

An Appraisal of Human Rights in Nigeria's Constitution and the Reaction of Courts to Some of those Rights

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Abstract

Human rights contained in the Nigerian constitution have the influence of the provisions of the Universal Declaration of Human Rights (UDHR). This work highlights those provisions and some measures that have been taken in Nigeria for the protection and promotion of human rights, including a compendium of how Nigeria's courts have reacted to the enforcement of some of those rights. The categorization of the rights provided for in the 1999 constitution of Nigeria shall be highlighted upon and an excursion shall be taken to the Nigerian courts to outline how they have reacted to the enforcement to the enforcement of some of these rights.

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Background to the Study

The Nigerian constitution, as afore stated, bears the impact of the UDHR, 1948. The UDHR had long come into force¹ when the various constitutions of Nigeria were drafted and adopted. The current constitution of Nigeria² incorporates human rights in the following 3 ways:

1. Specifically enumerated rights;
2. Rights not specifically enumerated;
3. Unremunerated rights (including rights not yet recognized).

Specifically-enumerated rights are human rights which find mention in international instruments such as UDHR and the covenants on human rights, and are also enumerated in the constitution, either as fundamental rights or directive principles of state policy. A number of rights which have, for example, been proclaimed in UDHR and covenants on human rights have also been enumerated in the Nigerian constitution. The following charts throw light on this assertion. It highlights specific Human Rights and the various Charter and Statutes (Nigeria's Constitution) that approves of it:

(A) Civil and Political Rights

1. Rights to life and security (Article 3), Sections 14(b) and 33
2. Prohibition of slavery, slave trade, etc. (Article 4), Section 34(b)
3. Equality before the law and non-discrimination (Article 8), Section 42
4. Rights to effective remedy (Article 8), Section 46(4)(b)
5. Rights against arbitrary arrest, detention, etc. (article 9)
6. Rights against ex post fact laws (article 11 (2)
7. Right to freedom of movement (article 13 (1), Section 41
8. Rights to own property and not to be deprived of property (Article 17), Section 43
9. Rights to freedom of thought, conscience and religion Article 18), Section 38
10. Rights to freedom of opinion and expression (Article 19), Section 39
11. Rights to freedom of assembly and association (Article 20(1), Section 40
12. Right to equal access to public service (Article 21 (2), Section 42
13. Right to social security (Article 22), Section 14
14. Rights to form and to join trade unions (Article 23 (4) Section 40

(B) Economic, Social and Cultural Rights

1. Rights to work, free choice of employment, Just and favorable conditions of work, etc. (article 23 (1)
2. Right to equal pay for equal work (article 23 (2)
3. Rights to just and favorable remuneration (Article 23 (37), Sections 16(2)(d)
4. Rights to rest and leisure (Article 24)
5. Right to adequate standard of living (Article 25 (17), Section 14
6. Rights to education, free education in elementary and fundamental stages (Article 26 (17), Section 18
7. Rights to a proper social order (Article 28), Section 16

¹By Virtue of the General Assembly of the United Nations Organisation U.N.

²The 1999 Constitution of Nigeria.

(C) Civil and Political Rights

1. Rights to life, liberty and security of persons (Article 6 (1) and 7 (12), Section 33, 35 and 14
2. Freedom from forced and compulsory labour (Article 8 (32), Section 34
3. Freedom from unlawful arrest and detention (Article 9 (2) (3) and (4), Section 34
4. Freedom of Movement and Choice of Residence (article 12 (1), Section 46 (4) (b)
5. Equality before council and tribunals (article 14 (1)
6. Right not to be compelled to testify or to confess guilt (Article 14 3) (g))
7. Right against double jeopardy (article 14 (77)
8. Right against ex post facto laws (article 18(1)
9. Freedom of thought, conscience and religion (Article 18 (1), Section 38
10. Right to hold opinion without interference and the
11. Right to freedom of expression (article 21), Section 38, 39
12. Right to peaceful assembly (article 21), Section 40
13. Right to freedom of association (article 22 (1), Section 40
14. Right to have access, on equal basis, to public services (article 25 ©, Section 42
15. Equality before the law and equal protection of law without discrimination (article 26)
16. Right of minorities with regards to culture, religion, and language (article 27).

(D) Economic, Social and Cultural Rights

1. Equal pay for equal work (article 7 (a) (1)
2. Protection of children and young persons (article 10 (3))
3. Right to work (article 6 (1)
4. Right to safe and healthy working conditions and protection of mother before child birth (Article 7 (b) and 10 (2)
5. Rights of workers to decent living (including their families rest, leisure, and reasonable limitation of their working hours
6. Obligation of states to make secondary education generally available (article 13 (2) (a)j
7. Rights to adequate standard of living (with family) (article 11)

The human rights incorporated or specifically stated in part II, chapter IV of the 1999 constitution of Nigeria are of special importance, and are called fundamental rights, in the sense that they are enforceable by the court and cannot be taken away or abridged by the executive or legislature³. They can be abridged or taken away only by constitutional amendments⁴. The human rights in part II, chapter IV of the 1999 constitution of Nigeria are, thus, of great importance. The human rights in part II, chapter II of the 1999 constitution of Nigeria entitled, directive principles of state policy, are not enforceable by courts but:

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, observe and apply the provisions of the chapter (chapter II) of the constitution.

³Agarwal, H.O. *A Concise Book on International Law & Human Rights*, 2009, Central Law Publications, Allahabad, 396, Rehman, J. *International Human Rights Law*, Pearson Education Ltd, Essex, p. 191 & Joshi, K.C. *International Law & Human Rights*, 2006, Eastern Book Company, Lucknow, 318-319

⁴Ibid

It is the duty of government to implement the contents of chapter II of the constitution of Nigeria⁵ because that is the essence and purpose of government but, since the rights mentioned in chapter II are social, economic and cultural rights, no time limit can be fixed for their implementation⁶.

(E) Rights not Specifically Enumerated

These are rights which are not specifically stated but have been given recognition by judicial pronouncements as parts of the existing fundamental rights such as sections 33, 39 and 40 of the 1999 constitution of Nigeria. These rights are either subsumed under the existing fundamental rights or have been held to be part of or to emanate from the existing rights under the theory of emanation, for example, it has been held (in India)⁷ that the rights to life and personal liberty⁸ are of widest amplitude and several unenumerated rights fall within the provisions for the rights to life and personal liberty. These rights include the following:

The right to travel abroad, the right to privacy, the right against solitary confinement, the right against bar fetters, the right to legal aid, the right to speedy trial, the right against handcuffing, the right against delayed execution, the right against custodial violence, the right against public hanging, the right to health care or doctor's assistance, the right to shelter, the right to know, the right to compensation for violation of human rights. The right to release and rehabilitation, the right against cruel and unusual punishment, and the right of inmates of protective homes⁹. Unenumerated rights (including rights not yet recognized) consist of those human rights enumerated in the Covenant on Civil and Political Rights and other international instruments but are neither enumerated in the Nigerian constitution as fundamental rights nor have not been recognized by judicial pronouncement as part of existing fundamental rights. It has consistently been recognized by the courts in Nigeria that the help of international human rights agreement that have been ratified by Nigeria can be taken into consideration in the interpretation of constitutional provisions and construction of agreements relating to human rights¹⁰. It is noteworthy that the National Human Rights Commission exists in Nigeria for the purpose of redressal of grievances of human rights violation and other purposes relating to the protection and promotion of human rights¹¹.

(F) Nigeria's Courts' Reaction to the Enforcement of some of these Rights

1. Right to Life: - S. 33 of the 1999 Constitution provides that every person has the right to life: but, the right is not sacrosanct. The fundamental nature of the right is recognized by the fact that s.33 which provides for the right to life cannot be derogated from in times of war or other public emergencies. However, the right to life may be derogated from in respect of deaths resulting from lawful acts of war.

The Constitution also guarantees further protection to this right by prohibiting the use of proactive legislation. The case of *Aliu Bello v. A.G. Oyo State* [1986] 5, NWLR, 828 serves as a locus classicus of the attitude of the Nigerian judiciary to this right, given the fact that it was

⁵Ibid

⁶Ibid

⁷Ibid

⁸Sections 33 & 35, 1999 Constitution of Nigeria

⁹Joshi, K.C. Op. cit. 325, 328

¹⁰See *Fawehinmi v. Abacha*, *Oshivire v. British Airways* & the Indian cases of *Varghese v. Bank of Cochin*, AIR 1980, S.C.4709, (1980) 2S.C.360, *Vishaka v. State of Rajasthan* AIR 1997 S.C.625.

¹¹See Act establishing the Commission.

decided by the apex court in the country. The descendants of the deceased in that case (the deceased was an armed-robbery convict) brought an application challenging the execution of their bread-winner, whose appeal was pending in the Court of Appeal. The Supreme Court deprecated the attitude of the respondent thus – “this is the first case in the country in which a legitimate government of the country, pastor present, colonial or indigenous, hastily and illegally snuffed-off the Life of an appellant whose appeal had vested and was in being, with an order of court upon appeal, and with a reckless disregard for the life and liberty of the subject and the principles of the rule of law. The brutal incident has bespattered the face of the Oyo State Government with the paintbrush of shame”. See, also, the case of Abdul Razaq and 3 Others v. IGP and 5 Others (consolidated suit Nos 10/4).

2. The Right to the Dignity of the Human Person: - S.34 of the 1999 Constitution provides for this and goes further to prohibit acts of torture, inhuman or degrading treatment, slavery or servitude, etc. The court of Appeal in the case of Uzoukwu v. Ezeonu II attempted a delineation of the basic elements of the rights and freedoms guaranteed in section 34. The Court of Appeal here, held that torture means to put a person to some form of pain which could be extreme. It also means to put a person to some form of anguish or excessive pain which could be a brutalisation of the human person. It could also be a mental torture in the sense of mental agony. Inhuman treatment is a barbarous, an uncouth and a cruel treatment: a treatment which has no human feeling on the part of the person inflicting the barbarity or cruelty. Degrading treatment was construed as that which has the element of lowering the societal status, character, value or position of a person. Slavery, as any state of drudgery while servitude is subjecting a person to a compulsory labour or irksome conditions like a slave. The court has held, for example, that mere verbal abuse, like calling one's descendants slaves, did not constitute a breach of the provision.

The plaintiffs, in the case of Mogaji and Others v. Board of Customs and Excise and Others brought action against the defendants, claiming that, as market women, they were mistreated by officers of the customs and exercise who, aided by police officers and soldiers, freely used horse-whips and teargas on them when they raided their shops, seized and retained their goods suspected to be contrabands. The court held that to organize a raid with the use of gun, horse-whips and teargas amounted to inhuman and degrading treatment.

The afore-mentioned unarguably guarantee certain minimum standards with respect to health and sanitary conditions, disciplinary measures, clothing, food and prison labour. Some of these issues were canvassed in the case of Abdullahi and Others v. A.G. Lagos State as a result of the detention of the applicant for 6-7years under appalling physical conditions. In Nemi and Others v. the State the link between the right to life and freedom from torture, inhuman or degrading treatments based on the “death-row phenomenon” was canvassed. The appellants in that case contended that the delay in their execution for 8years constituted inhuman and degrading treatment. This issue was technically averted by the Supreme Court as it held that it lacked original jurisdiction to entertain constitutional rights violation cases.

3. Right to Personal Liberty: - S. 35 of the 1999 Constitution guarantees this right. Its enjoyment is, however, subject to certain permissible exceptions. The efficacy of this provision has, furthermore, been seriously hampered by series of infamous decrees that were promulgated by military regimes since their first incursion into politics. S. 35(3) provides for the free trial rights of a suspect being informed of the reason for his arrest in a language which

he understands. “Reasonable time” under s. 35(4) of the constitution as interpreted in *Falode v. A.G. Lagos State* depends on the circumstances of each case. In the case of *Ayinla and 191 others v. A.G. Lagos state and others*, the applicants were variously remanded for periods ranging from 5 months – 9 years for capital offences, mostly armed-robbery under the “holden charge”. The right to personal liberty cannot be satisfactorily discussed without taking an excursion into issue of detention or unlawful detention. Subsection 35(6) provides for public apology for unlawful detention but this has not been the practice, the court still awards compensation for unlawful detention. In the case of *Dele Giwa v. IGP* public apology was considered adequate compensation for the unlawful detention of the applicant. This right to compensation for unlawful detention was clearly articulated by the court of appeal in *Odogo v. A.G. Federation and 6 others* where the applicant was detained on two instances for 8 years without trial for armed-robbery. He was released on the order of the High Court and awarded the sum of N2000.00. He, however, appealed against the quantum of damages, and the appeal court allowed the appeal.

It was held in *Madike v. IGP* (par *Kolawole* (JCA) in a dissenting judgment, that it is an acronym in any society in this day and age to deprive a citizen of his civil liberties without an opportunity to the citizen to approach the court to challenge such deprivation. It is submitted that this should be the guiding principle for the Nigerian judiciary with respect to the protection of this right.

4. Right to Freedom of Expression and the Press: - S. 39 of the 1999 Constitution provides for this and includes freedom to hold opinions and to receive and impart ideas and information without interference. Everyone is, additionally, guaranteed the right to own and operate any medium for the dissemination of information, ideas and opinions. The enjoyment of this right is, however, circumscribed by sections 39(3) and section 41(2) of the constitution.

5. The Right to Peaceful Assembly and Association:- S. 40 of the 1999 Constitution provides for the individual's freedom to assemble freely and to associate with others for the purpose of protecting his or her interest. See S. 40(a) and (b) and s. 41 of the 1999 Constitution for limitations and instances where derogations from his right is permitted. In the case of *Abayi v. Okogbue* it was held that the drafting of any unwilling person into an association, even if mandated by customary law, is unconstitutional. However, once an individual has chosen to affiliate with a particular group, the individual must abide by the prevailing rules, provided that those rules are not contrary to public policy or existing law. The Supreme Court held in *Egiri v. Uperi* that it may be contrary to the right of freedom of association for a court to compel a wife to return to her husband.

6. Right to Freedom of Movement: - This is provided for by S. 41 of 1999 Constitution and is guaranteed only to Nigerian citizens. Despite certain exceptions imposing restrictions on the enjoyment of those rights, a Nigerian cannot be expelled from the country nor refused entry or exit. In the case of *Shugabba v. Minister of Internal Affairs* the restriction of movement imposed on the applicant by the state government was held to be an encroachment of this right. The scope of this right was, however, expanded in the case of *Agbakoba v. D.G. S.S.S. and Anor* where the Court of Appeal, and in setting aside the decision of the trial court and ordering the release of the appellant's passport, held that:

It has, I venture to think, been sufficiently demonstrated that she was in error in holding that a citizen of Nigeria has no legal right to a passport and, in effect, that if he had been issued one it could be withdrawn, impounded or revoked at will by the government. To agree to that view would tantamount to removing the guarantee of the freedom of exit from our constitution. I hold that the seizure of the appellant's passport amounts to a violation of his right to travel abroad, guaranteed by the constitution.

Conclusion

It is concluded that as important as the rights and their categories are, as highlighted upon here, many citizens are not conversant with them. This interprets into the need for urgency in creating a means for enlightenment by concerned authorities, through the mass media, the essence of these rights. This will greatly improve on their enforceability, observance, protection and promotion, as exemplified by the judicial pronouncements and decisions highlighted above.

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