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Review of Constraints and Solutions to the Enforcement of Human Rights in Nigeria

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Abstract

Naturally, man is bequeathed with certain inalienable rights that are sacrosanct. These rights are not conferred on human beings by law but the law recognizes what is already in existence. In Nigeria Sections 33-44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) depicted these rights. These rights are intrinsic and fundamental that violation of any of them attracts an action of enforcement by the aggrieved party. However, it has been noted that the extent of human rights enforcement in Nigeria has been grossly inadequate, uncertain and doubtful as well, due to certain factorial constraints. Therefore, this work sought to identify and evaluate the constraints to the enforcement of human rights in Nigeria and to provide solutions to those constraints. The research adopted doctrinal research method and relied greatly on data collected from primary and secondary sources. The primary sources consist of the Constitution of the Federal Republic of Nigeria 1999 (as amended), case law, statutes, conventions, regional and international legal instruments. The secondary sources included textbooks, journal articles, internet materials, magazines and newspapers. A diligent analysis of the data assembled revealed that enforcement of human rights in Nigeria is highly ineffective due to some institutional and non-institutional constraints, such as: judicial mal-administration, doctrine of sovereign immunity, weak institutional infrastructure, constitutional derogation, government disobedience to Court orders among others. The paper therefore, recommends judicial reform, separation of the office of the Attorney General of the Federation from the Office of Minister of Justice, exclusion of human rights instruments from the ambit of Section 12 of the 1999 Constitution, amendment of some clauses in the Nigerian constitution especially Sections 215 and 308. It equally recommended that government should have absolute obedience to Court orders and create job opportunities for their citizens. Furthermore, there is need for the restoration of true democratic governance in Nigeria to ensure respect, protection and fulfillment of human rights among others.

Keywords: Human Rights, Enforcement, Constraints, Solutions, Nigeria.

1. Introduction

Human rights are those rights that provide a common standard of behavior among the international community such as rights to life, dignity of human person, personal liberty, fair hearing, freedom of movement, freedom of expression and press among others.[1] It is more than a collection of formal norms; they are dynamic, political, social, economic, juridical, as well as moral, cultural and philosophical conditions which define the intrinsic value of man and his inherent dignity. They are those justiciable rights which all human beings have by virtue of humanity and are regarded as first generation rights enshrined in Chapter IV.[2] However, it is on this ground that Cranston submits that they are natural, rational, inviolable and unalterable, the deprivation of which would constitute a grave affront to one's sense of justice.[3] In consequence, human rights are the basic

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[1]African Charter on Human and Peoples' Rights (1981). Domesticated and made enforceable in Nigeria by an Act of the National Assembly; *African Charter on Human and People's Rights (Ratification and Enforcement) Act,* cap. A9, Laws of the Federation of Nigeria, 2004.

[2] Constitution of the Federal Republic of Nigeria 1999 (as amended), Sections 33-44.

[3] M Cranston "Human Rights Real & Supposed", in *Political Theory and the Rights of Man.* Rapheal (ed.), (Bloomington: Indiana University Press, 1976) p 52.

rights and freedoms that belong to every person in the world from birth until death. They are based on shared values defined and protected by law and equally enforceable at law.[4] Accordingly, it is imperative to note, that these rights are not absolute as it can be taken away through constitutional limitations, restrictions or derogations in the interest of national interests and public concern.[5]

Nigeria recognizes the existence of human rights as a matter of legal and public policy, but impediments to its enforcement still abound in the country. There have been efforts to mitigate the impediments by creating some municipal laws,[6] more so, adopting and ratifying some international legal instruments[7]as regards to human rights protection, yet, the incidence of unenforceability of human rights is still potent in the society. This is as a result of Judicial Mal-administration, doctrine of sovereign immunity, weak institutional infrastructure, constitutional derogations, disobedience to court orders among others. as a matter of fact, this has breed high insecurity and poverty in the country thereby leading to lack of protection of lives and properties.

2. Legal Framework for Protection of Human Rights in Nigeria

Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for a long list of human rights provisions into Chapters II and IV. Undoubtedly, the lists of rights contained in Chapter II are entitlements and non-inherent rights of mankind created by law which represents the least indices of civilized existence. These are the socio-economic rights beautifully captured as the Fundamental Objectives and Directive Principles of State Policy and are predicated on the necessity for the well-being of the citizenry with the state playing a pivotal role. Chapter IV of the Constitution provides for Civil and Political Rights. They are the justiciable rights that courts of law can entertain actions to enforce compliance of them.[8] The rights contained therein are the first generation rights detailed in Sections 33-44 of the 1999 Constitution of the Federal Republic of Nigeria and there include: right to life, right to dignity, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, 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 and right to freedom from compulsory acquisition of property without compensation.[9]

Notwithstanding the above provisions in the municipal and international treaties, section 12 of the Constitution of the Federal Republic of Nigeria 1999 provides that:

> *No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly; a state cannot be bound by any agreement to which it has not*

[4]*Kuti v Attorney General of the Federation* (1985) 2 NWLR (pt 6) 211, *Federal Republic of Nigeria v. Daniels* (2011) LPELR CA/L/136/2009.

[5] Constitution of the Federal Republic of Nigeria 1999 (as amended),Section 45; *Director SSS v. Olisa Agbakoba*(1999) LLJR-SC.

[6]The Constitution of the Federal Republic of Nigeria, 1999 (as amended), etc.

[7] Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights, 1966, African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 LFN, 2010, among others.

[8]Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 44.

[9] African Charter on Human and Peoples' Rights 1981, Articles 1-26; International Covenant on Civil and Political Rights, 1966, Articles 6-27; Universal Declaration of Human Rights 1948, Articles 1-21.

> *given its consent either by signing, ratification, accession or any other means of declaration of intent to be bound.*[10]

It is important to note that, most treaties are not self-executing and as such, parties to them are usually enjoined to institute municipal measures to guarantee the application of such treaties within their domestic system.[11] However, the implication of the above provision is that human rights treaties entered into by Nigeria will not become binding until the same have been passed into law by the National Assembly. This has constituted an impediment to the enforcement of human rights in Nigeria. In *General Sanni Abacha v Gani Fawehinmi*,[12] the Supreme Court held that by Section 12 (1) of the Constitution of the Federal Republic of Nigeria 1999, "an international treaty entered into by the government of Nigeria does not become *ipso facto* binding until entered into law by the National Assembly and before its enactment, an international treaty has no force of law as to make its provisions actionable in Nigerian courts of law".[13] Furthermore, the Court unanimously held that "unincorporated treaties cannot change any aspect of Nigerian law even though Nigeria is a party to those treaties" but that they may "however, indirectly affect the rightful expectation by the citizen that governmental acts affecting them would observe the terms of the unincorporated treaties".[14] Similarly, the practical importance of this section in the context of human rights promotion and protection, however, is that international human rights treaties are not *ipso facto* applicable and enforceable in Nigeria unless they are domesticated as in the case of African Charter on Human and People's Rights.[15]

Accordingly, constitution is the supreme law of the land; it is the *grundnorm.* Its supremacy has never been called to question in ordinary circumstance.[16] Therefore, the effectiveness of ratified human rights treaties is predicated on their being domesticated and that any treaty enacted into law in Nigeria by virtue of Section 12 (1) of the Constitution of the Federal Republic of Nigeria 1999 is circumscribed in its operational scope and extent as may be prescribed by the legislature.

3. Obstacles to the Protection and Enforcement of Human Rights in Nigeria.

3.1 Judicial Mal-Administration

This first major obstacle is Judicial Mal-administration. This is the impairment of normal physiological function affecting part or all organs of the judiciary.[17] It is now universally accepted in at least all Western Democracies that the judiciary is the third arm of government with responsibilities in constitutional and legal matters, for the interpretation of our laws.[18] The judiciary is assigned with the duty of directing the society for the attainment of justice. It has an important role to play, as Section 46(1) of the Constitution of Nigeria depicts that any person who

[10] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 12 (1).
[11] For more information on Human Rights Treaties within States' Legal and Political Systems, Henry J. Steiner et al, International Human Rights in Context: Law, Politics, Morals 725-729 (1st ed. 1996).
[12] (2000) 6 NWLR 228 (Nigeria)
[13] The re-enactment of International Treaties into domestic law is what is referred to as the Concept of Domestication or transformation of treaties.
[14] *Ibid note 19*
[15] African Charter on Human and Peoples' Rights OAU Doc. CAB/LEG/67/3/Rev.5 (1981) reprinted in 21 I.L.M 58 (1982), entered into force Oct. 21 1986, Nigeria signed (1982), ratified (1983), and domesticated the African Charter as Cap 10, LFN, 1990 or Cap A9, LFN, 2004.
[16] *General Sanni Abacha v Ganni Fawehinmi* (2000), *6 NWLR 228 (Nig.)*
[17] AS Hornby. *Advance English Dictionary* (England: Oxford University Press ELT, 1942).
[18] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 6.

alleges that any of the provision of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress.[19] The beauty of this provision is that, it establishes the fact that the stated rights under Chapter IV of the Nigerian Constitution are not merely there as window dressing. Rather, it provides a potent instrument for their enforcement. This is where the judiciary comes in. In a similar vein, Eri submits that the principal function of the judiciary is the administration of justice, which consists, essentially, in adjudication in all matters and controversies in which civil rights of any person are involved or threatened.[20] For the avoidance of the doubt, Section 6 (6) (b) of the Constitution of the Federal Republic of Nigeria 1999[21] provides that the judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons or between government or authorities and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

Judicial mal-administration may come in various forms, such as: absence of true judicial independence, corrupt practices of the judiciary, inordinate delay in justice delivery and undue attachment to technicalities by the courts. All these have become perennial problems often leading to frustration and disenchantment with the system. One of the enduring and indeed imperishable attributes of the common law is the notion of judicial independence.[22] According to Oyeyipo, judicial independence postulates that no judicial officer should directly or directly, however remote be put to pressure by any person whatsoever, be it government, corporate body or an individual to decide any case in a particular way.[23] By implication, the judicial officers are free to make binding orders which must be respected by the legislature, the executive and the citizens, whatever their status. Therefore, the issue here borders on whether lack of judicial independence discourages activism on the part of judges, other judicial supporting staff and justice as well? Is the judiciary self accounting? How far is the judiciary able to determine what it gets for its running as an arm of government? It is worthy of note that judges are sworn to administer justice according to law. Lord Denning in *Candler v. Crane*[24]do much to justify the need for activism. However, there is no doubt that the 1999 constitution does provide a framework upon which an independent judiciary can be built.[25]In this connection, a judicial officer shall not be removed from office before the official age of retirement except in one or other of the following circumstances:

a. for his inability to discharge the functions of his office whether arising from infirmity of mind or of body or;

b. for misconduct or contravention of the Code of Conduct.[26]

[19]Ibid.
[20] Hon. Justice Umaru Eri, "An Overview of the Role of the Judiciary Under the Constitution", In *All Nigeria Judges' Conference.* (Ibadan: Spectrum Books Limited 2001).
[21]Constitution of the Federal Republic of Nigeria 1999 (as amended).
[22]*Garba v. University of Maiduguri* (1986) 1 NWLR 550 (Nigeria).
[23] TA Oyeyipo, Commentary on the Paper captioned "Whether the establishment of the National Judicial Council and the set-up will bring a lasting solution to the Perennial Problems Confronting the Judiciaries in this Nation", delivered at the 1999 All Nigerian Judges Conference (NJC) held at International Conference Centre, Abuja, Nigeria, November 1-5, 1999.
[24] (1985) 2KB 164/178
[25] Constitution of the Federal Republic of Nigeria 1999, Section 17 (e).
[26] Constitution of the Federal Republic of Nigeria 1999, Section 292.

Notwithstanding the above constitutional provision, judiciary lacks independence. The appointment and removal of judges are largely dependent upon politics, favouritism, ethnicity and other primordial considerations and control. Also, they are faced with other formidable problems which inevitably compromise its independence and impartiality. Similarly, there is no financial autonomy, even though under the present constitutional dispensation,[27]a measure of financial autonomy is sought to be enthroned. Ibrahim opines that the function and powers of the National Judicial Council within the federal structure should be noted as it is empowered to "collect, control and disburse all moneys, capital and recurrent for the judiciary.[28] To give credence to this, it is a constitutional provision that any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation[29] shall be paid directly to the NJC for disbursement to the courts established for the Federation and the States. In addition, the allowances and remuneration of judicial officers are charged on the Consolidated Revenue Fund of the federation.[30] It also means that the remuneration, salaries and conditions of service of judges (other than their allowances) shall not be altered to their disadvantages after their appointments.[31] Accordingly, the allowances can be said to be unavailable, inadequate and laughable. The judiciary is under the control and influence of government.

From the above premise, it can be widely concluded that judicial independence is not yet a reality but a mere aspiration in Nigeria today. This is because judicial independence requires more than charging the personal emoluments of judicial officers on the Consolidated Revenue Fund. The finances of that branch as an institution must be considered in the context of its adequacy. Thus, it is only in that sense that budgeting and allocation of resources to that branch become relevant. Therefore, the purport of the above is that officers of the judiciary are exposed to avoidable temptations of being corrupt such that their judgments are not the product of legal rule, precedent, forensic argument of counsel and cold facts of the case, but rather dictated by extraneous considerations. Without doubt, the challenges posed by the absence of true judicial independence are formidable one and its implication for human rights protection and promotion are no less disheartening.

3.2 Corruption

Corruption is also a huge problem in the Nigerian judiciary. The word corruption is derived from the *latin* words *"corruptus" or "corruptere"* in the past tense meaning "intensive", and "*pere*" meaning "destruction". In a loose term, it means "intensive destruction". According to Nwosu, corruption is a social ill, an abuse of power for private gains which occurs both in the private and public sectors.[32] It simply means lack of integrity or honesty (especially susceptibility to bribery); use of a position of trust for dishonest gain.[33] Corrupt practices of the judiciary is the moral perversion; or impairment of virtue and moral principles of law. Therefore, the pertinent question is where the judiciary is corrupt, how can justice be guaranteed? In Nigeria, the practice of

[27] Constitution empowers National Judicial Council (NJC) to "collect, control and disburse all moneys, capital and recurrent, for the Judiciary" Constitution, third schedule, Part 1, 21 (e) 1999 (Nigeria).
[28] A. Ibrahim. "The Nigerian Constitution and the Independence of the Judiciary" in *2001 Induction Courses for Newly Appointed Judges and Kadis in Nigeria.* (Ibadan: Spectrum Law Books, 2001).
[29] Constitution of the Federal Republic of Nigeria 1999, Section 81 (3).
[30] Constitution of the Federal Republic of Nigeria 1999, Section 84 (2) and (4).
[31]Ibid, Section 84 (3).
[32]UW Nwoso. "The Impact of Corruption on the Administration of Justice in Nigeria", *Journal of Good Governance and Sustainable Development in Africa (JGGSDA),* vol. 4, No. 1, April, 2018.
[33]Nwoso, Ibid.

corruption as abuse of public office for private gain is prevalent at the Federal, State and Local government levels as well as some other decentralised centres of powers and authority in addition to private sector. However, the judicial arm of government is thus not an exception and both lawyers and litigants are consciously or unconsciously made victims of varying degrees of extortion by judicial officers in the course of the dispensation of justice. For clarity of purpose, the term judicial system is used loosely to refer to the courts, judges, magistrates and other adjudicators who are assigned the task of resolving conflicts and disputes in accordance with the law in a given state either on career or *adhoc* basis. Therefore, when the headstream is contaminated, the entire system is contaminated. Then, water will seek its level.

3.3 Delays in the Administration of Justice in Nigeria

Inordinate delay in the administration of justice in Nigeria by the courts has become a pedestrian statement. What is however difficult to appreciate is how Nigerians have been able to live with such phenomenon for several years without proffering a lasting solution. In spite of the fact that speedy trial has become a statutory provision,[34] though without given meaning to what "within a reasonable time" is, ordinary cases of unlawful termination of employment or even those for the enforcement of fundamental human rights do last between 3-5 years or even more. Thus, in *Gozie Okeke v. State,*[35]Justice Ogundare held *inter-alia* that the word "reasonable" in its ordinary sense means moderate, tolerable or not excessive. However, a number of circumstances which could give rise to this delay include: lawyers writing letters of adjournments of cases, inability of judges and magistrates to deliver judgments on time, failure of the police or prison authorities to produce accused persons in court for trial. Similarly, Oputa observed that there is no doubt that such delays not erode public confidence in the judicial process but also undermine the very existence of the Courts.[36]

It may be concluded that some delays in judicial proceedings may be unavoidable, since the parties are to be given "adequate time and facilities[37] for the preparation of their cases. In the case of *Governor of Ekiti State & 4 Ors v Prince James Osayomi,*[38] court stressed that justice delayed is justice denied but justice rushed may result into justice being crushed. So, every party is entitled to fair hearing without over-speeding in order to enable the trial court arrives at a just decision. But this does not need to result in an undue delay in dispensation of justice, which can become offensive and injurious to the due administration of justice to the society at large.[39]

3.4 Court Rules

Again, in every jurisdiction where there are courts, there are established rules of practice and procedure.[40] These are the most principal source of the rules governing litigation. In *Western Steel Works Ltd. v. Iron & Steel Workers Union,*[41] the Supreme Court defined a rule as a normative proposition making certain legal result depends upon the establishment of certain factual situations stipulated in the antecedent part of the rule. These rules put together by the legislature, judges and other rule making agencies, and are seen by an ordinary man as technical because they are often

[34] Constitution of the Federal Republic of Nigeria 1999, Section 36 (1).
[35] (2003) 15 NWLR Pt. 842, p.25
[36] CA Oputa, *In the Eyes of the Law.* (Friends Law Publishers, 1992) p.50.
[37] Constitution of the Federal Republic of Nigeria 1999, Section 36 (4).
[38] (2005) 2 NWLR (pt. 909), p.90
[39]*Ogbudu v. The State* (1987) 2 NWLR pt. 54, p.20
[40] MM Stanley-Idum and JA Agaba. *Civil Litigation in Nigeria.*(Lagos: Nelag & Company Limited, 2017).
[41] (1986) 3 WNLR (pt. 30) 617

difficult for them to comprehend as it goes to the question of the court being called upon to determine its jurisdiction in a cause, procedural issues and judgment as well. This can dismiss an application by the court. For instance, where a plaintiff commenced action for the enforcement of fundamental rights by originating summons after obtaining leave of court and the summons was not signed by the trial judge as prescribed in the Rules, the Supreme Court declared it immaterial.[42] However, these rules are also rigid because they command compliance at varying degrees. Some of these rules include rules as to pleading, rules as to disclosure, discovery of document, witnesses' statements on oath, certification of documents, witness summonses, subpoenas, etc. The rules are not technical because they are made by lawyers or made deliberately to be so technical. Rather they are futuristic in nature and all possible questions (issues) that are likely to arise so as to make the rules ineffective or ineffectual will be captured and dealt with. At the end of the day, a simple rule would be followed by a myriad of exceptions and condition precedent such that a litigant is lost as to where the right conferred is or what is left of the right so conferred.

3.5 Doctrine of State Immunity

Another obstacle to achievement of human rights is the doctrine of State Immunity. Immunity is the exemption of a person or body from legal proceedings, or liability.[43] This doctrine has a long history rooted in antiquity. It is a personal immunity of kings or monarchs applying in a modified version to President, Vice President of the Federation, Governors and Deputy Governors of states by the entrenchment of a clause in the constitution to protect them in their personal capacity during their tenure of office. Under section 308 of the constitution, no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office.[44] However, it has been observed by Street that just as no Lord could be sued in court which he held to try cases of his tenants, so the kings, at the apex of the feudal pyramid and subject to the jurisdiction of no other court was not stable.[45] In Nigeria today, this clause has occasioned a lot of human rights infractions on the citizens by the government or state who are meant to protect the citizens. There have been series of tort actions such as trespass by the administrative authorities on individual lands or buildings of the citizens for their private use, yet action cannot lie against them notwithstanding the constitutional provisions of Sections 44 and 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

3.6 Challenge of Enforcement

One of the major deficiencies in the development of human rights is the enforcement. Since enforcement of human rights is largely depends on the domestic machinery of national governments,[46] Nigeria has erected seemingly firm institutional infrastructure to protect human rights in the country. The institutional infrastructure includes the judiciary,[47] the National Human Rights Commission,[48] the Public Complaints Commission[49] and the Legal Aid Council.[50] Undoubtedly, these various institutional mechanisms are not capable enough in providing adequate

[42]*Alhaji Dahiru Saude v. Alhaji Halliru Abdullahi* (1989) NWLR (pt. 116) 387.
[43] E Malemi. *Administrative Law.* (Lagos: Princeton Publishing Co., 2014).
[44]CFRN 1999 (as amended).
[45] H Street. *Government Liability: A Comparative Study.* (Cambridge University Press, 1953), p.1.
[46]JA Dada "Impediments to Human Rights Protection in Nigeria": *Annual Survey of International and Comparative Law, 2012.*
[47]Established under *section 6 by the 1999 Constitution (as amended)*
[48]National Human Rights Commission Act, (2004) cap 46
[49]Public Complaints Commission Act, (2004) cap 37
[50]Established under the Legal Aid Act, (2004) cap L9.

and effective platforms for meaningful human rights protection. This is because they are being controlled, directly or indirectly by the government through funding, composition of membership, provision of operational guidelines among others. As a matter of fact, government interference and influence becomes a reality not just possibility. For instance, the redeployment of the past Executive Secretary of National Human Rights Commission (NHRC), Kehinde Ajoni by the Government, was as a result of the scathing human rights report she presented at the 9th session of the United Nations Human Rights Council in Geneva on Monday, February 9, 2008.[51] In this connection, this has been one of the problems confronting the judiciary earlier pinpointed out. Thus, the extra-judicial bodies like Police, EFFC among others are not left behind in this discussion as they are in a more precarious position. Therefore, it has been widely believed that where an institutional mechanisms are not independent and do not have the financial and logistic capability, they cannot meaningfully function as they ought to. Government will continue to influence them, as the general saying goes: "He who pays the piper, dictates the tone".

The Nigeria Police also poses obstacles to attainment of human rights in some ways. Nigeria Police Force (NPF) is a creation of law[52] saddled with the responsibility of maintaining and securing of public safety and public order within the country.[53] It is a corporate body with perpetual succession and a common seal, which may sue and be sued in its corporate name. However, the police are under the obligatory duty to be non-discriminatory, discipline, responsible, accountable, understand the terrain they operate and as well know the purpose of their investigation. Notwithstanding, Nwocha aptly observed that a great majority of human rights breaches are occasioned by the agents of states or at least through their instrumentalities of which the police are the most notorious.[54] The Nigeria police have not been engaging in the acceptable standard of policing in the discharge of their duty (ies). Similarly, they have been infringing on the rights of the citizenry. For instance, the police in the cause of discharging their duties; do engage in illegal arrest, detention without trial, torture to elicit information during interrogation, mounting of road blocks, extra-judicial killings, betraying the confidence of informants, false incrimination, extortion among others. They perpetrated these act continually unabated thereby bastardising the human rights norms guiding policing.

However, it is a constitutional provision that a person to be arrested or detained shall be informed in writing within 24 hours in a language that he understands to keep him abreast of the facts or grounds of his arrest,[55] police still arrest and detain persons above the prescription of the law without trial, sometimes, with the pretence that investigation is on-going. Similarly, Section 35 (6)[56] provides that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority as specified by law, yet the police do not comply to this provision rather they collect money for bail and force the detainee to sign bail bond with a conspicuous writing, that "bail is free". Furthermore, *section 33*[57] provides for right to life but in Nigeria today, extra-judicial killings perpetrated by the police with flimsy reasons have reached an alarming stage. To make the matter worst, the Nigerian Senate on the 17th

[51]Adejuwon Soyinka, on Death Row, *Tell Magazine,* April 20, 2009 pp.20-22
[52] Constitution of the Federal Republic of Nigeria 1999, Section 214 (1).
[53]Ibid.
[54] ME Nwocha. *Human Rights and Criminal Justice in Nigeria.* (Abakaliki: CE Darrolls Publishers, 2013), p. 227.
[55] CFRN 1999 (as amended), Section 35 (5).
[56]Ibid.
[57] Ibid,

day of April, 2019 passed a Police Reform Bill *(Senate Bill 683)* assigning only two year jail term and fine of N1, 000,000.00only to any officer that is involved in extra-judicial killing.[58] This has brought public outcries that such bill serves as an encouragement to officers of the Nigeria Police Force to continue with the dastardly and unlawful act. Furthermore, the Joint Task Force (JTF) which police is part of has been noted to provide inadequate and violent response to the Boko Haram insurgence, killings suspects without trial as well as randomly killing of members of communities suspected to be supporting the Boko Haram.[59] This high handed approach of the police violates human rights in Nigeria considering the lack of access to fair trial and one of discriminatory techniques to determine offenders of violence.[60] Within the regular NPF, there are high incidences of corruption and violations which include extortion and embezzlement. The police force takes advantage of the commuters by putting up roadblocks where they extort motorists, collecting the popular N20.00without legal reasons. Also, the police are not providing equal protection under the law.[61] The wealthy are able to buy the police for security as well as influencing the police to turn a blind eye to their illegal activities thereby leaving the human rights of the poor more vulnerable.

The Economic and Financial Crimes Commission (EFCC) is similar to the Police in operation. The Commission is part of the designated Financial Intelligence Unit (FIU) in Nigeria established under the Economic and Financial Crimes Commission (Establishment, etc) Act in 2002.[62] The Commission is a creation of statute with the responsibility of coordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria.[63] It is a corporate body with perpetual succession and a common seal, may sue and be sued in its corporate name. However, the Commission is serially being criticised for operating outside the bound of law and infringing on human rights of persons in the course of discharge of its duties. Consequently, efforts have not been made to respect the rights of individuals in order to ensure that suspects are charged to Court promptly, eschewing illegal detentions. In practice, EFCC is well known for the act of holding charge, illegal detention, humiliation and maltreatment of suspects in their custody[64] which amount to the violation of rights to dignity of human person, personal liberty and freedom of movement.[65] Accordingly, the commission is perceived to be a tool of any incumbent government in dealing with political opponents and it is invariably accused of selectivity in investigation and prosecution of crimes. This approach has not boosted professionalism in the operations of the commission; rather it exposes the structural weakness in the administration of justice in Nigeria. However, the mass media is required to uphold the fundamental objectives of the State and uphold the responsibility

[58]*The Punch*, 17th April, 2019.
[59]*Human Rights Watch* (2012). "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria."
[60]Ibid.
[61]*Human Rights Watch* (2010). "Everyone's in on the Game-Corruption and Human Rights Abuses by the Nigerian Police Force."
[62]Cap E1 Laws of the Federation of Nigeria, 2010.
[63] Economic and Financial Crimes Commission (Establishment, etc) Act, Cap. E1 Laws of the Federation of Nigeria, 2010, Section 6.
[64]*Economic and Financial Crimes Commission v. Bayo Dada* (2014) All FWLR, CA
[65] Constitution of the Federal Republic of Nigeria 1999 (as amended), Sections. 34, 35 and 41; African Charter on Human and Peoples' Rights (ratification & Enforcement) Act, Articles 5, 6 and 12; *Economic and Financial Crimes Commission v. Dr. Erastus Akingbola*

and accountability of the government to the people.[66] This duty imposed on the media has been frustrated by the denial of access to information on public affairs by the EFCC.

One of the formidable constraints to optimal enjoyment, protection and promotion of human rights in Nigeria is the permissible derogations contained in the Constitution[67] and are too wide and in some cases, nebulous and antithetical to the cause of human rights.[68] For instance, Section 33 of the 1999 Constitution guarantees right to life in a widely qualified manner. But of particular concern is the provision where it permits and justifies deprivation of life in defence of property, to prevent the escape of a person from lawful custody or in order to effect lawful arrest without knowing the gravity of the offence which arrest is to be effected. However, Sections 35, 37, 38, 39, 40 and 41of the 1999 Constitution of the Federal Republic of Nigeria are not also granted in absolute conditions. They are constitutionally limited and circumscribed in the interests of defence, public safety, public order, public morality or public health. This undoubtedly poses a very grave danger to optimal realization of human rights.[69] In *Medical and Dental Practitioners Disciplinary Tribunal v. Emewulu & Anor,*[70] the Supreme Court held that all freedoms are limited by state policy or overriding public interest.

There is also the issue of reservation clauses in human rights instruments. Without doubt, a careful observation of the various international human rights instruments reveals that there are many ill-defined instances of permissible reservations inherent in them. In order words, many of these rights guaranteed in regional and international human rights instruments are not granted in absolute term. Rather, the various instruments create instances where it is legitimate and legally sustainable for the rights to be violated. For example, the African Charter contains derogation clauses that no one may be deprived of his freedom except for reasons and conditions previously laid down by the law,[71] while in limiting the right to assemble freely, the law permits necessary restrictions.[72] In the same vein, the International Covenant on Civil and Political Rights provides for derogations in time of public emergency which threatens the life of the nation.[73] Thus, no definition was given in the article as what constitutes public emergency. On the other hand, International Covenant on Economic, Social and Cultural Rights allows restrictions on the rights it guarantees.[74] Conversely, the purport of these reservation clauses is that a state is permitted to limit, restrict, abridge or suspend the enjoyment of these rights.

3.7 Disobedience to Court Orders

Similarly, disobedience to Court orders has a remarkable challenge to the development and realisation of human rights in Nigeria. This is because it undermines the authority, dignity and integrity of the Court and can promote anarchy.[75] Unarguably, the executive branch is the greatest

[66] CFRN 1999 (as amended), Section 22.
[67] Ibid, Section 45.
[68] JA Dada 'Human Rights under the Nigerian Constitution: Issues and Problems', *International Journal of Humanities and Social Science* (2012) vol. 2 No. 12, p.42.
[69] *DPP v. Chike Obi* (1961) 1 NLR 186 (Nigeria)
[70] (2001) 3 SCNJ, Section 106.
[71] African Charter on Human and Peoples' Rights, Articles 12, 13 and 14.
[72] Ibid.
[73] Ibid, Article 4; International Covenant on Civil and Political Rights prohibits derogation from Articles 6, 7, 8 (paras 1 & 2), 11, 15, 16 and 18.
[74] International Covenant on Economic, Social and Cultural Rights 1966, Article 4.
[75] JA Dada, note, 68.

violator of human rights,[76] and it has been a notorious fact that the judiciary does not have its judgment or orders of the courts. This largely depends on the executive body that obeys the orders which they are comfortable with and disobeys those that are in conflict with their interests without minding the grave consequences it might cause to the citizens whose rights have been violated.[77] Dada in his remark opines that accessibility of Court by litigants is one thing; impartiality of the Judges is another while respect and obedience to the judgment of the court is an important aspect to be considered.[78] This was the position of the law in *Attorney General of Lagos State v. Attorney General of the Federation*[79]where the Federal Government refused to obey the Supreme Court judgment which declared the withholding of revenue to the Lagos State Local Government unconstitutional.

3.8 Poverty

Poverty is a major challenge to human rights observance. Townsend sees poverty as a condition in which a person or community is deprived of and/or lacks the essentials for a minimum standard of wellbeing in life.[80] These essentials may be material resources such as food, safe drinking water and shelter or they may be social resources such as access to information, education, healthcare, social status and political power. Internationally, poverty has been defined within the confines of economics as living below one dollar per day,[81] which implies living below two hundred naira per day for Nigerians. In Nigeria today, majority of citizens are living in an unacceptable conditions of poverty. However, the major causes for poverty in Nigeria can be identified as unequal economic opportunities, poor integration in the power sharing and decision making processes, lack of access to resources, lack of means to satisfy basic needs among others.[82] Therefore, to enforce one's right in the event of violation, it requires a measure of financial independence to battle with abuse of human rights and this denial of basic necessities of human life has constituted a constraint to the enforcement of human rights in Nigeria. Igwe and Bassey noted that 'access to justice cannot thrive in a country where there is inequality in the distribution of economic resources, political power and social amenities.'[83] Poverty appears to be the mother of all the challenges to the realistion of human rights in Nigeria.

3.9 Illiteracy

One of the significant constraints to the enforcement of human rights in Nigeria is the high level of illiteracy. This is as a result of the socio-economic structure of the country where education has become an exclusive commodity to be purchased and consumed by the bourgeoisies through private institutions.[84] As Anyogu and Okpalobi curiously observed that inequality of access to

[76] M E Nwocha, note54.
[77] *Lagos State Government v. Ojukwu* (2001)CLR 2 (SC)
[78] JA Dada, note75.
[79] (2004) 20 NSCQR 99 (Nigeria); *Attorney General of Abia State v. Attorney General of the Federation* (2006) 16 NWLR 265
[80] P. Townsend. *Poverty in the UK.* (London*:* Penguin Books, 1979).
[81] World Economic Forum, (2006).
[82] F Anyogu and BN Okpalobi. 'Human Right Issues and Women's Experiences on Demanding their Rights in their Communities: The Way Forward for Nigeria.'(2016) 4(1) *Global Journal of Politics and Law Research,* p. 14.
[83] IO Igwe & AI Bassey, 'Review of the Impacts of Poverty on Access to Justice in Nigeria' (2021) 12(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, p.193.
[84] AG Shettima. 'Socio-Economic Obstacles to the Realisation of a just Society: The Nigerian Experience', in Y. Osibanjo et al (eds), *Human Rights, Democracy and Development in Nigeria.* Lagos: Legal Research and Resource Development Centre, 1999.

education has constituted a major factor for the low level of citizens' participation in the formal sector.[85] Education however, has the capacity of liberating the individual from ignorance, poverty and disease. So, it is of note that lack of it has serious mental, political and economic implications which greatly impedes access to justice in Nigeria. In a similar vein, Aguda believes that illiteracy breeds poverty, docility, and even forced connivance with agents of oppression and marginalization.[86] The net result is that a large majority of Nigerians do not have access to social justice by not understanding that they have an existing right protected by extant laws and they are alienated from the political and economic structures of the society.[87]

4. Solutions to the Enforcement of Human Rights in Nigeria

Going by the foregoing constraints enumerated above, the paper therefore suggests the urgent need for a reform of the judiciary and judicial process as well in the country in line with the current trend for human rights protection and promotion in the international community. Generally, there is need for constitutional reform in such a way that citizens should have right of access to court. There should be separation of office of the Attorney-General of the Federation from the office of Minister of Justice for proper administration or implementation of the Executive Order as a subsidiary legislation. Also, permissible derogations contained in the Nigerian constitution are too wide and in some cases, nebulous and antithetical to the cause of human rights, therefore, there is need to prescribe or limit the circumstances and specify the procedures under which derogations may be legitimately invoked. More so, there should be exclusion of human rights instruments from the ambit of Section 12 of the Constitution in such a way that international human rights instruments which Nigeria is a party to will automatically become applicable and enforceable without necessarily domesticated.

Nigerian law makers should design an effective method and basic approaches to human rights training for police and other security operatives responsible for internal security of the State. This will help in restructuring and strengthening institutional infrastructure in the country. Secondly, there should be harmonization theory in such a manner that international human rights norms will be interpreted and enforced as to confer primacy on international human rights instruments over domestic legislation despite its supremacy. Thirdly, there is also need for national economic enhancement in order to realize the socio-economic and cultural rights contained in Chapter II of the Constitution.

Finally, the executive arm should imbibe the spirit of dedicated obedience to court orders and be transparent in the way the affairs of government are being conducted to avoid military intervention in politics. In doing this, they are expected to guarantee universal basic education for the benefit of the citizens and social progress.

5. Conclusion

This paper attempted to carry out work an in-depth analysis of the constraints to the enforcement of human rights in Nigeria and projects solutions thereat. Without doubt, Nigerian society has condoned human rights violations for several decades now. This has leading to economic and humanitarian crisis that have multiplier effects on the citizens as the authorities are no longer obeying the rule of law, societal disorder, constant killings and destroying of property worth

[85] F Anyogu and BN Okpalobi 'Human Rights Issues and Women's Experiences on Demanding Their Rights in their Communities: The Way Forward for Nigeria.'(2016) 4(1) *Global Journal of Politics and Law Research*, p. 15
[86] TA Aguda. *The Crisis of Justice. (*Akure, Eresu Hills Publishers, 1986) pp 29-30.
[87]Ibid, note *85.*

millions sum. Generally, there have been concerted international condemnations of human rights violations. This warranted the ratification and consequent domestication of various regional and international legal instruments but there is lack of political will on the part of the legislative authorities to address the issue especially that of Chapter II of the Constitution of Nigeria 1999where the National Assembly has the constitutional competence to establish and regulate authorities to enforce this chapter or any part thereof. However, the enforcement of human rights in Nigeria has a lot of constitutional setbacks due to certain provisions that are antithetical to the values and norms of human society. This requires a retrospective approach that will hinge on constitutional re-engineering which will give meaning to human life and dignity knowing that the state social order is founded on ideals of freedom, equality and justice.