journals.unizik.edu.ng/index-php/jcpl ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

An Appraisal of International and Domestic Instruments for the Protection of Human Rights

Idachaba Martins Ajogwu*

ABSTRACT

This paper took a cursory look at the decline in protection and redress for victims of crime in Africa, and Nigeria in particular, with the inception of colonialism and imposition of alien court and legal systems on the territories. The upsurge of crime and criminality in the society undoubtedly have reached an alarming proportion that the society is rudely exposed and vulnerable to its consequences, the advancement of new and dangerous criminal activities that defy scientific advancement and threaten both survival and security of man; hence the need to interrogate and examine international and domestic instruments for the protection of human rights. The methodology adopted in this paper was doctrinal. Both Primary and Secondary resources were employed in carrying out this study. Legal textbooks, seminar papers, journal articles, internet resources, national constitutions, human rights instruments and other related statutes were examined. The paper found that there are inadequate victim-friendly legislation to meet with international standards. The paper also found that the Courts, particularly trial Courts abuse the grant of ex parte Orders. This paper therefore advocates promulgation of victims-friendly legislation and the establishment of Victims' Compensation Commissions or Boards by African countries, like their counterparts in Europe and America. We recommended further that when such Boards or Commissions are established, they should be manned by credible and eminent persons in law and cognate areas; with the sole responsibility of identifying and compensating genuine victims of crime accordingly.

1.0 Introduction

It is an incontrovertible fact that in every human society, every now and then, crimes are being committed. Laws are made to ensure a violent-free society and a peaceful co-existence by spelling out the rights of individuals, as well as co-relative duties. The rising trends of crimes or violent crimes have reached alarming proportion that the society is rudely exposed to high level of criminality and advancement of new and dangerous criminal activities that defy scientific advancement and threaten both survival and security of man; hence effort must be made to tackle this trend. Around the world, this pathetic situation has become so worrisome. Before the State took over the provision of security for its citizenry through its official law enforcement agency, record shows that victims were solely responsible for identifying those who wronged them, footing the bills of investigating their crimes and prosecuting the felons when arrested.[1] Thus, where a crime was committed without witnesses, efforts to identify the assailant became the

*__Idachaba Martins Ajogwu__ Esq. LL.B (HONS.) LL.M, PGD, FCent, PH.D (IN VIEW)***, *Lecturer, Faculty of Law, Kogi State University, Anyigba*, 08032224236, 07057747066,** Idachabamartins1@gmail.com

[1]P W Goetz, (ed) *Encyclopaedia Britannica* (15th edn.vol.25, New York: EncyclopaediaBritanica Inc. 1998) 958.

tasks borne by the victims unaided, as no Government agencies was responsible for investigating crimes.

We shall therefore be appraising some of the international and domestic instruments for the protection of human rights in Nigeria.

1.1 The Charter of the League of Nations

Unquestionably, the human rights movement is largely a product of the horrors of World War II – 'its rise, development and elaboration cannot be understood without resort to the abominations which European States and their agents committed during that war'.[2] According to Leary the, 'the gruesome and ghastly violations of the rights of designated racial groups committed by Nazi Germany, which stunned and traumatized the international community, were the primary impulsion for the development of an international system for the protection of universal human rights'.[3] The United Nations therefore, resolved to formulate a means that, would hold the perpetrators of such reprehensible and ruthless actions accountable for them, and also enhance and facilitate the realization of one of her main her objectives; the promotion of international peace and security, promotion of respect for human and fundamental rights and ensuring that future generation would be free from war.

The United Nations thus, inaugurated an eighteen-member multi-national Human Rights Commission, with, the sole objective to draw up a set of principles that all member states could pledge to implement. Eleanor Roosevelt was appointed the chairperson of the Commission which membership among others included John Humphrey and Rene Cassin, both lawyers. The presence of these two in the Commission, according to Glendon, 'assured that the Declaration would be an integrated text whose parts were related to one another, and whose interpretation was meant to be guided by the general principles contained in its preamble and concluded sections'.[4] Finally, the Commission came out with a draft copy of the Universal Declaration of Human Rights (UDHR) 1948.

1.1.1 The Universal Declaration of Human Rights 1948

Under the International human rights law, there are three key documents which together are known as International Bill of Rights. These include: The Universal Declaration of Human Rights (UDHR) 1948; the International Convention on Civil and Political Rights, 1966; and the International Covenant on Economic, Social and Cultural Rights, 1966. These together form the life-wire or backbone of the universal system. The Universal Declaration of Human Rights is the first part of the International Bill of Rights followed by the International Covenant on Economic,

---

[2]M Mutua, 'Proselytism and Cultural Integrity' in Tore Lindholm, W C Durham Jr, B G Talizib-lie (eds), *Facilitating Freedom of Religion or Belief: A Deskbook* (Martinus Nijhoff Publishers 2004) 651 – 668.

[3]V A Leary, 'The Effects of Western Perspectives on International Human Right' in An-Naim and F M Deng, *Human Rights in Africa: Cross Cultural-Perspectives* (1990) 15; see also L I Uzoukwu, *'Constitutionalism, Human rights and the Judiciary in Nigeria'* (LLD Thesis, University of South Africa 2010) 37.

[4]M A Gledon, 'The Rule of Law in the Universal Declaration of Human Rights', *North Western Journal of International Human Rights*, 2(1):119<http://www.scholarlycommons/au.northwestern.edu/injihr/vol.2/issues>accessed 25th November, 2020.

Social and Cultural Rights and the International Convention on Civil and Political Rights and its Optional Protocol.

While presenting the Document to the United Nations General Assembly (UNGA) for its final vote, the Chairperson, Mrs. Eleanor Roosevelt observed:

> *In giving our approval to the declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a Declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations.*[5]

The Universal Declaration of Human Rights (UDHR),[6] which is based on the idea that there are a few common standards of decency that can and should be accepted by peoples of all nations and cultures, was adopted on 10 December 1948, by the United Nations General Assembly (UNGA). Article 1 of the UN Charter declares that, 'all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'. It further affirms that, everyone is entitled to all the rights and freedoms set forth without distinction of any kind. It proclaims that, no distinction shall be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs.[7] Its adoption in 1948 marked the beginning of the transformation of human rights from moral imperatives into rights that are legally recognized internationally and nationally.[8]

The promulgation of the Universal Declaration of Human Rights (UDHR) in 1948 became the first known attempt at drawing international attention to human rights norms. Glendon asserted that, 'though the Declaration does not create binding legal obligations, most of its rights had already received a significant degree of recognition in the constitutions of many nations by 1948'.[9]

Basically, the Declaration proclaimed two categories of rights, namely, the civil and political rights and the economic, social and cultural rights.[10] The first category, known also as the, first generation of human rights, and consists *interalia,*

a) Right to life, liberty and security of person,

b) Right to be free from slavery or servitude,

c) Freedom from torture, cruel, inhumane and degrading treatment or punishment,

d) Right to recognition everywhere before the law,

---

[5]*Ibid*.
[6]UDHR 10 December 1948, G.A Res .217A (III), UN Doc. A/810.
[7]*Ibid*art. 2.
[8]Uzoukwu (n2) 37.

[9] See CFRN, 1999 (as amended) Chapter IV.
[10] UDHR (n5) arts.3 – 21 and 22 – 28.

e) Freedom from arbitrary arrest and detention,

f) Freedom of speech, assembly and association, etc.

Furthermore, under the classification of rights, is the 'second generation of human rights' and are recognized as economic and social or security rights and they include:

a) Right to social security,

b) Right to work under just conditions,

c) Right to education,

d) Right to reasonable standard of living,

e) Right to food,

f) Right to shelter and Medicare,

g) Right to participate in cultural life

h) Right to enjoy arts and technology.

Udombana described the two classes of rights as, 'integrated and interrelated scheme of rights'.[11] These rights are concentrated on the individuals,[12] and are contained in two Covenants, namely, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR); these Covenants accord the UDHR legal bindingness.

1.1.2 The Resurgence of Agitations for Victims' Rights - the UNO

The adoption and implementation of the Universal Declaration of Human Rights in 1948, and the subsequent creation of the office of the United Nations High Commissioner for Human Rights, vested with the responsibility of enforcing and implementing human rights, heralded in a new era - an era that would be devoid of the kind of atrocities and barbarity committed by the Nazi regime. It was thought that with the rights and freedoms protected in the UDHR, the issue of agitation for further rights was eliminated. However, since protection of human rights arose primarily to curb the states' and their agents' actions against the individual, while infractions or breaches by non-Governmental agents, are deemed within the purview of the national Governments and their law enforcement agencies, as well as the fact that international human rights law does not afford victims of crime legal rights *per se*; agitations for the protection of the rights of victims of crime became not only necessary, but imperative.

According to McFarlane, 'the central concern of every legal system is to protect the rights of victims and to deliver them justice'.[13] Thus, when this, cardinal principle is jettisoned and the state began converting restitution and compensation that were usually paid to the victims, to fines now payable into state treasuries, the agitations for the restoration of justice for victims became

[11]N J Udombana, *'Shifting Institutional Paradigms to Advance Socio-Economic Rights in Africa'* (LLD Thesis, University of South Africa 2007) 10.
[12]Uzoukwu (n2) 37.
[13] See A McFarlane, Attitudes to Victims: Issues for Medicine, the Law and Society in Chris Summer *et al* (eds).

fundamental. This became imperative, when efforts of national Governments concerning the issue were found grossly inadequate or none existent, contrary to the intendment of God as espoused in the Holy Bible.[14]

1.1.3 Other International Instruments

It should be stated that, aside from the UDHR and the two Covenants (ICCPR and ICESCR), there are other core-legally binding International Human Rights Treaties. These include the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),[15] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[16] Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),[17] Convention on the Rights of the child (CRC),[18] and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC).[19] There are also, 'a plethora of other Universal Instruments, Declarations, Principles, Guidelines and Recommendations with bearings on human rights' protection'[20] which African states are parties to.

Furthermore, over the years, the United Nations Organisation has set up a complex system for the promotion and the protection of human rights. This comprises the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of All Forms of Discrimination against Women, and the Committee on the Rights of the Child.[21] These committees are under the supervisory control of the Commissioner for Human Rights, for the purpose of universal implementation of internationally accepted human rights standards. On the issue of reparation for victims of violation of human rights, the United Nations General Assembly on 16th December, 2005, adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and serious violations of International Humanitarian Law.

1.1.4 The Impact of Majory Fry's activities on the Resurgence of Agitations for Victims' Rights

In 1960, Majory Fry, then a Magistrate in England drew attention to the need to treat victims of crime better. She appealed to Governments to establish ways to compensate victims of crime; and also advocated that victims of crime should, at least, get the same treatment as victims of motor vehicle or work place accidents. Her activities first attracted the attention of New Zealand's Government which, in 1963, commenced the first State Compensation Programme for victims of crime.[22] Consequently, those who suffer personal injuries, whether caused by a

[14] See, Genesis 4 *Authorised King James Version.*
[15] (CERD) entered into force 4January 1969 660 UNTS 1995.
[16] (CEDAW) 27 UST 1909 TIAS No 8289 1249 UNTS 14.
[17] (CAT) 10 December 1984 1465 UNTS 85.
[18] (CRC) 20November 1989 144 UNTS 123.
[19] (MWC) GA res.45/158 18Dec. 1990.
[20] N J Udombana,'Mission Accomplished? An Impact assessment of UDHR in Africa' (2008) *Journal of Public Law and Policy,* Vol.30,335-385.
[21] *Ibid*.
[22] *Ibid*.

careless motorists, doctor, criminal in an intentional assault or the victims' own fault, became entitled to compensation from the scheme, in the same way as other accident victims.The Scheme in New Zealand is funded from Government contributions and premiums paid by motorists, employers and earners, according to Miller.[23]

One year after New Zealand had established her State's Compensation Programme, England in 1964 also launched the first Victims' Compensation Programme in the UK. Since then, victims of crime in England have received increasing recognition, moving to a more central position within the criminal justice system**.** It should also be reiterated here that, her agitation towards an effective recognition, promotion and protection of victims of crime has had immense influence in countries all over the world. In the United States of America and other advanced countries of the world also, the interest for the promotion and protection of victims of crime have been rekindled.

Juxtaposing this good move by some of the countries named above Nigeria, one fact seems to be clear: that there still exist scanty provisions geared towards an effective promotion and protection of victims of crime in Nigeria. To further buttress this, is the inability of the Government to realize the need to establish a Federal and State Compensation Board or Commission.

1.1.5 Legal Status of United Nations Resolutions etc. on Rights of Victims

The United Nations General Assembly has approved and implemented several instruments on protection of the rights of victims. However, these Documents are not legally binding on member states because they are Declarations and Resolutions. In other words, it is not legally binding as it is neither an agreement nor a treaty. The United Nations General Assembly's (UNGA) resolutions are a declarative statement of sentiment and lack the legal authority to enact or amend international law that legally binds states. This position had severally been affirmed by past ICJ Judges. For instance, as far back as 1950, Sir Hersch Lauterpacht (former Judge of ICJ), had expressed this sentiment when he said, 'the General Assembly has no legal power to legislate or bind its members by way of recommendation especially when such Resolutions, Declarations and or Recommendations were adopted under Chapter VI of the United Nations Charter'.[24]

Similarly, Judge Schwebel had affirmed that, 'the General Assembly of the United Nations can only, in principle, issue Recommendations which are not of a binding character according to Article 10 of the Charter of the United Nations'. However, Gold confirmed that, Resolutions adopted by the Security Council under Chapter VII of the United Nations Charter are legally binding, and whoever such a Resolution is directed, is expected to comply forthwith. Under Chapter VII, the Security Council is invested with, power to issue stringent Resolutions on matters that deal with threat to peace, breaches of the peace and acts of aggression, that require nations to comply with the terms set forth in the Resolution. Whereas, Resolutions adopted under Chapter VI are intended to be followed and implemented via negotiated settlements between concerned parties. It is therefore observed that since Declarations and Resolutions that deal with the issue of protection of human rights, including the protection of rights of victims of crime, fall within the ambit of chapter VI of the United Nations Charter, they are not legally binding.

[23] J Miller, 'Compensating Crime Victims within New Zealand's No Fault Accident Compensation Scheme: The Advantages and Disadvantages' in Chris Summer *et al* (eds).

[24] M D Oberg, 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ (2006) *The European Journal of International Law* Vol.16 No.5, 879 – 906.

On this basis of their non-legal-bindingness, some member states of the Organisation, particularly from Africa, have been very reluctant to enforce and implement some of them allegedly on the pretext of non-legal-bindingness. This argument is considered unimpressive since the founding members of the United Nations, and a majority of other member states of the Organisation who never suffered the pangs of colonialism, are known to have implemented and are still implementing these United Nations General Assembly's Resolutions and Declarations, particularly UNGA R40/34,1985. Moreover, the states that put forward this argument are known to have enforced and are still implementing other non-legal binding UNGA Declarations and Resolutions. It is thus submitted that such defence should be discarded, particularly with regards to the implementation of the 1985 UNGA Declaration of Basic Principles, which deal mainly with the protection of the rights of victims of crime.

1.1.6 The UN 1985 Declaration of Basic Principles

Following series of agitations and campaigns by Victims' Rights Movements in Europe and United States of America, with active support from members of the World Society of Victimology, the United Nations Organisation, through its General Assembly in November 1985 promulgated the Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power 1985. Irvin Waller has rightly described the Declaration as '*Magna Carta* for victims and the cornerstone of United Nations efforts to recognise the needs and interests of victims'.[25] Although not legally binding, the UNGA 1985 Declaration of Basic Principles is noted to have, laid down minimum standards for the treatment of crime victims globally. Consequently, Governments across the world, particularly in Europe and the Americas, became aware of the harm done to victims and accepted the basic standards for providing them with information, considering their views in criminal Courts when their personal interests are at stake, providing restitution from the offender, and if necessary, compensation from the state. The Declaration, affirms that crime is not just against the state, but it also inflicts loss, injury and psychological trauma on its immediate victims and members of their families.

Thus, in order to lessen, 'the impact of crime and criminal justice on the victims and their families, it proposes that, the police, Courts, health-care and communities should respect victims and provide them assistance'.[26] Consequently, in 1998 through the international leadership of the United States Department of Justice, their Office for Victims of Crime, and the Ministry of Justice of the Netherlands, with active collaboration with the World Society of Victimology, a *Guide for Policy Makers and a Handbook on Justice for Victims* were developed.[27] These were subsequently approved and adopted in the same year by the United Nations as a concrete step towards implementing the UN Declaration of Basic Principles 1985.

[25] See, Irvin Waller, *Crime Victims: Doing Justice to their Support and Protection* (Helsinki: European Institute for Crime Prevention and Control, United Nations 2003) 22.
[26] *Ibid*.
[27] *Ibid*.

1.1.7 The Protected Rights for Victims of Crime[28]

According to Djik, the contents of the 1985 United Nations Declaration of Basic Principles can be summariesd in ten basic principles of justice, which now form the various rights of victims of crime.[29] These rights, according to him are;

(1) The Right to be treated with Compassion and Respect

The first in the series of rights of victims is the right to be treated with respect and compassion. Once a complaint is lodged with the police, a process intended to ascertain the veracity or otherwise of that complaint is set in motion. If the report is genuine, the offender is identified and brought to justice, sometimes in a very long and time-and-finance-consuming exercise. During this process, the UN 1985 Declaration charges police officers to accord the victims the same respect and recognition that other citizens enjoy, as that could contribute to the victim's greater willingness to assist in the investigation and the judicial process.[30]

The Declaration suggests that police could do this by, 'scheduling interviews on days that are convenient to the victims; and during trials, by fixing adjournments to favour the victims'.[31] Similarly, victim's property that may not necessarily adversely affect the trial should be restored to the victim after photographs had been taken for purpose of evidential exhibit.

(2) The Right to information on the Proceedings

In addition to recognition of and respect for victims, victims deserve protection of their safety and privacy. This is because the suspect or his cohorts may seek to intimidate or harm the victim so as to stop him or her from seeking justice. He may, if the victim and the offender are known to each other, or are members of the same family or community and or co-workers, even harass the victim in retaliation for having reported the offence to the police. Therefore, whenever necessary, the relevant authorities should protect the victims, their privacy, their family members and their witnesses. This is more important, especially in cases involving children, women, aged or handicapped persons. The Declaration enjoins the police and Court officials to note that in sexual offences, special protection of the right of privacy and safety of the victim may become particularly necessary.[32]

(3) The Right to present their views to the Judicial Authorities

Some victims may require additional, immediate or long term medical care, as well as other forms of assistance. Therefore, the Declaration enjoins professionals, to provide victims with the necessary material, medical, psychological and social assistance through Governmental, voluntary, community-based and or indigenous means. The Declaration further emphasises that in providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted. For instance, victims of sexual offences may require specialised treatment, including long-term emotional support by medical personnel

[28] *The Basic Principles*,art.4 – 14

[29] J J M Van-Dijk, Benchmarking Legislation on Crime victims: The UN Victims Declaration 1985<http://www.amouvt.nl/show.cgi?fid=80066_cached_similar> accessed January 5th, 2021.

[30] *Ibid*.

[31] *Ibid*.

skilled in the areas; it may include medical follow-up over an extended period owing to (AIDS) scourge.

(4) The Right to Free Legal Aid

Legal aid is the provision of free legal services to persons of low income or under certain circumstances cannot afford legal services. It is trite that in every legal proceeding, parties to the suit are entitled to a legal practitioner of their choice. However, due to low income or social status, they may not be able to afford the services of a legal practitioner. In this case, to ensure that the principle of fair hearing and fair trial is adhered to, the party in question is given the opportunity to be duly represented by a legal practitioner from the Legal Aid Council. Therefore, as one of the rights accorded to victims of crime, is the right to free legal aid. The UN declaration provides that proper assistance should be provided to victims throughout the legal process.

(5) The Right to see their Privacy and Identity Protected, and safety against retaliation and intimidation

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.

(6) The Right to be offered the opportunity to Participate in Mediation,

The UN is not opposed to mediatory settlement of disputes, thus the Declaration notes that where the victim and the offender have an existing familial relationship, criminal prosecution with its stigmatising effect should be avoided as this may have benefits for both of them. It therefore recommends the use of 'informal procedures', which is being applied in several Western European countries, South Australia and some North American countries; which have been considered by many to provide a number of benefits over formal procedures. It is observed that the proponents of this procedure are agreed that mediation and conciliation programmes bring the offender and the victim face-to-face to negotiate a restitution settlement. They also confirm that, face-to-face approach would take the edge off the social situation which the incident of the crime had caused, thereby addressing the injuries so much that the offender is able to comprehend the impact of his crime upon the victim.

(7) The Right to receive Compensation from the Offender

The declaration provides that an award of compensation should be offered for the victim of the crime committed against him as against the offender.

(8) The Right to Receive Compensation from the State in cases of Violent Crimes

In furtherance to the award of compensation, the declaration provides that victims that have suffered serious injuries or impairment from violent crimes should have the right of compensation from the state.

(9) The Right to receive social support or assistance.

The declaration provides that victims should receive the necessary material, medical, psychological and social assistance through Governmental, voluntary, community-based and indigenous means.

It should be pointed out rightly that the rights set forth in the UN 1985 Declaration are similar to those earlier prescribed in the Council of European Union Recommendation Council No. (R 85/11) 1985 and further reiterated in 2001 Framework Decision.

1.2 National Legislation on the Protection of Victims

The ideals of human rights and fundamental freedoms, recognised and guaranteed globally, are incorporated into written constitutions of several countries.[33] In Nigeria these rights and fundamental freedoms are provided for under Chapter IV of the 1999 Constitution (as amended).[34] It has been observed that 'Nigerians have very fond attachment to the protection of their fundamental rights', hence the rights' ideal has always been guaranteed in all her previous constitutions.[35] A number of these rights, and indeed most of them, according to Iluyumade, 'are directed at inhibiting or imposing limitations on the actions of Government and its agents' *vis-à-vis* the citizens'. They conceded that, although the act of a citizen can infringe the right of another citizen, more often than not, it is the wrongful act of an agency of Government that is called in question.

This position has received judicial confirmation and approval in several cases in Nigeria. Hence one can therefore, rightly submit that the whole of Chapter IV of the Constitution,[36] and the Fundamental Rights (Enforcement Procedure) Rules 2009, are designed mainly for the enforcement of fundamental human rights of victims of abuse of power. A glance at a number of violations of fundamental rights' cases decided under the 1979 Constitution, affirms that fundamental rights enforcement was restricted to rights breached by Government officials. In *Minister of Internal Affairs v Shagaba Darman*,[37] the Court of Appeal held that, 'it is undoubted that the provision was designed to protect the individual against the coercive and oppressive exercise of Governmental authority and abuse of majority power, hence the rights conferred can be enforced and avail essentially, if not entirely, against Government'.

Similarly, in *Kelvin Peterside v International Merchant Bank (Nig.) Ltd*,[38] the judge explained that, 'the fundamental rights enumerated in Chapter IV of the constitution of the Federal Republic of Nigeria can only be enforced against the Government or authority … it cannot be enforced by one individual against another'. This research agrees that fundamental rights are entrenched in constitutions to prevent or guard against dictatorship and to afford citizens the opportunity to seek redress against arbitrary, oppressive and unlawful actions of Government; but rejects the proposition that victims of similar breaches by private citizens cannot similarly seek redress under the fundamental rights enforcement regime. It is submitted that, some aspects

[33]N J Udombana, 'Social Rights are Human Rights: Actualising the Right to Work and Social Security in Africa', (2006) *Cornell International Law Journal* Vol.39 No. 2, 206 for the list of African Countries who have incorporated these ideals into their domestic Constitutions.
[34] CFRN (n8) ss33-44.
[35]B O Iluyomade, and B U Eka, *Cases and Materials on Administrative Law in Nigeria*, (University of Ile-Ife (1980) 35.
[36]CFRN 1999 (n8).
[37](1982) 2 NCLR 915, at 976.
[38] (1993) 2 NWLR (pt.278), 712 at 728.

of these rights are enforceable against private individuals as aptly stated by the Supreme Court in *Abdulhamid v Akar*.[39]

1.2.1 Fundamental Rights Enforcement Procedure Rules - The (FREP) Rules 2009

It is in the recognition of the need to promote and protect the fundamental rights of man and consequently the enforcement of these rights that attempts have been made over the years to enforce them. In Nigeria, since 1960, after the shocking recommendations of the Willink Commission, certain rights have been guaranteed and tagged 'fundamental rights'.[40] These are purely the first generation of rights called the 'civil and political rights'. However, under the 1979 Constitution the second generations of rights known as the 'economic, social and cultural rights'', were recognized. These are the rights which attained recognition in the 20th Century with the advent of socialism.[41] They form the second category of rights under the Universal Declaration of Human Rights (UDHR)[42] and were given force under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Ironically, they are placed on the same pedestal with the civil and political rights under the Africa Charter – the most popular African regional human rights instrument that forms part of domestic laws of Nigeria even before it came into force in 1986.[43]

The two categories of rights in the 1979 Constitution are retained in the 1999 Constitution with minor modifications. However, a landmark distinction between the fundamental rights provisions and fundamental objectives and directive principles provision under Chapter IV and Chapter II of the 1999 Constitution respectively is that while the former are considered by the same Constitution as justifiable or enforceable rights,[44] the latter are declared non – justifiable or non – enforceable rights.[45]

Under the Republican Constitution of Nigeria, 1963, the Parliament was given power to make provisions with respect to the practice and procedure of the High Court of the territories for the purposes of the fundamental rights provided in Chapter III of the Constitution,[46]*parimateria* with Chapter IV of the 1999 Constitution. The Parliament was also given additional power to confer upon the High Court Powers in addition to those conferred upon them by the Constitution for them to exercise their jurisdiction for the enforcement of fundamental rights effectively.[47]

---

[39] (2006) 13 NWLR (pt.996).

[40] See Independence and Republican Constitutions, 1960 & 1963 respectively, Chapter III- ss.18-33.

[41] The 'Second Generation' of rights is the economic, social and cultural rights, which attained recognition in the 20th Century with the advent of socialism; See D J Harris, *Cases and Materials in International Law*, (6thedn, Sweet & Maxwell 2005) 625.

[42] Arts. 22-29.

[43] African Charter on Human and Peoples' Rights (African Charter) 1981 OAU Doc. CAB/LEG/67/3/Rev.5,21 ILM 58, 8th para.

[44] CFRN (n8) s46.

[45] *Ibid* s6(6)(c).

[46] CFRN 1963, s32(3).

[47] *Ibid*.

However, under the 1979 Constitution, the power given to the Parliament with respect to the procedure of enforcement of fundamental rights shifted to the Chief Justice of Nigeria. Accordingly, the Chief Justice of Nigeria was given discretionary power to make rules with respect to the practice and procedures of a High Court for the purpose of enforcement of fundamental rights under Chapter IV.[48] This, indeed, is a relaxation of the strict application of separation of powers as the power to make laws is the primary responsibility of the legislature, not judiciary.[49]

In exercise of his power under section 42(3) of the 1979 Constitution,[50] the former Chief Justice of Nigeria, Justice Fatayi Williams, made the Fundamental Rights (Enforcement Procedure) Rules 1979.[51] The basis of the Rules was to ensure speedy disposition of human rights violation cases. However, the 1979 Rules failed to achieve its objects on the grounds that, for instance, it contained stringent procedures for the enforcement of the Fundamental Rights Rules.

In 2009, the FREP Rules were made by the Chief Justice of Nigeria, Mr. Idris LegboKutugi, GCON (CJN, as he then was), pursuant to the powers conferred on him by section 46(3) of the Nigerian Constitution. The (FREP) Rules 2009 consists of the Preamble and fifteen Orders with sub-titles. Order I deals with Application and Interpretation, Order II treats Commencement of Action. Limitation of Action is treated in Order III, while Orders V and VI, deal with Service of Court Processes and Amendment of Statement and Affidavits respectively. Where there are several applications relating to the same infringement, their consolation is treated in Order VII. Where any of the Respondents intends to raise a Preliminary Objection to the application, he is guided by Order VIII.

Equally, effects of non-compliance and application to quash any proceedings are regulated under Orders IX and X respectively. Orders XI and XII regulate the Orders which the Court may make, and Hearing of the Application. Orders XIII, XIV and XV treat Right of any other person or body to be heard and Committal for Contempt, as well as Transitional Provisions. Under its 3rd Preamble, the overriding objectives of FREP Rules are stated as being *interalia,* the expansive and purposeful interpretation and application of the Constitution, especially Chapter IV as well as the African Charter. These shall be done with a view to advancing and realising the rights and freedoms contained in them and affording the protection intended by them. Also, while interpreting and applying the Constitution and the African Charter, it mu st be for the purpose of advancing, but never for the purpose of restricting the applicant's rights and freedoms.

Consequently, the Rules obliges that the Court shall respect Municipal, Regional and International Bills of Rights cited to it or brought to its attention; or of which the Court is aware, whether these Bills constitute instruments in themselves or form parts of larger Documents like Constitutions. Such Bills include;

(i) The African Charter on Human and Peoples' Rights and other instruments (including Protocols) in the African Regional Human Rights system,

[48]CFRN (n8) s 46(3).
[49]*Ibid* s5.
[50]*Parimateria* with s 46(3) of the 1979 Constitution.
[51] See Supplement to official Gazette No.64, Vol.66 of 5th Dec. 1979.

(ii) The Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations Human Rights system.

The Court is enjoined to make consequential Orders as may be just and expedient for the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms. The Court shall also proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the unrepresented. Other objectives of the Rules include the speedy and efficient enforcement and realisation of human rights, which would be achieved through treating deserving human rights suits with priority. And when there is any question as to the liberty of the applicant or any person, the case shall be treated as an emergency under Preambles (f) and (g), respectively. Under Order II (1), actions are commenced when any person alleges that any of the constitutionally guaranteed rights as they affect him, has been, is being, or is likely to be infringed. He begins this by applying to the Court within the state where the alleged infraction occurred for redress. Order II (2) contemplates that the action commences by the Applicant filing any originating process without leave of Court.

One of the provisions of the FREP Rules that is most favourable to the applicant is Order II (4), which is to the effect that, 'where the applicant is in custody or if for any reason is unable to swear to an affidavit, the affidavit could be sworn to by any other person who has personal knowledge of the facts, or one whom the applicant had informed of the facts'. This provision is a clear departure from the provisions of previous rules, which provided that the applicant must personally depose to the affidavit. The general conduct of fundamental rights proceedings is regulated under Order III Rules (1-6). Though the new Rules emphasises commencement of action through Motion on Notice, however, Order IV Rule 3 still permits hearing the application *ex parte*, if the Court is satisfied that 'exceptional hardship' may be caused the applicant before the service of the Motion on the Respondents. This work is constrained to observe that, by this Order and Rule, unscrupulous applicants, aided by their counsels will always contrive exceptional circumstances to suit their intentions, which usually is 'to disrupt investigative processes and abort police investigations'.

1.2.2 The Witness Protection Programme Bill, 2017

The Witness Protection Bill is one the recent legislations aimed at protecting victims of crime; and to compliment the ACJA, is the Witness Protection Programme Bill 2012, which transcends protective measures during trials. It must be pointed out that while the ACJA provides measures where the Court may protect the identity of a witness during trial, the Witness Protection Programme Bill "provides for the safety and well-being of witnesses in criminal and other related proceedings. Hence, this bill makes provisions for witness protection prior to, during and after trial. The objective of the Bill is to: ensure that due administration of justice in criminal and related proceedings is not prejudiced by the unwillingness of witnesses to give evidence for fear of violence, serious injury, death and provide a framework for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk of intimidation due to their cooperation with prosecution, investigation, inquiry or tribunal, as the case may be.

The Witness Protection Programme shall take actions necessary and reasonable to protect the safety and welfare of a witness at risk. The actions to be taken may include: physical and armed protection; making arrangement necessary to allow the witness to establish a new identity; relocating the witness; providing accommodation for the witness; providing logistics for transporting the property of the witness; providing reasonable financial assistance to the witness; permitting a person involved in the administration of the programme to use an assumed name in carrying out his duties and have proper documentation supporting the assumed name. This action also applies to a foreign witness present in Nigeria, pursuant to an agreement or arrangement between Nigeria and the country of the foreign witness.[52]

In terms of protective measures during criminal trials, the Courts are expected to implement such measures as deemed necessary and this may include: holding closed sessions; the use of pseudonyms; the reduction of identifying information; the use of video link; and employing measures to obscure or distort the identity of the witness. The bill was passed by the Senate on June 8th, 2017 and has been sent to the House of Representatives for concurrence before it can be sent to the President for assent. However, it is advocated that before the bill becomes a law, adequate provisions on the protection of the rights of victims as contemplated by the UNO in UN 1985 Declaration, are considered and adopted.

1.3 The Administration of Criminal Justice Act

Before the enactment of the Administration of Criminal Justice Act and the Administration of Criminal Justice Laws of various states, two basic procedural enactments regulated criminal justice administration in Nigeria. While the Criminal Procedure Act applied in the States in the Southern parts, the Criminal Procedure Code was applicable in States in the Northern parts of the country.[53] These two enactments were bequeathed to Nigeria by the colonial masters, and they have never been substantially reformed or amended. In view of the objectives of colonialism, it is correct to assert that these enactments were not prepared with the interest of victims of crime in mind and, therefore, not much is in any of them for the protection and redress for victims of crime. And more importantly, resurgence of interest in agitations for the rights of victims of crime came into prominence only in the early 1960s, several years after the imposition of colonialism, and shortly before many of these African States became politically independent. Consequently, both Procedural Rules contain very scanty and unimpressive provisions about protection of victims.[54]

Under the Criminal Procedure Act, it is only, 'where any person is convicted of having stolen or for having received stolen property, that, 'the Court convicting him may order that such property or part thereof be restored to the person who appears to it to be the owner thereof'. However, this can only happen, 'either on payment or without payment by the owner to the person, in whose possession such property or a part thereof then is, of any sum named in such order'.[55] This provision makes payment for the property the condition of getting the property back by the victim, Agbede thus rightly observed that, 'this tantamount to a travesty of justice that the owner

[52]This is set out in the objectives of the Bill
[53]CPC C42 LFN 2010.
[54] CPA 41 LFN 2010.
[55]*Ibid*s 270 (1).

of stolen goods should be asked to pay to recover his own property'.[56] Similarly, the Criminal Procedure Code[57] provides for the restitution of the stolen property to the owner and payment of compensation to the innocent purchaser.

From the above analysis, it is obvious that the relevant provisions of the Criminal Procedure Act and the Criminal Procedure Code were concerned with the property which was the subject of the crime, and not compensation to the victim in the real sense.[58] According to Bello, in Nigeria, 'a Court has no power to award compensation to the victim in a criminal trial'.[59]

This is one area in Criminal Litigation which has for a very long time been begging for attention. Under Criminal Procedure Act and Criminal Procedure Code, all a victim can get is a criminal conviction of the accused and if he is still desirous of recovering his money, for instance, in a charge of stealing, then he needs a civil suit to achieve that. According to Odion, 'asking the victims to proceed on another journey of civil litigation with the attendant cost and time, before he can be financially rehabilitated is not fair enough in the circumstance'.[60]

It is for the very reason of improving the Criminal Justice System that the ACJA and the ACJL of the various States were enacted. The Act and Law repealed the CRA and the CPC[61] in States where they are applicable. The preliminary provision of the ACJA recognizes the salient position of the victim of crime by stating that:

> *The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interest of the suspects, the defendant and the victim.*[62]

In spite of this provision of the law, the interest of the victim is still always submerged in the interest of the society whose norms and values are affronted by the commission of a crime. It is observed that the recent ACJA 2015 could not make adequate or provide institutional framework needed to ensure that the victim of crime can obtain adequate compensation in line with international standard and best practices.[63]

---

[56]O Agbede, 'Modalities for the Enforcement of Financial Compensation for the Victims of Crime' In Sade Adetiba (ed) 25.

[57]*Ibid*(n52) s358.

[58] Mohammed Nasir (President of CAl as He then was) 'Criminal Justice: Restitution, Compensation and Victims' Remedies' in Sade Adetiba (ed)18.

[59] Mohammed Bello, (CJN as He then was), in the Address he delivered at the National Conference, in Sade Adetiba (ed) 11.

[60]J O Odion, 'Evolving Restitutionary Rights for Victims of Crime in Nigeria: A Focus on Corrupt and Fraudulent Practices' <http://www.nigerianlawguru.com/articles/criminal-law-andprocedure/Evolving-Restitutionary-Right-For-Victims-Of-Crime-In-Nigeria/a-Focus-on-Corrupt-and-Fraudulent-Practices.pdf > accessed 20th November, 2020.

[61]ACJA 2015 s493

[62] ACJA 2015 s1; s2 ACJL 2017 Kogi State.

[63]ibid ACJA s315; s317 ACJL Kogi State.

In view of the global interest and concern, particularly in Europe, America and at the United Nations, in the 'protection and redress for victims of crime', obvious in their constitutional provisions, coupled with the substantial number of victims-friendly Statutes, Declarations, Resolutions and Recommendations, specially promulgated for the welfare and protection of victims, it is recommended that urgent and appropriate steps be put in place, in Africa, and in Nigeria particularly in order:

To formulate and promulgate of a National Policy on Compensation, Restitution and Remedies for Victims of Crime at the Federal level. To establish, both at the Federal and State Levels, Victims of Crime Compensation's Commissions or Boards, to be saddled with the responsibility of identification, compensation, or restitution of genuine victims of crime. Such Boards or Commissions when established should be chaired at the Federal level by a Retired Chief Justice of Nigeria or such other eminent persons with proven integrity. And at the State Level, by a retired judge or retired Justice of the Supreme Court, as the case may be.

At the National Assembly, it is recommended that steps be initiated to enact a law to be known as 'Victims' of Crime Act' or by any, or some other name, or names wherein all issues connecting with and relating to welfare, protection and redress for victims of crime shall be prescribed. Such legislation should take cognizance of the UN 1985 Declaration, and other relevant international instruments for the protection of victims of crime.

It is recommended that the Criminal Justice System be reformed so as to discard some practices which attach more importance to punishment of offenders, and rather draw attention to the rights of victims of crime. In the short term, the Courts should start enforcing the few victims'-friendly provisions of the Administration of Criminal Justice Act and the Administration of Criminal Justice Law (of various States).

CONCLUSION

In order to properly, tackle the issue of constitutionality or otherwise of Courts' disruption of criminal investigative processes, a recourse is made to the positions of the Supreme Court and Court of Appeal on the issue. In several decisions the Superior Courts have deprecated the proclivity of the Court below to grant indiscriminate injunctive orders to disrupt public functions and prohibit public functionaries from performing their constitutional duties. The Court of Appeal even asserted that it is an inter-meddling with the functions of another arm of Government. It is therefore affirmed that meddling in criminal investigative processes is both unconstitutional and illegal.