation or

such as may arise under the Canadian bill of rights. They have no such exciting task in front of them as awaits the court of India and Nigeria that of fusing English law with the indigenous law|"[1245].

Perhaps we should have taken this before now. but it is stationed here for a purpose, principally to make the reader more comfortable with the issues canvassed earlier in this paper. We will look at the traditional roles and the ones emerging as a result of societal changes. Obviously, a consideration of the role of the judiciary should encapsulate the principles of a democratically federated system of government like Nigeria.

(a) The judiciary like we said earlier in this paper is the guardian of the Constitution. It ensures that the provisions of the Constitution are jealously observed and properly interpreted to achieve its purpose. In guarding the Constitution the judiciary is by extension guarding the rights of the citizens. The principles usually taken into account in perfecting this role include adherence to rule of law, fair hearing, equality before the law etc in attunement with the prevailing circumstances in the realm of societal changes. In 1907 Charles Evans Hughes declared that the judiciary is the safeguard of our liberty and of our property under the Constitution.

(b) The courts deal with people and their individual problems on a case by case and day to day basis. Consequently, it is

[1245] "(per Lord Devlin in his samples of Law making, p. 6)

the judiciary who would readily know whether there is inequitability in the workings of the system or not. The court therefore, intervenes to safeguard the society against injustice. In the course of resolving a lawsuit, the courts indeed do all they could to condemn tyranny or executive recklessness? The courts therefore are enemies of tyrants.

(c) The Judiciary is the last hope of the common man and so the citizens last line of defence in his unequal combat with power especially when it is abused. It is the attitude of the court or judge who worth his salt that battles to ensure that its cherished independence is not reduced to mere theoretical proclamation that is akin to defacto independence.

(d) The judiciary strengthened by the theory of separation of power constitutes a veritable organ in checkmating the Legislature and the Executive from arbitrarily doing the wrong thing to the detriment of other citizens contrary to law. The court therefore, protects the people from power without being subservient to those with which power is domiciled.

When these functions are religiously followed the conclusion is that the judiciary would maintain its reasonable level of independence, pride of place, strength and of course professionalism. Because of the incidence of globalization and quest for developmental upliftment in a contemporary society like Nigeria the responsibilities of the judiciary is becoming wider and wider every day. Challenges coming up before the courts frequently are the dream of the government to eradicate or reduce

the activities of Boko Haram; Kidnappers; armed robbery (of old and new models); child abuse and human trafficking; dealers in fake drugs and drug traffickers; vandalisation of oil pipelines and electricity; oil theft; constant air mishap; failed contracts; various degrees of corrupt practices; breaches of fundamental human rights; deliberate spread of Covid disease by carriers and infected persons; application of the Freedom of Information Act; election petitions etc. It is true that if the legislature and the executive down their tools the society may not altogether collapse but if the judiciary alone stops working a state of anarchy will prevail that would lead to total collapse of the system. Most of these base behaviours that have been adequately criminalized require quick dispensation of justice. Courts should give priorities to them as another way of discouraging the perpetrators who always think that when they are taken to court the matter will linger while they have their freedom through the right of bail in bailable offences. I encourage judges to take up the challenge posed by these monsters and dispose all such cases without delay.

Social Objectives Under Chapter II of the 1999 Constitution

Until we succeed, we have over and over again talked about the justiciability of chapter II of the 1999 constitution of the Federal Republic of Nigeria. This solemn and basic provisions in the groundnorm articulated the fundamental objectives and directive principles of state policy. The content being encapsulated in sections 13 fundamental obligations of the government; 14 the government and the people; 15 political objectives; 16 economic objectives; 17 social objectives; 18 educational objectives; 19 foreign policy objectives, 20 Environmental objectives; 21

Directives on Nigerian cultures; 22 obligations of the mass media; 23 National ethics; and 24 Duties of the Citizen .

The Fundamental Objectives and Directive Principles of state policy as catalogued above from sections 13 to 24 constitute basic objectives and principles that form the fulcrum of human existence in a modern society. It is very unfortunate that these aforesaid basic needs for better living are fancifully there for nothing. The offensive section of the Constitution which impedes the power of courts to adjudicate on matters concerning the fundamental objectives and Directive principles of state policy is section 6 (6) (c) which states as follows:

"The judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of state policy set out in chapter II of this Constitution"

The effect of the obnoxious prevision of Section 6(6) (c) of the Constitution is that the Fundamental Objectives and Directive principles of State policy when not observed by any authority be it Federal, State or Local government such is not justiciable. In other words, if a candidate at an election campaign promises (even if written as agreement) that he would build a bridge for a particular community if elected, he fails or reneges to fulfill his promise no action can be taken by the community against such candidate. Our position has been at various fora that if the provisions are there merely for fancy, then expunge it from the

fundamental law of the land. This is simply like providing something for a child with the right hand and taking it away from him with the left hand. We humbly submit that justiciability of the provisions of chapter II would not only make politicians to be serious, it would also herald development and minimize corruption and resources would be judiciously utilized.

Sections 6 (6) (b1) and 7 (2) (a) and (b) have provided unlimited access to the courts by any person. Consequently, section 6 (6) (c) which limits access to court concerning matters under the fundamental objectives and directive principles cannot stand. We are not alone on this position. Even in India the position is to enforce similar provisions being integral part of the Constitution as was decided in *Pandev V. State of Bingal*.[1246] Confronted with the issue of ouster of court's jurisdiction, Hon. Justice Ejembi Eko, holding dissenting judgement in *Orakuh Resources Ltd & Ior V. Nigerian Communications Commission & 4 Ors*[1247] Said: "uninhibited or unhindered access to court of law that is: the direct and easy accessibility thereto guaranteed by section (17) (2) (e) of the Constitution is a major aspect of the rule of law. Any provision of a municipal law or statute purporting to restrict easy accessibility to the law courts for citizen to ventilate their grievance must be subjected to strict interrogation or interpretation". In the same way Karibi - White, JSC stated in *Capt, Amadi V. Nnpc*[1248]. *"the right to easy access to the law court for the citizen to vent grievances i.e in pursuit of the determination of his civil right or obligations against the other*

[1246] (1988) LRC (Const.) 241
[1247] (2022) 6 NWLR (pt. 1827) 539 at 599.610
[1248] (2000) 10 NWLR (pt. 874) 72 at 76

including individuals, government, or authorities, means the approach (or access) to the court of law without constraint. Such constraints include unnecessary and cumbersome statutory roadblocks".

We respectfully submit that the pronouncements made in the above cases by the apex court regarding access to court as well as the position taken by the Indian courts (supra), the provision of section 6 (6) (c) is no longer a good law. It needs to be abrogated very urgently or the courts should adopt a library approach to it.

Challenges and Constraints of the Judiciary in Executing its Constitutional Role

We are here confronted with tense situations that tend to erode the perceived independence of the judiciary thereby making the judiciary less powerful, less stable and far below its counterparts: the Legislative and the Executive. Indeed we think this is the most critical aspect of the discussion on judicial independence.

Failure to Enforce Court Decisions/Orders

Section 287(1) of the 1999 Constitution Provides:

(1) The decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Supreme Court. Sub-sections (2) and (3) made similar provisions for enforcements of decisions of the Court of Appeal and the High Court's respectively. The provisions in the 1999 Constitution are also replication of the provisions of the 1979-1989 Constitutions on the subject. It is potent to note that "authorities", "persons" and "courts with subordinate jurisdiction" have the power to enforce decisions of superior courts. But like we said earlier, the courts

do not have the force to so enforce. Everything is in the hand of the executive while the court merely provides the judgment and cooperation by monitoring the activities of the enforcement officers from the Executive (mostly the police). Unfortunately, what occurs most of the time is that the courts are subjected to the coercive influence of the other arms of government to stop enforcement. The main problem is that the Chief Legal Officers - The Attorney-General of the Federation or State have found themselves as strictly part of government and so derail and renege in their responsibility of advising the executive as appropriate.

At the Annual General Bar Conference held at Lagos in August 1989, Oputa, JSC said:

> *Every Government in this country, civilian and military, has had an Attorney-General as the Chief Law Officer of the State. On this all-important and indispensable officer rests the arduous, onerous and frightening responsibility of steering the government along the path of justice, observance of the Rule of Law and the Human Rights provisions of the Constitution. In military regime where the legislative and executive functions of government are fused, the Attorney-General assumes even greater responsibility. Now, every Attorney-General is first and foremost and I dare say, permanently a lawyer. He is only temporarily a Minister or Commissioner for justice. As a lawyer he should share the anxiety of members of the legal profession in the observance of the rule of law. As a Minister he has to advise the government*

> *of the day. If his honest and considered advice is rejected and he feels very strongly about it, he can resign.*

We sympathize with Hon. Justice Chukwudifu Oputa of the blessed memory for his passion and pride of being a lawyer. Sympathy here because he is even suggesting that an Attorney-General should resign if his advice is rejected. The question is who has ever resigned in Nigeria or has the Executive not rejected advices from the Attorneys-General. In Nigeria the worse scenario is where the Attorney-General assumes the role of the government-in-power. Preference is given to the role as Minister or Commissioner of Justice than the role of an Attorney-General. I think that is why rightly in our view some people are asking for the separation of both offices for separate persons to occupy. In *Federal Civil Service Commission V. Laoye*[1249] it was an Attorney-General who asked the Supreme Court to reverse all its former decisions in which the court declared the removal of a civil servant illegal. Dealing with the matter squarely, Oputa, J.S.C again said:

> *"Before dealing with these submissions, I like to dispose of what the Attorney, General described as "the trend of the court to favour individual litigants against public institutions". Yes, justice has never been one-way traffic. It has never been justice for government functionaries only. Justice has two scales and the case of either party is put one or other of the scales and weighed. Justice is also depicted as blind. It neither sees nor recognises*

1249 (1989)2 NWLR Pt. 106 at 652

> *who is government functionary and who is not. It is not a respecter of persons or institutions no matter how highly placed they are. it is the duty of courts to safeguard the rights and liberties of the individual and to protect him from any form of abuse or misuse of power or what my learned brother ESO, J.S.C in Governor of Lagos State V. Ojukwu (Supra) described as executive lawlessness.'*

There are scores of refusal by executive and legislative to obey court orders. For instance- in October 1982, Anyaegbunam, C.J. (Fed High Court) made an order against the Senate but when the President of the Senate received the order, the Senators called the judge names and rejected the order.[1250] The former C.J. of Kano, Dahiru Musdaphar suffered the same act of intimidation and disobedience to court orders in the hands of Governor Abubakar Rimi in 1982. Ajose-Adeogun, J of Lagos State also suffered the same show-down by Governor Lateef Jakande in 1982. It seems that the executive is only interested in orders of Court involving confiscation of properties, which are never accounted for.

(b) Executive Interference

Another monster is the fact that the Executive feels and extends its almighty power to interfere with the functions of the judiciary. While the judiciary fights to resist the pressures of hysteria, fanaticism and prudence, the executive is clothed with the force of expediency and clamour. How can a Chief Executive

1250 See New Nigerian Newspaper October 22, 1982)

shamelessly pick his phone and call a Judge with a directive on the way a case he has interest (personal or government) should go. If the judge fails to obey, he becomes a target not to be elevated or accorded any benefit others enjoy. Where lies the independence? Where lies the separation of power?

(c) Poor working condition and low retirement age

Although there is improvement in the welfare package of judicial officers now, it is not enough. One of the cardinal principles of objective independence of the judiciary is that all monies meant for the judiciary should be voted by the legislative and domiciled directly into the relevant department of the judiciary but certainly not through the Executive. Provided that the amount so allocated should be enough to cater for the welfare and provision of adequate infrastructure for the judiciary. A judge should have good cars, dressing allowances, personal residential accommodation where he will move into at retirement; police orderly even at retirement and infact to continue enjoying his employment benefits after retirement. Also age of retirement should not be less than 75 years for all judges, unless the judge is physically incapacitated. This recommendation is supported by the fact that in Nigeria when judges retire at the age of 65 years or 70 years from Supreme Court or Court of Appeal, they are still strong and as a result they take up more tedious public assignments.

(d) Corruption:

For the individual or subjective conscience of the judge to be intact the judge should not be corrupt. The spirit of the judge should always be ready to fight against the cold hands of corruption otherwise he suffers the disgrace that may extend to

his children. Needless talking much about corruption which is usually fueled by greed and nepotism but suffice it to say that corruption poses a great danger to the independence of the judiciary. Our knowledge and passion for corrupt-free state makes us feel that one day this country will totally become a poor or failed State if corruption is not properly controlled.

(e) Lack of Continuous Learning

Judges should be given the opportunity to attend and participate in Seminars, Symposia , Conferences, refresher courses and other programmes that would enhance their knowledge of the Law and procedure, especially in the face of changing trend in the general scheme of things. Knowledge itself is power and how to acquire it must not be compromised. Enough funds should be allocated for training and retraining of judicial officers locally and internationally.

(f) Judicial Lawlessness

At times judges contribute to the problem by conducting themselves in such a way and manner that puts their integrity, erudition, uprightness, conscience and maturity to test. Such little but serious issues like poor dressing; poor and careless speeches; drunkenness; over-zealousness and desire to make news as newspaper headlines; making quick orders as pre-trial remedies without giving affected parties opportunity to be heard.

In his opening address at the 1988 Conference of Judges in Abuja, Nigeria Bello, observed: *"Indeed, there is an urgent need among some of us, the judges, to appreciate that exparte injunctions which were devised as vehicle for the carriage of*

instant justice in proper cases should not be converted into a bulldozer for the demolition of substantial justice".

In recent time, contradictory court orders are made on the same subject matter by different judges of the same jurisdiction. For instance, in Lagos, Federal High Court making orders on a matter another Federal High Court in Abuja had adjudicated and made its own orders. How do you enforce such conflicting orders from the same court? We all call to mind the orders and counter orders on exparte applications made in respect of the imbroglio at the Annual General Bar Conference at Port Harcourt in 1992. We recommend unequivocally that judges should conduct themselves very well to put their head above board and not to give the other arms of government the opportunity to make the Judiciary a laughing-stock.

CONCLUSION

The judiciary is the guardian of the constitution. Powers are conferred on the Judge so that he may exercise it with independence and impartiality and make justice accessible to all in fair and open manner. This independent minded judge is backed by the pillar of separation of power propounded over 300 years ago.

Judgment of courts should be enforced by the authorities and persons charged with the responsibility to do so. Everything should be done to enhance the independence of the judiciary. Programmes should be adopted to strengthen and make the judiciary more proactive. The welfare of judges must not be played with for any reason. The Executive and the Legislative should not involve in any act or omission that would negatively

interfere with the functions of the judiciary at all times. Instead, a healthy working relationship should exist among the three arms of government without necessarily overlapping. The courts should be liberal in handling matters that concern social objectives as provided for under section 17 of the 1999 Constitution to perfect the foundation of a new social order.

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