Human Rights Protection under the Nigerian Constitution

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INTRODUCTION:

From the beginning let me literally define human rights as rights inherent in our nature without which we cannot live as human beings. Thus, human rights and fundamental freedoms do allow us to develop fully as human beings and use our human qualities, intelligence, talents and conscience to satisfy our spiritual, social and economic needs. These rights are based solely on humankind’s increasing and inherent demand for a life in which the dignity and equality of each human being are respected, protected and promoted. Denial of these rights by individuals and states, not only brings about individual and personal tragedy or disaster to the victim, but also creates conditions of social and political unrest, sowing the seeds of hatred and violence in the society and between nations.¹ Suffice it to say that the

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fundamental objectives of human rights law is to “secure the self-actualization of every person, to protect each individual from abuse of power by state agents and to assure that basic needs are can be met”\textsuperscript{2}

The history of ‘conventional’ human rights has been shaped by major world events and by Peoples’ struggle for freedom, equality and dignity throughout the world. Hilaire Barnett told us that the most prominent attempt ever made to protect human rights at the international level was the establishment of the League of Nations after the World War 1 and the “imposition of certain safeguards of human rights in peace treaties negotiated after the war for the protection minorities”.\textsuperscript{3}

The catastrophic effect of the Second World War, particularly “in the light of holocaust and the outrage genocide”\textsuperscript{4} prompted the international community to put their forces together, irrespective of their ideological and historical differences, for a binding international document creating legal obligations to protect and preserve human rights. Thus, after the war, the international community became convinced that there was real need for the protection of human rights- it being integral for the preservation of world peace and cooperation. Thus, before the

\textsuperscript{1} See for literal discussions on human rights \textit{Teaching Human Rights} (United Nations, New York, 2004)
\textsuperscript{2} D. Shelton, \textit{Environmental Rights} in “Peoples’ Rights” (ed.) P. Alston (Oxford, OUP, 2001) p. 185
Second World War issues on human rights were principally a matter of domestic jurisdiction of states. In the light of this international challenge, one of the “great aspirational documents of our human history” was adopted. The Universal Declaration on Human Rights inspired a large number of international as well as regional human rights instruments.

The adoption of the Universal Declaration of Human Rights in 1948 for the first time placed certain limitations on state’s actions and made individuals, in addition to their states subject of international law. The year 1966 saw the coming into life of two most important treaties on human rights protection i.e. the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The former introduced a set of negative rights like right to life, freedom from torture, freedom from discriminations etc, which require states to refrain from acting in certain unjust ways interfering with the lives of individuals and hence called the first generation rights. These rights are contained under Chapter IV of the Nigerian Constitution 1999. The latter introduced what generally known as second-generation rights requiring some affirmative state actions for their realization. They relate to the general welfare and well-being of the entire society rather than one individual. They consist of right to

5 Mary Robinson, former United Nations High Commissioner for Human Rights, referring to the Universal Declarations on Human Rights, on the 50th Anniversary of the UDHR in 1998; quoted in Teaching Human Rights, No. 1 above
6 Ibid,
7 The Czech jurist and first Secretary General of the International Institute for Human Rights in Strasbourg divided human rights into three generations as far back as 1977. However, the terminology was introduced by Vasal, Karel (infra)
work, education, social security, food, etc. These are typically contained under Chapter II of the Nigerian Constitution 1999 titled “Fundamental Objectives and Directive Principles of State Policy” as aspirational statements and are non-justiciable because they are not ‘rights’ in Nigeria. Of recent recognition is another category of rights classified as third-generation or solidarity rights distinguishable from the earlier mentioned two categories in that “their realization is predicated not only upon both the affirmative and negative duties of the state, but also upon the behaviour of each individual”8. These include self determination and a host of other rights that are presently controversial like the right to development, right to a healthy environment, right to intergenerational equity etc.

Nigeria, being a party to many international as well as regional human rights instruments and a member of international community has obligations both under these treaties and under the rules of customary international law. Some of the international human rights treaties Nigeria signed and ratified include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (the ICESCR), the Convention on the Rights of the Child (CRC), the Convention against Torture (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of
Discrimination Against Women (CEDAW).\(^9\) Nigeria has also signed and ratified Rome Statute of the International Criminal Court.\(^10\) The African Charter on Human and Peoples’ Rights has also been signed and ratified\(^11\) by Nigeria so also the African Charter on the Rights and Welfare of the Child.\(^12\)

**The real ‘deal’: jargon, jargon…**

Coming back to the title of this paper which is “Human Rights Protection under the Nigerian Constitution” I may say that the title seems misleading. Nevertheless, I understood it to mean the fundamental rights provisions under Chapter IV and to certain extent, although debatable the provisions of Chapter II and other provisions of the 1999 Constitution containing mechanisms for the implementation of human rights provisions. I am going to argue that in addition to the fact that most the human rights provisions under Chapter IV of the 1999 Constitution are vague and incomplete there is no practical justification for making some of the Chapter II ‘rights’ non-justiciable in this country. I am also going to highlight on the new dimension of human rights violation which commonly occurs in our society upon which all of us contribute one way or another.

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\(^9\) For the ratification information on all the treaties and others ratified by Nigeria see [http://www1.umn.edu/humanrts/instree/htm](http://www1.umn.edu/humanrts/instree/htm); accessed on 15\(^{th}\) October, 2007

\(^10\) On 1\(^{st}\) June, 2000, See Ibid

\(^11\) Signed on 31\(^{st}\) August 1982 and ratified on 22\(^{nd}\) July, 1983.

\(^12\) Signed on 13\(^{th}\) July, 1999 and ratified on June, 2001
Generally speaking, human rights provisions under the 1999 Constitution may be viewed from three perspectives following Karel Vasal’s three-fold division of rights into the so-called first, second and third generation rights.13 Ideally, the categorization shouldn’t be used as a way of prioritizing one generation of rights over another. This is because, “all human rights are universal, invisible and interrelated”14. Unfortunately I may say, we will soon find out that this has never been the case in the Nigerian Constitution. Certain rights are given more preference and accorded more protection than others. Well, as Professor Ihonvbere pointed out, this might have been one of the unfortunate products of undemocratic constitutional process which continues to haunt the legitimacy of the 1999 Constitution.15

The so-called first-generation rights introduced a set of negative rights like right to life, right to personal liberty, right to dignity to human person, right to freedom from torture, right to freedom from discriminations etc., Under this category states are required to refrain from acting in certain unjust ways interfering with the lives of individuals. These are contained under Chapter IV of the Nigerian Constitution 1999 and are basically the fundamental rights in Nigeria. These rights are

enforceable against government, its agencies and functionaries and against individual persons by all Nigerian citizens and some by even non-Nigerians.\textsuperscript{16} Sometimes these are referred to as civil and political rights. They consist of right to life; right to dignity of human person; right to personal liberty; right to fair hearing; right to private and family life; right to freedom of thought, conscience; right to peaceful assembly and association; right to freedom of movement; right to freedom from discrimination; right to acquire and own immovable property anywhere in Nigeria. It may be interesting to note that Nigeria’s successive constitutions from 1960 to the 1999 made these rights justiciable and therefore enforceable so that Nigerian citizens whose civil or political rights are infringed upon by government or its functionaries or agencies or by even individual persons can institute legal action in the court of law for redress.\textsuperscript{17}

The second-generation rights are in Nigeria not ‘rights’ although they relate to the general welfare and well-being of the entire society rather than one individual. They consist of right to work, education, social security, etc. These are typically contained under Chapter II of the Nigerian Constitution 1999 titled “Fundamental Objectives and Directive Principles of State Policy” which contains “lofty ideals to which the State should aspire in the discharge of its obligations towards citizens”\textsuperscript{18}.

The provisions in Chapter II except by some miraculous theoretical academic

\textsuperscript{16} See \textit{Theresa Onwo v Nwofor Oko} [1996] 6 NWLR pt. 456, p. 584
\textsuperscript{17} See section 46 of the 1999 Constitution.
\textsuperscript{18} C. K. Agomo, \textit{Gender and Human Rights in Nigeria}, CODESRIA BULLETIN, No. 1, 2003, p. 4
extensions and invocations are unenforceable directly in Nigeria. Therein lies the irony! Examples of second-generation rights include the right to education, work, social security, food, and an adequate standard of living.

Of recent recognition is another category of rights classified as third-generation or solidarity rights distinguishable from the earlier mentioned two categories in that “their realization is predicated not only upon both the affirmative and negative duties of the state, but also upon the behaviour of each individual”19. These include self determination and a host of other rights that are presently controversial like the right to development, right to a healthy environment, right to intergenerational equity, right to peace etc. Some of these may be found under Chapter II as fundamental objectives of state.

Further, it should be noted that within the Chapter IV itself not all fundamental rights are the same in quality, extent or nature. Three categories of rights may be identified i.e. absolute rights; limited rights and qualified rights.

Absolute rights are by their nature absolutely or unconditionally guaranteed. These rights “can never be departed from because they are fundamental to the rights of man”20. Some of these rights are for example the right not to be subjected to

torture, inhuman or degrading treatment, the right not to be held in slavery or servitude, the right not to be punished without law etc.

*Limited or restricted rights* are those upon which limitations have been placed by the constitution and their infringement within the scope of that limitation may not, depending on the circumstances be a contravention of the constitution. For instance, right to life under section 33(1) of the 1999 Constitution is subject to limitation under section 33(2). The limitation is within the scope of that section only to the effect that deprivation of life may not be regarded as breach of the section if it results from the use of force as permitted by law for the defense of a person from unlawful violence; defense of property; lawful arrest; prevention of escape from lawful detention or to quell riot, insurrection or mutiny.

Finally some rights are *qualified rights* in sense that the Constitution permits such rights to be interfered with in certain situations under certain conditions. The type of this qualification can be found under section 45 of the 1999 Constitution. Thus, in the interest of defense public safety, public order, public morality or public health or for the protection of rights and freedoms of other persons rights guaranteed under sections 37, 38, 39, 40 and 41 can be restricted by law that is reasonably justifiable in democratic society.

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21 See section 34 of the 1999 Constitution
22 See section 36(12) of the 1999 Constitution
Is non Justiciability of Chapter II unjustifiable?

The non-justiciable ‘rights’ are contained under Chapter II of the 1999 Constitution – sections 14 to 24 as fundamental objectives and directive principles of state policy. They consist of government and the people; political objectives; economic objectives; social objectives; educational objectives; foreign policy objectives; environmental objectives; directive on Nigerian cultures; obligation of the mass media; national ethics and duties of the citizens. Section 13 provides for the fundamental obligations of the governments in respect of these directives to the effect that it shall be the duty of all organs of government, and of all authorities and persons exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of Chapter II. It should be noted that the provision of section 13 alone could have transformed the entire chapter II provisions into enforceable rights if not for the provision of section 6(6)(c) which seems to have taken away this magnificent gift with another hand. Section 6 (6)(c) provides that the judicial powers under section 6 of the Constitution shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as the whether any law or judicial decision is in conformity with the provisions of Chapter II. We will soon find out how ‘unwise’ and unnecessary these provisions are in present day realities in this country.
There is an argument opposing recognition of second-generation rights as human rights on the assumption that the rights are basically unenforceable because the courts will obviously be unable to enforce affirmative duties of state. And that, regardless of the political system or level of economic development, all states will be able to comply with the civil and political rights, but not all states have the ability to provide the financial as well as technical resources for the realisation of obligations such as education, food, work and social security.²³

These arguments seem to be practically baseless. Practically speaking, everybody knows that the “long recognised basic needs of man were not civil and political rights but rather social and economic both in form and substance”²⁴. Naturally, food, shelter and clothing are more important to man than participation in politics or peaceful assembly or privacy. What is the meaning of right to private and family life guaranteed under section 37 of the Nigerian Constitution to a homeless man sleeping under the bridge? What does right to life under section 33 mean to ordinary Nigerians if one in every three of them will every day go to bed with an empty stomach? Is it not better if the right to private and family life is complemented with enforceable right to housing commensurate to one’s station in

life? In the widespread of poverty, chronic illiteracy, starvation and squalor how can human dignity and freedom be promoted?

As I have said earlier, the provision of section 6(6)(c) of the 1999 Constitution expressly disallows judiciary in this country to invoke its powers in relation to any issue or question as to whether any act or omission by authority or person or as to whether any law or any judicial decision is in conformity with the provisions of chapter II of the constitution. Whereas this sub-section clearly ‘ousts’ powers of the courts in this country to enforce the provisions of chapter II, section 13 as opening section of chapter II enjoins all the organs of government and of all authorities and persons in this country to conform and observe and apply the provisions of chapter II.

In the present day realities in this country, “section 6(6)(c) is not a wise provision in the constitution”.25 It has been observed that the endemic unconstitutional military interventions in this country could be attributed to absence of enforcement of chapter II provisions. Thus, if the civilian leaders were initially being compelled to comply with these objectives “there would have been no reasons for military to intervene in Nigerian politics and government.”26

It has been argued that it could not have been the intention of section 6(6)(c) to exclude all matters under chapter II from “judicial searchlight” because the

25 Ibid, p. 79
26 Ibid,
provision says “except as otherwise provided by the Constitution”. Well, that is true, nevertheless even with the Supreme Court’s decision in A.G. Ondo State v A.G. of the Federation & Ors it may be difficult to file and sustain an action solely for the enforcement of the provisions of Chapter II.

In the absence of enforcement provisions of chapter II we can only resort to judiciary for elaborate and active interpretation of fundamental rights provisions to give life and meaning to chapter II provisions. This can be achieved by either mobilizing the existing rights guaranteed under Chapter IV for this purpose or by invoking the provisions of the African Charter containing some of these rights. It should be noted that through the Ratification and Enforcement Act Cap 10, Laws of the Federation (LFN) 1990 the African Charter was incorporated into our domestic laws; hence its provisions are enforceable in Nigeria.

The Nigerian judiciary should learn from courts in India (and South Africa) by going beyond the restriction imposed by the non-justiciability provisions of chapter II. In Olga Tellis v Bombay Municipal it was held that:

28 [2002] 10 NSCQR 1034
30 See Abacha v Fawehinmi [2000] 6NWLR pt. 600 p. 228
31 AIR 1986 SC 180
“Deprive a person of his right to livelihood and you shall deprive him of his life…Any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life”

Further, in *Exparte Chairperson of the Constitutional Assembly: In ReCertification of the Constitution of Republic of South Africa*, the Constitutional Court of South Africa held that:

“(These rights are, at least to some extent, justiciable. As we have stated in the previous paragraph, many of the civil and political rights entrenched in the (constitutional text before this Court for certification in that case) will give rise to similar budgetary implications without compromising their justiciability. The fact that socio-economic rights will almost inevitably give rise to such implications does not seem to us to be a bar to their justiciability. At the very minimum, socio-economic rights can be negatively protected from improper invasion”).

There is no doubt that the Nigerian Constitution as one of the best constitutions in the world, perhaps in terms of ‘drafting artistry’, guaranteed to certain limited

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32 [1996] (4) SA 744

33 Quoted in *The Premier of the Province of the Western Cape and Ors v Irene Grootboom & Ors* [2001] 1 CHR 261 at 282
extent some human rights of Nigerian citizens. Theories apart, it is one thing that rights under chapter IV have been guaranteed and it is completely another thing that they are practically protected and promoted by government and its functionaries and by members of the community.

With the coming back of democracy to this country in 1999 definitely there have been some encouraging improvements in the human rights record of this country, but unfortunately human rights violation has taken new dimension – a civilian shape. The violators are no longer the usual military men or armed policemen only. Unrealistic and unpopular political programs and economic policies by some of the democratically elected governments have directly or indirectly drained most of the Nigerian citizens their dreams of realizing God’s bestowed rights.

It is indisputable that human rights violation in our society is quite rampant – so rampant that in a day, if one does not directly or indirectly become a victim, one must probably see or know someone who is a victim. As I have said earlier on, the perpetuators are not governments alone.

We see the violations in our offices, in our hospitals, in our schools, on our roads, in our communities, villages and cities and right in our homes and within our own families. One cannot count, if one were to count the number of human rights violations one sees in a given day. The perpetuators are all over, so also the victims.
Coming out from home to this place I have seen countless human rights violations. I saw a number of them right at the gate of this historic library.

The helpless and ‘hopeless’ ‘almajiris’ begging day and night on our streets are victims of our own and governments’ violations.\(^{34}\) The physically and mentally challenged persons wandering are victims of violation of human rights guaranteed in our magnificently drafted constitution. The hardworking ‘achaba’ riders most of whom were compelled out of schools and villages to cities for greener pasture are also victims of human rights violations. Back to our houses, the poor little girl ‘employed’ or ‘enslaved’ as ‘domestic help’ is a victim of our own violations. The poor civil servant praying to own a house at his retirement - who can be dismissed summarily by his boss for personal reasons, too is a victim. Our brothers and sisters languishing and dying in piecemeal in our prisons and police cells are victims of a number of guaranteed human rights. Our hearts must go out to the helpless women and children and other vulnerable persons in our villages to whom human right is a blessing to be wished for and not a cause to be fought for. To my mind, all these people are victims of human rights violation because of one thing only, which is our inability to be our brothers’ keepers and to diligently choose trustworthy persons as our leaders.

\(^{34}\) About 15 million of these children below 15 years are engaged in child labor.
Permit me to call our attention to some few examples. In July 2007 the Amnesty International delegates visited 10 prisons in the FCT, Enugu, Lagos and Kano states and a psychiatric hospital in Enugu which housed some mental illness patients transferred from prison.\textsuperscript{35} 250 prisoners were interviewed including 55 women, 37 persons sentenced to death and almost 160 inmates awaiting trial.

At the time of the Amnesty’s International’s visit to Kano Central Prison, the prison housed almost double the population it was initially designed to accommodate.\textsuperscript{36} The prison which was built since 1936 was meant to accommodate 690 inmates only. As at 2007 it was accommodating 1268 inmates 78.9\% of whom were awaiting trial. The place was so over-crowded that in one cell there were over 125 inmates. Some of the inmates were awaiting trial for up to 8 years. The report stated that:

“The stuffy, dark cells, which are supposed to hold 60 people, are packed with up to 130 inmates. Consequently nearly half of the inmates share a bed or have no bed at all… Underneath a bed in one of the two cells in the female wing, Amnesty International saw a mentally and physically ill woman chained to the leg of a bed. She had

\textsuperscript{35} See Nigeria: Prisoners’ Rights Systematically Flouted (Amnesty International Publications, 2008)
\textsuperscript{36} Ibid;
large bumps on her arms. There are no facilities for inmates with mental illness, beyond occasional clinic visits from a psychiatric”.³⁷

There is the same story in almost every prison in this country— the story of congestion and maltreatment.

Rule 10 of the UN Standard Minimum Rules for the Treatment of Prisoners (SMR) stated:

10. “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”.

During this severe cold season it may not be surprising to find out that most of the inmates in our prisons are sleeping on bare floor some with no clothing at all. It may not be wrong to state that for the range of these human rights violations all stakeholders throughout this country’s criminal justice system are culpable for maintaining this situation. All of us are also culpable, for keeping silent.

³⁷ Ibid; p. 30
The same sad story was reported in respect of police. The police were blamed of not bringing suspects promptly before the court of law despite all the guarantees in the constitution. Suspects are detained for weeks “and in some cases months”\(^{38}\) before taken to court. They are usually ill-treated in police cells; many are being denied their right to see their lawyer or even their families. Torture is being used to extract confessions. The intimidating slogan “Bail is free” is displayed in almost all the police stations in this country. Nevertheless, the truth is that bail is never free regardless of who you are or what is committed.

A report of the Human Rights Watch pointed out that:

“Despite repeated promises of reform by senior government and police officials, extra-judicial killings, torture, ill treatment, arbitrary arrests and extortion remain the hallmarks of the Nigerian police. Throughout the years, a large number of extra-judicial killings occurred not only in the context of crime fighting operations against alleged armed robbers, but also during routine duties such as traffic control. Cases of torture

\(^{38}\) ibid
and ill-treatment by the police during arrest and detention are common. 39

CONCLUSION

There is no doubt that to certain limited extent protection of human rights has been guaranteed in the Nigerian Constitution. The question of whether or not the rights guaranteed are being protected, promoted and respected by the government and its functionaries and by all of us, is completely another thing. The most basic needs of Nigerians like housing, food, environment, education have not been addressed as fundamental rights. What a big irony! I wonder what freedom of speech will mean to a hungry person. Or what right to privacy will mean to homeless person. Women, children and other members of the vulnerable group have not been specifically provided for in the Constitution. Despite increased economic growth in recent years in this country thousands of Nigerians continue to live without access to adequate housing, education and health care. The culture of impunity for torture and ill-treatment by the police continued. Our prisons continue to congest and congest every day. Domestic violence right in our own families is reported every day. Human rights defenders and journalists critical of the government continued

to face intimidation and harassment. We see human rights abuse every day, everywhere and the rate continues.

What is now left for us? Good leaders!

Thanks you for listening.