

**CHALLENGES OF ENFORCEMENT OF FUNDAMENTAL  
HUMAN RIGHTS UNDER THE CONSTITUTION OF THE  
FEDERAL REPUBLIC OF NIGERIA, 1999.**

**BY**

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**BEING A LONG ESSAY**

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## **DEDICATION**

This work is dedicated to my lovely wife **Mrs. Justina A. Chiroma**, my Children and the victims of Human Right Abuses in the world.

## ACKNOWLEDGEMENT

I thank God Almighty for making it possible for me to go through this programme. My thanks also go to the leadership of the Niger State Ministry of Justice that was always at hand to give me a helping hand during the time I was undergoing the programme.

I am also indebted to my Project Supervisor **Prof. Olanrewaju Fagbohun** who despite his tight schedule found time for me I am most obliged. Prof. I say may God Almighty bless you and your family.

I finally thank my family who bore it patiently in my absence during the course of the programme, my God bless you (Amen).

## **DECLARATION**

I declare that this work is a product of my personal effort. This research work has neither in whole or in part been presented for award of the Post Graduate Diploma in (Legislative Drafting) elsewhere. Authors have been duly acknowledged.

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**Chiroma Moses Gamzhi**

2009/2010 Session

## CERTIFICATION

I certify that this research work titled “Challenges of the Enforcement of Fundamental Human Rights under the Constitution of the Federal Republic of Nigeria, 1999” was carried out by me under the supervision of **Prof. Olanrewaju Fagbohun** and submitted to meet the partial requirement for the award of the Post Graduate Diploma in (Legislative Drafting) of the Nigerian Institute of Advance Legal Studies Lagos.

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## **ABSTRACT**

Fundamental Human Rights provisions have continue to feature very prominently in the successive Constitutions of the Federal Republic of Nigeria, and there has been a rise in the activities of Human Right groups in Nigeria even with the advent of this democratic experiment in Nigeria. Despite all these, Human Rights abuse is on the increase in Nigeria.

Therefore, the specific objectives of this study are:

- 1) To evaluate the provisions on Fundamental Human Rights in Nigerian Constitution.
- 2) To consider the extent of enforceability under the Rules.
- 3) To consider and examine the challenges that are there in enforcement of these Rights.
- 4) To make a case for the justiciability of the provisions of Chapter II of the 1999 Constitution of the Federal Republic of Nigeria.

The study relied on Primary and Secondary sources of Information.

The Primary Sources are: - Administrative decisions and ruling, Constitution, Judicial reports and Administrative rules and regulations among others.

Secondary Sources are: - Constitution, Conventions and documents, Law Dictionaries, Periodicals and Source books of historical documents.

Find tools are: - Research guides, Citation, Digest of Case Law and Indexes to statutes and Legislative history.

The study revealed that: (a) Human Rights are not exactly same as Constitutional Rights or Fundamental Rights. Fundamental Rights are those aspects of Human Rights which are statutory protected. Such protection have practical relevant when individual can conveniently seek relief in a Court for an infringement. (b) There are many challenges that are hindering the

enforcement of Fundamental Human Rights in Nigeria. These include: Illiteracy, Poverty, Rise in the action of Militants, Kidnappers and religious fanatics, Non – justiciability of the provisions of Chapter II of the 1999 Constitution of Federal Republic of Nigeria and disrespect to Court Orders by Government and its agents.

The study concluded that until all the obstacles to the enforcement of Fundamental Rights as discovered in this study are removed including making the provisions of Chapter II of the Constitution justiciable, the pursuit of Nigerian Society free from Human Rights Abuse will continue to be a fleeting illusion to be pursued but never attained.

## **CHAPTER ONE**

### **1.0 INTRODUCTION**

The foundation of any genuine democracy is embedded in the rule of law, a principle that demands devotion to the spiritual and moral values, the common heritage of the people and the true source of individual freedom and political liberty. These democratic ideas are presently being assimilated into the people's consciousness in Nigeria as the nascent democratic experiment gradually solidifies. There is increasing awareness by the citizenry of the existence of constitutionally guaranteed rights. The utility of these rights can only be attained through the process of law enforcement. It is not useful to talk of right which lies only in the realms of human imagination.

Human rights are in some circles discussed, but erroneously, as synonymous with constitutional rights. This might be, because the general conception is that every right is enforceable in law. The word 'right' means that to which a person has a just and valid claim, whether it be land, a thing or the privilege of doing something. 'Human' pertains to having characteristics of, or the nature of mankind, human rights are thus rights which all person (mankind). every where, and at all times have by virtue of being mortal and rational creature. They are inherent in every human creature by virtue of his humanity. These rights embrace a wide spectrum of civil, political,

economic, social cultural, group solidarity and developmental claims which are considered indispensable to a meaningful human existence.

The constitution on the other hand is the body of laws on the basis of which a state (Country) is governed. In Nigeria, the constitution is the supreme law of the land on the basis of which the validity of other laws is determined. It is the grundnorm of the country's corpus juris<sup>1</sup>. Rights in the constitution are enforceable in accordance with the provisions of the constitutions unlike general human rights some of which are not justiciable and constitute mere aspirations of the citizens.

In *Kuti and others v. AG Federation*<sup>2</sup> Oputa JSC emphasized that:

*Not every civil or legal right is fundamental right. The ideal and concept of fundamental rights both derive from the premise of the inalienable rights of man - life, liberty, and the pursuit of happiness. Emergent nations with written constitutions have enshrined in such constitution some of these basic human rights, each right that is thus considered fundamental is clearly spelt out.*

Thus, in Nigeria, those rights that are considered fundamental to human beings are enshrined in Chapter IV of the 1999 Constitution of Federal Republic of Nigeria<sup>3</sup>

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1.S.1 (3) 1999 Constitution of Federal Republic of Nigeria.

2. [1985] 8 NWLR (pt 6) 211.

3. Ibid fn<sup>1</sup>

The rights contained in Chapter IV of the Constitution, Sections 33 to 46, and the African Chapter on Human and peoples rights are rights that are enforceable in our Courts of Laws in Nigeria. These rights that are contained in Chapter IV are first generation rights<sup>4</sup> — right to life - section 33, right to dignity of human person - section 34, right to personal liberty - Section 35, right to fair hearing — section 36, right to private and family life, Section — 37, right to freedom of thought, conscience and religion - Section 38, right to freedom of expression and press — Section 39, right to peaceful assembly and association Section 40, right to freedom of movement section 41, right to freedom from discrimination - Section 42, right to acquire and own immoveable property any where in Nigeria — Section 43, compulsory acquisition o property — Section 44, restriction on and derogation from Fundamental Rights — Section 45, special jurisdiction of High Court and Legal Aid — Section 46 and African Chartered on Human and People’s Rights which was ratified and re-enacted as municipal Law by the National Assembly on 17th of March, 1983 and came into force on the 21st of October, 1986.

Rules were made pursuant to section 46 (3)<sup>5</sup> of the Constitution by the immediate past Chief Justice of Nigeria, Justice Idris Legbo Kutigi with effective date of 1<sup>st</sup> December 2009 for their enforcement. The enforcement of these rights is not without challenges.

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4. First generation rights largely represent Western liberal democratic ideas which, in the views of Adamantia Pollis, are anchored on a definition of a person as (an isolated, autonomous individual). It is a categorization of rights as they evolved and in accordance with their importance. See also O. C. Eze. Human Right Law No. 1 (Lagos: Helen – Roberts Limited, 1997) at 2 – 3.

5. *ibid* fn<sup>3</sup>

Therefore, it is these challenges that arise in the enforcement of these rights under the 1999 Constitution of the Federal Republic of Nigeria that is the subject of this study.

## **1.1 BACKGROUND OF THE STUDY**

One of the British legacies in the Commonwealth of which Nigeria is a member is a libertarian tradition of the Common Law and its system of Justice embodied in the Magna Carta of 1215 and the Bill of Rights of 1689. Civil Liberties were guaranteed by the Colonial Government but to the extent necessary to prevent rebellion against Colonial Government. This was expressed in the various Constitutional conferences held in the march towards Nigerian independence in order to allay minority tribes' fears of domination by majority tribes.

Fundamental Human Rights provisions have continued to feature very prominently in the successive constitutions of the Federal Republic of Nigeria. The 1979 Constitution of the Federal Republic of Nigeria introduced a new dimension to the Constitutional recognition of human rights by providing Fundamental Objectives and Directive Principles of State Policy (Chapter II)<sup>6</sup> in addition to Fundamental Human Rights (Chapter IV). The 1989 Constitution followed this trend and so did the 1999 Constitution which forms the focus of this study.

Before the coming into force on the 1<sup>st</sup> day of December, 2009, the new Fundamental Rights (Enforcement Procedure) Rules, the Rules under 1979 Constitution had cumbersome provisions. The new Rules have done away

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6. 1979 Constitution of the Federal Republic of Nigeria

with most these obstacles. Under the 2009 Rules, the applicants no longer need leave to apply for Enforcement of their Rights, no longer limitation time for the application, and application can now be filed on behalf of the applicant by a representative<sup>7</sup>.

The 1999 Constitution is being reviewed but nothing is being done to make the provisions of Chapter II of the Constitution justiciable. Social, Political, and Economic factors have continued to constitute these greatest obstacles to the citizens' desire to seek redress for the infringement of their rights.

The Fundamental Rights (Enforcement) Rules 2009 made some innovations in the rules but there are still some shortcomings and inhibitions in the rules. Despite the activities of Human Rights groups in Nigeria and the establishment of Human Rights Commission, Human Rights Abuse in Nigeria are on the increase.

It is based on this background that this study evaluate the provisions on Fundamental Human Rights under the Constitution of the Federal Republic of Nigeria 1999. The study also considers the extent of enforcement under the 2009 Rules, the Jurisdiction of Courts as provided thereunder, and the challenges of the enforcement.

## **1.2 AIMS AND OBJECTIVES**

The enforcement of Fundamental Right under the 1999 Constitution of the Federal Republic of Nigeria is not without some challenges.

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<sup>7</sup>. S. 3 (e) to the Preamble of the Fundamental Rights (Enforcement Procedure) Rules 2009.

Therefore, the Aims and Objectives of this study is to identify these challenges, and critically appraise them. Suggestions for the attainment of society free from Human Rights abuse made in this study. It is also the aim of this study to make a case for the justiciability of the provisions of Chapter II of the Constitution.

### **1.3 SIGNIFICANCE OF THE STUDY**

The Aims and Objectives of this study are indicated in Paragraph 1 .2 above. The significance of this study therefore cannot be overemphasized, considering the hitherto demanding procedures for the enforceability of these Human Rights in our Courts. Effort to tackle Human Rights abuses which are prevalent in the African region, especially in Nigeria received boost in 2009 with the introduction of the new Fundamental Rights (Enforcement Procedure) Rules 2009.

The new Procedure Rules which was signed on November 11, 2009 by the immediate past Chief Justice of Nigeria, CJN, Justice Idris Legbo Kitigi came into force with immediate effect.

The new Rules, unlike the previous Rules guiding the procedure to be followed in Court in applications for the enforcement of Fundamental Rights, under Chapter IV of the 1999 Constitution and the African Chapter on Human and Peoples Right (Ratification and Enforcement) Act contain some innovations that will make the processes easier for Lawyer and litigants.

The new Rules unlike the previous one allow Lawyers or Litigants to file their brief, even if the applicant is detained, in other words, it is not necessary that the applicant must be physically present before the Commissioner for Oaths to swear to his statement on the Affidavit.

There are still some obstacles to the enforcement of Fundamental Rights even with the introduction of the new Rules. The issues of principal claim and ancillary relief is still one of the major headaches by the Applicants; how to determine the Court that has Jurisdiction is also a problem e.g Court striking out or dismissing Fundamental Rights applications on ground that Fundamental Rights matters against the State Government cannot be instituted in the Federal High Courts, the Non-justiciability of the provisions of Chapter II of the 1999 Constitution of the Federal Republic of Nigeria.

The National Assembly should as a matter of urgency amend the Constitution to make the provisions of Chapter II justiciable. Also the Jurisdiction of the High Court be amended to make it freer for Applicant to approach any High Court to enforce his Right whenever it is breached irrespective of the claim, parties and where the breach occurred.

#### **1.4 SCOPE OF THE STUDY.**

The topic of this study is the “challenges of the Enforcement of Fundamental Human Right under the 1999 Constitution of Federal Republic of Nigeria”. This study will be limited to Nigeria.

Therefore, the study is divided into five Chapters.

Chapter One of the study is an Introduction to the Study. It looked at the background, the Aims and Objectives, the significance and the structure of the study. Chapter Two examines the quest for Fundamental Human Rights, its historical context and the nature of Constitutional provisions in Nigeria. Chapter Three examines the Enforcement of Fundamental Human Rights, individual and institutional Enforcement of Fundamental Human Rights, the cause of action, procedure for the enforcement. The Chapter also examines the Jurisdiction of the Court and the Jurisprudence of the Court.

Chapter Four examines the challenges and limitations to the Enforcement of these Rights under the 1999 Constitution of the Federal Republic of Nigeria, and the non-justiciability of the provisions of Chapter II of the Constitution. Chapter Five Summarizes the Study, makes Observations, Conclusion and Recommendations if any.

### **1.5 STRUCTURE OF THE STUDY.**

The study will adopt a mixture of analytical and historical approach. It will be analytical in that there will be an exploration of what is the existing Law as it relates to Enforcement of Fundamental Rights in Nigeria. This will include the use of statute books, the judgement of Superior Courts and English Laws that are applicable in Nigeria, such as the Rules of Common Law, Doctrine of equity and status of general applications in force in 1900. it will be historical in that the evolution of Fundamental Human Rights will be traced in this study so as to know the reason behind the evolution of these Rights.

The study will make use of Primary and Secondary sources. Primary sources refer to: Administrative decisions and ruling, Constitution, Judicial reports, Administrative rules and regulations among others, while Secondary Sources refer

to: Constitution, Convention and documents, Law dictionaries, Periodicals, Source books of historical document to mention but few here.

## CHAPTER TWO

### 2.0. THE QUEST FOR FUNDAMENTAL HUMAN RIGHTS.

The concept of human rights engenders one of the most profound questions ever to task the intellect. Discourse on the precise meaning and content of Human Rights has taxed the ingenuity of eminent scholars yet the issue raise, more questions than answers on issues such as the universality - relativity palaver<sup>8</sup> as well as ethical, moral, cultural, philosophical, legal and ideological underpinnings of the subject matters. For this purpose, it suffices to examine the major strands in the various approaches to Human Rights — the traditional approach and the socialist approach.

The traditional approach to human rights finds firm anchorage on natural law conceptions. Proponents of this synthesis, such as Thomas Hobbes an English philosopher suggested the existence of hypothetical social contract where a group of free individuals agree for the sake of the common good to form institution to govern themselves<sup>9</sup>. They give up some liberties in exchange for protection from the sovereign. This led to John Locke's theory that a failure of the government to secure rights is a failure which justifies the removal of the government, and was mirrored in later postulation by Jean Jacques Rousseau in his "Du contract social" (the social contract)<sup>10</sup>.

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8. A. A. Na'im and F. Deng (Eds), *Human Rights in Africa – Cross cultural perspectives* (Washington: The Brooking Institution, 1990).

9. O. Eze *Human Rights in Africa* (Lagos: Nigeria Law Publications Ltd; 1988); M. Cranston, *What are Human Rights?* (New York; Taplinger, 1973) Chapter I; C. A. Oputa, *Human Rights in the Legal and Political Culture of Nigeria* (Lagos: Nigerian Law Publication Ltd, 1988).

10. *ibid.*

Thomas Hobbes and John Locke construct a general scheme of rights which are common to mankind irrespective of nationality, creed or sex in line with Anold Lien conception of Human Rights as:

*Universal rights or enabling qualities of human beings attaching to the human being wherever he appears, without regard to time, place, colour, sex, parentage or environment<sup>11</sup>*

These Rights are said to be inalienable with divine content and appertain to the individual. They include the right to life; right to liberty; right to property freedom of thought; conscience and religion; freedom of expression and the press<sup>12</sup>.

The socialist approach,, on the other hand, is predicated on the dialectical thesis that the economic infrastructure is determinant of the superstructure. Consequently it has been noted that:

*It is the concrete material conditions of the society which give rise to the sort of rights that can be enjoyed. Therefore, there can never be rights with divine content derived from natural law synthesis From this point given, what are considered human rights in a bourgeoisies society is the liberty allowed to either the exploitation as alienation of the working class and Peasantly by the domThant class. The very fact of The quities social relations which constitute bottle neck in the enjoyment of human rights<sup>13</sup>*

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11. A. J. Lien. A fragment of thoughts concerning the nature and fulfillment of Human Rights (West Port Greenwood Press Publishers, 1973) pp /44-5

12. S. 33 – 39 1999 Constitution of the Federal Republic of Nigeria

13. O. Gye-wado, A comparative Analysis of International Framework for Enforcement of Human Right in Africa and West Europe (1990) 2RADIC P.188.

Thus, the socialist synthesis questions the validity of traditional stance and maintains that Human Rights is a mere legal potentiality which depends on material conditions for its concretization as a social reality.

Consequently, Human Right must find expression in the matrix of the material realm. The third world perspective equally conceives economic development as an intrinsic aspect of Human Rights.

There are presently three generations of Human Rights. First generation rights relate to civil and political rights, second generation rights are of economic, social and cultural nature, while the third generation rights deal with the issue of solidarity.

Civil and Political Rights which form the basis of the first generation rights are libertarian in character. They relate to the sanctity of the individual and his right within socio-political milieu in which he is located.

Such rights include: right to life; freedom from torture and in human treatment; right to liberty; freedom from slavery and force labor; freedom of movement; right to fair trial, freedom of thought, conscience and religion, right of franchise and the rights which are central to the traditional synthesis. By their nature, civil and political rights are said to be 'negative rights' in the sense that they impose restraints on the state without requiring positive action for their enjoyment. While it may be true that rights entail primarily positive or primarily negative correlative duties, the negative- positive rights distinction is not entirely correct because, the distinction between negative

and positive is better appreciated in terms of ‘rights’ but of duties<sup>14</sup>. I feel there is a typology of duties for each right which is:

1. Duties to avoid depriving;
2. Duties to protect from deprivation; and
3. Duties to aid the deprived.

Thus, virtually all — if not all — rights reflect both negative and positive correlative duties.

First Generation Rights largely represent Western liberal democratic ideals which are anchored on a definition of the person as ‘an isolated, autonomous individual’ and inherent with individual self aggrandizement and the glorification of private property as a Fundamental inalienable Human Right. These tallies with Ake’s critiques of the liberal regime as ‘atomized and individualistic<sup>15</sup>.

While conceding that there is a substantial element of truth’ in the views which are critical of the liberal tradition and that ‘horrors have been committed in the name of liberalism’, Donnelly argues, that the criticisms reflect the ‘conventional or minimalist conception of liberalism’ which is only one theory and practice<sup>16</sup>. He further argues that there exists a radical liberal tradition under which individualism is moderated by social values, private properly rights are limited rather than absolute, and civil and political rights are coupled with economic and social rights<sup>17</sup>.

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14. See Section 33 – 39 in 1999 Constitution of the Federal Republic of Nigeria.

15. C. Ake. The African Context of Human Rights African to day. 1-2 1987, P5

16. Jack Donnelly; Human Rights and Western liberalism; in Na’im and Deng (eds.), Human Rights in Africa-cross-cultural perspectives.

17. Ibid. P. 33 Rhoda Howard is equally of the view that the fear of anomie with criss-crosses criticism of the Liberal tradition are based on exaggerated misconceptions of the nature of Social life in the Western World. Rhoda Howard, ‘Group versus individual identity in the African debate on Human Rights in Na’im and Dengs (eds.) ibid P. 159 -198.

It is therefore, apparent that primacy is often accorded civil and political rights which form the basis of the Fundamental Human Rights as envisaged in Chapter IV of our Constitution 1999, relative to other generations of Human Rights.

The three elements — individualism, private property rights, and civil and political rights do indeed have a special place in the western liberal human rights tradition.

First generation rights find expression in the Constitution of many Countries as Fundamental Rights. Various Regional Human Rights regimes also embody these rights while at the international levels the universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966 are instructive.

Second generation rights, primarily of economic, social and cultural nature, pertain to equality and are predicated on the necessity for the material well-being of the citizenry, with the state playing a pivotal role. They are essentially equalitarian or egalitarian in character and embrace, inter alia, the right to work; the right to just condition of work; the right to fair remuneration; the right to an adequate standard of living; the right to organize, form and join trade unions; the right to equal pay for equal work; the right to social security; the right to food, the right to education and the right to participate in cultural life.

Generally, these rights require affirmative Governmental action for their implementation.

Consequently, they are positively represented as rights to' rather than 'freedoms from' as is characteristic of first generation rights<sup>18</sup>.

The Countries of the third world, reeling under the pangs of underdevelopment, tend to perceive first generation rights as luxuries and, instead, place premium on the second and third generation rights. Amnesty International's 'Background paper on Ghana', reveals that the principle of 'one man vote' is meaningless unless accompanied by the principle of 'one man, one bread'<sup>19</sup>, Ake is of the view that:

*...Human Rights have to be much more than political correlate of commodity fetishism which is what they are in the western tradition. In that tradition, the rights are not only abstract they are also ascribed to abstract person. The rights are ascribed to the human being from whom all specific determination have been abstracted''<sup>20</sup>.*

Ake further argues that freedom of speech and freedom of press do not mean much for a largely illiterate community absolved in eking a living out of an arid mortar of subsistence. Thus'

*...If rights are to be meaningful in the context of a people struggling to stay afloat under very adverse economic and political conditions, they have to be concrete... in the sense that their practical import is visible and relevant to the condition of existence of the people to whom they apply, And most importantly, concrete in the sense that they can be realized by the beneficially<sup>21</sup>.*

18. C. Welch, Jr. 'Human Rights as a problem I contemporary African, in Welch and Meltzer (eds.) Human Rights and development in Africa (Albany: Suny Press, 1984), P. 24

19. Quoted in J. O. Ihonvbrere, 'under development and human right violation in Africa', in G. W. Shepherd, Jr. and Mark O. C Onikpo (eds.), Emerging human rights: The African Political Economy context (West Port, Connecticut: Greenwood Press, 1990) PP. 55

20. *ibid* fn<sup>7</sup>. P4.

21. Claude Ake, quoted in T. A. Aguda, Human rights and the right to development in Africa (Lagos: UILA, 1989) P. 26. Osita Eze is equally of the view that 'to the extent that socio-economic rights are not guaranteed, then to that extent will civil and political rights remain palliatives for the masses; Eze, 'Human rights issues and and violations: The African experience in Shepherd Jr. and Anikpo (eds.), Emerging Human Rights, OP. Cit P. 102.

Presently, the National Constitutions of many Countries do not embody second generation rights, except as Fundamental objectives and Directive Principle of State Policy which as in the case of Nigeria, are non-justiciable. However, various, continental regimes embody these rights in differing degrees. At the International level, the universal Declaration of Human Rights, though pre-occupied with first generation rights, and more importantly, the international covenant on Economic, social and cultural Rights, 1966, represent the prism from which international perspective on second general rights could be viewed.

Third generation rights relate to the question of solidarity, they deal with the organic and corporate existence and working of the society and embrace, inter alia, the right to safe and healthy environment, the rights to development and the right to share in the common heritage of mankind<sup>22</sup>. These rights are still being progressively developed. It is hoped that the co-operative synthesis which forms the core of third generation rights will be concretized and become the shared expectation and responsibility of the entire human race. Additionally, generational conflicts must not be given pride of place over complementary synthesis which runs through the generations of human rights.

## **2.01 HISTORICAL CONTEXT OF FUNDAMENTAL HUMAN RIGHTS**

Although ideas of rights and liberty have existed for much of human history, it is unclear how much such liberties can be described as “human rights” in the modern sense. The concept of rights certainly existed in pre-modern cultures; ancient philosophers such as Aristotle wrote extensively on the

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22. See SS 14 – 23 of Chapter 11 of the 1999 Constitution of Federal Republic of Nigeria, Articles 11, 17, 18, 19, 20, 21, and 22 of the African Charter on Human and Peoples Rights.

rights (to dikaion in ancient Greek, roughly” just claim”) of citizens to property and participation in public affairs.

However, neither the Greeks nor the Romans had any concept of universal human rights; slavery for instance, was justified both in ancient and modern times as a natural condition<sup>23</sup>. Medieval charters of liberty such as the English Magna Carta were not charter of human rights, let alone general charters of rights. They instead constituted a form of limited political and legal agreement to address specific political circumstances, in case of Magna Carta later being mythologized in the course of early modern debate about rights<sup>24</sup>.

Much of Modern Human Rights law and the basis of most modern interpretations of Human Rights can be traced back to relatively recent European history. The Twelve Articles of the Black Forest (1525) are considered to be the first record of Human Right in Europe. They were part of the peasants demands raised towards the Swabian league in the peasants’ war in Germany. The British Bill of Rights (or an Act Declaring the rights and Liberties of the subject and settling the ‘succession of the crown’) of 1689 made illegal a range of oppressive governmental actions in the United Kingdom. Two major revolutions occurred during the 18<sup>th</sup> Century, in the United States (1776) and in France (1789), leading to the adoption of the United State Declaration of independence and the French declaration of the rights of man and the citizen respectively, both of which established certain Legal Rights. Additionally, the Virginia Declaration of Rights of 1776 encoded a number of Fundamental Civil Right and Civil Freedoms into Law.

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23. Δ F. Michael (2002). Human Rights: an interdisciplinary approach. Wiley – Blackwell. PP. 15 – 17

**ISBN 9780745623559.**

24. Δ Freeman, the Magna Carta was very important in the late Middle ages PP. 18 – 19

The term ‘Human Rights’ probably came into use sometimes between Thomas Paine’s ‘The Rights of Man’ and William Lloyd Garrison’s 1831 writings in The Liberator saying he was trying to enlist his readers in “the great cause of Human Rights”<sup>25</sup>

In the 19th century, human rights became a central concern over the issue of slavery. A number of reformers such as William Wilberforce in Britain worked towards the abolition of slavery. This was achieved in the British Empire by the slave Trade Act 1807 and the slavery Abolition Act 1833.

The huge losses of life and gross abuses of Human Rights that took place during the first and second world wars were a driving force behind the development of Modern Human Rights instruments.

Modern International conceptions of Human Rights as earlier stated, can be traced to the aftermath of world war II and the foundation of the United Nations<sup>26</sup>. Article 1(3) of the United Nations charter set out one of the purposes of the UN is to: “achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for Human Rights and for Fundamental freedoms for all without distinction as to race, sex, language, or religion”<sup>27</sup>.

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25. ^ Mayer (2000) P. 110

26. H. L. Peacock, A History of Modern Europe 1889 – 1978 Six edition (Heinemann Educational Books 1980). Hong Kong PP. 445 – 458.

27. United Nations Charter Article 1 (3).

The rights espoused in the UN charter would be codified in the international Bill of Human Rights, composing the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The development of Fundamental Human Rights in Nigeria can be appreciated at the three historical epochs- pre-colonial, colonial and post colonial.

Pre-colonial Nigeria' was neither culturally nor politically homogeneous, yet it had its own notion of human rights, informed largely by the material condition of the time<sup>28</sup>. Unfortunately, the colonial era was one of the diminished if not extinguished, human rights promotion and protection. This is because colonial domination inheres with gross injustice and inhumanity and is, therefore, the very antithesis of Human Rights<sup>29</sup>. This is partly attributed to the social, political, economic and cultural dislocation occasioned by colonialism, since the colonized people were excluded from history, forgotten in geography (and) only existed in relation to a colonial point of reference<sup>30</sup>.

Although the Human Rights were somehow collectivized at communalistic ethos, there were cases of derogation such as Osu System and Human Sacrifices, and killing of twins in the Eastern Nigeria.

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28. O. Gye – Wado, 'the Rule of Admissibility under the African Charter on Human and Peoples' Rights' (1991) 3 RADIC, PP. 742 – 743; Eze, Human Rights in Africa (Lagos: Nigerian Law Publications Ltd; 1988).

29. Professor Eze is of the view that by abolishing certain objectionable practices prevalent at the time in Africa, the Colonialists contributed to a progressive development of Human Rights but further argues that, on balance, there is no argument as to the Fundamental negative effects of Colonialism on Colonial and independent Africa since Colonialism was essentially antithetical to Human Rights promotion. Eze, Human Rights in Africa, *ibid*.

30. Onje Gye – Wado, 'The African Charter: its implementation in Nigeria – problems and prospects; presented at a Workshop on the Press and Human Rights in Nigeria, jointly organized by the CLO and the NUJ, Abuja 27 – 28 January, 1993, P. 4.

Post Colonial Nigeria saw Nigeria becoming party to several International Human Rights treaties, including the convention relating to the status of Refugees (1967) and the protocol relating to the status of Refugees, the convention on the political rights of women (1953) and the international convention on the elimination of all forms of Discrimination against women 1977, the international convention on the elimination of all forms of racial Discrimination (1966) , and the international convention on the suppression and punishment of the crime of apartheid (1981), and the African Charter on Human and Peoples' Rights 1981 which became part of Nigerian law on the 17th March 1983 by virtue of African charter on ,human and people's rights(Application and Enforcement) Act cap 10 laws of Federation 1990. Nigeria has also ratified the slavery convention of 1926, the supplementary convention on the Abolition of slavery of 1956, and the Geneva conventions relating to the treatment of prisoners of war and the protection of civilian person in time of war, among others.

The Government Human Rights record was mixed and generally worse under the military rule. Decrees were promulgated and exempted from legal challenge. During the regime of Major General Yakubu Gowon; it was not days of "innocence" in relation to Human Rights. This trend of abuse of the rights of people continued under Murtala/Obasanjo Government. In 1976, after the creation of Nigerian security Organizations human rights violation became frequent. The return of Constitutional Government in the second republic (1979- 83) reduced the violations, although the Human Rights record was poor because of the increasing powers of the police force and the NSO and the constant harassment of political opponents.

Under the Buhari regime, Military Security was the criteria for judicial action, often in the form of military tribunals. The Government not only gave the NSO greater powers but also promulgated decrees that directly violated Human Rights. The most notable were State Security (Detention of persons) Decree Number 2 of 1984, which empowered the chief of staff at supreme Headquarters to detain anyone suspected of being a security risk indefinitely without trial (detention was of three months initially, and then renewable), and Decree Number 4, which made the publication or any material considered embarrassing to any Government Official a punishable offence. Under Decree Number 2, many people considered ‘enemies’ of the government were detained in NSO Cells and allegedly tortured. Second Republic Government Official, whom the Buhari regime held collectively responsible for the economic mess were detained without trial or were tried by special Military Tribunals. At these tribunals the accused were assumed guilty until proved innocent rather than innocent until proved guilty<sup>31</sup>. Journalists and Media Organization were regularly harassed by Security agents.

Although, there were Human Rights groups during the Buharis days, which included local branches of amnesty International, it was far less effective than the parent organization. The National council for National Awareness founded after the assassination of Murtala Muhammad to protect a just and Human Society was also not effective. The more active Human Right group, the Committee for Defense of Human Right Founded by Late Dr. Beko - Ransorne- Kuti suffered under the pangs of the military strong power. In 1990,

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31. Erugo, S. "The Erosion of Fundamental Rights in the Nigeria pretrial criminal process" 1 Abia State University Law Journal, February, 1997, 19. See also ineme, E. Military Tribunals and Due Process in Nigeria, Lagos: CRD 1999.

the Civil Liberties Organization (CLO) founded by group of Young Lawyers then) led by Olisa Agbakoba now SAN emerged during Buhari days with other several organizations which included, National Association of Nigerian Student (MANS) the Nigerian Bar Association (NBA), the Nigerian Labour Congress, (NLC), the Nigeria Union of Journalists (MUJ), criticized the Government's violations of civil rights and urged remedial measures.

When Babangida came to power in August 1985, one of his main arguments was the need to restore Civil Liberties. The new regime prided itself of being a defender of Human Rights, and many of Babangida's initial acts justified his Human Rights posture. He scrapped NSO, threw open its cells and replaced it: with State Security Service (SSS), scrapped Decree Number 4 reduced the punishment for Drug traffickers from public execution to jail terms.

In other ways, however, human rights remained substantially circumscribed in 1990. Decree number 2 remained in place, with allowable period of detention without charge reduced to six weeks in January 1990. With the aid of this and other decrees that restricted freedom, usually promulgated retrospectively, such radical and outspoken critics of the Government as Gani Fawehinmi, Tal Solarin, and Balarabe Musa where regular customers of the security cells. In 1988 *Néwswatch* was proscribed for six months, and journalists, academics, and civil rights activist continued to be harassed by state security agents<sup>32</sup>.

The abuses of Human Rights continued under Abacha where six prominent Ogoni Sons were executed<sup>33</sup>.

32. Nwanko, C. Aigbogu, F., E1 and Dulue, M. *The crisis of Press freedom in Nigeria*, Lagos, CRP, 1993. See Nwanko, C. "The Civil Liberties Organization and the struggle for Human Rights and democracy in Nigeria" in Diamon, L (ed). *The democratic revolution: struggles for freedom and pluralism in the developing world* (New York, Freedom House 1992 105 – 123.

33. *ibid* fn<sup>27</sup>.

With the return to democratic rule in Nigeria in 1999, one can not still say that there has been a substantial improvement in reduction of human rights abuses in Nigeria both by government, its agents and individuals against the public. There has been increase in the assassination of political opponents. People's vote do not longer count in any election, people's political freedom is being denied by the political king makers. The religious groups of Boko haram and kala kato in Borno and Bauchi State respectively are increasingly abusing the right of other people, and the security forces on the other hand are said to have grossly violated the rights of the leaders of these groups. There are also Human Rights abuses in Jos Plateau State, where thousands of people have lost their lives and properties destroyed without Government caring about it. Establishment of National Human Right Commission in Nigeria has not helped much in reduction of Human Right Abuses in Nigeria. Major Hamza Al — Mustapha and others have had their rights violated. They have been in detention for more than ten years without bail.

## **2.02 NATURE OF CONSTITUTIONAL PROVISION**

Pre-Colonial Nigeria was politically and culturally heterogeneous, yet, notions of human rights were extant, predicated essentially on the communalistic ethos of that era. Consequently human rights were collectivized. However, the danger of romanticism must be guarded against<sup>34</sup>, as I have earlier noted, there were cases of derogation such as the Osu-System in the Eastern Nigeria where some people were regarded as outcast and human sacrifices was in practice. However, these must be appreciated within the context of the concrete material condition of the time.

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34. Human Right Watch the Ogoni Crisis: A Case study of Military Repression in South-Eastern Nigeria (C 705) 7/95.

Colonialism largely abridged rather than enhanced human rights, as Gyewado rightly points out:

*One of the glaring index of colonial period was the denial of the fundamental rights of the colonized peoples. It is in this context that the argument of civilizing mission can be flouted, while the colonizers pretended notions of human rights, as a least Natural right they paradoxically never saw the necessity for the enjoyment of these rights by the colonized peoples. Of course the logic of colonialism was incapable of allowing the full effect of the rights; otherwise colonialism would have ceased to be relevant. Additionally, the derogation from these rights had also affected the development and articulation of Africa human right dispensation and perspectives<sup>35</sup>.*

However, at the twilight of Colonial Rule in Nigeria, the Willink Minorities Commission in 1958 recommended the inclusion of Human Rights in the Constitution. This was accepted and fundamental rights, principally first generation rights, found expression in the constitution that year and were retained. In both the independence (1960) and Republican (1963) Constitution<sup>36</sup>. Chapter IV, common to the three 1979, 1989 and 1999 Constitutions of the Federal Republic of Nigeria, also embodies these rights without any radical departure, from pre — 1979 position. Specifically the chapter provides for the right to life - Section 33, right to dignity of human person -Section 34, right to personal liberty-Section 35, right to fair hearing-section 36, right to private and family life -Section 37, right to freedom of thought conscience and religion -Section 38, right to peaceful assembly and association -Section 40, right to freedom of movement -Section 41<sup>37</sup>,

35. Onje Gye Wado, African, Reparations and International Law presented at the 18<sup>th</sup> Annual Conference of Nigeria Society International Affairs, NIPSS Kuru 23 – 25, November, 1992.

36. Nwabueze, A Constitutional History of Nigeria (USA Longman Me., 1982) PP. 116 - 117.

37. 1999 Constitution of the Federal republic of Nigeria.

right to freedom from discrimination-section 42, right to acquire and own immovable property anywhere in Nigeria -Section 43, compulsory acquisition of property -Section 44.

Second and third generation rights do not find expression under the three 1979, 1989, and 1999 Constitutions as Justiciable rights. Instead, they form the basis of Chapter II titled ‘Fundamental Objectives and Directive Principles of State Policy.’ These include political, economic, social, cultural, educational and foreign policy objectives and directive principles. The very first Section of that chapter (section 13 in the 1979 and 1999 Constitutions, Section 14 of the 1989 constitution) is to the effect that:

*It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or Judicial Powers, to conform to, observe and apply the provisions of this chapter of this Constitution*<sup>38</sup>.

On the other hand, section 6(6) (c) provides that the ‘judicial powers’ vested in the courts enumerated in the constitution:

*Shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution.*

According to the Constitution Drafting Committee<sup>39</sup> the inclusion of this Section, which is generally understood as making Chapter II non-Judicial, was based on the argument that unlike first generation rights which impose restraints on the state, the other generations of human rights require positive

38. S. 6 (6) (c) *ibid*.

39. The Constitution Review Committee which reviewed the 1979 Constitution appears to have retained Section 6 (6) (c) in 1999 Constitution.

steps on the part of the state to secure material means for their enjoyment, this may well be so but that does not explain why, for instance, the first generation right of freedom of expression is guaranteed under the constitution while a staggering majority of the populace are not literate except in their dialects and so that invariably eludes them. Indeed, underdevelopment is no doubt an inhibiting factor, but more critical is the nature of the political system and the extent to which it is geared towards putting in place the requisite structures for the enjoyment of these rights.

The non - Judiciability of the provision of Chapter II was questioned by Fagbohunlu<sup>40</sup> According to him, section 6 (6) (c) of the Constitution 1979 of the Federal Republic of Nigeria which is pan material with Section 6(6) (c) of the 1999 Constitution of Nigeria merely precludes the court from invoking their 'Judicial Powers' in aid of economic, social and cultural rights but that does not remove the unlimited jurisdiction of court under Section 236 of the 1979 Constitution<sup>41</sup> and that:

*the prohibition is not absolute, but is explicitly made subject to other provisions of the constitution, such as section 13 thereof which imposes specific obligations on all organs of government and all authorities exercising legislative, executive, or judicial powers to conform to observe and to apply the economic social and cultural obligations arising from chapter II of the constitution<sup>42</sup>*

Fagbohunlu was of the view that the Courts have jurisdiction to investigation alleged violation of Economic and Social Cultural Rights under Chapter II and can exercise Judicial Powers in such case subject to the limitation imposed by section 6 (6) (c) of the Constitution. The learned commentator

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40. Tunde Fagbohunlu 'the Legal Frame Work of Human Rights in Nigeria in the CLO Annual Report on Human Rights in Nigeria 1990 (Lagos (1991), P.109 at124- 126.

41. 5.255 of 1989 constitution.

42. *Ibid* fn<sup>37</sup>.

must have a different view now that Section 272 of the 1999 Constitution does not carry the word ‘unlimited’ in its power to adjudicate in matters, more so that the jurisdiction of the courts have been made subject to Section 251 of the Constitution.

In any event, we are of the considered opinion that although the provision of Chapter II of the Constitution are non — judiciable, they can be used as indicators and signposts by the courts on the road leading to social and distributive Justice<sup>43</sup>. consequently, they serve as prism through which the human rights records of various government could be viewed and lack of commitment of the realization of these objectives and directive principles may well attract impeachment proceedings. Impeachable conducts are not specifically defined under the Constitution except for the reference to gross misconduct, defined as ‘a grave violation’ or breach of the provisions of this Constitution or a misconduct of such nature as amount in the opinion of the National Assembly to gross misconduct.

The enforcement machinery of chapter iv of the Constitution of Federal Republic of Nigeria 1999 is as provided for in Section 14 of the Constitution, Section 46 (1) of the 1999 Constitution) which is part of Chapter IV is of the effect that “any person who alleges that any of the provisions 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”. Section 46 (2) empowers the High Court to hear and determine any application made to it in pursuance of Section 46 (1) and make such orders, issue such writs and give such direction as it may consider appropriate for the purpose Of enforcing or securing the enforcement of any rights which

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43. C. A. Oputa, ‘Access to Justice’ Law and practice Vol. 1 No. 1 of August 1988.

are called into question Section 46 (3) similar to Section 42 (3) of the 1979 Constitution empowers the Chief Justice of Nigeria to make rules with respect to the practice and procedure of the High Court for the Section in question<sup>44</sup>.

Pursuant to Section 46 (3) of the Constitution of the Federal Republic of Nigeria, 1999 the Chief Justice of Nigeria made the Fundamental Right Enforcement Rules, 2009 for the Enforcement of the provisions under Chapter Iv of the 1999 Constitution, as well as the African Charter on Human and Peoples Rights, and in the preamble to the rules, matters initiated there under are to be given pride of place over all other matters before the Courts<sup>45</sup>.

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44. See S. 46 (3) of the 1999 Constitution of the Federal Republic of Nigeria.

45. S. 3 (g) of the Preamble Fundamental Rights (Enforcement Procedure) Rules, 2009.

## CHAPTER THREE

### 3.0. ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS

Human Rights that are enforceable in law are those rights which are recognized by law as Fundamental Rights as distinguished from mere aspirations or individuals ideas of rights. These Fundamental Rights are now embodied in Chapter IV of the Nigerian Constitution of 1999 from Section 33 to 46, and the African Charter on Human and People Rights, which was ratified and re-enacted as a Municipal Law by the National Assembly on the 17<sup>th</sup> March 1983. The Charter became part of Nigerian Law by virtue of the African Charter on Human and Peoples Rights (Application and Enforcement) Act Cap 10 Laws of Federation 1990. the rights as provided by the Constitution are as follow: right to life-section 33, right to dignity of human person-Section 34, right to personal liberty-section 35, right to fair hearing-Section 36, right to private and family life – Section 37, right to freedom of thought, conscience and religion-Section 3. right to freedom of expression and the Press-Section 39, right to peaceful assembly and Association-Section 40, right to freedom of movement —Section 41, right to freedom from discrimination — Section 42, right to acquire and own immovable property-Section anywhere in Nigeria-Section 43, compulsory acquisition of Property-Section 44, restriction on and derogation from Fundamental Rights — Section 45 Special Jurisdiction of High Court and Legal Aid-Section 46<sup>46</sup>.

The right as enumerated above are rights in the first generation rights context.

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46. Section 46 of the 1999 Constitution of Federal Republic of Nigeria. See also Fundamental Human Rights (Enforcement Procedure) Rules 2009.

In Nigeria, the process of protection and enforcement of the rights may be classified as conventional and unconventional, and orthodox and unorthodox ways. The orthodox ways are the procedures provided by the Law<sup>47</sup>. They are regularly adopted in seeking relief against an alleged infringement of right. These include invocation of judicial powers and the recourse to Police Enforcement. Mediation can be classified as an unorthodox procedure.

Mediation is a process by which an impartial person, the mediator facilitates communication between the parties to a dispute to promote reconciliation, settlement and understanding. It is a private, voluntary and informal process of dispute resolution where a neutral party assists the disputing parties to reach a mutually accepted agreement. The mediator is not concerned with the issue of right and wrong. His primary interest is to assist the parties in reaching an amicable, acceptable and satisfactory resolution of their dispute. In mediation, parties listen actively to each other and try to understand each other's point of view. They recognize as legitimate the needs and interest of other people. They improve and build on their relationship if possible, discuss purposefully, systematically and rationally. They look for joint solutions, new options, ideas and ways to make decisions easy for each other. They keep difficult problems in perspective, not permitting the problems to prevent agreement.

On other issues and breaking them into smaller component parts so that they may be addressed separately. Where all else fails, they seek specific area of agreement, providing for some sort of relationship in the future and allowing for review of the situation<sup>48</sup>.

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47. Nigeria Social Insurance Trust Fund Management Board v. Adebisi 1999 13 NWLR PART 633 Pg 16. See also Articles 3 — 23 of the African Charter on Human and Peoples Rights.

48. Olagunju, J. Conflict Management, the mediatory approach (Kaduna: Karl Print and Publish for Corporate Mediators 1998) at 12 – 13.

The key feature of mediation is that it allows parties to decide the outcome of their dispute. This is why the outcome is called agreement, and not an award as in arbitration, or a judgment as in litigation<sup>49</sup>.

The characteristics of mediation invariably commend it to the settlement of certain Fundamental Rights disputes. It should be noted that Fundamental Rights are personal rights. The person entitled to benefit from such rights may decide to litigate it, compromise it, or abandon it. Mediation stands as a better option when dealing with the alleged infringement of the rights of an individual. It can be utilized in settling family and private land disputes. The only snag might be the willingness of the parties to agree. It is my opinion that the outcome of mediation is nearly always preferred to litigation.

### **3.01 INDIVIDUAL AND INSTITUTIONAL ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS.**

Efforts to tackle Human Rights abuses which are prevalent in the African region, especially in Nigeria received a boost recently with the introduction of the new Fundamental Rights (Enforcement Procedure) Rules, 2009.

The new procedure rules which was signed on 11<sup>th</sup> November, 2009 by the immediate past Chief Justice of Nigeria, C J N. Justice Idris Legbo Kutigi came into force with immediate effect. By paragraph 3 (e) of the preamble to the rule, the courts are obliged to encourage and welcome public interest litigation in the Human Rights field and no Human Rights case may be dismissed or struck out for want of locus standi. Thus, the following persons can institute Human Right Cases:

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<sup>49</sup>. *ibid* at 14.

- i. Anyone acting in his own interest-individual;
- ii. Anyone acting on behalf of another person;
- iii. Anyone acting as a member of, or in the interest of a group or class of persons;
- iv. Anyone acting in the public interest;
- v. Association acting in the interest of its members or other individuals or group.

Other persons that can institute human right cases are:

- i. Human Rights activists, advocates or groups as well as any non-government organization who may institute Human Rights application on behalf of any potential applicant.

By the new rules the era of inhibition on issue of locus standi is gone considering that the applicant no longer needs the leave of the court to apply for a redress for the violation of his Fundamental Rights, the cases of *Anzaku V. Gov. Nassarawa State*, *Chukuma V. C. O. P.*, and *Igwe V. Ezeanochie, Onah v Okenwa*<sup>50</sup> are good examples of a group or class of persons, Associations and individual's enforcement of Fundamental Rights as envisaged in paragraph 3 (e) (i), (ii), (iv) and (v) of the Preamble to the enforcement rules 2009.

In *Anzaku V. Gov. Nasarawa State*. The Executive Governor of Nasarawa State purportedly in June 1999 issued policy statement directing all unified Local Government Staff of the State serving in Local Government Council other than their Council of origin to relocate to their Local Government Councils on their existing rank and status.

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50. [2005]5NWLR Part 919 P.448, [2005]8NWLR Part 927 P.278, [2010]7NWLR Part 1192 P.61 and [2010]7NWLR Part 1194 P.512 respectively.

Staff of various Councils who were not of Nasarawa State of origin were directed to remain where they were.

In giving effect to the policy, Lafia Local Government Council deployed the 34 appellants herein, who claimed it as their Council of origin, from Lafia to Nasarawa Eggon Local Government Council, said to be their Local Government Council of origin. This was after a long drawn and detailed screening of the Staff of Lafia Council by a Committee set up by it for the purpose. The Committee, identified the appellants and some others as being of Nasarawa Eggon Council refused to accept the appellants as being from their Council when Lafia Council sent the appellants there.

The appellant regarded the policy and action of the Governor and his Government as a breach of their Fundamental Rights entrenched in the 1999 Constitution and they applied to the High Court of the State for the enforcement of their said right. The trial Court heard the Appellants' application on the Affidavit evidence of the parties and dismissed the application.

The Appellants were dissatisfied with the ruling and they appealed to the Court of Appeal. The Court of Appeal considered Section 42 of the Constitution of the Federal Republic of Nigeria, 1999 and allowed the appeal.

Chukwuma V.C.O.P<sup>51</sup>, the Appellant who were the Plaintiffs belonged to a Social Cultural Association known as Igbo Community Association, which was meant to promote the welfare of its Members resident in kwara State.

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51. *ibid* fn<sup>50</sup>.

The Association was to host a meeting of Igbo Delegates Assembly which comprised of all the Igbo Community Associations in the Northern States of Nigeria in Ilorin at a private hotel, called Yebumot Hotel.

On the scheduled day of the meeting, the officers, men and agents of the Respondent in this case came to the venue of the meeting and forcefully dispersed the Appellants and the Members from the venue of the meeting and sealed off the venue.

The Appellants aggrieved by the action of the Respondent instituted an action at the Federal High Court, Ilorin seeking a declaration that the action of the Respondent was a violation of their Constitutional Right of Association Freedom of Movement and Assembly; a claim for damages and an injunctions restraining the Respondents from stopping, intimidation or harassing the Appellants from holding their meeting in Kwara State.

The Appellant lost both at trial Court and Court of Appeal, when the court considered section 45 of the 1999 Constitution of Federal Republic of Nigeria, and held that the Police was right to have sealed up the premises for the failure of the Appellant to seek for Police permit and that the Hotel was a public place subject to Public Order Act.

In the case of *Igwe V Ezeonochie* the Appellants were members of the Federal Trans-Nkissi Residents Association which was formed in 1998.

However in 2001 some members of the Association together with the Respondents formed a new and rival association in the area where members of the Federal Trans-Nkissi Residents Association Onisha lived. The rival

Association was called the Federal Low-cost Estate Housing Resident Association. The Respondents then approached some of the Appellants to be members of the new association, but they refused and choose to continue their membership of the Federal Trans- Nkissi residents association, as a result of the refusal of the Appellants to be members of the new association, the Respondent resorted to the use of Police, Vigilante Men and hired Armed Men to harass, threaten, intimidate and terrorize the Appellants and to compel them into membership of the Federal Low-cost Housing Estate Residents Association.

The Appellants were further warned against their continuing declaration of the Federal Trans-Nkissi Residents Association as opposed to the new association of Onitsha and were forced to pay their Security Levy to the new association.

The Appellants approached Anambra State High Court for the enforcement of their Fundamental Rights to freedom of association, freedom of movement, freedom of expression and right to dignity of their persons. They lost on the ground that it was improperly commenced under the Fundamental Rights (Enforcement Procedure) Rules. They appealed to Court of Appeal which allowed their appeal. All the above named cases are examples of the Individual and Institutional enforcement of Fundamental Human Rights<sup>52</sup>.

### **3.02 THE CAUSE OF ACTION**

The 1999 Constitution of the Federal Republic of Nigeria provides for the cause of action in matters of Enforcement of Fundamental Human Rights in

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52. It was thought that only individual can enforce his Fundamental Rights, but here we see that Institutions like University, Media Houses and others can also enforce their Fundamental Rights - Freedom of Press.

Section 46(1). Section 46(1) provides any persons who alleges that any of the provisions 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.

Order II rule I Fundamental Rights (Enforcement Procedure) Rules. 2009 provides:

*Any person who alleges that any of the Fundamental Rights provided in the Constitution or African charter on Human and people's right (Ratification and Enforcement) Act and which he is entitled, has been, is being, or is likely to be infringed, may apply to the court in the state where the infringement occur or is likely to occur, for redress.*

For the application to succeed in matters for the Enforcement of Fundamental Right, the Applicants' relief must relate to the principal claim and not ancillary issue. Issues of principal claim and ancillary relief are one of the major headaches by the Applicants. The courts in some decided cases on Fundamental Human Rights have increased restriction of the scope of the applications for the enforcement of Fundamental Human Rights Cases. Indeed, application alleging serious Human Rights violation are routinely struck out or dismissed on the grounds that they are mere ancillary relief<sup>53</sup>. The violation of the Fundamental Rights of workers to freedom of association is viewed as an ancillary relief which cannot be enforced under the Fundamental Rights (Enforcement Procedure) Rules.

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53. Tukur V. Government of Gongola State (1989) 4 NWLR Part 117 P. 517 at P. 520

54. (2010) 7 NWLR part 1192 Pg. 61 at 69 ration 9.

Therefore, it takes the ingenuity of an Applicant to identify what the principal claim is and the ancillary claim in order to avoid his claim being struck out.

In *Igwe v. Ezeanoche*<sup>54</sup> the Court of Appeal held that:

*Whenever the court is confronted with an application brought under the Fundamental Right (Enforcement Procedure) Rules, it is imperative that the court should critically examine the relief sought by the applicant, the grounds for seeking the relief and the facts contained in the statement accompanying the application and relied on for the relief sought. Where the facts relied on disclose infringement of the Fundamental Right of the Applicant or the main basis of the claim then it is a clear case for the enforcement of such rights through the Fundamental (Enforcement Procedure) Rules, But where the main or principal claim is not the enforcement or securing the enforcement of a Fundamental Right, the jurisdiction of the Court cannot be properly involved or exercised as the Court will be incompetent to do so.*

*Per Ariwoola, J. C. A.*

*... in the light of the above, I am of the firm view that the appellants' complaint was properly brought under the Fundamental Rights (Enforcement Procedure) Rules and are hereby entitled to the relief sought being that their complaint was about infringement of their Fundamental Rights by the Respondents rather than about where to make payment security level<sup>55</sup>.*

One would have thought that since Section 44 under Chapter IV of the 1999 Constitution of Federal Republic of Nigeria is one of the Fundamental Rights enforceable by way of the Fundamental Enforcement Rule, one could approach the Court through the Fundamental Rights (Enforcement

54. (2010) 7 NWLR part 1192 Pg. 61 at 69 ratio 9.

55. *Igwe V. Ezeanochie* [2010] 7 NWRL Part 1192, also *Tukur V. Government of Gongola State* *ibid* fn<sup>54</sup>.

Procedure) Rules. But in the Case of Achebe V. Nwosu, the Court held otherwise.

**Facts:** - Applicant/Respondent on an ex parte application brought under a Fundamental Rights (Enforcement) Rules got leave from the Federal High Court Enugu to enforce against the 2<sup>nd</sup> Respondent/Applicant his Fundamental Right under Sections 40 and 42 of the Constitution of the Federal Republic of Nigeria 1979 in respect of a piece of land known as plot S/4 triangle layout near Orthopedic Hospital Enugu. In application, the Federal Ministry of Health, the Federal Ministry of Works and Housing and Inspector General of Police were joint as the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents respectively. In the statement supporting his Motion on Notice for the enforcement the applicant/respondent sought the following reliefs among others:

1. A declaration of Court that the Appellant is entitle to the full enjoyment of the ownership and possessory rights of conferred on him by the statutory right of occupancy granted him over the aforementioned plot including his right of way and or access to the plot.

The Court of Appeal (Enugu Division) on Monday 14th January 2002 gave judgment and held among others as follows.

*Ratio 8: There are two categories of Fundamental Rights under the Nigeria Constitution, viz:*

- a. Procedural Fundamental Rights which mush be observed when ever the occasion for their observance arises an example of such right to fair hearing enshrined in Section 33 of the 1979 Constitution.*

*b. Self directing Fundamental Rights which can be initiated as a substantive action.*

*The first category of rights do not create a distinct cause of action and have been describe as a protective secondary right that must depend on the breach of a primary wrong arising from the breach of the primary right before the party wronged can apply to the Court for a relief on the ground that in the determination of his civil right and obligation he was denied fair hearing. Right which fall under the second category can be enforced directly by substantive action.*

*Ratio 9. Where the main or principal claim in an action in the enforcement of a Fundamental Right, i.e. the Fundamental Right breached is the self— directly variety that can be initiated as a substantive action, it is competent to try the action under the Fundamental Rights (Enforcement Procedure) Rules. Where, however, enforcement of a Fundamental Right is subsidiary, ancillary or incidental to main claim, the action must be instituted by writ of summons as prescribed by the rules of trial court. In the instant case, the primary relief sought by the 1<sup>st</sup> respondent is a declaration of title to the land which is not one of the rights that can be enforced under the Fundamental Rights (Enforcement Procedure) Rules that is applicable only where breach of Fundamental Right is primary wrong. In the circumstance, the 1<sup>st</sup> Respondents suit before the trial Court was incompetent and the trial Court had no jurisdiction to hear the suit.*

### **3.03. PROCEDURE FOR THE ENFORCEMENT**

The Fundamental Rights enforcement procedure is designed for summary mode of dispute resolution which renders it unsuitable for contentions action laden with controversy. Consequently, suits hereunder are initiated by motion on notice or originating summons<sup>56</sup>

Before the coming into force the 2009 Fundamental Right (Enforcement Rules) on the 1<sup>st</sup> day of December 2009 procedure for the Enforcement of

56. Order 1 Rule 2 of the Fundamental Right Rules 1979.

57. Ibid Order 2 Rule 1 & 2.

58. Abacha V. Fawehirimi [2001] 6 NWLR Part 660 Pg. 228.

Fundamental Human Rights in the High Court required the obtaining of leave of Court by filing a Motion Exparte supported by an Affidavit, the statement of material facts and verifying Affidavit within twelve months of the occurrence of the event complaint against<sup>57</sup>.

When leave is granted a Motion on Notice is filed in the same manner as the Motion Exparte and served on the party complained against i.e. the Respondents. The party served must have at least eight days to respond before the hearing which must be within fourteen days of the granting of the leave<sup>58</sup>.

The demanding procedures as I have earlier noted will certainly task ingenuity of a lawyer. Many lawyers have commenced proceedings only to have them struck out for non compliance with these procedural requirements. The same procedure was adopted for the enforcement of the provisions of the African Charter on human and peoples' right<sup>59</sup>.

The meaning of these rules is certainly beyond the comprehension of laymen. The implication is that litigants must employ the services of a lawyer in order to seek redress for an infringement of his Fundamental Rights. In a vastly poor society such as ours, only a few can afford such luxury. The unpleasant consequence of these hiccups is that various acts of infringement of Constitution Rights do not get to the Courts.

However with the new Procedure Rules which was signed on the 11<sup>th</sup> day of November 2009 by the immediate past Chief Justice of Nigeria, C J N

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57. Ibid Order 2 Rule 1 & 2.

58. Abacha V. Fawehirimi [2000] 6 NWLR Part 660 Pg. 228.

59. Ibid Order 2 Rule 1 & 2.

Justice Idris Legbo Kutigi, brought new innovations into the rules that will make the procedure easier for Lawyer and Litigants.

Under the new Rules Order II

Rule 2:

*An application for the enforcement of Fundamental Rights may be made by originating process accepted by the Court which shall subject to the provision of these rules lie without leave of the Court.*

R3

*An application shall be supported by a student setting out the name and description of the applicant, the reliefs sought, the grounds upon which the reliefs are sought, and supported by an Affidavit setting out the facts upon which the application is made.*

R4

*The Affidavit shall be made by the Applicant, but where the Affidavit shall be made by a person who has personal knowledge of the facts or by a person who has been informed of the facts by the Applicant, stating that the Applicant is unable to depose personally to the Affidavit.*

R5

*Every Applicant shall be accompanied by a Written Address which shall be succinct argument in support of the grounds of the application R6. where the Respondent intends to oppose the application, he shall file his Written Address within 5 days of the service on him of such application and may accompany it with a Court Affidavit.*

R6.

*Where the Respondent intends to oppose the application, he shall file his Written Address within five days of the service on him of such application and may accompany it with Counter Affidavit.*

R7

*The Applicant may on being served with the Respondent Written Address file and serve an address on point of law within 5 days of being served, and may accompany it with a Further Affidavit.*

As part of enforcement procedures orders V Rules I - 11 provide for service of process<sup>60</sup>.

Order VI relates to amendment of statements and affidavits in the enforcement process, while Order VII relates to consolidation of several applications relating to the same infringement<sup>61</sup>.

The Fundamental Rights enforcements are initiated by motion on notice or by way of originating summons, as they are design for summary dispute resolution and are not suitable for matters that are contentious action that are laden with controversy.

### **3.04. JURISDICTION OF COURT**

Jurisdiction is defined as the power of the court to hear and determine the subject matter in controversy between parties. In other words Jurisdiction is the authority of the court to exercise Judicial Powers<sup>62</sup>.

Jurisdiction is very Fundamental in the realm of the administration or justice as any form of pronouncement by a court or tribunal without jurisdiction is an exercise in futility. Parties cannot by consent or collusion vest a court with jurisdiction or wave any constitutional provision.

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60. Abacha V. Fawehirimi [2000] 6 NWLR Part 660 Pg. 228.

61. ibd.

62. Babalola V. Obaoku-ote [2005] 8 NWLR Part 386 at Pg. 389.

In an action for the enforcement of Fundamental Human Rights, Section 46 (I) of the 1999 Constitution confers jurisdiction on a High Court of that State in which the infringement occurred.

By the provision of order II rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009, any person who alleges that any of the Fundamental rights provided for in the constitution or African Charter on Human and People's Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or likely to be infringed, may apply to the Court in the State where the infringement occurred or is likely to occur, for redress. Under the provisions of Section 46 (2) of the 1999 Constitution of the Federal Republic of Nigeria, a High Court shall have original jurisdiction to hear and determine any application made to it and may make orders, issue such writs and give such directives as it may consider appropriate for the purposes of enforcing or securing the enforcement within that State of any rights to which the person who makes the application may be entitled<sup>63</sup>.

Thus, the Courts with original jurisdiction to hear matters of enforcement of Fundamental Rights by way of Fundamental Rights (Enforcement Procedure) Rules are: Federal High Court or High Court of a State or the High Court of the Federal Capital Territory Abuja. See Order 1 Rule 2 paragraph 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009.

The question then is, when can the Court exercise jurisdiction in respect of application under Fundamental Rights (Enforcement Procedure) Rules, and

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63. *Igwe V. Ezeanochie* fn<sup>25</sup>.

what documents should the Court consider in determining whether it has jurisdiction?

The answer is provided for, when the Court<sup>64</sup> in ratios 9 and 10 held that:

*When the Court is confronted with an application brought under the Fundamental Right (Enforcement Procedure) Rules, it is imperative that the Court should critically examine the reliefs sought by the Applicant, the grounds for seeking the reliefs and facts contained in the statement accompanying the application and relied on her the relief sought. Where the facts relied on disclose infringement of the Fundamental Rights of the Applicant as the main or basis of the claim then it is a clear Case for the enforcement of such rights through the Fundamental Rights (Enforcement Procedure) rules, but where the main or principal claim is not the enforcement or securing the enforcement of a Fundamental Right, the Jurisdiction of the Court cannot be properly involved or exercised as the Court will be incompetent to do so.*

*And*

*In determining the competence of an action vis-a-vis the Jurisdiction of the Court, it is the plan lift's or Applicant's claim or relief sought that has to be looked into and thoroughly examined by the Court. In an action commenced by writ of summons or motions and the Affidavit in support or statement accompanying the application which will contain the fact relied upon by the Applicant. In other words, in the consideration or determination of the jurisdiction of the Court to entertain a matter brought before it, the statement of defence or Counter Affidavit of the defendant or respondent has no relevance and should never be considered.*

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64. Ibid.

Another issue to consider in determining the jurisdiction of Court is the parties involve in the matter. The High Court of a State, Federal High Court and High Court of Federal Capital Territory Abuja have jurisdiction to entertain matters arising for enforcement of Fundamental Rights by way of Fundamental Rights (Enforcement Procedure) Rules.

But by Section 251 (1) (r) the Federal High Court is given exclusive jurisdiction over matters including matters for enforcement of Fundamental Right where one of the parties is Federal Government or any of it's agencies. Thus in the Case of FUTECH, YOLA V. MUSA SANI FULULES<sup>65</sup> issue of exclusive jurisdiction of the Federal High Court under Section 230 (1) of the 1979 Constitution which is pari-material with Section 251 (1) of the 1999 Constitution was considered.

**Facts:** The Respondent as Applicant applied for the enforcement of his Fundamental Human Rights at the Adamawa State High Court claiming among others, a declaration that the Applicant having been accused of committing a Criminal Offence to wit: Examination Malpractice, only a Court of Law or appropriate miscellaneous offences tribunal can try him; that neither the Senate of the Appellant nor any Committee set up by the Appellant is competent to determine whether the Applicant/Respondent has committed the offence of Examination Malpractice or not; that the documents found on the Applicant/Respondent have no relevance with the examination he was writing; that the decision of the Appellant to expel the Applicant/Respondent from the Appellants Institution is impotent and ultra-vires the Appellant, and a violation of the Applicant's/Respondent's Fundamental Human Right as enshrined in the 1979 Constitution; that the

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65. [2005] 12 NWLR Part 938 Pg. 175.

Applicant's/Respondent expulsion is null and void as the registrar is not competent to expel the Applicant/Respondent by the relevant University Law applicable to the Appellant Institution, and an order compelling the Appellant to reinstate the Applicant/Respondent as a Student of the Appellants Institution with his full rights and privileges.

The Court of Appeal (Jos Division) held:

*In considering which of the two Sections of the 1979 Constitution i.e. Section 230 (1) and 236 (1) shall prevail should there be conflict in their provisions, regard must be had to opening phrases in the respective Sections. When the two Section are read together, it is clear that whatever might have been contained in the other Sections of the Constitution, including Section 236 (1), that are Contrary to the provision of Section 230 (1) thereof, the provisions of Section 230 (1) would prevail. In that regard Section 236 (1) is subject to Section 230 (1) of the 1979 Constitution. It is therefore very clear that the frontiers and the jurisdiction of the two Courts i.e. Federal High Court and High Court of a State mentioned in these Section had been whittled down since the promulgation of the Constitution (Suspension and Modification) Decree No. 107 of 1993, when the jurisdiction of the Federal High Court was enlarged at the expense of the High Court.*

In the instant Case, where the subject matter or the suit before the trial Court questions the action of the Appellant, the Federal University of Technology, Yola, which is a Federal Government Agency, the subject matter certainly comes within the exclusive jurisdiction of the Federal High Court and as

such Adamawa State High Court (the Lower Court) has no jurisdiction to entertain the matter.

Therefore, the jurisdiction of the Federal High Court to entertain an action for the enforcement of Fundamental Rights as entrenched in the 1999 Constitution is limited to matters specified under Section 7 (1) and (2) of the Federal High Court Act 1973 and Section 251 of the 1999 Constitution. The enforcement of Fundamental Rights outside these matters is not within the contemplation of Section 46 (2) of the 1999 Constitution.

### **3.05 JURISPRUDENCE OF THE COURT.**

The Judiciary being the arm of the Government which is constitutionally empowered to interpret the law has a significant role to play in ensuring that citizens enjoy the rights and freedom guaranteed -Section 6 (6) (b) of the 1999 Constitution of the Federal Republic of Nigeria. For this to be achieved there must be a very strong and vibrant Judiciary, a timid and weak Judiciary could render all the rights and freedoms contained in Chapter IV not worth the paper on which they were written.

Prior to the 1999 Constitution, there were number of Cases relating to the interpretation of the Fundamental Human Rights provisions in the first Republic that left a lot to be desired in term of enhancement of Fundamental Human Rights of citizens.

In the case of DPP VS Chike Obi, a case that dealt with the relationship between the freedom of expression guaranteed in the Constitution and the Law of Sedition contained in the Criminal Code. The Court in its Judgment held that:

*It is clearly legitimate and Constitutional by means of fair argument to criticize the Government of the day, what is not permitted is to criticize the Government in a malignant Manner as describe above for such attacks by their nature tend to affect public peace.*

The conclusion therefore was that the Constitutional provisions relating to freedom of expression do not in any way invalidate the Law of Sedition as contained in Criminal Code. What is guaranteed in the Constitution is an ordered freedom, not freedom to spread false news likely to cause fear and alarm to the public.

In Awolowo v. Federal Minister of Internal Affairs<sup>66</sup> the Court also had to interpret the right of an accused person to choose a Legal Practitioner of his own choice as guaranteed in the Constitution. Here the Court upheld the unfettered discretion of the Minister of Internal Affairs to prevent the entry of Foreigners into the Country. The interpretation given to the Constitutional provision as regards free choice in selecting a Defence Counsel was such that the Accused was in real fact deprived of his freedom of choice.

The decisions in J. S. Olawoyin v .A.G. Northern Region<sup>67</sup> and Ibeziako v. C.O.P and other Cases relating to the interpretation of the Fundamental

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66. 1966 1 All NLR 178.

67. 1961 1 All NLR 269.

Rights provisions attracted very uncomplimentary remarks by distinguished scholars.

Nwabueze had this to say:

*The fact that with one exception all the Constitutional Cases went in favour of the Government deprived the decision of much of their legitimating effect... the point here is that everyone of the decision handed down by the Nigerian Supreme Court between 1960 and 1965 was necessarily wrong in Law but that they should all have gone in favour of the Government was remarkable and naturally created the impression of political bias ... the situation was all the more lamentable because most of the decisions concerned individuals liberties, to what purpose people were prompted to ask why were Civil Liberties guaranteed in the Constitution if even, violation of them however flagrant seeming received the sanction of the Court...*

*Ezejiofor was equally critical when he also observed the judges probably feared that an active interventionist policy of interpreting the Constitution in a liberal spirit would lead to open confrontation with the politicians and the consequently weakening of Judicial Authority. Consequently, most of them were anxious to render decisions favourable to the Government and its supporters. Indeed, they behave as if it was their duty to adopt challenged measures of the authorities as valid and to find arguments to justify them.*

In late Awolowo's view, the Executive Arm of Government bribed and cajoled Sections of the Judiciary into toeing Executive line in practically all major legal issues of the day in which it had interest.

There was however, a change of wind in the Second Republic. In the Case of Shugaba Darman V. Ministry of Internal Affairs<sup>68</sup>.

The Court held that the Minister for Internal Affairs does not have unfettered discretion in matters even involving National Security where individual's liberty is at stake. The deportation order against Shugaba was annulled. Monetary damages were awarded against Federal Government as a positive measure for the callous manner in which its agents had treated Shugaba.

Similarly, in State V. Arthur Nwanko which is the Locus Classicus as far as interpretation of the relationship between the freedom of expression and the press under the 1979 Constitution and the Law of Sedition as contained in the Criminal Code is concerned. Here the Appellant who was contesting against the incumbent Governor, Jim Nwobodo, in Anambra State published a book which contained many uncomplimentary remarks about the Governor and his Administration. He was charged and convicted for the publication of seditious materials at the High Court. On appeal, it was held that the Section of the Criminal Code making provisions for sedition was Contrary to Section 36 and 41 of the 1979 Constitution and therefore, by implication nullified on the first day of October, 1979.

OLATAUWARA J.C.A, in the above case admonished that:

*Those who occupy sensitive posts must be prepared to face public criticism in respect of their office so as to ensure that they are accountable to the electorate. They should not be made to feel they live in an ivory tower and therefore belong to*

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68. 1982 3 NCLR 915.

*a different class. They must develop thick skin and where possible plug their ears with cotton wool. If they feel too sensitive or irascible they are within their Constitutional Rights to sue for defamation but they should not use the machinery of Government to invoke Criminal Proceedings to gag their opponents as the freedom of speech guaranteed will be meaningless.*

With the change of wind of the attitude of Judiciary in matters of enforcement of Fundamental Human Right as regards its interpretation of the provisions of Chapter IV of our Constitution. Nwabueze observed that:

*The Nigerian Judiciary has since the inception of the Presidential Constitution exhibited a commendably active liberalism in the enforcement of Constitutional restriction upon Governmental Powers....*

*Performance of this record of vigorous vigilant courageous activism is most refreshing and encouraging.*

Fundamental Rights (Enforcement Procedure) Rules require that application pertaining to the Fundamental Right be taken expeditiously. As a requirement of the Law that matters pertaining Human Rights be heard expeditiously, one would have thought that there was no need for an Applicant in such matters to file an Affidavit of urgency when filing Motion Exparte for leave to enforce a Fundamental Right. But in the Case of *Uti V. Federal Road Safety Commission*<sup>69</sup> the Federal High Court held.

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69. [2001] 1 CHR 434 at 439.

*“The essence of an Affidavit of urgency which was filed here is to put before the Court an application for the Court to hear the matter urgently. It does not take the place of a varying Affidavit which the Rules require”.*

Judge hearing application for securing the enforcement of Fundamental Rights are duty bound to treat them with dispatch. Application seeking to secure the liberty of any person restrained ought to take precedence over other cases pending in Court.

Thus in the Case of RON OBEY V. West African Examination Council<sup>70</sup> the Court heard and determined the whole matter within twenty-one days by Rhodes — Vivour J. as he then was.

Before the 2009 Fundamental Rights (Enforcement Procedure) Rules came into force on the 1<sup>st</sup> December 2009, the Courts have struck out application for enforcement of right for lack of Locus Standi.

In the case of Badejo V. Minister of Education and others<sup>71</sup>. Appellant, an 11 year old Primary School Girl took an action through her father acting as the next of friend against the Respondents for denying her admission into the Federal Government College. It was her Case that those who scored Lower marks than her were admitted by the Respondents, the action was struck out for lack of Locus Standi but on appeal, the Court of Appeal held that she had Locus Standi.

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70. [2000] 2 WRN 130; 2 NPILR 106.

71. 1990 4 NWLR Part 143 Pg. 254.

Parent suing as next friend of their children must not sue as a parent and as a next of friend of his child as the title of the action.

Thus in the case of Dr. Sofolahan and another V. Chief (Mrs.) Fowler<sup>72</sup> the Supreme Court (Katsina — Alu JSC as he then was) held:

*“Finally, as to the title of this action supposedly brought on behalf of infants, I have no doubt that it was wrong the way the Plaintiffs Appellants here were stated in the Writ of Summons and other processes. The names of each of the two parents and the next friend of...*

*This is against the procedure. It also shows that each of those parents was at the same time pursuing his or her cause since they claim to sue also as parents.*

*The right procedure is that the name of the infant should take the forefront while that of his next friend should follow. Labeling each correctly as infant and next friend respectively. The proper format is as per form 2 in Atkins Court forms, 2K1 edition, Vol. 21(3), 1997 issue, Page 402.*

*“The Law is clear that the next friend in a suit is an Officer of the Court appointed and allowed to pursue the interest of the minor he represents; he is not regarded as a party to the proceedings... the default committed in the title of the suit is not technically. It is Fundamental”.*

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72. 2002 4 NWLR Part 788 Page 664 at Pages 684 – 685.

I am very sure now that if the above case had come up when the new rules were in force, the decision in the matter would have been different bearing in mind paragraph 3 (e) 1)11) iii) iv) v) to the preamble which has enlarged the standing to sue. The issue of Locus Standi has been done away with in the new rules.

The Nigerian Courts have had to also decide on whether companies, corporations, parastatals and other legal entities which are not natural persons can enforce any aspect of the Fundamental Rights guaranteed in chapter iv of the Constitution. In *concord press Nigeria Limited V. Attorney — General of the Federation and Ors*<sup>73</sup> and *Punch Nigeria Limited and Anor. V. Attorney — General of the Federation and Ors.*<sup>74</sup> both Applicants separately challenged the closure of their Business premises under the Fundamental Rights (Enforcement Procedure) Rules. The Federal High Court upheld the contention of the Applicants that the action of the Federal Military violated their Fundamental Right to freedom of expression. The Court ordered for the re-opening of the Companies' premises and also ordered damages against the respondents. In both cases no challenge was made by the Respondents as to the Locus Standi of the Applicants.

In the present democratic experiment the Court have had time to decide on priority of National Security over right to personal liberty as enshrined in Section 35 of the 1999 Constitution. The Supreme Court in the case of *Alhaji Mujahid Dokubo Asari V. Federal Republic of Nigeria*<sup>75</sup> made a notable pronouncement on such issue.

**Per Muhammad, JSC. Held:**

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73. (1994) FHCLR.

74. (1998) HRLRA 488.

75. (2007) 12 NWLR Part 1048 Pg. 320 at Pg. 335.

*“let me observe from outset, that although the Respondent did not advert its mind to fully address the Appellant’s issue, I must draw the attention of the learned counsel for the Appellant that the main discuss of his submission on issue two is on state of emergency, I think this is an unnecessary voyage in world of fantasy. What is the relationship between grant of bail or refusal thereof with the suspension of a part of the Constitution i.e Section 35 of that Constitution? What brought about the provisions of the Constitution which result to the declaration of emergency? If refusal of bail to any person accused to have committed a crime will amount to jettisoning some part of the Constitution, or will invoke the declaration for a period of emergency, then this Country, which I believe is populated by majority of law abiding citizens, who always carry out their normal day to day life without instilling any fear or causing any havoc to any one, at any time will be doomed. The reference made by Learned Counsel to provisions on emergency situations is nothing other than concoction of mere facts to whip-up sympathy. The Learned Counsel is aware that Courts do not make Laws. They interpret law. Court cannot suspend the Constitution or any part thereof.*

*However if in its role of interpretation, a Court makes a pronouncement which may have the weight and effect of declaring a Law or some part of the Constitution for that matter null and void, the Court must find support from the same Constitution or any other statute of equal force. The pronouncement by Court below is that where National Security is threatened or there is real likelihood of its being threatened Human Rights or the individual right of those responsible take second place. Human Rights or individual rights must be suspended until the National Security can be protected or well taken care of....*

*This is not anything new. The corporate existence of Nigeria as a united, harmonious individual and indissoluble sovereign nation is certainly greater than any citizen's liberty or right. Once the security of this nation is in jeopardy and it survives in pieces rather than in peace, the individual's liberty or right may not even exist".*

The Court further held that the right to personal liberty guaranteed by Section 35 of the Constitution of the Federal Republic of Nigeria, 1999 is not an absolute right. Personal liberty of an individual within the contemplation of Section 35 (1) of the Constitution is a qualified right in the context and by virtue of Section 35 (1) (c) thereof which permits restriction on individual liberty in the course of judicial inquiry or where as in the case

at hand, a person was arrested and put under detention upon reasonable suspicion of having committed a felony. A person's liberty can also be curtailed in order to prevent him from committing further offences. If every person accused of a felony can hide under the canopy of Section 35 of the Constitution to escape lawful detention then an escape route to freedom is easily and richly made available to persons suspected to have committed serious crimes and that will not augur well for the peace, progress, or prosperity and tranquility of the society.

Thus, persons who are comfortable with committing crime on a very big scale should also be comfortable with the forfeiture of their liberty either temporary or permanently, in as much as they want to preserve their liberty or is it rights they should also know that their crime affect the rights of other persons who are equally entitled to the same rights as theirs.

It is the sincere hope of this study that the courts should continue to give liberal interpretation in matter of enforcement of Fundamental Human Rights that come to the Courts so that a society free from aggressive Human Rights abuse could be attained.

## CHAPTER FOUR

### 4.0 CHALLENGES AND LIMITATIONS TO THE ENFORCEMENT OF THE FUNDAMENTAL HUMAN RIGHTS.

The procedural rule for the commencement of an action for the enforcement of Fundamental Human Rights is guided by the Fundamental Rights (Enforcement Procedure) Rules 2009 made pursuant to Section 46(3) of the 1999 Constitution of the Federal Republic of Nigeria by the Chief Justice of the Federation.

Before the 2009 Rules, the procedure for the enforcement of Fundamental Rights in the High Courts required bringing up the action within a specified period of time from the occurrence of the breach of such rights, but under the 2009 Rules the limitation of the period of time has been done away with<sup>76</sup> Equally under 1979 Rule, leave of court was a requirement for the enforcement of the Right under Chapter IV of the Constitution but under the 2009 Rules, no leave is longer required<sup>77</sup> thus the era of inhibition on issue of Locus Standi is gone.

The new Rules unlike the previous one allow Lawyers or Litigants to file their brief, even if the Applicant is detained. In other words, it is not necessary that the Applicant must be physically present before the Commissioner for Oaths to swear to his statement or the Affidavit. Under the new rule such application can be made on behalf of an Applicant whose

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<sup>76</sup>. Order III Rule I Fundamental Rights (Enforcement Procedure) Rules 2009.

<sup>77</sup>. *ibid* Order II Rule 2.

Rights have been infringed upon and who is seeking a redress of same. This has brought some relief to Lawyers and Litigants as well.

However as beautiful as the new rules are there are still so many challenges for the enforcement of the Fundamental Human Rights. There challenges are as follows:

### **1. COURTS' JURISDICTION.**

By Section 251 of the 1999 Constitution of the Federal Republic of Nigeria, the Federal High Court has exclusive jurisdiction on matters affecting the Federal Government or any of its Agencies. As a result, the hitherto unlimited jurisdiction of State High Court to entertain matters involving an infringement on Fundamental Rights of citizens was circumscribed. An action for the enforcement of Fundamental rights cannot be maintained against the Federal Government or any of its Agencies in the State High Court.<sup>78</sup> Identifying the party to be sued is now very important consideration, which may determine the Court where the action is to be instituted.

The inherent problem with this requirement is that Federal High Courts are very sparsely spread across the States of the Federation, various States do not even have Federal High Courts, Litigants will have to travel far distances at enormous expenses to institute actions in nearest Federal High Court covering their locality. Even where the action can be filed in State High Court, most States High Courts are rooted in the cities, very few of the 774 Local Government Headquarters in the Country can boast of a High Court,

78. FUTECH, Yola V. Muas Sani Fulules (2005) 12 NWLR Part 938.

and again, most are within the cities, so that Litigants must bear the financial burden not only of the transportation and Legal Fees of their solicitors, but themselves to the nearest court to enforce their rights. The result is that various cases of infringement of rights do not get to the courts at all. One of the primary aims of the Fundamental Rights Procedure Rules is to expedite disposal of Fundamental Rights Cases, what is the essence of speedy disposal of a suit if adverse economic factors prevent prospective Litigants from seeking redress for infringement of their rights? Although there is a Constitutional provision for Legal Aid as an obligation of the Government this is rarely provided and only in Criminal Cases. Redress for breaches of Fundamental Rights in most cases, if not all, take the form of civil wrongs.

## **2. ISSUE OF PRINCIPAL OR ANCILLARY RELIEF.**

The issue of principal claim or ancillary relief is one of the major headaches by the Litigants or Applicants. The Courts have in some decided cases on Fundamental Human Rights increased restriction on the scope of the applications for the enforcement of Fundamental Human Rights Cases. Indeed, applications alleging serious Human Rights violation are routinely struck out or dismissed on the ground that they were mere ancillary reliefs.<sup>79</sup> The right of workers to belong to Trade Unions for the protection of their interest is guaranteed by the Trade Union Act, the Constitution and African Charter on Human and Peoples' Rights. But in clear breath of such rights Trade Union are either proscribed or derecognized by employer of labour. For some inexplicable reasons violation of the Fundamental Rights of worker to freedom of association is viewed as an ancillary relief which can

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79. Achehe V. Nwosu (2003) 7 NWLR Part 818 Pg. 103 at 14.

not be enforced under the Fundamental Rights (Enforcement Procedure) Rules.

### **3. ILLITERACY.**

The inability to read and write constitutes a serious challenge to the enforcement of Fundamental Rights in Nigeria. A good number of the people in Nigeria are illiterate who can not appreciate or understand what rights they have. The freedom of expression makes very little meaning. With loss of their freedom of expression goes their right to participate meaningfully in the Government. Ake argued that freedom of press do not mean much for a largely illiterate community absolved in eking a living out of an arid mortar of subsistence. In the same vein Oputa observed:

*“In this search for justice and redress resulting in the effectuation of his rights the ordinary citizens of Nigeria is caught in a mess of a rather vicious circle.*

*a. the court can adjudicate upon and effectuate his rights unless there is a suit complaining about the breach or threatened breach of these rights filed in Court.*

*b. People especially the illiterate masses of our Country do not even know what their rights are. They may therefore not even know when those rights have been or are being in fringed.*

*c. Even if the ordinary citizen knows of his rights and knows that they are being in fringed he*

*may be too afraid to sue the powers that be. It does require considerable courage to drag chief Executive or functionaries of the Government to Court and very few of our people have that courage.*

*d. were there is an awareness of the right and the knowledge or realization of its breach or threatened breach and the courage to prosecute the claim, the prospective Litigant may be too poor to embark on the luxury of a costly and prolonged litigation up to the Supreme Court.<sup>80</sup>*

#### **4. POVERTY**

Poverty is one of the greatest challenges to the enforcement of Fundamental Rights in Nigeria especially under the present dispensation. Poverty has the following characteristics:

- i. Inability for one to have the means to satisfy the necessities of life.
- ii. Undernourishment or malnutrition, and
- iii. Wretched and degrading shelter, shabby clothing and lack of any kind of luxury.

It is very difficult to claim that majority of our people can not be categorized as poor, in the present setting, where people are living below poverty level of \$1 per day, despite the huge resources our dear country have had since the inception of this democratic experiment over ten years ago.

Thus one of our eminent jurists Aguda once observed:

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80. A. Oputa 'access to Justice' Law and Practice Vol. No. 1 of August 1988.

*.....the practical actualization of most of the Fundamental Rights cannot be achieved in a Country like ours where millions are living below starvation.., in circumstances of this nature Fundamental Right provision enshrined in the Constitution are nothing but meaningless jargon to all those of our people living below or just at starvation level...*

In the same vein, Ghagwatt JSC of India Supreme Court once observed in the case of *Minerva Mills Limited v. Union of India*:

*...the large majority of people who are living in almost subhuman existence in conditions of abject poverty and for who life is one long broken story of want and destitution notions of individuals freedom and liberty though representing some of the most cherished values of a free society would sound as empty words bandied about in the drawing rooms of the rich and well to do...*

It is very clear that the institutional frame work through which the poor can realize his Fundamental Human Right is tilted against him from the onset. Right to life is a guaranteed right under Section 33 of the 1999 Constitution of our great Country Nigeria. This presupposes as a minimum the right to food, shelter, health and education. Of what benefit is this right to life in Nigeria, when many families in Nigeria view the right to life as an empty right. Many citizens of ours do not know where or how they and other

members of their families will get their next meal. There are many people in Nigeria today that indeed feel they are happier if that very life they are living is taken away from them. It does not matter to them whether they live or not. Or it is right to dignity of human person section 34 of the 1999 Constitution? When many teeming population of our able bodied citizens are unemployed. How can you live a dignified life as a human being when you can not help yourself?

Aguda once observed when addressing the issue of right to dignity of human person at a lecture at Kuru Plateau State in 1987 thus:

*...We can imagine a greater torture for an able body man or woman than to wake up in the morning and not have the smallest clue as to how or where he is going to find a meal to eat the whole of that day, not to talk of the day after? I take it as most inhuman and degrading for an able bodied man or woman willing and able to work to find himself or herself a victim of unabated and frustrating prolonged employment.*

*Such a situation leads progressively from optimism and from pessimism to fatalism accompanied by a dreadful feeling of insecurity, of complete economic helplessness and failure. When that stage of economic helplessness and failure is reached that surely must be a stage of torture...*

Right to personal liberty envisages the right not to be subjected to imprisonment, arrest and any other physical coercion in any manner that does not admit of legal justification. Poverty is described by Oputa as being another modern form of slavery.<sup>81</sup>

The story is the same of right to fair hearing. Right to fair hearing in the Constitution implies two important aspects, judicial independence and equality before the law.

This right is difficult to be realized by a poor man who can not afford to pay summons fees let alone the services of a Counsel to prosecute the Case for him.

Aguda in the same vein observed thus:

*What fair hearing can a poor person hope to hear when he cannot even boast of a square meal a day? if he is cheated of his right; he would certainly prefer to leave the matter in the hands of God than risk death through starvation as a result of investing all that he and his family can boast of as total of their worldly possession in trying to assert an illusory right to fair hearing of his grievance by the courts<sup>82</sup>*

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81. C. A. Oputa 'access to Justice' Law and Practice Vol. 1 of August 1988.

82. *ibid* fn<sup>81</sup>.

In the later part of the above presentation he mused:

*To think that a very poor person can have a meaningful hearing in Court in the pursuit of his right real or imaginary is to live in fools paradise.*

What about right to private life? In our Country today millions of people living in shelters not fit for modern poultry or piggery in the words of late Awolowo, where many are at the mercy of the elements because they live under tree and under bridges. The idea of privacy must be strange to them.

The right to freedom of movement would flourish and make sense where there exist good roads, waterways and airways at costs that are affordable by all or majority of the citizens. In the context of present Nigeria, this minimum requirement seems to be conspicuously absent. A man who with his family merely exists by tilling one or two acres of land around his tent can hardly be expected to have in contemplation the right of movement so much cherished by those who have the means to move.

## **5. LACK OF PHYSICAL SECURITY**

The fact that there appears to be an increase in crime rate in Nigeria is itself a challenge to the enforcement of Fundamental Right. Where is right of freedom of movement, right to own property, right to personal liberty when you are not sure who will be the next to be kidnapped either by ritualist or kidnappers for ransom?

Where is right to freedom of association when in the next minute one would be gunned down by political opponent or thrown into prison by those who are suppose to protect such rights of yours because you do not belong to the same Political Party with them?

The degree of insecurity is manifested by the recent invention of the Crime of Kidnapping “Caging” with metal rods all available opening in dwelling houses, even electricity meters outside are “caged” as well. The right to personal liberty is not enhanced when prevailing circumstances make false imprisonment a wise option.

## **6. ATTITUDE OF SOME STATE FUNCTIONARIES OR SECURITY AGENTS**

In spite of the existence of Fundamental Human Rights provisions in our constitution police are still detaining people for long periods of time without charging them to Court for trials. A visit to the cells of special anti-fraud unit of the Nigerian Police Lagos will confirm the story of Human Rights abuse by the police.

The officials of the Department of Customs and Exercise raiding markets with guns, horse-whip and tear gases for the seizure of banned imported items without any Warrant from Court when it was due to their inability to guard our borders that led to the presence of banned imported items in the first place. Have we forgotten the circumstances in which late Justice Sambo Former Chairman of Code of Conduct Bureau was ejected from his house in

blantered disrespect to Court Order by then Minister of Federal Capital Territory, Nasiru EL-Rufai not to eject him?

The Attorney- General of Federation and of States are not helping matters. Whose fault can it be said to be responsible for the abuse of rights of Major Al-Mustapha and others held for the past 13 years without bail at just trial Court when they are still presumed innocent? All these constitute big challenges to the realization of Fundamental Human Right by citizens.

## **7. RELIGIOUS, FANATICISM AND MILITANCY**

Today in Nigeria there has been an increase in the activities of religion extremists in the Northern part of Nigeria with specific references to Kano, Maiduguri, Bauchi and Plateau States. This religion extremism has led to the death of thousands of innocent citizens whose rights to life have been enshrined in the Constitution.

Where is the right to life and right to freedom of religion when some people will always want another people to behave in their own religious ways rather than other peoples religious ways. This has led to the threatening of National Security which in turn has led to the violation of people's Human Rights. This in itself is a challenge to the realization of Fundamental Human Rights. It is equally true that the activities of the Militants in the Niger Delta region is itself a big challenge to the enforcement of Fundamental Human Rights. Before the grant of amnesty by the late President Umar Musa Yar'adua, the activities of these Militants greatly threatened National Security. If therefore,

the National Security is in issue, Human Rights cannot exist at all in such circumstances until the National Security is resolved.

Thus in the Case of Alhaji Mujahid Dokubo Asari V. Federal Republic of Nigeria<sup>83</sup> the Supreme Court held:

*...Where National Security is threatened or there is real likelihood of its being threatened Human Rights or the individual rights of those responsible take second place.*

*Human Right or individual rights must be suspended until the National Security can be protected or well taken care of.*

*This is not any thing new. The corporate existence of Nigeria as a united, harmonious indivisible and in dissoluble sovereign Nation is certainly greater than any citizen 's liberty or right. Once the security of this Nation is in jeopardy and it survives in pieces rather than in peace the individual's liberty or right may not even exist...*

Therefore, persons who are comfortable with committing crime on a very big scale like that of Boko Haram, of Borno State, kala kato of Bauchi State, the Niger Delta Region, and Plateau State should also be comfortable with the forfeiture of their liberty either temporary or Permanently, in as much as they want to preserve their liberty or is it rights? they should also know that their crimes affect the rights of other persons who are equally entitled to the same rights as theirs.

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83. [2007] 12 NWLR Part 1048 Page 320 at Page 335.

#### **4.01 NON JUSTICIABILITY OF THE PROVISIONS OF CHAPTER II OF THE 1999 CONSTITUTION**

The rights as found in Chapter II of the 1999 Constitution of the Federal Republic of Nigeria are second and third generation rights. These rights do not find expression under the Constitution as justiciable rights, instead they form the basis of Chapter II titled 'Fundamental Objectives and Directive Principles of State Policy'. These include political, economic, social, cultural, educational and foreign policy objectives and Directive Principles. The very first Section of that Chapter (Section 13 in the 1999 Constitution) is to the effect that:

*It shall be the duty and responsibility of all organs of the Government: and of all authorities and persons exercising Legislative, Executive or Judicial Powers to conform to, observe and apply the provision of the Chapter of the Constitution.*

On the other hand Section 6(6) (c) provides that the Judicial Powers vested in the Courts enumerated in the Constitution:

*shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of the State Policy set out in Chapter II of this Constitution.*

The rights under Chapter II which are political, economic, social, cultural, educational, and environmental rights embrace the right to work, right to just conditions of work, right to fair remuneration, right to an adequate standard of living, right to organize, form and join trade unions, right to collective bargaining, right to equal pay for equal work, right to security, right to property, right to education, and right participate in cultural life and enjoy the benefit of scientific progress.

Section 16 of that Chapter reveals an interesting formulation. The provision is as follows:

1. The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution.
  - a. harness the resources of the Nation and promote National Prosperity and an efficient, dynamic and self reliant economy;
  - b. control the National Economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of Social Justice and equality of status and opportunity.
- 2) The State shall direct its policy towards ensuring
  - a. The provisions of a planned and balanced economic development.
  - b. That the material resources of the Nation are harnessed and distributed as the best as possible to served the common good;
  - c. That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of groups: and
  - d. That suitable and adequate food, reasonable National minimum living wage, old age care and pensions, and unemployment, sick benefit and welfare of the disabled are provided for all citizens.

That subject of this economic policy affect the generality of the Nigerian public. A closer look at these provisions, in comparison with practical experience, undoubtedly indicates that this policy is observed more in breach than in compliance. Government Economic Policy has continued to benefit the same group of persons who revolve from one office to another as though they enjoy monopoly of knowledge, policy are embarked upon with little or no regard for the positions of the masses. The current planned deregulation of the downstream sector of oil industry despite, massive protect, leaves an open wound regarding the issue of resources. If the policy is in the interest of the masses and if it is the same masses saying no to that policy, what is the insistence of the Government on it?

The Niger Delta Region of Nigeria which harbors a great chunk of the Country Oil Resources has been agitated for some time now as people protest the perceived injustice arising from unfair distribution of the Country's Oil wealth. What about living wages? Workers take home per month is static, while inflation continues to drain the value of the pittance they receive. The Politicians' pay per month is worth 35 years pay of an average Civil Servant in Nigeria.

Unemployment among the youth continues to grow at as astronomical rate. The policy take about pension rights of citizens, but report are rife with stories of senior citizens collapsing and dying on queues while awaiting the payment of their pensions. On the face of all these maladies, the successive Government have highly misplaced priorities and persevered in pursuing projects with little or no bearing on the people's immediate needs under the guise of economic reformation with promises of future benefit.

Section 14 of the Constitution talks of Democracy and Social Justice, that sovereignty belongs to the people from whom Government through this Constitution derives its powers and authority that the Government shall take Security and Welfare of its people as a priority, and that Government should recognize the diversity of the people in the conduct of its Affairs.

A visit to any State Secretariat in the Federation will tell you a different story. There is no State in Nigeria today that you will not find one ethnic group dominating others in terms of Government's appointments, and even the person who governs the State. As an example, Benue State's Affairs is dominated by TIVS, Kogi by Igalas Niger State by the Nupes, and Plateau by the Biroms, to mention a few here. Yet one can not go to Court to say enough of this domination. How many citizens have Police, or any of the Security Agents guarding their houses in order to give them Security? only very few prominent individual rich people are enjoying all these policies envisaged in Chapter II of the Constitution.

Section 15 talks of non — discrimination on the ground of place of origin, sex, religion, status, ethnic ties, the duty of the State to secure full residence rights for every citizens in all part of Federation.

In contrast to the above, people have been deported from one State to another in the name of National Security. Yet those affected can not question this act of some State Governments in Court because this Section is non-judicial.

Section 17 talks of freedom of equality, and justice, employment, health, equal pay for equal work, and securing adequate means of livelihood.

The question is how many unemployed youths are rooming on Nigeria streets today? How many people have died because they can not afford hospital bills, and how many people have died in Nigeria because of diseases which ordinarily were preventable were they not living in object poverty?

Section 18 of the Constitution talks of education opportunities for all at levels, but how many of our children can afford to go to school today?

How many of the Children of Governors, Deputy Governors, Special Advisers and even Local Government Chairmen are schooling today in Nigeria, yet one cannot go to Court and get redress or ask why should Mr. President's, Governors' Children be in School in America while my own child can not get admission into a Nigerian University even where he is having more qualification than the children of all these people, and yet the Constitution has this prohibition.

The essence of relief that these provisions are thought to have provided is obliterated by the Constitution itself, which unequivocally provided in Section 6 (6) (C) that the Judicial Power vested in the Courts:

*Shall not except as other wise provided by this Constitution, extend to any issue or question as to whether any act omission by any authority or person as whether any law or any judicial decision is in comforting with the Fundamental objectives and directive principles of State policy set out in Chapter II of this Constitution.*

The provision of Chapter II are said to be non-justiciable as they constitute mere ideas towards which the States are expected to aim<sup>84</sup>.

The regrettable import of these provisions can be discerned from the lucid lamentation of a renowned Nigerian judge Akinola Aguda;

*I feel much concerned to think that the directive principles are to be regarded as mere ideals, the arrival of which the citizens can only pray and hope for, but in respect of which he can not ask for assistance whatsoever from the courts. If this were so then wherein lies the expectation and the hope of a bright future for the teeming million of our people who manage merely to survive at near starvation levels<sup>85</sup>.*

This study observes that a Democratic Government, as an elected Government, ought to function within the confines of the Law given by the electorate that is the Constitution. To ensure compliance, therefore, the electorate should have the power and be in the position to question any acts which are not in compliance with the goals set out by the Constitution.

Until the Constitution is amended to make the provisions of Chapter II justiciable, the hope of getting a Nigerian Society free from Human Rights abuse will be a mirage.

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84. Chapter II of the 1999 Constitution of the Federal Republic of Nigeria. See Okojie and ors V. A. G. Lagos State (1981) N C L R 218.

85. Jemibewon, D. M the Military, Law and Society: reflection of a General (Ibadan: Spectrum books Ltd. 1998) at 109.

## **CHAPTER FIVE**

### **5.0 SUMMARY AND CONCLUSION.**

We have observed that the foundation of any genuine democracy is embedded in the rule of law, a principle that demands devotion to the spiritual and moral values, the common heritage of the people and the true source of individual freedom and political liberty. This is one of the legacies that our colonial master, the British left for us, a libertarian tradition of the Common Law and its system of justice embodied in the Magna Carta of 1215 and the Bill of Rights of 1689. Civil Liberties that were guaranteed by the Colonial Government were expressed in the various Constitutional conferences held in the march towards Nigerian independence in order to allay minority tribe's fears of domination by majority tribes. Fundamental Human Rights have since then continued to feature very prominently in the successive Constitutions of the Federal Republic of Nigeria.

These Fundamental Human Rights have become an issue in all jurisdictions of the world, Nigeria inclusive. Despite the enshrinement of these rights in our Constitution, and the increasing activities of human rights groups and the establishment of Human Right Commission in Nigeria, Human Right abuses are on the increase in Nigeria.

In this study, we have tried to evaluate the provisions of Fundamental Human Right in Nigeria Constitution, and considered the extent of enforceability under the rules, jurisdiction, and the jurisprudence of the Courts as provided in the Constitution.

We examined the concept or the quest for Fundamental Human Rights, Historical context, and the Nature of Constitutional provisions; individual and institutional enforcement of Fundamental Rights, the Cause of Action, and Procedure for enforcement. We also examined the challenges and limitations of enforcement, and the non-justiciability of the Chapter II of the 1999 Constitution of the Federal Republic of Nigeria.

On the concept or quest for Fundamental Human Rights, we observed that the concept of Human Rights engenders one of the most profound problems ever to task the intellect. The precise meaning and concept of Human Right has tasked ingenuity of eminent scholars yet the issue raises more questions than answers on such issues such as the universality-relativity palaver as well as ethical, moral, cultural, philosophical, legal and ideological underpinnings of the subject matters. Thus, there are many strands in the various approaches to human rights - the traditional approach and the socialist approach.

We noted that the traditional approach to Human Rights finds firm anchorage on Natural Law conceptions. The socialist on the other hand is predicated on the dialectical thesis that the economic infrastructure is determinant of the superstructure. Thus, the socialist synthesis questions the validity of traditional stance, and maintains that Human Right is a more legal potentiality which depends on material conditions for its concretization as a social reality.

We observed that there are three generations of Human Rights. First Generation rights relate to civil and political rights. These are the rights that

find expression in the Constitution of many Countries as Fundamental Human Rights as is in the case of Nigeria in Chapter (IV) of the 1999 Constitution and are enforceable in our Law Courts.

The Second Generation Human Rights as we observed are primarily of economic, social and cultural nature and pertain to equality and are predicated on the necessity for the material well-being of the citizenry, with the State playing a pivotal role. These rights find expression in Chapter II of the 1999 Constitution of Federal Republic of Nigeria, they are non-justiciable.

The Third Generation of Human Rights relates to question of solidarity, they deal with the organic and corporate existence and working of the society and enhance, inter alia, the right to safe and healthy environment, the rights to development and right to share in the common heritage of mankind. These rights are also expressed in Chapter II of the 1999 Constitution of the Federal Republic of Nigeria which is also non-justiciable.

On the historical context of Fundamental Human Rights, we noted that the history of modern Human Rights movement commenced shortly after the Second World War. This movement was championed by the United Nation (UN) in response to the gross violations of Human Rights carried out during the war. International norms were developed to protect the dignity, rights and freedom of human beings. First was the universal declaration of Human Rights (UDHR), adopted by the UN on the 10th December, 1948. This instrument is regarded as the bedrock for the development of other International Human Rights Instrument.

In Nigeria in furtherance of its Human Rights enhancement, it adopted the Africa Charter of Human and Peoples Rights on the 17<sup>th</sup> March 1983 to become part of Nigerian Law.

We did observe also that during the Military rule, Human Rights record was mixed and generally worse as Decrees were promulgated and exempt from legal challenge. Decrees Number 2 and 4 were the main instruments of Human Rights abuse<sup>86</sup>.

On the nature of Constitution provisions we noted that the first generation of Human Rights found expression in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria, and are justiciable, while on the other hand, the second and third generation of Human Rights which also are expressed in Chapter II of the Constitution are non-justiciable, instead they form the basis of Chapter II entitled 'Fundamental Objectives and Directive Principles of State policy'.

On the enforcement of Fundamental Human Rights, enforceable in our Courts are those Human Rights which are expressed in Chapter IV of our Constitution as 'Fundament Human Rights' from sections 33 - 46 of the 1999 Constitution of Federal Republic of Nigeria and the African Charter on Human and peoples rights which was ratified and re-enacted as a municipal law by the National Assembly. These rights are: right to life - section 33, right to dignity of human person — section 34, right to personal liberty - section 35, right to freedom of thought, conscience and religion — section 38, right to freedom of expression and press — section 39, right to peaceful assembly and association — section 40, right to freedom of movement —

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86. O. C. Eze Human Rights Law No. 1 (Lagos Helen Roberts Limited, 1997) at 2 - 3

section 41 right to freedom from discrimination —section 42 right to acquire and own immovable property — section 43 and compulsory acquisition of property — section 44 restrictions on and derogation from fundamental rights —section 45, special jurisdiction of high court and legal aid council - Section – 46<sup>87</sup>.

We observed that the enforcement of these rights in Nigeria take either the conventional and unconventional ways or Orthodox and unorthodox ways. The orthodox ways are the procedures provided by the law, which are regularly adopted in seeking relief against an alleged infringement of right, the unconventional or orthodox ways take the form of mediation. We noted that mediation is a process by which an impartial person, the Mediator facilitates communication between the parties to a dispute to promote reconciliation, settlement and understanding. Mediation we observed has a key feature that allows parties to decide the outcome of their dispute which is why its outcome is called an agreement and not an award as in arbitration or a Judgment as in Litigation. We also discovered that it is not only individual that can enforce his rights, Institutions like Media Houses, Associations and Group of persons can also enforce their Fundamental Rights as are enshrined in the 1999 Constitution of the Federal Republic of Nigeria in Chapter IV. The Cases of *Anzaku v. Gov Nasarawa state*, *Chukwuma V.C.O.P. Kwara State*, *Concord Press Nigeria Ltd V. Attorney — General of the Federation and Ors*<sup>88</sup>, and the *Punch Nigeria Ltd and Anor V. Attorney General of the Federation and Ors* were cited as examples of Institutional enforcement of Fundamental Rights.

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87. 1999 Constitution of the Federal Republic of Nigeria.

88. *ibid*, fn<sup>46</sup>.

We also examined the cause of action as provided for by Section 46(1) of the 1999 Constitution of the Federal Republic of Nigeria, and Order II rule I Fundamental Rights (Enforcement Procedure) Rules 2009. we have tried in this study to distinguish between the principal claim and the ancillary claim in order to discover when cause of action arises that will be enforced by way of enforcement procedure rules or by writs of summons, so that ones action will not be struck out for want of proper procedure for the commencement of such action.

The procedure for the enforcement of Fundamental Human Rights was also examined. Before the coming into force of the 2009 rules, the procedure was so cumbersome, the Litigants had to seek for leave, and had to come within specific period of time from the happening of the breach of the right, but with the new Rules of 2009 that has been done away with, and the issue of Locus Standi, is also done away with in the new rules. We examined Order II Rule 2- Rules 7 of the Fundamental Rights (Enforcement Procedure) Rules 2009.

We noted that Fundamental Human Rights action are initiated by Motion on Notices or by way of Originating Summons because they are designed for summary dispute resolution and are not suitable for matters that are contentious actions that are laden with controversies.

As for jurisdiction of the Courts in matters of Fundamental Human Rights we examined Section 46(1)(2) of the 1999 Constitution, and Order II Rule I of the Fundamental Human Rights (Enforcement Procedure) Rules 2009.

We also noted that before these Courts would assume jurisdiction, they must examine the relief critically, the grounds for seeking the relief and the facts contained in the statement. Where the main or basis of the claim disclose infringement of Fundamental Rights of the Applicant the Court would assume jurisdiction brought by way of enforcement Procedure Rules. But where the claim or the basis of the Applicant is not the enforcement of a Fundamental Right the jurisdiction of the Courts cannot be properly invoked by way of Fundamental Human Rights (Enforcement Procedure) Rules.

We also examined the Jurisdiction of Court as it relates to parties. Where one of the parties is Federal Government or any of its Agencies, surely only the Federal High Court could exercise jurisdiction and must be within the territorial jurisdiction where the breach occurred, see Section 251 of the 1999 Constitution of Federal Republic of Nigeria and the case of FUTECH ,YOLA V. MUSA SANI FULULES<sup>89</sup>.

On the jurisprudence of the Court we noted that prior to the coming into force of the 1999 Constitution, there were number of cases relating to interpretation of Fundamental Human Rights provision in the first Republic that left a lot to be desired in terms of enhancement of Fundamental Human Rights of citizens. We discussed the cases of DPP V. Chike Obi, J . S Olawoyin V.A.G Northern Region<sup>90</sup>, the case of Awolowo V. Federal Minister of Internal Affairs<sup>91</sup> which were all decided in favor of the Government of their time. But in the Second Republic, there was a charge in the wind of Justice with the case of Shugaba Darman V. Minister of Internal Affairs which went in favor of the Applicant.

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89. *ibid*, fn<sup>50</sup>.

90. 1961 all NLR 269

91. (1966) 1 all NLR 178

The jurisprudence of the Court under the present dispensation has seen tremendous improvement. It is not only individuals that can enforce their Fundamental Human Rights and against Government and its agencies, but can also enforce it on individuals. Corporate organization, association and group of persons can also enforce their Fundamental Human Rights as are enshrined in Chapter IV of the 1999 Constitution.

The Supreme Court in the Case of Alhaji Mujahid Dokubo Asari V. Federal Republic of Nigeria<sup>92</sup> held that where National Security is threatened or there is real likelihood of its being threatened Human Rights or the individual rights of those responsible takes second place. Human Rights or individual rights must be suspended until the National Security can be protected or well taken care of. The Court further held that the corporate existence of Nigeria as a united, harmonious indivisible and indissoluble sovereign nation is certainly greater than any citizen's liberty or right. Once the security of this nation is in jeopardy and it survives in pieces rather than in peace, the individual's liberty or right may not even exist.

The above discussions revealed that human rights are not exactly same as constitutional or fundamental rights. Fundamental rights are those aspects of human rights which are statutorily protected. Such protections have practical relevance when an individual can conveniently seek relief in a court for an infringement. But there are many obstacles to be surmounted in seeking such relief, which range from procedural rules, illiteracy, poverty or economic factors, blatant disrespect to court orders by government and its agents, the increase activities of militants and religion fanatics

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92. *ibid* fn<sup>83</sup> Chapter Four

Until the government, its agents keep to the constitutional provisions, and until the government its agents shun corruption and do all it takes a civilized and just government to do all for its citizens, and until, citizens live within the law and not the law living within the citizens, the pursuit of a society or a Nigeria free from human rights abuse will continue to be fleeting illusion to be pursuit but never attained. God forbids.

## **5.1 OBSERVATIONS.**

We have already made our Observations in the Summary part of this study. But suffice to say that not all Human Rights are Fundamental Human Rights. Human Rights are rights which all persons (Mankind) everywhere and at all times have by virtue of being mortal and rational creatures. They are inherent in every human by virtue of his humanity. Their rights embrace a Wide Spectrum of Civil, Political, Economic, Social, Cultural, Group Solitarily and Developmental Claims which are considered indispensable to a meaningful human existence. They are demands or claims that individuals or groups make on society some are protected by law and part of *ex-lata* while others remain aspirations to be attained in future.

Human Rights that are Fundamental which are classed as first generation rights are the ones enshrined in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria and are entitled “Fundamental Human Rights” from Sections 33 - 46 of the Constitution, these are rights that are enforceable in our Law Courts. Enforceable also in our Law Courts is the African Charter on human and peoples’ rights which was ratified and re-enacted as a Municipal Law by the National Assembly.

Despite all these provisions as enshrined in our Constitution, the Human Rights Abuse instead of regressing is progressing in Nigeria, Social, political, religious factors have continued to constitute the greatest hindrances to the citizens' desire to seek redress for the infringement of their rights.

We also observed that illiteracy, poverty, lack of independent judiciary, rise in religious fanaticism and militancy, as well as lack of respect for Court Orders by Government and its Security agents have constituted greatest challenges to the enforcement of Fundamental Human Rights in Nigeria. We also observed that Non - justiciability of the provisions of Chapter II of our Constitution also poses a very big challenge in the enforcement of Fundamental Human Rights.

There has been an innovation in the procedural rules for the enforcement of Fundamental Human Rights. With the coming into force of the 2009 rules many obstacles that were there on the ways of enforcement of Fundamental Rights have been removed.

The issue of Locus Standi, leave of the Court, and limitation periods, has been done away with under the 2009 rules. Litigations in Human Rights Cases can now be initiated and prosecuted on behalf of the Applicants by Counsel even without the Applicant been required to attend to the hearing of his application.

The issue of main claim and ancillary relief still poses a challenge to the enforcement of Fundamental Rights even with these innovations. The

problem of parties having to identify the Court in which to file their action is also a big challenge.

### **5.3 RECOMMENDATIONS.**

Before we can say with any decree of confidence that Fundamental Human Rights provisions will be realizable in this Country the following must as necessity be tackled:

1. There must be a transformation of our Rural Areas by the provisions of basic infrastructures because this is where majority of Nigerians are living and will continue to live. Hygienic water supply, adequate means of communication and electricity should no longer be seen as a luxury only enjoyable by those in the Urban Areas. This is because, what is the essence of right to life if the water I take will cause me cholera which will eventually lead to my death?
2. There must be independent, fearless and efficient Judiciary. What is the essence of Right to Fair Hearing if there is not independent Judiciary?
3. There must be efficient police force to guarantee the security of life and property of citizens. In the present dispensation, where is right to life, right to freedom of movement, right freedom of religion when the activities of the Militants, religion fanatical groups and Kidnappers are flourishing unabated?

4. Mass literacy. This is inevitable because for the realization of freedom of expression and Association, the level of education of the majority has to be raised. This will enable them to take more active part in Government.
5. As a corollary to the inaccessibility of the Court is the need to extend the jurisdiction of Court on Fundamental Rights Cases to Magistrate Courts, which are nearer to the grassroots. It is well known that Magistrate Courts, though lower than the High Court in the Judicial Hierarchy, exist in virtually every Local Government in Nigeria and are presided over by Lawyers. Legal Practitioners also appear in these Courts for the prosecution of other Cases. It is difficult to find justification for denying these Courts jurisdiction to hear Fundamental Rights Cases.
6. Mediation process should be institutionalized in the settlement of Human Rights matters. Mediation is a process by which an impartial person, the mediator, facilitates communication between the parties to a dispute to promote reconciliation, settlement, and understanding. It is a private, voluntary and informal process of dispute resolution where a neutral party assists the disputing parties to reach a mutually acceptable agreement. Therefore, the State should provide legal frame work and necessary logistic for the operation of such reconciliatory mechanism.
7. All other obstacles to the enforcement of Fundamental Human Rights as we have identified in this study must be removed so that there could be a Nigerian Society that has at its lowest ebb Human Rights Abuse. The provision of Chapter II of the Constitution must be made justiciable if human right is meant to be attained in Nigeria.-