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IMPEDIMENTS TO HUMAN RIGHTS PROTECTION IN NIGERIA

JACOB ABIODUN DADA*

When the United Nations introduced the Universal Declaration of Human Rights in 1948, it was seen by many as a sign of optimism, of the possibilities of a better world. Yet over 50 years later, observers recognize that we live in an age when human rights abuses are as prevalent as they have ever been; in some instances more prevalent. The world is littered with examples of violation of basic rights: censorship, discrimination, political imprisonment, torture, slavery, the death penalty, disappearances, genocide, poverty, refugees. The rights of women, children and other groups in society continue to be ignored in atrocious ways. The environmental crisis takes the discourse on rights to a different level. D.J. O'Byrne.¹

ABSTRACT

The promotion and protection of human rights have engaged the attention of the world community, and though the African country of Nigeria has subscribed to major international human rights instruments, violations continue to occur with disturbing frequency and regularity in that nation. Why is this so? This article examines the multifarious and multidimensional impediments which have hamstrung meaningful enjoyment of human rights in Nigeria. It points out the shortcomings of the dualist model under the Nigerian Constitution and stresses the

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¹ DARREN J. O'BYRNE, HUMAN RIGHTS: AN INTRODUCTION 5 (2003).

objectionable wide amplitude of the derogation clauses. It also makes suggestions for reform.

INTRODUCTION

It is elementary knowledge that human rights have become a global subject, with global appeal. The fact that human rights have gained remarkable attention, prominence, and significance in our world of pluralism, diversity, and interdependence stems from their very nature.² Human rights are rights which all human beings have by virtue of their humanity, such as right to life, dignity of human person, personal liberty, fair hearing and freedom of thought, conscience and religion. They provide a common standard of behavior among the international community.³ To demonstrate the important character of human rights, a learned author insightfully declared that: "the issue of human rights in the recent past, has penetrated the international dialogue, become an active ingredient in interstate relations and has burst the sacred bounds of national sovereignty."⁴

It is for the foregoing reason that virtually all nations of the world, including Nigeria, have subscribed to the major international human rights instruments, such as the Universal Declaration of Human Rights, 1948; the International Covenant on Civil and Political Rights, 1966 (ICCPR); The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR); and other regional human rights instruments. However, it must be remembered—as perceptibly noted by an astute author—that "human rights are more than a collection of formal norms, they are dynamic political, social, economic, juridical, as well as moral, cultural and philosophical conditions which define the intrinsic value of man and his inherent dignity."⁵

The practical implication of this is that international human rights promotion, protection, and enforcement transcend mere formal

2. See the Universal Declaration of Human Rights, G.A.Res. 217A, pmbL, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948) [hereinafter Universal Declaration of Human Rights]; U.N. Charter pmbL. The preambles of both the UDHR and the U.N. Charter recognize human rights as inherent in man. Paragraph 2 of the U.N. Charter, for instance, "reaffirm[s] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."

3. Universal Declaration of Human Rights, *supra* note 2, at ¶ 8. See also Muhammad Haleem, *The Domestic Application of International Human Rights Norms*, in DEVELOPING HUMAN RIGHTS JURISPRUDENCE: THE DOMESTIC APPLICATION OF INTERNATIONAL HUMAN RIGHTS NORMS 91, 91-92 (1988).

4. Thomas W. Wilson, Jr., *A Bedrock Consensus of Human Rights*, in HUMAN DIGNITY: THE INTERNATIONALIZATION OF HUMAN RIGHTS 47, 47 (Alice H. Henkin ed., 1979).

5. MOSES MOSKOWITZ, INTERNATIONAL CONCERN WITH HUMAN RIGHTS 3 (1974).

subscription⁶ to their ideals or—more poignantly put—mere domestication. As Bhagwati⁷ has noted,

The language of human rights carries great rhetorical force of uncertain practical significance. At the level of rhetoric, human rights have an image which is both morally compelling and attractively uncompromising. But what is necessary is that the highly general statements of human rights which ideally use the language of universality, inalienability and indefeasibility should be transformed into more particular formulations, if the rhetoric of human rights is to have major impact on the resolution of social and economic problems in a country.

Although Nigeria is a signatory to many international human rights instruments⁸ and has laudable and inspiring constitutional provisions for their protection,⁹ there are varying degrees of human rights violations in the nation, and governance is characterized by acute disregard for, and sadistic undermining of, these basic rights and fundamental freedoms.¹⁰ Indeed, today, as in the inglorious days of military rule, frequent cases of extra-judicial killings,¹¹ unjustifiable torture of detainees by security agents, unbridled curtailment of freedom of the press,¹² and objectionable discrimination against women,¹³ are still witnessed. Also, politically motivated arrests and detentions have continued unabated, and lengthy

6. *Id.*

7. P. N. Bhagwati, *Inaugural Address, in* DEVELOPING HUMAN RIGHTS JURISPRUDENCE: THE DOMESTIC APPLICATION OF INTERNATIONAL HUMAN RIGHTS NORMS xx, xx (1988). Bhagwati's address was given at the Judicial Colloquium in Bangalore, held February 24-26, 1988.

8. Such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), and the African Charter on Human and Peoples' Rights (1981).

9. Two chapters of the 1999 Constitution (chapters 2 and 4) are exclusively dedicated to human rights. In addition, Nigeria has established ostensibly strong institutional infrastructure for human rights promotion and protection. Apart from the judicial organ, Nigeria has extrajudicial bodies for human rights promotion and protection. These include the National Human Rights Commission and the Public Complaints Commission.

10. For recent examples of human rights violations in Nigeria, see the latest Human Rights Report submitted by the U.S. Department of State to the U.S. Congress, *available at* <http://www.state.gov/documents/organization/160138.pdf>. For more examples, see Adejuwon Soyinka, *On Death Row*, TELL MAGAZINE (Nigeria), Apr. 20, 2009 at 22.

11. On December, 28, 2006, the Inspector General of Police, Tafa Balogun, announced that police killed 1,694 suspected armed robbers during the year.

12. As exemplified in the repeated raid of newspaper houses like the *Insider*, and confiscation of issues of the magazines and newspapers, in 2009, the office of *Leadership Newspaper* was sealed and its operatives arrested allegedly for publishing a false story about the health of President Umaru Yar'Adua.

13. Examples of such objectionable practices include, widowhood rites and female genital mutilation.

pre-trial detentions of detainees¹⁴ have continued with impunity. The pertinent question therefore is: what are the factors responsible for human rights violations in Nigeria despite the nation's subscription to, and adoption of, many human rights instruments?

There are multifarious and multi-dimensional impediments to the full realization of human rights in Nigeria. The primary burden of this paper is to investigate, interrogate, and articulate these impediments. In execution of this mandate this paper is divided into two broad parts. Part I explores factors limiting human rights goals in Nigeria, and Part II prescribes constitutional and institutional reforms. Before delving into the main thrust of the paper however, it is not only relevant but also imperative to note that Nigeria is the most populous nation on the African continent, and it was admitted as the 100th member of the United Nations. The country, located in the West African sub-region, has over 100 ethnic nationalities and was buffeted by many military coups until political liberalization was ushered in by the return to civilian rule in 1999.

I. FACTORS LIMITING HUMAN RIGHTS GOALS IN NIGERIA

The impediments to human rights promotion and protection in Nigeria can be classified as constitutional, social, and political, among others. Many constitutional provisions on human rights, rather than energize and galvanize human rights goals, obviously limit and undermine them. For instance, there are numerous derogation clauses which are not only too wide but ill-defined and nebulous. This constitutes a formidable weakness which can gravely undermine human rights promotion. Similarly, the socio-political environment in Nigeria is not sufficiently clement or conducive to meaningful human rights regime. Often, government exhibits regrettable autocratic tendencies and erects a culture of impunity by regular disobedience to court orders. The result is that those who have the material means to seek legal redress are often left with no remedy. For clarity, the various impediments will now be examined under various headings as follows:

A. THE NIGERIAN CONSTITUTION AND HUMAN RIGHTS TREATIES

Section 12 of the 1999 Constitution of Nigeria concerns treaties and their implementation. Since international human rights instruments are, essentially, multi-lateral treaties, a careful examination of the provisions

14. For instance, in 2002, 350 inmates of Kirikiri Prison filed an action challenging the constitutionality of their detention without trial for a long period of time.

of section 12 becomes not only relevant but imperative. The section provides that:

- (i) No treaty between the Federation and any other country shall have force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.
- (ii) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

What therefore is the implication of the foregoing in light of the well-known principle of international law of treaties that a state cannot be bound by any agreement to which it has not given its consent—either by signing, ratification, accession or any other means of declaration of intent to be bound?¹⁵ Besides, most treaties are not self-executing and as such, parties to them are usually enjoined to institute municipal measures to guarantee the application of such treaties within their domestic systems.¹⁶

The implication of the provisions of section 12 of the 1999 Constitution is simply that human rights treaties entered into by Nigeria will not become binding until the same have been passed into law by the National Assembly. In *General Sani Abacha v. Gain Fawehinmi*,¹⁷ the Supreme Court held that by section 12(1) of the 1979 Constitution (the *ipissima verbis* of section 12(1) of the 1999 Constitution), “an international treaty entered into by the government of Nigeria does not become *ipso facto* binding until enacted into law by the National Assembly and before its enactment, an international treaty has no force of law as to make its provisions actionable in Nigerian law courts.”¹⁸ Further, the court unanimously held that “unincorporated treaties cannot change any aspect of Nigerian law even though Nigeria is a party to those treaties” but that they may “however indirectly affect the rightful expectation by the citizen that governmental acts affecting them would observe the terms of the unincorporated treaties.”¹⁹

15. Except where such agreements are mere declarations of existing norms of customary international law.

16. For more information on human rights treaties within states’ legal and political systems, see HENRY J. STEINER ET AL., *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 725-729 (1st ed. 1996).

17. *Abacha v. Fawehinmi*, [2000] 6 NWLR 228 (Nigeria).

18. The reenactment of international treaties into domestic law is what is referred to as the concept of domestication or transformation of treaties. *Id.*

19. *Id.*

The practical significance of the provisions of section 12 of the 1999 Constitution in the context of human rights promotion and protection, therefore, is that international human rights treaties are not *ipso facto* applicable and enforceable in Nigeria unless they are domesticated as in the case of the African Charter on Human and Peoples' Rights.²⁰ Accordingly, the effectiveness of ratified human rights treaties is predicated on their being domesticated. This is so because the provision of the constitution is supreme. The Supreme Court unequivocally made the foregoing point as follows:

Constitution is the supreme law of the land; it is the grundnorm. Its supremacy has never been called to question in ordinary circumstance. Thus, any treaty enacted into law in Nigeria by virtue of section 12(1) of the 1979 Constitution (now section 12(1) 1999 Constitution) is circumscribed in its operational scope and extent as may be prescribed by the legislature.²¹

B. THE PROBLEM OF PRIMACY BETWEEN INTERNATIONAL HUMAN RIGHTS NORMS AND DOMESTIC LEGISLATION

International agreements—particularly those relating to human rights—employ two approaches, namely the 'treaty' method and the 'non-treaty' method. Whereas the treaty method creates legally binding obligations on state parties, the non-treaty method establishes non-legal commitments to guide signatory states.²² Nigeria's international obligations, primarily those concerning human rights, are treaty-based. For instance, the National Assembly in March, 1983 incorporated *holus bolus*, the text of the African Charter on Human and Peoples' Rights, into the corpus of domestic legislation. The wholesale incorporation of the Charter raises certain fundamental issues which appertain to any domesticated human rights treaty. For instance, the 1999 Constitution draws a distinction between justiceable and non-justiceable human rights.²³ The Charter, on the other hand, makes no distinction between economic, social, and cultural rights, on the one hand and civil and political rights on the other. One important question which arises therefore is the implication of the wholesale domestication. Again, in the event of conflict between the Nigerian Constitution, Nigerian statutes,

20. *The African Charter on Human and Peoples' Rights*, OAU Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986. Nigeria signed (1982), ratified (1983), and domesticated the African Charter as Cap 10, LFN, 1990 or Cap A9, LFN, 2004.

21. Abacha, 6 NWLR at 258.

22. See Fred W. Reinke, *Treaty and Non-Treaty Human Rights Agreements: A Case Study of Freedom of Movement in East Germany*, 24 COLUM. J. TRANSNAT'L L. 647, 647-648 (1986).

23. While the Provisions of chapter iv dealing with Civil and Political Rights are justiceable, those of Chapter II, encapsulating social, economic and cultural rights are made non-justiceable.

and the Charter, as incorporated, which one prevails? This last question raises the issue of primacy between international human rights norms and domestic legislation.

On the relationship between international human rights instruments and domestic law—which includes the Constitution—two principal schools of thought have emerged, viz monism and dualism. In addition to these dominant theories, a lesser theory that has also been propounded is the harmonization theory.²⁴ Monism asserts that international law and municipal law form part of a universal legal order serving the needs of the human community one way or another. By this theory, any international treaty, including those concerned with human rights, ratified or assented to by a state is directly enforceable within the municipal system. On the other hand, dualism holds that international law and municipal law are two distinct legal orders.²⁵ Thus, each may isolate the other, and as such, ratified treaties are not enforceable until the parliament enacts a law to incorporate them into the municipal law. The harmonization theory holds that man is the focus of both areas as man lives in both jurisdictions. Harmonization theorists contend that both systems are concordant bodies of doctrine, autonomous but harmonious in their aim of achieving the basic good and therefore reject the presumed conflict between international law and national law.

In Nigeria, the dualist or indirect system applies by virtue of the provision of section 12 of the 1999 Constitution. It is for this reason that the Supreme Court unequivocally held that no treaty applies unless it is ratified. Further, the court held that the Constitution, by virtue of its supremacy, has primacy over international law in the event of conflict between the two.²⁶ In the words of the court, any treaty enacted into law in Nigeria by virtue of section 12(1) of the 1999 Constitution, is circumscribed in its operational scope and extent as may be prescribed by the legislature.²⁷

As relating to the conflict between international law and other national law, the Supreme Court unfortunately did not make an unequivocal pronouncement. However, the court noted that “in incorporating African Charter, this country (Nigeria) provided that the treaty shall rank at *par*

24. For analysis of these theories, see D.J. HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW 67 (5th ed. 1998); H.O. AGARWAL, INTERNATIONAL LAW AND HUMAN RIGHTS 43-45 (17th ed. 2010).

25. *Id.*

26. Abacha, 6 NWLR at 255.

27. *Id.* at 258.

with other ordinary municipal laws.”²⁸ On the other hand, Mr. Justice Mohammed (JSC) held that:

[T]he African Charter on Human and Peoples’ Rights (Notification and Enforcement Act, Cap 10 Laws of the Federation of Nigeria, 1990) is a statute with international flavor. Therefore, if there is a conflict between it and another statute, its provisions will prevail over those of that other status for the reason that it is presumed that the legislature does not intend to breach an international obligation. Thus it possesses a greater vigor and strength than any other domestic statute.²⁹

The view that international instruments, including human rights instruments, should take precedence over domestic legislation, it is submitted is a better and preferred view. The subscription of Nigeria to those norms by ratification of the treaties means that the Nigerian governments and their judicial agencies are not legally permitted to derogate from those norms. Accordingly, international human rights norms should be interpreted and enforced in such a manner as to confer primacy on international human rights instruments over domestic legislation.³⁰

C. RESERVATION CLAUSES IN HUMAN RIGHTS INSTRUMENTS

A careful and painstaking content analysis of the various international human rights instruments reveals that there are many ill-defined instances of permissible derogations inherent in them. In other words, many of the human rights guaranteed in international human rights instruments are not sacrosanct or granted in absolute terms. Rather, the various instruments create instances where it is legitimate and legally sustainable for the rights to be violated. Although virtually all the rights granted by the Universal Declaration of Human Rights, 1948 are not qualified,³¹ the same thing cannot be said of the two Covenants³² which elaborated on the provisions of the Declaration. For instance, Article 4 of

28. *Id.* at 255. Justice Achike, in his dissent, found that “a close study of that Act [Cap 10] does not demonstrate, directly or indirectly, that it had been ‘elevated to a higher pedestal’ in relation to other municipal legislation.” *Id.* at 316-317.

29. *Id.* at 251.

30. C. E. Obiagwu, *International Human Rights Framework: A Challenge to Nigerian Courts*, in CURRENT THEMES IN THE DOMESTICATION OF HUMAN RIGHTS NORMS 51, 58 (C.C. Nweze & Obiageli Nwankwo eds., 2003).

31. Articles 9 and 12, however, seem to contemplate permissible derogation by the use of the expression “arbitrary.” Also, Article 29(2) recognizes permissible limitations in the enjoyment and exercise of the rights guaranteed in the Declaration.

32. That is, the Covenant on Civil and Political Rights (1966) and the Covenant on Economic, Social and Cultural Rights (1966). Both covenants were adopted on December 16, 1966.

the International Covenant on Civil and Political Rights recognizes and provides for permissible derogations in the following terms:

In time of public emergency which threatens the life of the nation, and the existence of which is officially proclaimed, the state parties ... may take measures derogating from their obligations under the present covenant...³³

Similarly, Article 4 of the International Covenant on Economic, Social and Cultural Right allows restrictions and limitations on the rights it guarantees. The Article provides that:

The states parties to the present covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

The African Charter also contains derogation clauses. For instance, Article 6 provides *inter alia* that “no one may be deprived of his freedom except for reasons and conditions previously laid down by law...” while Article 11, in limiting the right to assemble freely, permits “necessary restrictions provided for by law.”³⁴

The practical and legal implication of these derogation clauses is simply that a state is permitted to limit, restrict, abridge, or suspend the enjoyment of these rights. While it may be inappropriate to contend that all the rights should be given in absolute terms, it is a matter of grave concern that the instances of permissible derogation are not well-defined and as such, susceptible and amenable to abuse. For instance, no definition is offered by the Convention on Civil, and Political Rights of what constitutes a “public emergency.” Apart from the problem of definition, how do we react to derogations during a state-induced public emergency? It is respectfully submitted that the wide and ill-defined permissible derogations from the enjoyment of the rights guaranteed by some international human rights instruments is a veritable tool to avoidable curtailment of the protection and promotion of human rights at the domestic level; contextually in Nigeria.

33. Article 4(2) of the International Covenant on Civil and Political Rights prohibits derogation from Articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18.

34. See also Articles 12, 13 and 14 of the African Charter, *supra* note 20.

D. CONSTITUTIONAL DEROGATIONS

A formidable impediment to optimal enjoyment, protection, and promotion of human rights in Nigeria is also located in the various constitutional limitations and qualifications imposed on these rights. Section 45(1) of the 1999 Constitution, like its predecessor the 1979 Constitution,³⁵ provides a veritable foundation upon which any law invalidating fundamental rights may be justified. The section provides, *inter-alia* that:

Nothing in sections 37, 38, 39, 40 and 41 of [this] constitution shall invalidate any law that is reasonably justifiable in a democratic society

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom of other persons.³⁶

By the foregoing provision, the right to private and family life, freedom of thought, conscience and religion, freedom of expression and the press, right to peaceful assembly and association and right to freedom of movement may be circumscribed or limited. Also, other human rights constitutionally guaranteed are not sacrosanct or absolute but are expressly and specifically limited. Admittedly, there may be no absolute right without qualifications, but the constitutional provisions limiting the rights guaranteed³⁷ are somewhat imprecise, indeed nebulous, and as such, constitute a real drawback in the effort to promote human rights. For instance, what law is “reasonably justifiable in a democratic society” does not enjoy any definition and neither is it capable of any precise articulation.³⁸ This undoubtedly poses a very grave danger to optimal realization of human rights. In the case of *DPP v. Chike Obi*³⁹ which was followed in *Queen v. Amalgamated Press*,⁴⁰ the Court held that the sedition law, though it evidently gravely circumscribed the constitutionally guaranteed right of freedom of speech, was “reasonably justified in a democratic society.” It is also on account of the derogation clauses that the Supreme Court held in *Medical and Dental Practitioners*

35. See, CONSTITUTION, Art. 41(1) (1979) (Nigeria).

36. Section 45(1), 1999 Constitution of the Federal Republic of Nigeria.

37. See CONSTITUTION, Art. 33-36 (1999) (Nigeria).

38. Many courts have grappled with this problem. See, e.g., *Olawoyin v. Attorney Gen. of N. Region*, [1961] 1 N.L.R. 269 (Nigeria); *Williams v. Majekodunmi*, [1962] 1 N.L.R. 413 (Nigeria); *Adegbenro v. Attorney Gen. of the Fed'n & Ors.*, [1962] 1 N.L.R. 431 (Nigeria).

39. *D.P.P. v. Chike Obi*, [1961] 1 N.L.R. 186 (Nigeria).

40. *Queen v. Amalgamated Press*, [1961] 1 N.L.R. 199 (Nigeria).

*Disciplinary Tribunal v. Emewulu & Anor*⁴¹ that all freedoms are limited by state policy or overriding public interest.

To demonstrate the amplitude and plenitude of the dangers posed by these nebulous constitutional derogations, reference may be made to the provision of section 33(1) of the 1999 Constitution which guarantees the right to life. The section permits derogation from this right, in execution of a sentence of a court with respect to a criminal offense, and goes on to provide that:

- a person shall not be regarded as having been deprived of his life ...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 -
- (a) for the defense of any person from unlawful violence or for the defense of property;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
 - (c) for the purpose of suppressing a riot, insurrection or muting.⁴²

With the characteristic overzealousness of Nigerian security agents—especially the police, many of whom are ill-trained and ill-motivated—this provision is often abused.⁴³ This derogation explains the worrisome cases of extra-judicial killings which have been witnessed in Nigeria,⁴⁴ and is particularly disturbing because of its wide amplitude. For instance, death resulting from the use of force is permitted in order to effect lawful arrest or to prevent escape from lawful custody, irrespective of the nature or gravity of the offense for which the arrest is to be made or for which the person was incarcerated. With this type of provision, the police can be said to have been unwittingly licensed to kill.⁴⁵

41. *Medical and Dental Practitioners Disciplinary Tribunal v. Emewulu*, [2001] 3 S.C.N.J. 106.

42. Section 33(2), 1999 Constitution of the Federal Republic of Nigeria.

43. *See, e.g.*, U.N. Human Rights Council various reports, in U.N. Human Rights Council, Report of the Human Rights Council on its Ninth Session, U.N. Doc. A/HRC/9/1-A/HRC/9/27 (Feb. 9, 2008). The reports were discussed in Adejuwon Soyinka, *On Death Row*, TELL MAGAZINE (Nigeria), Apr. 20, 2009, at 22.

44. Examples of extra-judicial killings include the deaths of Dele Udoh, the Nigerian athlete who was brutally murdered at a road block, Colonel Rindam, Nwogu Okere and more recently, Mohammed Yusuf—the leader of the Islamic sect Boko Haram—and the six Igbo traders, known as “Apo six.” For more information on these extra-judicial killings, *see Editorial Comment*, THE PUNCH, Aug. 13, 2009, at 14; *see also* SUNDAY TRIBUNE, May 19, 1991, at 1; NEWSWATCH, Aug. 24, 2009, at 10-18.

45. In 2007, authorities claimed that more than eight thousand people had been killed since 2000 in gun duels with the police. These killings have attracted the condemnation of human rights

E. IMPACT & CONSEQUENCES OF MILITARY RULE

Military intervention in the politics of many African countries including Nigeria has, undoubtedly, had quite a destabilizing effect on human rights.⁴⁶ Military governments—with their questionable legitimacy—are characteristically not only lacking in elements of constitutionalism, but are essentially totalitarian and autocratic, apparently intoxicated by the power that flows from the barrel of the gun. Lack of civility, decency, and respect for the rule of law are usually manifested by military rulers.

Nigeria, with its long history of military rule, has witnessed monumental infractions of human rights. There are various dimensions of military rule which are antithetical to the protection and promotion of human rights. Aduba⁴⁷ has incisively and elaborately identified these dimensions which are: exclusion of courts' jurisdiction,⁴⁸ lack of provisions for appeal in military decrees and edicts, use of Special Military Tribunals to try cases,⁴⁹ and detention without trial. Other ways identified by the learned author⁵⁰ in which military rule has negatively impacted human rights are: the passing of retrospective penal legislation, placement of the burden of proof in criminal cases on the accused, and executive lawlessness and disobedience of lawful orders of the court.

Exclusion of courts' jurisdiction by successive military administrations constituted a formidable problem to meaningful enjoyment of human rights in Nigeria during the military era. Military governments characteristically promulgated decrees which ousted the jurisdiction of the court. For instance, The Federal Military Government (Supremacy and Enforcement Powers) Decree⁵¹ provided that:

groups. See *The Punch Editorial*, THE PUNCH 14, Aug. 13, 2009. See also *Nigeria: Great Nation, Poor Human Rights*, NEWSWATCH No. 16, Apr. 20, 2009, at 18-26.

46. Osita Eze clearly demonstrates the gravity of the problem. See OSITA C. EZE, HUMAN RIGHTS IN AFRICA: SOME SELECTED PROBLEMS 4-5 (1984).

47. J. Nnamadi Aduba, *The Protection of Human Rights in Nigeria*, in TEXT FOR HUMAN RIGHTS TEACHING IN SCHOOLS 109, 129-132 (A.O. Obilade & C.O. Nwankwo, eds., 1999) [hereinafter Aduba].

48. Examples of decrees with ouster clauses include the State Security (Detention of Persons) Decree No. 2 (1984) (Nigeria) and the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 13 (1984)(Nigeria).

49. The composition of the membership of the Tribunal does not inspire confidence as to its members' impartiality and competence. Besides, the proceedings of the Tribunals are expected to be concluded within two weeks. See, e.g., Special Tribunal (Miscellaneous Offences) Act (1990), Cap. 410, § 6(1) (Nigeria).

50. Aduba, *supra* note 47, at 131-132.

51. Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 13 (1984) (Nigeria); see also Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970; and Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 12 of 1994.

No civil proceedings shall be or be instituted in any court on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if such proceedings are instituted before or on or later than the commencement of this Decree, the proceedings shall abate or be discharged and made void.

Specifically dealing with the human rights constitutionally guaranteed, the Decree provided in clear and unequivocal language that:

the question whether any provision of Chapter iv of the Constitution⁵² has been or is being or would be contravened by anything done or proposed to be done in pursuance of any Decree or an Edict shall not be inquired into by any court of law and accordingly no provisions of the constitution shall apply in respect of any such question.⁵³

By this ouster clause, the courts are precluded from inquiring into the legality or otherwise of any power exercised pursuant thereto, even if an infraction of the human rights of the citizen has occurred. Provisions such as the foregoing gravely reduced the “ambit of human rights to vanishing point.”⁵⁴ In *Kanada v. Governor of Kaduna State*,⁵⁵ the Court of Appeal held *inter alia* that the effect of this type of decree was to suspend the courts’ jurisdiction and stop any proceedings instituted before the coming-into-force of the decree.

The case of *Wang Chin-Yao v. Chief of Staff, Supreme Headquarters*⁵⁶ is of profound relevance and importance when considering the impact of ouster clauses in military decrees as they affect human rights. In that case, the appellants had been detained under the State Security (Detention of Persons) Decree⁵⁷ following their arrest by officers of the Customs and Excise when found in possession of blank attested invoices and Proforma invoices relating to imported goods. The Decree, by section 4, barred legal actions against any person for anything done or

52. That is, the Chapter concerning human rights.

53. Military Government (Supremacy and Enforcement of Powers) Decree No. 13 § 1(2)(b)(i) (1984) (Nigeria). Similarly, section 4(1) of the notorious State Security (Detention of Persons) Decree No. 2 (1984) provides that “[n]o suit or other legal proceedings shall lie against any person for anything done or intended to be done in pursuance of this Decree.”

54. P. U Umoh, *Human Rights in Nigeria: Impediments to Realization*, 2 Univ. Uyo L.J. 41, 46 (1988).

55. *Kanada v. Governor of Kaduna State*, [1984] 4 NWLR 361 (Nigeria).

56. *Wang Chin-Yao v. Chief of Staff, Supreme Headquarters*, [1986] LRC (Const.) 319 (Nigeria). Reported also in GANI FAWEHINMI, *NIGERIAN LAW OF HABEAS CORPUS* 437 (1996).

57. State Security (Detention of Persons) Decree No. 2 (1984) (Nigeria).

intended to be done in pursuance of the Decree. The learned trial judge refused to issue the writ. Being aggrieved, the appellants appealed to the Court of Appeal. In delivering the judgment of the court, Ademola, J.C.A held, *inter alia*, that “the combined effect of Decree No. 2 and Decree 13 of 1984 is that on the question of civil liberties, the law courts of Nigeria must as of now blow muted trumpets.”⁵⁸

The above judgment clearly demonstrates that ouster clauses in decrees and edicts effectively circumscribed access to court by aggrieved persons. In limited cases where right of access existed and the judiciary was willing to demonstrate judicial activism, enjoyment, protection, and promotion of human rights were further hampered by incidences of disobedience to court orders.⁵⁹ Undoubtedly, it is one thing for a court to grant a remedy sought by an individual, but quite another for the successful party to reap the fruits of his judgment. This is because the court cannot enforce its own order as it does not have the necessary machinery to do so.⁶⁰ Consequently, apart from undermining the authority and integrity of the court, disobedience to court orders is a grave assault on human rights promotion and protection. The frustration of the judiciary on account of disobedience of court orders was beautifully captured by the Supreme Court in the celebrated case of *Governor of Lagos State v. Ojukwu*,⁶¹ when it lamented that:

During World War 11 Lord Atkin was still able to say, “In this country amid the clash of arms, the laws are not silent. They be changed but they speak the same language in war as in peace...Judges are no respecters of persons and stand between the subject and ...any attempted encroachment on his liberty by the Executive alert to see that any coercive action is justified in law.” I can safely say here in Nigeria (that) even under a military government, the law is no respecter of persons, principalities, governments or powers and the courts stand between the citizens and the government alert to see that the state or government is bound by the law and respects the law.⁶²

The use of Special Military Tribunals also gravely impacted the promotion and protection of human rights during military rule. Although complete independence of the judiciary in democratic dispensation may

58. Wang Chin-Yao, LRC (Const.) 391 at 330.

59. For some instances, see, Aduba, *supra* note 47, at 109-37.

60. The Constitution expressly confers the power of law enforcement on the executive branch, which all law enforcement agencies are members of. *See* CONSTITUTION, Art. 5 (1999) (Nigeria).

61. *Governor of Lagos State v. Ojukwu*, [1986] 1 NWLR 621.

62. *Id.* at 647-648

be debatable,⁶³ the courts are created in such a manner as to ensure a reasonable measure of independence and impartiality of judges so that proceedings are free from bias and extraneous considerations. This is not so of military tribunals which are characteristically composed of soldiers with little or no knowledge of law and no regard for human rights, due process, or judicial precedent. What is more, cases are heard and determined in camera, with the decisions hardly open to judicial review or appeal.⁶⁴ Thus, the limitations suffered by human rights in the military era are as obvious as they are enormous.⁶⁵ A particularly worrisome and monstrous curtailment of human rights during military regimes is located in the consistent use of retroactive legislation.⁶⁶ During military regimes, many retroactive decrees with penal implications were promulgated. A notable example was the State Security (Detention of Persons) Decree,⁶⁷ from 1984 which empowered the Chief of Staff, Supreme Headquarters to detain persons who have contributed to the economic adversity of the nation.”⁶⁸ Although Nigeria is presently under democratic governance,⁶⁹ the poor attitude and behavior of the current leaders⁷⁰ in the areas of human rights are influenced by the reprehensible attitude of the military rulers demonstrated above.

F. ABSENCE OF TRUE JUDICIAL INDEPENDENCE

One of the enduring and indeed imperishable attributes of the common law is the notion of judicial independence.⁷¹ So important is this notion that it has become entrenched not only in the English judicial system, but in most judicial systems across the globe.⁷² The term judicial

63. Although sections 4, 5 and 6 of the 1999 Constitution guarantee separation of power, the Constitution also provides numerous instances of interaction between the various organs of government.

64. OSITA NNAMANI OGBU, *HUMAN RIGHTS LAW AND PRACTICE IN NIGERIA: AN INTRODUCTION* 338-339 (1999).

65. The civil populace is oppressed and repressed and there was obvious desecration of all civil institutions including the judiciary, which should have been an arbiter.

66. “Retroactive law” is defined as a legislative act that looks backward or contemplates the past, affecting acts or facts that existed before the act came into effect. *Black’s Law Dictionary* (9th ed. 2009), available at Westlaw BLACKS.

67. State Security (Detention of Persons) Decree No. 2 (1984) (Nigeria). This decree was promulgated during the military regime of Muhammadu Buhari and Tunde Edigbon.

68. Other examples include the Special Tribunal (Miscellaneous Provisions) Decree No. 20 (1984) (Nigeria) and the Counterfeit Currency (Special Provisions) Decree No. 22 (1984) (Nigeria). Under the former, some persons were executed for trying to export cocaine, a hard drug.

69. Nigeria returned to democratic governance on May 29, 1999, after over two decades of military rule.

70. Exemplified by press censorship, extra-judicial killings, and police brutality. See Adejuwon Soyinka, *On Death Row*, TELL MAGAZINE 18-23 (Nigeria), Apr. 20, 2009, which chronicled poor human rights regime in Nigeria.

71. See *Garba v. Univ. of Maiduguri*, [1986] 1 NWLR 550 (Nigeria).

72. *Id.* at 570-75.

independence, otherwise referred to as the independence of the judiciary, does not lend itself to a generally accepted definition. Consequently, an examination of some attempts which have been made to define it will suffice for the present purpose.

According to Oyeyipo,⁷³

Judicial independence postulates that no judicial officer should directly or indirectly, however remote be put to pressure by any person whatsoever, be it government, corporate body or an individual to decide any case in a particular way. He should be free to make binding orders which must be respected by the legislature, the executive and the citizens, whatever their status...

From the above premise, it can be safely concluded that judicial independence is not yet a reality but a mere aspiration in Nigeria today. The appointment and removal of judges are not insulated or isolated from politics, ethnicity favoritism, and other primordial considerations. Lamenting on the constraint against judicial independence in Nigeria, Tobi⁷⁴ insightfully declared that "there were instances in the past where appointing bodies by sheer acts of favoritism and nepotism overturned the A.J.C. (Advisory Judicial Committee) list and planted their own by way of replacement." Other authors have also categorically noted that "the appointment of judges cannot through the institutional mechanism of NJC (National Judicial Council) be insulated from political consideration and control."⁷⁵

Apart from the problem of appointment and removal, the judiciary is faced with other formidable problems which inevitably compromise its independence and impartiality. The Nigerian Judiciary lacks financial autonomy in the real sense of the word, even though under the present constitutional dispensation, a measure of financial autonomy is sought to

73. T.A. Oyeyipo, Commentary on the paper captioned *Whether the Establishment of the National Judicial Council and the Set-Up Will Bring a Lasting Solution to the Perennial Problems Confronting the Judiciaries in this Nation 5*, delivered at the 1999 All Nigerian Judges Conference (NJC) held at International Conference Centre, Abuja, Nigeria November 1-5, 1999.

74. N. Tobi, paper entitled *Whether the Establishment of the National Judicial Council and the Set-Up Will Bring a Lasting Solution to the Perennial Problems Confronting the Judiciaries of this Nation 19*, delivered at the Annual Conference of Judges held at the International Conference Centre, Abuja, Nigeria, between November 1-5, 1999.

75. J. A. Dada & M. E. Ekpo, *Issues and Problems in the Establishment of National Judicial Council under the 1999 Constitution*, CALABAR L. J., 101-02 (2006).

be enthroned.⁷⁶ Besides, the remuneration of judicial officers is not only inadequate but laughable. The implication of this is that judicial officers are exposed to avoidable temptations of being corrupt such that their judgments are not the result of legal rule, forensic argument of counsel, precedent, and cold facts of the case, but are rather dictated by extraneous considerations. The plight of many judges is worsened by environmental challenges of absence of social security and bloated extended family.⁷⁷

From the above, the challenge posed by the absence of true judicial independence is formidable. Similarly, its implications for human rights promotion and protection are no less daunting.

G. PROBLEM OF DISOBEDIENCE TO COURT ORDERS

Without doubt, accessibility to court by litigants is one thing, while the impartiality of the judge is another. Respect and obedience to the judgment and orders of the court is yet another important consideration. It is a notorious fact that judgments and orders of courts are not self-executing and the judiciary does not have its own body or institution charged with the responsibility of enforcing its judgments.⁷⁸ The implication of this fact is that the judiciary inevitably depends on the executive for the enforcement of its judgments. The executive branch, without doubt, is the greatest violator of human rights.⁷⁹ It is the major “predator” from which judicial protection is often sought.⁸⁰ This being the case, there is little guarantee that when an order is made against the executive branch, the same will be treated as sacrosanct. On the contrary, the unfortunate and regrettable experience has been regular disobedience of the executive to lawful and subsisting court orders.⁸¹ Often, government chooses the orders to obey. It obeys those it is comfortable with and disobeys those which are in conflict with its interest, ignoring the consequences to the individuals whose rights have been violated.

76. The 1999 Constitution empowers the National Judicial Council to “collect, control and disburse all moneys, capital and recurrent, for the judiciary.” CONSTITUTION, Third Schedule, Part 1, ¶ 21(e) (1999) (Nigeria).

77. MUHAMMED MUSTAPHA AKANBI, *THE JUDICIARY AND THE CHALLENGES OF JUSTICE* 45 (1996).

78. Under the 1999 Constitution, as amended, it is the responsibility of the executive branch to enforce the law, including judicial decisions. *See* CONSTITUTION, Art. 5 (1999) (Nigeria).

79. *See* MAKAU MUTUA, *HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE* 2 (2002). *See also* Chidi Anselm Odinkalu, *Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa*, 47 *J. of Afr. L.* 1-37 (2003).

80. I. Sagay, *Newbreed Magazine*, August 13, 1989 at 8.

81. This is amplified by the cases of *Military Governor of Lagos State v. Chief Emeka O. Ojukwu*, [1986] 1 *NWLR* 621 (Nigeria); *Lakanmi & Kikelomo Ola v. Attorney General (Western State)*, [1971] *UNIV. IFE L. REP.* 201.

This is true both under military rule as well as democratic dispensation. For instance, the Federal Government refused to obey the Supreme Court judgment which declared illegal the withholding of revenue to the Lagos state local government.⁸²

The inevitable question therefore is: what is the value of a judgment and order which is disobeyed? Disobedience to court orders undoubtedly undermines the authority, dignity, and integrity of the court and can promote anarchy. But much more, it constitutes a remarkable challenge to the development and realization of human rights.⁸³

H. IMPACT OF UNDERDEVELOPMENT AND THE POLITICAL SYSTEM

Without doubt, the impact of the political system and of underdevelopment—economic, social, political, and cultural—has a profound influence on the promotion and protection of human rights.⁸⁴ Nigeria, like most African countries, suffers convoluted political crisis and remarkable underdevelopment. The manifestations of these twin problems can be seen in the high level of illiteracy and poverty, the virtual collapse of social infrastructure, political instability, and constant military intervention.

Eze⁸⁵ identified some of the dimensions of our political system and underdevelopment which have negative impacts on human rights promotion and protection in Africa: the scarcity of those material means needed for the advancement and preservation of human rights, the insecurity occasioned by political instability, the long years of military rule with its characteristic authoritarianism and desecration of human rights, the pretentious virtue of Western democracies, conflicting cultural and institutional patterns, as well as the low level of consciousness of a majority of African peoples. Other indices of underdevelopment include lack of basic infrastructure, unemployment, illiteracy, and poverty.

Nigeria is buffeted in grave proportion by the above dimensions of underdevelopment. Many Nigerians live in want, abject poverty and penury, and are devastated by preventable diseases. Many wallow in seemingly irredeemable ignorance notwithstanding the Jomtiem

82. See *A. G. of Lagos State v. A.G. of Federation*, [2004] 20 NSCQR 99 (Nigeria); see also *A. G. Abia State v. A.G. Federation*, [2006] 16 NWLR 265, wherein, although the Supreme Court declared it unconstitutional, the federal government paid deductions from the Federation directly to the local government. *A. G. Federation v. A. G. Abia State & 35 Ors.* (No. 2), [2002] 6 NWLR 542; *A.G. of Ogun State & Ors v. A. G. of the Federation*, [2002] 18 NWLR 232.

83. See, Umoh, *supra* note 54, at 47-48.

84. EZE, *supra* note 46, at 4.

85. *Id.*

Declaration of Education for All by the year 2000.⁸⁶ Commenting on underdevelopment of Nigeria and its impact on human rights, Ake observed that “freedom of speech and freedom of the press do not mean much for a largely illiterate rural community completely absorbed in the daily rigors of the struggle for survival.”⁸⁷ Lending his opinion on this problem, Aguda lamented that:

The practical actualization of most of the fundamental rights cannot be achieved in a country like ours where millions are living below starvation level... In the circumstances of this nature, fundamental rights provisions enshrined in the constitution are nothing but meaningless jargon to all those of our people living below or just at starvation level.⁸⁸

Oputa,⁸⁹ in recognizing the problem which the condition of our underdevelopment poses to the realization of human rights noted that:

One of the best tests of the efficacy of the fundamental rights provisions of our constitution should ...be whether the rights enshrined therein are accorded to the poor, the unemployed, the weak, the oppressed and the defenseless. In theory, our Constitution in its preamble talks nobly of “promoting the good government and welfare of all persons in our country on the principles of freedom, equality and justice”...But in actual practice one sees that it is the powerful, the rich and the dominant class that seem to have all the rights, while the only right left to the poor, the weak and the down-trodden seems to be their rights to suffer in silence, to be patient and wait for their reward in heaven (if they are believers).

Indeed, it is our faulty political system and underdevelopment which is partly responsible for the grave neglect which the social, economic and cultural rights have suffered in Nigeria. Concomitantly, because human

86. The World Conference on Education For All, which took place March 5-9, 1990 at Jomtien, Thailand, declared *inter alia* that “education is indispensable for human progress and empowerment,” and as such that all must be educated by the year 2000. Nigeria committed itself to the realization of this vision, as one of the countries which attended the Conference. Thereafter, there was a re-affirmation of the goal of the Conference by Nigeria. See BENJAMIN OBI NWABUEZE, *CRISES AND PROBLEMS IN EDUCATION IN NIGERIA* 123 (1995).

87. Claude Ake, *The African Context of Human Rights*, 35 AFRICA TODAY 5, 6 (1987).

88. T. Akinola Aguda, *Judicial Process and Stability in the Third Republic*, NAT’L CONCORD Nov.7, 1988, at 7.

89. C. A. OPUTA, *HUMAN RIGHTS IN THE POLITICAL AND LEGAL CULTURE OF NIGERIA* 67-68 (1989).

rights are interdependent and interrelated, the civil and political rights cannot be meaningfully realized.

I. LOCUS STANDI

Human rights promotion and protection in Nigeria is too often hamstrung by the doctrine of *locus standi*. *Locus standi* means “legal standing” or the capacity—based on sufficient interest in a subject-matter—to institute legal proceedings in the pursuit of a certain cause.⁹⁰ The courts have always insisted that unless a person has the *locus standi*, he is a meddlesome interloper and as such, a suit at his instance will be incompetent and unmaintainable.⁹¹

Locus Standi is inextricably interwoven with the issue of jurisdiction. Accordingly, where there is want of *locus standi*, the court will have no jurisdiction to entertain the matter.⁹² In *Attorney General of Kaduna State v. Hassan*,⁹³ Oputa J.S.C. succinctly articulated the *raison deter* for this doctrine as follows: “The legal concept of standing or locus is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest.”⁹⁴

Consequently, in human rights litigations the issue of *locus standi* or sufficient interest is not only relevant but paramount. Thus, for a person to sustainably activate the judicial process to redress an infraction of human rights, he must show that he is an interested person—one whose right has been, is being, or is in imminent danger of being violated or invaded. Where a public injury or public wrong or infraction of a fundamental right affecting an indeterminate number of people is involved, to be competent to sue, a plaintiff must show that he has suffered more, or is likely to suffer more, than the multitude of individuals who have been collectively wronged. Thus, although there is now a commendable relaxation of the rigid, restrictive and constrictive

90. See *Abraham Adesanya v. The President of the Fed. Republic of Nigeria*, [1981] 2 N.C.L.R. 358 (Nigeria); *Adenya v. Odemeru*, [2003] F.W.L.R. (pt 158) 1258 (Nigeria); *Attorney General, Kaduna State v. Hassan*, [1985] 2 N.W.L.R. (pt 8) 483 (Nigeria); *Akilu v. Fawehinmi*, (No. 2) [1989] 2 N.W.L.R. (pt 102) 122 (Nigeria).

91. See, e.g., *Odeneye v. Efunuga*, [1990] 7 N.W.L.R. (pt 164) 618 (Nigeria); *Abraham Adesanya v. The President of the Fed. Republic of Nigeria*, [1981] 2 N.C.L.R. 358 (Nigeria).

92. *Akinbinu vs Oseni*, [1992] 1 NWLR 97 (Nigeria).

93. *Hassan*, 2 N.W.L.R. (pt 8) 483.

94. *Id.* at 524-525.

interpretation of the doctrine of *locus standi*,⁹⁵ the doctrine remains a formidable albatross in human rights litigation in Nigeria.

J. WEAK INSTITUTIONAL INFRASTRUCTURE

A major deficiency in the development of human rights is one of enforcement. Since the enforcement of human rights largely depends on the domestic machinery of national governments,⁹⁶ Nigeria has erected seemingly firm institutional infrastructure to safeguard human rights in the country. The institutional infrastructure includes the judiciary,⁹⁷ the National Human Rights Commission,⁹⁸ the Public Complaints Commission,⁹⁹ and the Legal Aid Council.¹⁰⁰ Regrettably, the various institutional mechanisms are not strong enough or capable of providing adequate and effective platforms for meaningful human rights promotion and protection. This is especially so because many of these institutional mechanisms are not independent and do not have the financial and logistical capability to meaningfully function as they ought to. This article earlier spotlighted some of the problems confronting the judiciary. The extra-judicial bodies are in a more precarious position. Being controlled, directly or indirectly, by the government through funding, composition of membership, and provision of operational guidelines, among others, government interference or influence becomes not a mere possibility but a reality. For instance, it is widely believed that the redeployment of Kehinde Ajoni, the erstwhile Executive Secretary of the National Human Rights Commission (NHRC), was a result of the scathing human rights report she presented at the 9th session of the United Nations Human Rights Council¹⁰¹ held in Geneva, Switzerland on Monday, February 9, 2008.

95. This relaxation is exemplified by the decision of the Supreme Court in the celebrated case of *Akilu v. Fawehinmi*, 2 NWLR 122.

96. STEINER ET AL., *supra* note 16, at 709.

97. Established by the 1999 Constitution (as amended). CONSTITUTION, Art. 6 (1999) (Nigeria).

98. Established pursuant to the National Human Rights Commission Act, (2004) Cap. 46 (Nigeria).

99. Established by the Public Complaints Commission Act, (2004) Cap. 37 (Nigeria).

100. Established under the Legal Aid Act, (2004) Cap. L9 (Nigeria).

101. See Adejuwon Soyinka, *On Death Row*, TELL MAGAZINE (Nigeria), Apr. 20, 2009, at 20-22.

II. PRESCRIPTION FOR CONSTITUTIONAL AND INSTITUTIONAL REFORMS

It is the state, with its various institutions, which is primarily responsible for guaranteeing the implementation and enforcement of human rights.¹⁰² This mandate is explicitly stated in the Charter of the United Nations as follows:

All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of 'universal' respect for, and observance of human rights and fundamental freedom.¹⁰³

Consequently, to overcome the multitudinous challenges stated above, it is imperative that necessary constitutional and institutional reforms be undertaken in addition to the need for government to demonstrate pragmatic political will to promote and protect human rights. It is therefore intended in this part to briefly propose the following reforms which, if faithfully implemented, will ensure better protection and aA

A. EXCLUSION OF HUMAN RIGHTS INSTRUMENTS FROM THE AMBIT OF SECTION 12 OF THE CONSTITUTION.

Human rights instruments should be excluded from the provision of section 12 of the 1999 Constitution requiring the National Assembly to enact treaties to which Nigeria is a party into law before they become binding and enforceable in Nigeria. This means that any international human rights instrument to which Nigeria is a party will automatically become applicable and enforceable in Nigeria without the necessity of the same being enacted into law by the National Assembly. This way, Nigeria will be bound by all human rights instruments it ratifies on the basis of *pacta sunt servanda*.

B. ABRIDGEMENT OF LIMITATION PROVISIONS:

The ambit of permissible constitutional derogations must be severely limited. Accordingly, the various sections—such as sections 33 and 45 of

102. HUMAN RIGHTS: INTERNATIONAL PROTECTION, MONITORING, ENFORCEMENT 257 (Janusz Symonides ed., 2003).

103. U.N. Charter art. 56. In addition, other international human rights instruments specifically define States' undertakings for the promotion and protection of human rights. For instance, the Vienna Declaration and Programme of Action provides that the protection and promotion of human rights is the first responsibility of governments. World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, preamble, ¶ 1, U.N. Doc A/CONF.157/24, (July 12, 1993) [hereinafter *Vienna Declaration and Programme of Action*].

the 1999 Constitution which provide wide and sometimes nebulous limitations on some of the rights—must be amended. The danger posed by these derogation clauses informs their condemnation by Honorable Justice Bhagwati. In his words:

We must therefore take care to ensure that in no situation, however grave it may appear, shall we allow basic human rights to be derogated from, because once there is a derogation for an apparently justifiable cause, there is always a tendency in the wielders of powers in order to perpetuate their power, to continue derogation of human rights in the name of security of the state. Effective respect for human rights must place two kinds of restrictions on the forces of derogation. It must limit the circumstances and specify the procedures under which derogation may be legitimately invoked and it must also identify and reserve certain core human rights such as the right to life or the right to personal liberty, or freedom *ex post facto* from criminal laws which are the most vital from a political science perspective, as absolutely non-derogable.¹⁰⁴

We consider it irresistible to commend this insightful pronouncement to the Nigerian State.

C. STRENGTHENING OF THE EXTRA-JUDICIAL BODIES:

Extra-judicial bodies for human rights enforcement must be strengthened to promote their efficiency and efficacy in human rights promotion and protection. Judicial enforcement of human rights is characteristically protracted and expensive. This is why over-reliance and dependence on the judiciary must be de-emphasized and discouraged in favor of these extra-judicial bodies which are less cumbersome, less technical and inexpensive. Accordingly, the human rights agencies should enjoy reasonable independence to free them from executive interference.¹⁰⁵ In addition, the agencies especially, the National Human Rights Commission, and the Public Complaints Commission must be strengthened and adequately funded. The constituent instruments of the Commissions should be amended to grant them financial autonomy so that they can discharge their noble statutory mandate. Apart from ensuring the financial autonomy of the Commissions, government should be charged with the responsibility of providing technical and

104. Bhagwati, *supra* note 7, at xxi.

105. As earlier noted, the appointment, funding, and operational guidelines of these executive bodies are controlled by the executive branch of government—often the most dangerous human rights predator.

infrastructural support and solidarity for their work and those of other human rights organizations.

D. DEDICATED OBEDIENCE TO COURT ORDERS:

The executive branch has the onerous, important, and compelling duty to ensure prompt compliance with the orders of the courts. Human rights should no longer be a matter of rhetoric. Rather, the government must constantly and deliberately seek to advance the cause of human rights through human rights-friendly legislation, policies, and actions. It is fitting and commendable that the Federal Government of Nigeria, in response to the recommendation of the Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in Vienna Australia in 1963,¹⁰⁶ has drawn up a comprehensive National Action Plan for the promotion and protection of Human Rights in Nigeria.¹⁰⁷ In furtherance of the mandate of the Vienna Declaration, the Nigerian National Action Plan has carefully identified and drawn up an integrated and systematic national strategy to help realize the advancement of human rights in Nigeria. This noble and laudable effort will be meaningless and remain dead letters if the government fails to honestly and committedly pursue the program of action articulated therein. In discharging this commitment, the Government must always ensure that persons of proven integrity with spotless moral character are those appointed to the bench and bodies consecrated for human rights promotion and protection.

E. SUSTAINMENT OF DEMOCRACY:

Human rights can no longer be meaningfully discussed outside a democratic environment. Indeed, it is axiomatic that the more democratic a state is, the less violation of human rights the citizens of that state experience.¹⁰⁸ The current democratic environment, with all its imperfections, is undoubtedly more clement for the protection and development of human rights than military rule, which is characteristically associated with autocracy and totalitarianism. As the Vienna Declaration succinctly states, “democracy, development and

106. Vienna Declaration and Programme of Action, *supra* note 103.

107. The National Action Plan (NAP) for the Promotion and Protection of Human Rights in Nigeria was presented at the United Nations at Geneva, Switzerland in July, 2009, *available at* http://www.dhnet.org.br/dados/pp/nacionais/pndh_nigeria_2_2009_2013.pdf.

108. STEINER ET AL., *supra* note 16, at 207

respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.”¹⁰⁹

Accordingly, the current culture of violence and impunity must be halted. Those in public offices, especially in the legislative and executive branch, must be more transparent in the way the affairs of government are conducted just as they owe a duty to abide by the mandate of section 15(5) of the 1999 Constitution (as amended) to “abolish all corrupt practices and abuse of power.” Further, to sustain our current democracy, the political class must remember the injunction of section 13 of the 1999 Constitution that “it is the duty and responsibility of all organs of government, and all the authorities and persons exercising legislative, executive and judicial powers to conform to, observe and apply the provisions of the fundamental objectives and directives of state policy.” This is an unmistakable agenda for good governance. It is in keeping faith with this agenda that democracy will be sustained, and concomitantly, human rights will be better protected in Nigeria.

CONCLUSION

Without doubt, concern for human rights is universal, which is why the concept of human rights has gained remarkable appeal and significance in our world of pluralism, diversity, and interdependence. Regrettably, the enjoyment of human rights in Nigeria—as in many nations across the globe—has been hamstrung by multifarious and multidimensional impediments. This is why atrocious violations of human rights still exist in Nigeria today. Many of the hindrances to human rights protection in Nigeria have been sustained, and remain unabated, partly because of a lack of genuine and practical commitment on the part of the government to ensure meaningful enjoyment of these rights. Successive Nigerian governments, like many governments, have not been able to match the impressive record of codification and prescription of the rights with equally rigorous application and enforcement. Rather, they have been contented with mere codification presumably because—as noted by Haleem—¹¹⁰generally, governments find it difficult to vote against what is deemed to be good and what makes prudent political sense in light of the fact that human rights issues now form part of the equation of international relations.

109. Vienna Declaration and Programme of Action, *supra* note 103, at ¶ 8.

110. Muhammad.Haleem, *The Domestic Application of International Human Rights Norms, in DEVELOPING HUMAN RIGHTS JURISPRUDENCE: THE DOMESTIC APPLICATION OF INTERNATIONAL HUMAN RIGHTS NORMS* 91, 101 (1988).

Since human rights are most effectively protected at the national level, it is therefore imperative for each national government to take all legislative, judicial, and administrative measures in order to prevent, prohibit, and eradicate all human rights violations. It should not merely be fashionable to accept and adopt international human rights instruments. Rather, practical commitment ought and should be demonstrated at all times towards the realization of their noble objectives. Accordingly, it is hereby advocated that meaningful steps be taken to adopt the proposals for reform stated in this article among others. Specifically, the ambit of permissible derogation must be well-defined and severely limited. Further, the dualist model on the applicability of international human rights treaties should be abolished as it constitutes a significant drawback to human rights protection in Nigeria. Finally, the courts must at all times adopt a generous interpretation of human rights provisions—and avoid what has been called the austerity of tabulated legalism—suitable to give individuals the full measure of the fundamental rights and freedom.