

AN EXAMINATION OF THE CHALLENGES AND PROSPECTS FOR THE ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA *¹**Abstract**

This article titled Challenges and Prospects of the enforcement of human rights in Nigeria revealed that despite the constitutional provisions that guarantees enforcement of human rights there are some limitations and challenges that may affect the enforcement. Human Rights abuses or violations are a menace. Humanity everywhere in the world has faced this problem despite efforts by government of the various Nation States across the world to find a solution to this problem. The need for extra protection of Human Rights has become increasingly necessary in Nigeria today. To ensure the control and eradication of Human Rights abuses or violation, the country has established various legal and institutional frameworks for the Protection and Enforcement of Human Rights in the Country. Fundamental rights are only an aspect of Human Rights which have been recognized and entrenched in the constitution. The rights are provided to enhance human dignity and liberty of every individual in a modern state. The article was purely doctrinal. Thus, most of the work was done in the library by reading such materials as text books, journals, newspapers and magazines, statutes and cases which are relevant and in line with the current development of law with the topic under discussion. Information for this article was also obtained from the internet. Information obtained from this source was carefully analysed to meet the objectives of this work. Other works have limited themselves to literature on Human rights especially in the area of civil and political rights violations. The article has recommended for certain provisions of the constitution of the Federal Republic of Nigeria as well as the African Charter on Human and Peoples Rights, the Fundamental Enforcement Rules 2009 and the Child Right Acts 2003 for a better enforcement and prosecution of the fundamental human rights in Nigeria. The article in conclusion made some recommendations among others such as the amendment of the Fundamental Rights Enforcement Rules 2009 to accommodate service on public holidays and Sundays, the granting of independence of the Judiciary in terms of financial autonomy both of the Federal and State levels and the need to make provisions in the charter for the mode of procedure for the enforcement of Fundamental Human Rights cases coming under the charter which if applied or implemented will in no small measure help in addressing the challenges as stated above in which the article has done.

Keywords: Human Rights, Protection and Enforcement, Legal and Institutional Framework

1. Introduction

The enforcement of human rights refers to the mechanisms and processes put in place to ensure that individuals' fundamental rights and freedoms are respected and protected. This includes laws, institutions, and actions taken by governments, organizations and individuals to promote and safeguard human dignity, equality and justice. The enforcement of human rights in Nigeria is a complex issue, marked by both challenges and prospects. Nigeria, as a signatory to various international human rights instruments, has a responsibility to protect and promote human rights. However, the country faces significant obstacles in effectively enforcing these rights. Some of the challenges affecting the enforcement of human rights are; Inadequate Legal Framework i.e. Although Nigeria has a robust human rights framework, the laws are often inadequate, outdated, or contradictory, hindering effective enforcement, Weak Institutions i.e. Institutions responsible for enforcing human rights, such as the police and judiciary, are often weak, corrupt, and lack the necessary resources, Cultural and Religious Factors i.e. Cultural and religious beliefs often perpetuate human rights abuses, particularly against women and vulnerable groups, Conflict and Insurgency i.e. The ongoing conflict with Boko Haram and other insurgent groups has led to widespread human rights abuses and impunity and Lack of Awareness i.e. Many Nigerians are unaware of their human rights, making it difficult to demand accountability. The followings are some of the prospects to tackling some of the above listed challenges: Strong Civil Society i.e. Nigeria has a vibrant civil society, with many organizations actively promoting and advocating for human rights, Growing International Cooperation i.e. Nigeria's international partners are increasingly pressuring the government to improve its human rights record, Constitutional Guarantees i.e. The Nigerian Constitution guarantees fundamental human rights, providing a basis for advocacy and litigation, Growing Awareness i.e. There is a growing awareness among Nigerians about their human rights, which could lead to increased demand for accountability, etc. The enforcement of human rights in Nigeria is challenged by inadequate laws, weak institutions, cultural factors, conflict, and lack of awareness, but prospects are brightened by a strong civil society, international cooperation, constitutional guarantees, and growing awareness.

2. Challenges for the Enforcement of Human Rights in Nigeria

The following are the challenges for the enforcement of human rights in Nigeria and these challenges are fully discussed hereunder.

Arbitrary Execution of an accused Person sentenced to death by the Court of first instance before exhaustion of Right of Appeal

It is altruism that the provisions in chapter IV of the constitution as discussed in chapter 3.1 of this study contains 12 sections, that is section 33 - 44. According to section 33(1) of the 1999 Nigerian Constitution, every person has a right to life. However, the right to life can be subjected to five conditions viz; Murder, Treason, Treachery, Trial by ordeal and

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Armed Robbery Under the provisions of the Robbery and Firearm (Special Provisions) Act no one can complain that his or her life has been unjustly terminated. In that same token, the hangman or any other person authorised by law to execute the death sentence is free from guilt. It is the suggestion of the author that the provision of section 33(1) should be reviewed and expressly provided to accommodate situations where an accused person is found guilty of a capital offence, and sentenced to death by a court of competent jurisdiction must not face execution until after the final dismissal of the Appeal of the accused person by the highest court in the country, that is the Supreme Court, even where at the trial court or at the court of Appeal the defence counsel had admitted that 'there is nothing useful to urge in favour of the accused person'.

The suggestion above must also of necessity cover situation where an accused person is convicted and sentenced to death and even though he has not expressed his intention to Appeal against his conviction and sentence by the trial court, the state must of necessity file an Appeal on behalf of the accused person already convicted and also provide a counsel to represent same.

The author strongly believes that cases like *Aliu Bello v Attorney-General of Oyo State*,² where the accused person was executed while his appeal was pending could be avoided where those express provision are in place.

Disrespect to Court Orders and Lack of Enforcement of Judgment on Death Penalty

It is trite judgment on death penalty are left unenforced because of lack of will by governors of the respective states to sign the execution warrant. This has led to disrespect to court orders and most correctional centres to be congested as against the will of government to decongest correctional centres. As at present we have a total of 3,413 death roll inmates³ across the country's custodial centres. The figure represents a fraction of the total of 77,934 as at 1st April, 2024. It is stated that Celestine Egburuche has been dubbed Nigeria's 'Oldest prison' amid a campaign calling for his release. He is 100 years old and has spent 18 years in jail after being found guilty of organizing a murder⁴. This has made the correctional centres to be overcrowded which is quite against the spirit of the Federal government's commitment to decongesting all the correctional centres across the country, since the purpose of setting up such centres is to rehabilitate, reform and reintegrate inmates back to the society.

Restriction of Movement through Immigration Regulations

Every citizen of Nigeria, is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom⁵. There are however immigration regulations controlling the free movement of people from one country to another, such as the requirements that a traveller undertaking a journey from Nigeria to another country must obtain visas and other vital documents from the Embassy of the host country. The must also holds a valid Nigerian passport. It then follows that 'unjustifiable seizure of a person's passport is an encroachment of his right to freedom of movement entrenched in section 41(1) of the Constitution⁶. In *Agbakoba v Director, State Security Services and Anor*,⁷ it was established that for the constitutional right to freedom of movement to be meaningful, (including entry and exit from the country) it must be construed to include a right to a passport, the document facilitating such movement. Thus, such a fundamental right provision must be expressly provided to make the right of movement be effective.

Police Brutality

The study of Human Right Enforcement revealed that police brutality violates human right in Nigeria which manifestly leads to insecurity in different forms such as torture to extract information and confessional statement, illegal detention, kick-back or bribery intimidation, extra-judicial killing has posed a great challenge to the protection and enforcement of human rights in Nigeria. Nigeria has recorded more than 800 incidents of extra-judicial killings across the country in the last three years⁸. It is curious to note that the Nigerian Constitution Prohibits torture, and there is the Anti-Torture Act which imposes a penalty of up to 25 years imprisonment for perpetrators. Despite the laudable legislation put in place to stamp out the police brutality as well as other police vices, the enforcement and protection of human rights remain a challenge. The government of Nigeria is therefore urged to be sincere in the fight against some miscreants and unscrupulous elements within the police force are punished appropriately for some crime committed by them to serve as deterrent to other police officer⁹.

Poverty

Poverty is a significant barrier that hampers the realization of fundamental human rights in Nigeria, such as the right to adequate standard of living, health and education among others. Poverty continues to be a pervasive issue in Nigeria affecting a substantial portion of the population¹⁰. Poverty continues to be a pervasive issue of Nigeria, affecting a substantial portion of the population. Poverty limits individual access to basic necessities of life, which are essential

² (1986) 5NWLR (Pt.45) 828

³ Leadership.ng <https://eee.prisonstudies.orog.ng>

⁴ <https://www.bsc.com>

⁵ See S. 41 (1) of 1999 Constitution.

⁶ E. Egburuonu. *Encyclopedia of Legal Authorities on Fundamental Rights Enforcement*; Basic Rights Publications Ltd. Aba, 2006; p. 155.

⁷ (1994) 6 NWLR (Pt. 7) 475.

⁸ International Human Right Group Global rights, 23rd October, 2023

⁹ Ibid

¹⁰ <https://www.vanguardngr.com-vanguard> October, 19th 2023

components of the rights guaranteed by the universal declaration of Human Rights. Concerted efforts are required at all levels of government to alleviate its effect on the citizens. The recent removal of the petroleum subsidy in Nigeria had added a significant burden to the common man¹¹. The commission¹² recognizes that the removal of fuel subsidy is a complex and challenging economic decision, but it has had a detrimental effect on the lives of many Nigerians. The removal of fuel subsidy has led to a sharp increase in the cost of living, including transportation and food prices and has reduced the ability of individuals and families to access basic services which has some serious human rights implication on the citizenry.

Poverty has the following characteristics on an individual:

- i. Inability for one to have the means to satisfy the necessities of life;
- ii. Undernourishment; and
- iii. Wretched degrading shelter and shabby clothing

It is very difficult to claim that majority of our people cannot be categorized as poor, in the present setting where people are living below poverty level of ₦1 per day, despite the huge resources the country is sitting on. Thus, one of our eminent jurists Aguda once observed: ‘... 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 rights provision enshrined in the constitution are nothing but meaningless below or just at starvation level...’ It is very clear that the institutional framework through which the poor can realize his fundamental human rights is tilted against him from the onset. Right to life is a guaranteed right under section 33 of the 1999 constitution of our 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 where many families in Nigeria view the right to life as an empty right. Rights are difficult to enforce by a poor man who cannot afford to pay summon fees let alone the service of a counsel to prosecute the case for him. Aguda in the same vein observed that ‘To think that a very poor person can have meaningful hearing in court in the pursuit of his right real or imaginary is to live in fool’s paradise’.

Illiteracy

The inability to read and write constitutes a serious challenge to the enforcement of fundamental rights in Nigeria. A good number of people in Nigeria are illiterate who cannot appreciate or understood what rights they have; this means freedom of expression have very little meaning to them¹³. With loss of their freedom of expression goes their right to participate meaningfully in the government.

Difficulty of the Applicability of the Fundamental Rights Enforcement Rules 2009 to the provisions of the African Charter and the Limited time allocated for service of process

Non justiciability of Provisions of Chapter II of the constitution of the federal Republic of Nigeria and the Fundamental Rights Enforcement Procedure Rules 2009 came into force on the 1st day of December 2009. These Rules replaced the 1979 Rules which were described as bold, innovative and encouraging in a number of respects¹⁴. Though the 2009 Rules have been described as bold, innovative and encouraging, it has some problems associated to it. A notable example is that paragraph 3 (a) of the Rules¹⁵ states the overriding objectives of these Rules as follows: The Constitution, especially Chapter IV, as well as the African Charter, shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by them. The problem associated with the above provision is that some of the rights contained in the African Charter are also contained in Chapter 11 of the Constitution of Nigeria and by virtue of section 6(6) (c) of the constitution are not enforceable in a court of law. Thus, if section 1(1) is read in harmony with section 1(3) of the Constitution, the concept of constitutional supremacy will be placed in focus because section 1(3) stipulates that ‘any other law’ which is inconsistent with the constitution, the constitution will prevail and that other law shall to the extent of the inconsistency be void¹⁶. This therefore means that it will be difficult for any court in Nigeria to enforce those rights contained in the African Charter which are contained in chapter 11 of the Constitution, except where the provisions of the constitution in that regard are amended. Otherwise, it will be a daunting task for any court in Nigeria to enforce those aspects of the rights contained in the charter even though the 2009 rules permit the enforceability of same. ‘Order 4 Rule 1 States; ‘The application shall be fixed for hearing within 7 days from the day the application was filed’. The pertinent question therefore is that if it is not possible to serve the application within 7 days on the other party, what then shall become of the application? It is suggested therefore that order 4 rule 1 be amended to accommodate a situation where the 7 days period of hearing of such an application be reckoned with from the date of service. According to *Joshua B. Alobo*:¹⁷ ‘The remarkable features of 2009 Rules entail elimination of inordinate delays and undue technicalities which had previously hampered the enforcement of the fundamental rights of litigants.’ If this statement is to be fully realized, then there is also the need to amend order V Rule 11 to accommodate the service of processes on Sunday and Public Holidays rather than permitting service on those days as the exigency of the case

¹¹Tony Ojukwu, SAN, the Executive Secretary of the National Human Rights Commission (NHRC), Abuja in Commemoration of International Day for the Eradication of Poverty, *Vanguard*, October 19th 2023.

¹² Ibid

¹³ <https://businessday.ng>

¹⁴A. Bamidele, *Taking Human rights through the Fundamental rights (Enforcement Procedure) Rules*; An interested overview, Being a paper presented at the NBA Human rights Seminar, Enugu, 2010 p.3.

¹⁵ Preamble to the 2009 Fundamental Rights Enforcement Procedure Rules.

¹⁶ Ibid. Jide Olakanmi & Co. *Handbook on Human Rights*. 2nd Edition Law Lords Publication, 2010 p. 317.

¹⁷Exposition and Notable principles on fundamental rights (Enforcement Procedure) Rules 2009, Law Books Publication Department Abuja, 2010, p. 9

may permit. It is also contended that the definition of court to determine Human Rights cases is too restrictive. It is therefore suggested that order 1 Rule 2 be amended to expand the scope of courts to include Magistrates and Area Courts in appropriate cases to determine cases of Human Rights especially where States or Federal High Courts are lacking or not easily accessible.

Lack of Autonomy of the National Human Rights Commission of Nigeria

The National Human Rights Commission of Nigeria as stated herein before was established by the National Human Rights Act, 1995. This was in line with the Resolution of the General Assembly of the United Nation which enjoins all member states to establish Human Rights Institutions for the enhancement of the enjoyment of Human Rights. Its establishment is aimed at creating an enabling environment for extra-judicial recognition, promotion, protection and enforcement of Human Rights, treaty obligations and providing a forum for public enlightenment and dialogue on Human Rights issues thereby limiting controversy and confrontation. At present the work of the commission cannot properly be enhanced. Thus, there is the need to make express provision for the commission's independence and autonomy thereby granting it more investigative powers.

In like manner the composition, appointment and security of tenure of its members should be constitutionally defined. Furthermore, the Senate should have a role in confirming the President's nominees of the Executive Secretary who is also the Chief Executive Officer of the Commission. To further enhance the autonomy of the Commission the funds of the Commission should also be guaranteed. Likewise, the Commission ought to report to the National Assembly instead of to the President. The Commission at present has six zonal offices representing the six geo-political zones of the country, namely;¹⁸ North West Zone (Kano), North East Zone (Maiduguri) North Central (Jos), South West (Lagos), South East (Enugu) and South South (Port Harcourt). It is contended that since the country has 36 states, the Zonal offices of the Commission are grossly inadequate for the Commission to achieve any meaningful result. The provision of offices in each state of the Federation is therefore desirable if the Commission is to achieve any meaningful result. The decisions and findings of the Commission at present are not binding on the parties. Therefore, the national Human Rights Commission ought to be entrenched in the constitution and the Act establishing the Commission amended to cloth the Commission with quasi-judicial powers to enforce decisions of the governing council of the Commission on complaints/cases treated.

Furthermore, at present the Commission does not have the requisite powers of access to all the information that it requires to deal with complaints of human, rights violations¹⁹. There is therefore the urgent need to amend the Act establishing the Commission to grant such powers to it. The Act establishing the Commission also needs to be amended, expressly providing and making it compulsory that inquiries or correspondence on Human Rights matters emanating from the Commission must be responded to within 7 days period upon receipt of complaint. Finally, at present the Commission does not have the power to issue subpoenas for the production of documents and to summon witnesses and parties before it²⁰. The absence of the commission's powers in this regard poses a problem in the event parties and witnesses that are before the Commission are unwilling to respond to the invitation of the Commission. The Act therefore, as a matter of necessity, ought to be amended to grant it such powers. The above suggested amendments are expected to strengthen the Commission in the discharge of its mandate and further guarantee its independence and autonomy.

The Provisions of some sections of the Constitution are loosely worded and capable of having many interpretations

There are instances under which a person may die and his death is justifiable and no one shall be prosecuted for causing such death. Thus, according to section 33(2): 'A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary.

- i. For the defence of any person from unlawful violence or for the defence of property;
- ii. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- iii. For the purpose of suppressing a riot, insurrection or mutiny.'

The above subsections though not ambiguous are so loosely worded as to be capable of many interpretations, for example, death of any person is justifiable if such death occurs when any person is being defended from unlawful violence²¹. But this subsection does not go further to explain what the position would be if the person being defended from unlawful violence is the person who is eventually killed in the process of such defence while the original assailant escapes. In the same vein, any death caused to anyone in the process of defending some property is not questionable;²² that is, such death will receive legal and constitutional approval. The framers of the Constitution would have been doing the nation a big favour if they had stated the nature of property that shall fall within the subsection. For example, would it be justifiable to defend one's personal property of very low economic value and cause the death of a human being only to tell us that he was defending his property? In order to effect a lawful arrest or to prevent the escape of a person lawfully detained, death may occur and

¹⁸ <<http://www.nigeriarights.gov.ng>> accessed on 14th December, 2022.

¹⁹K. F. Ajoni, Statutory Report of the National Human Right Commission for the year 2006; being a paper presented at 2006 Annual Conference of the Nigerian Bar Association in Port Harcourt p.11

²⁰ Ibid p.11

²¹ See S. 33(2) (a)

²² Ibid.

such death is not against the law of the land and nobody redresses on behalf of the victim²³. The pertinent question then is, does this subsection 2(b) refer to death of the person who is trying to escape from unlawful custody; or the death of an innocent passer-by who is accidentally killed by the person making the arrest? This subsection also refers to the use of reasonable force. What force is reasonable in a particular case may not be necessarily reasonable in another. In *Duru v The State*,²⁴ the accused shot the deceased with a gun in response to a slap. The plea of self defence failed.

In like manner, death caused to a person 'for the purpose of suppressing a riot, insurrection or mutiny' is also justified²⁵. It is trite that rioting is tantamount to lawlessness and mutiny is subversion of the highest order. No responsible government can tolerate these situations. But what becomes of a Mobile Police officer who fires a gun shot at a crowd and killed many people when the tear-gas would have been more appropriate since those people are supposed to be unarmed and defenceless citizens? There should be a distinction between those who die while suppressing a riot and those who fall victims of such lawful suppression of insurrection. Distinction should also be placed between those who take advantage of riotous situation to murder innocent Nigerians and those who are genuinely and lawfully suppressing the riot.

We are aware that Nigeria is blessed with very highly intelligent, courageous, and learned gentlemen whose abilities to deal with constitutional interpretation, no matter how ambiguous the provisions might be are undoubtable. However, it happens that sometimes these learned men of the Bench refuse to travel far beyond what appear to them to be the intention of the framers of the constitution 'in their voyages of discovery'. Their job of constitutional interpretation would therefore be made easier by legislation if it had gone further to explain the circumstances considered above in section 33(1) and (2) (a) (b) and (c) above. By section 35 (1) (I) of the Constitution, there are cases of unlawful arrest of persons from Nigeria which this subsection sought to protect. Any person found engaged in such nefarious activity may be arrested, detained and charged to the court. This sub-section does not go further to mention the persons by whom such arrests may be made. Can any person whether entrusted with that duty or not, upon reasonable suspicion that a person is trying to enter Nigeria illegally or has in fact entered, arrest such a person? If so, what are the methods of such arrest and detention? It is suggested that the above subsection should be revisited and the powers of persons to effect the arrest be defined and if possible, such methods of arrest and detention.

Section 35 (2) of the Constitution is to the effect that any person arrested or detained has the right to remain silent until he has consulted his lawyer or any other person of his own choice. The anomaly in this sub-section is that, it does not state how long a detainee is entitled to remain silent or to avoid answering any question asked to him by the law enforcement officers. It is opined that it will jeopardize the speedy prosecution of cases and paralyse the administration of justice if accused persons were to remain silent or refuse to answer questions indefinitely. It is therefore sensible to incorporate as part of the subsection some reasonable time when the accused is expected to remain silent. The 1963 Constitution²⁶ contained a proviso enabling the courts to punish for contempt. However, the 1999 Constitution does not have any such proviso enabling courts specifically to punish for contempt. This proviso therefore ought to be provided to avoid court using powers to punish for contempt of itself notwithstanding that it is not defined in any written law.

Lack of appropriate sanctions and mode of enforcement of fundamental rights under the African Charter on Human and People's Rights

The African Charter on Human and Peoples Rights is an international treaty voluntarily entered into by Nigeria as a sovereign nation alongside other African countries desirous of protecting fundamental Human Rights in their respective domain. Nigeria has gone further in its quest for protection of the fundamental Human Rights of her citizens and other law-abiding persons in its territory, by incorporating this Charter with our domestic law by virtue of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap 10 Laws of the Federation 1990 (now Cap A9 LFN 2004). What was enacted under section 1 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9 2004 is that the provisions of the Charter 'shall have force of law in Nigeria and shall be given full recognition in Nigeria and effect and applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria'. There are, however, problems associated with some provisions of the Charter. Article 7 for example prohibits the punishment of one person for the offence of another. This means State party to the African Charter are to ensure that Criminal responsibility is personal. Thus, it will be an affront to this provision where the police force of a State party to the Charter, arrests someone for the offence committed, or alleged to have been committed by another. Thus, in *ACB v Okonkwo*, the court held that criminal responsibility is personal and cannot be transferred; and that it will be contrary to law where a police officer arrests someone for the offence committed by another²⁷.

The problem associated with article 7 is that, there are no remedial sanctions regarding its breach. The court is therefore at liberty to determine the appropriate sanctions to be meted out to whoever that may be in breach. The African Charter also guarantees the right to property²⁸. The right may, however, be encroached upon in order to advance public interest. It is worthy of note that the African Charter has not provided for the standard of compensation to be paid an individual whose

²³ S. 33 (2) (b)

²⁴ (1993) 3 SCN J 3

²⁵ S. 33 (2) (c)

²⁶ S. 22 (10)

²⁷ *ACB v Okonkwo* (1997) 1 NWLR 195.

²⁸ Article 14 of the Charter

right to properly is encroached upon²⁹. The African Charter has also failed to provide a mode of procedure for the enforcement of fundamental rights under it. In *Ogugu v The State*,³⁰ The Supreme Court (per Bello CJN) held:

However, I am unable to agree with Mr. Agbakoba that because neither the African Charter nor its Ratification and Enforcement Act has made a Special Provision like section 42 of the constitution for the enforcement of its human and people's rights within a domestic jurisdiction, there is a lacuna in our laws for the enforcement of these rights. Since the charter has become part of our domestic laws, the enforcement of its provisions like all our other laws fall within the judicial powers of the Court as provided by the constitution and all other laws relating thereto.

Despite the decision above, the absence of provision for the mode of enforcement of fundamental rights under the Charter, unlike the fundamental rights guaranteed in Chapter IV of the constitution which can only be enforced under the fundamental Rights Enforcement procedure (FREP) Rules, will create procedural problem. The reason being that a person seeking to ventilate a claim under the charter is at liberty to approach the court in any manner. This may sometimes create doubts in the mind of the judge presiding. It is therefore suggested that express provisions be made to adopt the FREP Rules in bringing actions under the Charter. Thus, according to Femi Falana,³¹ having regard to the simple and speedy nature of application relating to the enforcement of fundamental rights, applicants who wish to ventilate any claim under the African Charter should file their complaints under the FRHP Rules. As stated previously an express provision in the charter to adopt FREP Rules as a mode of enforcement of fundamental rights will be appropriate.

3. The Prospect of the Enforcement of Human Rights in Nigeria

Protection and enforcement of Human Rights in Nigeria have daunting challenges, there are however, prospects for the enforcement of Human Rights in Nigeria which are discussed hereunder.

Legislation on Human Rights

There has been increased legislations on Human Rights in 2021 in Nigeria which was a great stride in the protection of human rights using legislative instruments. Six States (Adamawa, Borno, Edo, Imo, Ondo, Kebbi, Kogi and Osun) passed and assented to the violence Against persons Prohibition Law in 2021 while that of four states (Bayelsa, Nassarawa and Niger) are awaiting the governors' assent. This is representative of the efforts of the government to curb violence against persons and enthrone enforcement of Human Rights. States that are yet to Violence Against Persons Prohibition Act (VAPP Act) are encouraged to do so while states that have domesticated the VAPP Act are urged to strengthen their implementation³².

Police Reform

The disbandment of special Anti-Robbery Squad (SARS) in 2020 following protest against police brutality and extrajudicial killings was a good step towards police force reform. Increase funding for the police training and resources has improved accountability and oversight mechanism addressing the culture of corruption that has plagued the force. The increase support for and engagement of the police from the public and civil society organisations are some of the prospects of the police force.

The Nigeria Police Force which is one of the institutional frameworks for the protection of Human Rights in Nigeria is in theory governed by domestic laws and regulations as well as international treaties and legal nouns. The police authority is now being sensitized to include in its code of conduct a clause for personal liability for extortions and other Human Rights violations of persons in their custody. This to a large extent will create an enabling environment for the respect of fundamental rights of citizens as enshrined in the constitution and other regional and international treaties to which Nigeria is a signatory.

In line with the above, the Inspector General of Police recently warned his men to check their arrogant display of power. At a Conference of Commissioners of Police held in Ibadan Oyo State on the 20th of February, 2009, the Inspector General of Police was reported to have threatened to sanction any police officer who misuses his power or displays excesses of authority³³. The Inspector General of Police further warned that police authorities would hold every officer accountable for lapses or poor-quality service delivery³⁴. According to the late Justice J. O. Ige, time is long overdue to get every police force to bear the brunt whenever its officers misbehaved³⁵. On the whole practical measures, be put in place to ensure that Police Officers should not see themselves as being above the law. The enactment of Police Act 2020 has provided for a more efficient and effective police service that is based on the principles of:

- a) accountability and transparency;
- b) protection of Human Rights and fundamental freedoms; and

²⁹ U. O. Umozurike, footnote 24 Supra. P.8

³⁰ (1994) 9 NWLR (Pt. 366) 64

³¹ F. Falana, *Fundamental Rights Enforcement*; Legal Text Publishing Company Ltd. Lagos, 2004 p. 166.

³² Vanguard Newspaper, 13th January, 2022

³³ Justice J. O. Ige (Rtd), *Protection and Enforcement of Fundamental Rights and Enforcement of Judgement*, Practice Notes No. 1, 2010 p.34.

³⁴ Ibid, p.34

³⁵ Ibid, p. 34.

- c) Partnership with other security agencies³⁶.

Financial Autonomy for the Judiciary

Central to the question of integrity and independence of the Judiciary, is the issue of funding of the Judiciary. Under the 1999 constitution, the National Judicial Council (NJC) is expected to 'Collect, control and disburse all monies, capital and recurrent for the judiciary'. However, it is not clear who is to fund the Judiciary's capital and recurrent budget of Federal and State level. The Constitution empowers the NJC to collect and to disburse all funds, capital and recurrent for the entire Judiciary in the country, it failed to state clearly where those funds are to come from³⁷. It is also not just the mechanism of funding that is important. The level or quantum of funding is critical. It is therefore argued that a constitutional guarantee to the minimum level of the funds allocated to the judiciary as this may be only way to guarantee its independence, autonomy and guarantee sustainable judicial reforms. The Peruvian Constitution for instance allocates 6% of the monies accruing to the country to the judiciary. The Nigerian constitution should be amended to accommodate this fact to ensure an effective, independent and impartial judiciary that will promote order and peace which are prerequisite to development in all its various dimensions³⁸. Due to constant struggles and agitations, there has been some level of financial autonomy which is accrued to the judiciary at the Federal level of government and efforts are being made by various states to adopt same especially with the implementation of financial autonomy for the state legislature and judicial order of 2020 assented to by the Buhari led Government. It is to be emphasized that any power given to the judiciary is not for the gratification of the judge but rather to enable him more effectively administer justice, to enable him protect innocent citizens from power and its abuse by the various concentrations of power. Protection from power is thus the necessary role of the courts. That is why the courts are the citizen's first line of defence in their unequal combat with power. It is only an erudite, courageous, fearless and independent Bench that can protect all of us from the abuse of power. The independence of the Judiciary is thus the citizens' bulwark against oppression. With an independent Judiciary we can 'build a nation where no man is oppressed and so with peace and plenty Nigeria may be blessed'³⁹.

Liberalization of Enforcement of Monetary Judgement

The most commonly adopted procedure for the enforcement of a monetary judgement in Nigeria is garnishee proceedings. A judgement creditor who had obtained judgement against a judgement debtor must identify or must be certain of the judgement debtor's assets are within the jurisdiction of the court that delivered the judgement. By order 8 of the judgment enforcement rules, a garnishee proceeding may be taken in a magistrate Court notwithstanding the fact that the debt owing or accruing from the judgement debtor is for an amount that exceeds the jurisdiction of the court⁴⁰. Ideally, when a judgement sum is secured against a security agency, the affected outfit, the judgement debtor- is expected to comply by paying the sum. However, on many occasions, the agency turns a blind eye to the judgement, refusing to pay the sum or appealing the ruling. The judgement creditor can now approach the court by way of seeking garnishing proceeding to ensure the enforcement. It required that the judgement is contained in a known Bank account of the judgement debtor and the money are normally being paid once attachment has been made. The process is now being made easy and less cumbersome.

Removal of certain constraints in Fundamental Human Rights cases and encouragement of speedy Trials of Cases

The Fundamental Rights Enforcement Rules 2009 has brought some impetus for the Enforcement of Human Rights by way of encouraging speedy processes for hearing of Human Rights cases in court. These developments are summarized hereunder. Abolition of the requirement of locus standi. The 2009 Rules has abolished the requirement of locus standi. It would be recalled that under the 1979 Rules, before an Applicant case could be entertained in court, he must show that he has locus standi. Abolition of the requirement for leave. The 2009 Rules have abolished the preliminary requirements for application to Court for leave to enforcement one's fundamental rights; this is no longer a requirement under the 2009 Rules.

Abolition of Statute Bar

The 2009 Rules have provided that the doctrine of status Bar or limitations of the action shall not apply, this is radical departure from provision of Order 1(1) of 1979 Rules which provided that an application for leave to enforcement fundamental rights must filed within 12 months from the date of the happening of the event. Enforcement of the African Charter on Human and people's rights and other Human Rights instrument. The 2009 Rules have recognized the application of the provision of the African Charter on Human and People's Right and other Regional and International Human Right Instrument in Human Right Jurisprudent of Nigeria⁴¹.

4. Conclusion and Recommendations

Human right abuses or violations are a menace in Nigeria. Humanity everywhere in the world has faced this problem despite efforts by government of the various Nation States across the world to find a solution to this problem. The need for extra protection of Human rights has become increasingly necessary in our country Nigeria today. To ensure the control,

³⁶ Section 1 Police Act 2020

³⁷ E. O. A. Etannibi, and O. O. Festus, *Constitutional Federation and Democracy in Nigeria: Human rights Monitor* 1999 p. 107.

³⁸ D. A. Guobadia and A. Adekunle; *The Uwais Court: The Supreme court and the Challenge of Legal Development* (1995 – 2006) a publication of the Nigerian Institute of Advance legal Studies 2006 p. 512.

³⁹ Ibid. T. O. Elias and M. I. Jegede, *Nigerian Essays in Jurisprudence*, p. 237.

⁴⁰ <https://omaplex.com.ng>

⁴¹ Paragraph 3(6) of the preamble to the 2009 Rules.

protection and enforcement of Human Rights abuses or violation, the country has established various legal and institutional frameworks for the protection and enforcement of Human rights in Nigeria shows that human rights and fundamental freedoms are recognized and preserved in some respects, just as there are problems towards effective control of the human rights abuses in other respect which this article had addressed. The study makes the following recommendations for amendment as follows:

- i. The amendment of sections 15 – 18 of Nigeria Constitution which are provisions under chapter II that is the fundamental objectives and directive principles of state policy which concerns Economic, Educational and Social and Cultural rights are extensively provided for in the constitution should be made to enjoy equal status as the civil and political rights in term of justifiability.

Section 33 (1)⁴² be also amended and expressly provided to accommodate a situation where an accused person is found guilty of a capital offence, and sentenced to death by a court of competent jurisdiction must not face execution until after the final dismissal of the Appeal of the accused person by the highest court in the country i.e. The Supreme Court. This author strongly believes could prevent cases like *Aliu Bello v. Attorney-General* of Oyo State⁴³ occurring.

It is further recommended that section 33 (2) (a)⁴⁴ also be amended to determine the nature of property that may warrant a person defending same to the extent of killing another person.

It is also the recommendations by the author that section 33(2) (b)⁴⁵ also be amended to place a clear distinction between those who die while suppressing a riot and those who fall victims of such lawful suppression of insurrection. Distinction should also be placed between those who take advantage of riotous situation to murder innocent citizens and those who are genuinely and lawfully suppressing the riot.

Section 35(2)⁴⁶ provides for right to remain silent or refusal to answer question until the accused person consults his lawyer. This provision however does not state how long an accused person should remain silent. It is recommended that some reasonable time be incorporated in the above provision when the accused person is expected to remain silent in order not to paralyse the administration of justice where the accused person were to remain silent indefinitely.

Section 35(4) be amended to the effect that a trial court before which a person charged with an offence and who has been detained awaiting trial should conclude the case and give its judgement in writing within 360 days from the date the defendant was brought before the court.

Section 46(1) of the Nigerian Constitution should be amended to also vest original jurisdiction in respect of civil and political rights litigation in Area or District Courts, or Customary Courts manned by lawyers. These courts are closer to majority of Nigerians especially those in non-urban areas rather than only the High Courts which have original jurisdiction to entertain civil and political rights matters.

- ii. The author therefore recommends that article 7 thereof be amended to also make provision for sanctions in the event of breach.

It is also the recommendation by the author that there be provisions in the Charter for the mode of procedure for the enforcement of fundamental Human Rights cases coming under the Charter.

- iii. The article recommends that the 2009 Rules⁴⁷ be amended to accommodate service on public Holidays and Sundays to eliminate inordinate delays which are against the spirit of the rule.

- iv. The author therefore recommends that the commission be made independent which the author argues will enhance its more investigative powers.

It is also the recommendation by the author that the commission be granted powers to issue subpoena for the production of documents and to summon witnesses and parties before it.

- v. For the Judiciary to function effectively, it is the author's recommendation that the judiciary be granted independence in all practical terms. This is necessary to give the courts the honour, prestige, integrity and the unrestrained liberty to do justice.

The current agitations for financial independence of the judiciary at the Federal and State Judiciary should therefore be respected and adhered to so that the Judiciary can be completely independent.

- vi. It is the author's recommendation therefore that all laws governing the police be amended to be in line with international standards.

The author further recommends that a code of conduct that seek to prohibit the use of torture by the police be included in the police laws to prevent torture by the police with appropriate sanctions in the event of breach by the police.

⁴² Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁴³ *Supra*

⁴⁴ See Footnote, 265

⁴⁵ *Ibid*

⁴⁶ African charter Cap A9 LFN 2004

⁴⁷ Fundamental Rights Enforcement Rules 2009.