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LIVING BEYOND THE RHETORIC OF FUNDAMENTAL HUMAN RIGHTS TO FULFILLED HUMAN RIGHTS IN NIGERIA: THE ROLE OF JUDICIARY

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Abstract

Human rights are of the universal concept. They have transboundary flavour and have remained subjects of debates for ages' time and will continue to appear on the cover pages of print and electronic media beyond ages. Under the universal arrangement, certain human rights have transformed into active rights. In some states, these rights are classified as the fundamental human rights while others are grouped under aspirations to be actualized by the state based on the improved economy. In Nigeria, fundamental human rights are provided in Chapter Four of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and they are justiciable. Others such as social, economic, cultural, educational, political, environmental rights among others are provided in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and they are non-justiciable. The classification of these rights into groups in the constitution without considering the nexus for each other has made the realization of one independent of the other a mirage. The premise of this paper is to unearth the rhetoric of fundamental human rights without fulfilled human rights in Nigeria and the role of the judiciary. The paper adopted a doctrinal research approach through the examination of primary and secondary materials with the aim of finding the challenges to full realization of human rights in Nigeria. The paper discovered that, beyond constitutional classification of human rights into fundamental human rights and other rights, the judiciary has remained the tool to activating the dormant rights into active rights through judicial activism. Where judiciary remained conservative, it becomes epileptic to achieving even the fundamentally provided rights under the constitution. It was based on the above that the paper made recommendations.

Keywords: Human. Human Rights, Fundamental Human Rights, Rhetoric, Judiciary. Nigeria.

1. Introduction

From the ages' time, the loss of the divine garden by man puts man in the perpetual struggle for survival including protecting himself from bring preyed upon by his fellowman and other habitats. Man in the desire to protect himself entered into a social contract whereby the weak decided to submit their mandate to the strong to govern them in the exchange giving them security and the provisions necessaries or means to achieving the necessaries of life. Although human rights appeared universal and inalienable, however, the state by virtue of the social contract decides on which pacts are to be fundamental and therefore justicable and which pacts are to be kept in abeyance pending when they will hatch from the incubation.

Beyond rhetoric, in most state, fundamental rights remained a paper tiger without the arrangement to providing the means to actualizing the rights. In other words fundamental rights do not have breath of life if the essentials life existence are not easy road. The journey to this paper was borne out of the desire to peep into the rhetoric of the fundamental human rights in Nigeria and why it has become expedient for the judiciary to rise in activism in order to breathe life into human rights for the purpose of paving the way for the citizens to live a fulfilled life in Nigeria.

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The paper shall examine the key concepts under review to *wit*: human, human rights, fundamental human rights, judiciary among others. The paper shall draw a conclusion and propose some solutions to the challenges of realisation of human rights in Nigeria. The recommendations, it is hoped will propelled alteration into the existing legal order to enable Nigerians to breathe.

2. Conceptual underpin

2.1 Human and Human Rights

Human is represented in the Latin maxim as *homo or humanus* meaning man and earth. It is the specie of the creation endowed with wisdom. It is a primate that belongs to the biological family of great apes characterized by hairlessness, bipedality and high intelligence. Theologically, the book of Genesis in Chapter 1: 26 noted that during the creation of the earth, God commanded the host of heaven thus: 'let us make man in our image, after our likeness; and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creped upon the earth.'[2]

Human is a special being that possesses a complex blend of social qualities, complex characters, consciousness, creativity and blend of emotions. Brooks argued that human being 'encompasses a rich tapestry of qualities that shape our thoughts, emotions, and actions.'[3] He defines the most qualities of human being as consciousness, empathy, creativity, resilience and the pursuit of meaning and purpose.[4] Human being is a classic being recognized by the creator and given dominion over every other being. Man is made in the likeness of God, cherished by God and granted privileges and rights. The dominality of man from the creation extended to his fellow. Naturally, man is not endowed with same strength, wisdom and wealth. This propelled the existence on earth to survival of the fittest. The strong and the wealthy control the weak and the downtrodden in the unbalance ecological sphere, hence, the need for the weak to bargain for survival through a pact in form of social contract.

The theme human right does not come by accident, it is natural, immutable, inalienable, inborn and remain with man as long as he breaths. It is that which exclusively belong to human being despite age, colour, sex, race, nationality, religion, class, ability or social, cultural and economic status. John Locke in his Second Treaties of Government, Chapter II noted:

> The state of nature has a law of nature to govern it, which obliges every one; and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinity wise maker; all the servants of one sovereign master, sent to the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us, that may authorize us to destroy one another….[5]

The Bible King James Version

[3] R Brooks, What Makes Us Human? https://www.drrobertbrooks.com. Accessed on Thursday, 20th November 2025.

[4] Ibid.

[5] E Gyankosh, 'Unit II Locke: Natural Rights', https://www..egyankosh.ac. Accessed on Thursday 20th November 2025.

Locke argument is that since every man is created by one sovereign being, human beings remain the workmen and are equal before their creator and as such should work towards one another in harmony in order not to harm each other's life, liberty and property.

The Universal Declaration of human Rights acknowledged 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.'[6] The basis of human existence is the pursuit of his happiness, fulfillment and self-preservation. Man by nature is not made to be subject or being subordinate to one another but to pursue his self-preservation in accordance with his conscience. However, because human beings are not endowed with equal strength, the weak run to the strong for protection against intimidation and deprivation by the strong, hence the arose social contract in form of laws, treaties, covenants and conventions.

It is in this arrangement that the global community and the state have fashioned several legal instruments on the protection of human rights. Ogbu refers human rights as 'which all persons everywhere and at all times equally have by virtue of being moral and rational creatures.'[7] Human rights enjoy a universal flavour and they are on top of the agenda for international discourse in ages' time. This is the basis of several treaties and conventions aimed at setting standard of acceptable international benchmark on the treatment of human being globally. Under the national law, human rights are grouped into fundamental human rights and the fundamental objectives and directive principles of state policy.[8] Those under the fundamental objectives and directive principles of state policy are in embryo or under incubation waiting for maturity based on the improvement of the recourses of the state.

2.2 Fundamental Human Rights

In Nigeria, the justiceable rights are term fundamental human rights and they are provided in Chapter Four of the Constitution of the Federal Republic of Nigeria 1999 (as amended). They are the right to life[9]; right to dignity of human person[10]; right to liberty of person[11]; right to fair hearing[12]; right to private and family life[13]; right to freedom of thought, conscience and religion[14]; right to freedom of expression and the press[15]; right to peaceful assembly and association[16]; right to freedom of movement[17]; right to freedom from discrimination[18]; right to acquire and own immoveable property anywhere in Nigeria[19] and right to payment of compensations for compulsory acquisition of property.[20] Fundamental human rights are active rights of the Nigerians

[6] Universal Declaration of Human RIGHTS 1948, Article 1.
[7] ON Ogbu, *Human Rights Law and Practice in Nigeria: An Introduction* (Enugu: CIDJAP Press, 1999) p.2.
[8] Chapter two of the Nigerian Constitution deals with the fundamental objectives and directive principle of state policy.
[9] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 33.
[10] Ibid, Section 34.
[11] Ibid, Section 35.
[12] Ibid, Section 36.
[13] Ibid, Section 37.
[14] Ibid, Section 38.
[15] Ibid, Section 39.
[16] Ibid, Section 40.
[17] Ibid, Section 41.
[18] Ibid, Section 42.
[19] Ibid, Section 43.
[20] Ibid, Section 44.

with the legal backing for enforcement if been, is being or likely to be contravened in any part of Nigeria.[21]

Fundamental human rights are immutable, global, and intrinsic rights that belong to every human being upon birth and until death. Kayode Eso JSC noted in the case of *Ransome-Kuti v. AG Federation*[22] that fundamental human rights stand above the ordinary laws of the land and which is in fact, antecedent to the political society itself. Fundamental human rights are *jus naturale*. They are not given; they are inborn. They are inseparable from human beings. They do not discriminate against colour, race, sex, nationality, religion, class, ability or social, cultural and economic status. They speak the same language in the entire world. The state is incompetent to legislate out of the fundamental human rights and the individuals cannot waive the fundamental rights of another for his sole benefit.

2.3 Essential but Not Justiciable Rights in Nigeria

The essential but non-justiciable rights under the Nigerian constitution are economic rights[23], social rights[24], educational rights[25], environmental rights[26], cultural right[27], right to medical care among others. The essential but non-justiceable rights in Nigeria have remained the catalyst or the propellers to the realization of the fundamental rights. These essential rights can also be termed necessaries rights.

Necessaries are life supporting mechanism without which man's existence would be miserable. Black's Law Dictionary noted that necessaries are 'Things that are indispensable to living.'[28] It includes: food, medicine, clothing, shelter, and other personal services usually considered reasonably essential for the preservation and enjoyment of life, to the extent that a person having a duty of protection must furnish them.[29] It appears that when one talked about the necessaries of life, another would understand it to mean food, shelter and clothing. Necessaries of life go beyond the provision of food, shelter and clothing but encompass the all-round needs that are indispensible for living. The indispensable mechanisms for life existence in Nigeria are unfortunately non-justiceable but there can be no better ways of breathing life into them than judicial activism.

2.3 Judiciary

Judiciary is the third arm of government but appears to be more powerful than the first and the second arms of government respectively. Under the law, the judiciary is vest with onerous duties of administration of justice, interpretation of law, application of law and the watchdog of the constitution. The fear of the judiciary by the executive and the legislative arms of the government appear to be the beginning of the political, economic and social stability in any given nation. In an organized society, judiciary appears more powerful, more feared and more respected by the citizens. Although often graded as the last limb of the government, judiciary is more stable and the key to a stable society. It is filled with men that undergo through career and on-job-training

[21] Ibid, Section 46.
[22] [1985] 7 NWLR (Pt.6) 221.
[23] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 16.
[24] Ibid, Section 17.
[25] Ibid, Section 18.
[26] Ibid, Section 20.
[27] Ibid, Section 21.
[28] BA Garner, *Black's Law Dictionary* (9th Edn: USA, Thomson Reuters, 2009) p.1129.
[29] Ibid.

over a period of time. For instance; under the Constitution of the Federal Republic of Nigeria 1999 (as amended), a judge of the Federal or State High Court must possess minimum requirement of a degree in law from the recognized university and be admitted to practice as solicitor and advocate of the Supreme Court of Nigeria for not less ten years post call.[30] Within these years of experience, the person must have been adjudged to be a fit and proper person. However, in the other arms of government, a degree in the university is not a criterion for the aspirant to acquire the position of the executive or the legislature. The job-on-training experience is not the yardstick to be elevated into the executive and legislative position.

The above makes the judiciary the most respected, honoured and prestigious arm of the government. It is a hallowed arm of the government that carries the hope of every citizen. A nation with weak judiciary lives in potential anarchy and time bomb.

3. Rhetoric of Fundamental Human Rights

Fundamental human rights in Nigeria have remained in the realm of persuasive speech. Government will always present a picture as if the provision for the fundamental rights in the constitution is independence of the social, economic, educational, environmental, health and cultural rights. Fundamental human rights cannot thrive in the environment of hostility with social, economic, educational, environmental, health and cultural rights. A man who is not feeding well does not know the meaning of right to life, dignity and liberty. A man who depends on menial job to eke a living has nothing in common with dignity in lablour. For instance, Section 34 (1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that 'Every individual is entitled to respect for the dignity of his person, and accordingly- no person shall be held in slavery or servitude.' Ironically, this constitutional provision is the most abused in Nigeria. The economic policies and decisions of the government of Nigeria have put the majority of Nigerians in the state of slavery. Black's Law Dictionary defines slavery as 'A situation in which one person has absolute power over the life, fortune, and liberty of another.'[31] It is 'The practice of keeping individuals in such a state of bondage or servitude.'[32] Servitude is a situation of using coercion, such as manipulation, control or violence, threats or lies by one against another so as to compel the other to remain loyal under the dominance of the other.

In Nigeria, government dominates the means of production and exchange. The economic policies of government sometime are made aiming at the targeted group or individual. For instance, the gain for fuel subside removal has remained a mirage to many Nigerians. Pump price of fuel at the petrol stations increased geometrical since the removal of fuel subsides in May 2023 while the living standard of many Nigerians has continued lower on daily basis. The labour of the Nigerian workers remains undignified in such a manner that salaries and wages become a means of servitude instead of living wage. Others who are not civil or public servants are forced by the Nigerian economic policies to engage in menial jobs, unquantified payment in terms of job done among others. The removal of fuel subsides in Nigeria which ought to breathe life into the citizens has turned a means of deepening poverty in Nigeria. Labour becomes dignified if it produces a living wage. The rhetoric of the freedom of movement lays in the inability of many citizen of Nigeria to afford the cost of transport arising from the inflated cost of fuel. The rhetoric of the right to life is captivated in the inability of the Nigerians to afford life necessaries such as food, clothing and shelter. The means of income of many Nigerian are retrogressive while their daily demands are in geometrical progression.

Government has continued to be persuasive in the issue concerning fundamental human rights without tying the knot to the means of fulfilling human rights. There is a challenge. Nigerians

[30]Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 231.
[31] BA Garner, *Black's Law Dictionary* (9th edn, USA: St. Paul Minn, 2009) 1515.
[32] Ibid.

have been imprisoned in the rhetoric of fundamental human rights and will continue to be in bondage until the real means of human existence is addressed.

4. The Role of judiciary in Human Rights Cases

The judiciary has remained the beacon for the actualization of the human rights. Any components of human rights that are checked in Chapter Four of the Constitution of the Federal Republic of Nigeria 1999 (as amended) can only receive breathe of life through judicial activism. The Fundamental Rights (Enforcement Procedure) Rules 2009 provides that the court should actively interpret municipal, regional and international bills of rights brought to its attention or of which the court is aware in handling human rights cases. The basis of the active preamble in the FREP Rules is to ensure that the judiciary becomes proactive in human rights cases.

Before the FREP Rules, Nigerian courts have been reluctant in the interpreting social, economic and cultural rights as enforceable human rights. In *Badejo v. Federal Ministry of Education*[33] the court held that the right to education is not an enforceable right in Nigeria. Conversely in *Legal Defence and Assistance Project v. Federal Ministry of Education*[34], the court held that the right to education especially basic education is a fundamental rights and not just a policy goal. In this case, the court linked the right to education to that of the realization of the right to life. Under the African Charter, environmental rights are justiciable rights and they include the right to a general satisfactory environment favourable to development. It has been argued that without a safe environment, it would be difficult to enjoy the right to life, health, food and water. Environmental right is not enforceable right under the Nigerian constitution but under the African charter, it is recognized as one of the enforceable rights. It becomes the duty of the Nigerian judiciary to leverage on activism to interpret the social, economic and cultural rights as the core to the realization of the fundamental rights.

Once the courts begin to interpret the fundamental rights provisions dependable of the social, economic, educational, environmental and cultural rights provisions, the rhetoric of the fundamental rights in Nigeria will move to the fulfillment of human rights. In this stand, the dignity of human beings in Nigeria will be enhanced and the democratic principles of fairness, equality and the rule of law will be activated. Nigeria is on the crossroad, it is either the judiciary wakes up to restore the dignity in man or slumber in a ship seated in the middle of tsunami. Nigerian judiciary cannot afford to enter into archive and remain the tale by the moonlight. Judiciary should be responsive to its mandate in the interest of the present and the future generation.

5. Conclusion and Recommendation

The meat of this paper is the clarion call on the court to stand up, stand tall, courageous and bold in the discharge of justice in human rights cases in Nigeria. The paper has unearth the sad reality that fundamental human rights provisions under the Constitution of the Federal Republic of Nigeria 1999 (as amended) cannot be much meaningful to many Nigerians in the growing presence of lack of the means to maintain a standard of living adequate to human existence. It is on this score that the paper called on the judiciary to activate the dormant rights under the Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and breathe life into them in order to make the provisions for the fundamental human rights under the Nigerian law impactful. There is no better way to handle this than the judicial activism.

[33] [1990] 4 NWLR Pt. 143 254.
[34] FHC/ABJ/CS/978/15, [2018] NGFCHC 1.