



NEW PERSPECTIVES ON FUNDAMENTAL HUMAN RIGHTS IN NIGERIA

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ABSTRACT

This paper rethinks the meaning and reach of fundamental human rights in Nigeria by highlighting the gap between constitutional guarantees and real-world experiences. It argues that emerging social, environmental, and digital challenges demand a broader, more responsive interpretation of rights, one that centres lived realities rather than narrow doctrinal frames. The discussion spotlights persistent enforcement deficits, including weak institutional capacity, uneven judicial access, and recurring political interference, while also pointing to innovative openings created by public-interest litigation and grassroots mobilisation. It contends that Nigeria's rights landscape is shifting, not because the legal texts have changed significantly, but because social expectations and accountability pressures are evolving rapidly. Ultimately, the paper calls for a more dynamic theory of rights, one that recognises environmental protection, data autonomy, and community self-determination as core to human dignity. This perspective pushes beyond traditional civil and political categories to imagine a rights framework fit for a complex, climate-stressed, and digitally mediated society that empowers people at every level.

Keywords: *Fundamental, Human Right, Nigeria*

1.0 INTRODUCTION

Over the years, there have been great strides made in the promotion and protection of human rights. Not only have there been local and international instruments prepared and adapted to this end, but human rights standards now have greater force of law than at any time in human history.¹ The concern of the judiciary with the promotion and protection of human rights stems from the realisation that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world. This resulted in the pledge of Nigeria and other states and human rights organisations to achieve, in co-operation with the judiciary, the promotion of universal respect for and enforcement of human rights and fundamental freedoms. The paper seeks to examine the state of human rights norms and their enforcement in Nigeria.

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¹ RE Howard-Hassmann, 'The Second Great Transformation: Human Rights Leapfrogging in the Era of Globalization' *Human Rights Quarterly* (2005) 27 (1) 1-40.



1.1. Meaning of Human Rights

Human rights have been severally defined by different scholars. It has been defined as those claims made by men, for themselves or on behalf of other men, supported by some theories which concentrate on the humanity of man as a human being, a member of humankind.²

Thus, Cranston asserted that

Human rights are something of which no man may be deprived without a great affront to justice. There are certain deeds which should never be evaded, some supremely sacred things.³

The expression ‘human rights’ in its widest connotation embraces those civil, political, economic, social, cultural, group, solidarity and developmental rights which are considered indispensable to a meaningful human existence ‘Right’ here is used in a compositional sense and not in a strict sense and includes both moral and legal rights. Legal rights are those human rights that are guaranteed by the positive law (*Lex Lata*), while moral human rights are claims which ought to be in the positive (*Lex Ferenda*). On his part, Osita Eze defines human rights as representing demands or claims which an individual or group make on society, some of which are protected by law and have become part of *ex lata*, while others remain aspirations to be attained in future.

Human rights are inherent rights to be enjoyed by all human beings of the global village and not a gift to be withdrawn, withheld or granted at someone’s whim or will;⁴ in this sense, they are said to be inalienable. The Constitution and other codes do not create human rights but declare and preserve existing rights.

Similarly, in the case of *Odogu v Attorney General of the Federation*,⁵ Katsina-Alu (JSC) defined fundamental human rights as a right guaranteed in the Nigerian Constitution, and it is a right which everyone is entitled to when he is not subjected to the disabilities enumerated in the Constitution to enjoy by virtue of being a human being. Umozuruike, on his part, defined it as ‘those rights which the international community recognises as belonging to all individuals by the very fact of their humanity.’ Louis Henkin defines it as: “claims asserted and recognised as of right, not claims upon love or grace or brotherhood or charity. There are claims under some applicable laws. Antonio Cassese describes

² FE Doruick, *Human Rights Problem Uk Perspective 2 Texts* (Saxon House, West mead 1997) 12.

³ M Crauston, *Human Rights Real or Supposed Political Theory and Right of Man*, (Bloomington Indiana University Press 1967).7; OC Eze, *Human Right in Africa: Some Selected Problems* (Lagos; Nigeria Institute of International Affair and Macmillan Nigeria Publishers Lid, 1984) 2.

⁴ See the *Universal Declaration of Human Rights. A Magnacatta for all Humanity* (United Nations Department of . Public information Printed 1998)

⁵ (1996)6NWIR (Pt. 456) 522.



rather than defines human rights as an ideological and normative “galaxy” in rapid expansion with a specific goal to increase safeguards for the dignity of the person.⁶ Justice Kayode Esho of the Supreme Court of Nigeria, in the case of *Ransome Kuti v Attorney General of the Federation*,⁷ described human rights as:

A right which stands above the ordinary law of the land and which, in fact, is antecedent to the political society itself. It is a primary condition of a civilised existence, and what has been done by our constitution since independence is to have these rights enshrined in the Constitution so that the right could be immutable to the extent of the non-immutability of the Constitution itself.

Generally, human rights consist of the right to life, the right to liberty, the right to fair hearing, the right to the dignity of the human person, the right to freedom from discrimination, from movement, association and religion. They are those claims which are invariably supported by ethics and should be supported by law as well.

They apply regardless of colour, race, sex or other distinction and may not be withdrawn or denied by the Government, people or individuals. The concept of human rights is universal, and this has been repeatedly reaffirmed in the Universal Declaration of Human Rights of 1948. The first conference on human rights held in Tehran in 1948 considered that the declaration was an obligation of the members of the international community. Human rights have become a potent instrument of diplomacy, to which has been added democracy. Both have become the yardstick for the grant of aid by the developed countries to the developing ones.

The implementation of human rights devolves mainly on municipal Law. The paradox in human rights is that their most effective protectors are their most egregious violators. Human rights and fundamental freedom enable a person to fully develop and use all human qualities, intelligence, talent and conscience to satisfy both spiritual and physical needs. They generally include social rights, political rights, economic rights and cultural rights.

1.2. Scope of Human Rights

Human rights organisations are those organisations which seek to monitor the administration of human rights principles as provided by the various human rights laws at all levels and at all times. These organisations are all over the globe seeking to protect and promote human rights laws, as well as highlighting those areas where they have been violated. Human rights organisations sprang up from

⁶ A case, Human Right in a changing world 10) P, Philadelphia, 1990

⁷ (1985) 8 NWI R (Pt. 6) 201.



the lacuna that existed between the establishment and effective sustenance of the universal principle of human rights as declared by the U.N. in 1948.

This development gave rise to the emergence of organisations such as Amnesty International by Peter Benson, a British Lawyer. Amnesty International became the first major non-governmental international human rights organisation in the public assertion of human rights against the tyrannical disposition of governments with branches all over the world.

With the establishment of Amnesty International, other organisations such as the Civil Liberties Organisation (C.L.O), Institute of Human Rights and Humanitarian Law (IHRHL), National Campaign for Human Rights and Democracy, and many others were established. These organisations borrowed a leaf from Amnesty International to protect human rights principles in countries where the impact of Amnesty International was not fully operational. Furthermore, these organisations, since their inception, have fervently sought to protect human rights principles as declared by the U.N., and have refused to compromise human rights standards as provided for by the various human rights laws of the U.N.

It is in this vein that these organisations took giant steps to write and publish dossiers on human rights violations by the Government and their agents all over the world. In Nigeria, however, the efforts of these human rights organisations have been palpable in ensuring and enhancing the protection of the rights of citizens. They have continued their monitoring, advocacy and educational activities over the years despite routine harassment by the authorities of the Government.

During the military era, officers of the State Security Service (SSS) visited the offices of these organisations regularly to intimidate staff, destroy property and confiscate publications. Human rights activists have been detained and harassed times without number.

2.0. HISTORICAL PERSPECTIVE OF HUMAN RIGHTS

What is known today as human rights has taken so many years and gone through a lot of stages in the history of man. The development of human rights began in Greece around 300 BC Philosophers began to show interest in the relationship that exists between society, the state, religion and the individual that make up the state. The development of human rights at both national and international levels has resulted in a modern concept of human rights quite different from the philosophy of natural law of the 16th and 17th centuries. The contemporary idea of human rights took firm footing in the resolve of the allies after the 2nd world war that assured the respect for human rights was their war aim.

Today, the concept of human rights is closely linked to the State or an organised society with a government. The concept of human rights now refers to the relationship between the individual and the State or the Government; their right to political participation, the freedom that they enjoy and their



claims on the state with regard to the provision of basic needs of life, among others. Human rights today are understood as those rights contained in international law and instruments such as the U.N. Charter, the Universal Declaration of Human Rights, the Convention on the Rights of the Child, as well as regional human rights treaties like the African Charter on Human and Peoples Rights.

In Nigeria, the concern for human rights is not a modern phenomenon. Before 1959, the protection of human rights in Nigeria was not statutory. The clamour for independence for Nigeria by different interest groups necessitated the drawing up of plans by the colonial government for the protection of human rights. Thus, a Constitutional Conference was held in London in 1959, where the interests of minority ethnic groups within Nigeria were very much an issue. It was observed at the conference that the solution to the problem of the minority groups would be the provision of a scheme of rights in the Nigerian Constitution for the protection of rights and fundamental freedoms.⁸

At the end of the conference, it was resolved that a scheme of fundamental rights be introduced into the Nigerian constitution. These rights were introduced in 1959, and they include the right to life, the right to liberty, the right to freedom of movement, freedom from slavery, from forced labour, and freedom from inhuman treatment, among others. These laws have subsequently been re-enacted into the present 1999 Constitution of Nigeria (as amended).

2.1. Origin of Human Rights

The concept of human rights is one of great antiquity. Philosophers such as John Locke and Jean Montesquieu, among others, played prominent roles in the evolution of human rights. The development of natural law theories was instrumental in the laying down of a universal and eternal set of laws based on the dignity of the human person. Natural laws are those laws created by the will of God. They are eternal, immutable and of universal application. What is today referred to as human rights is a conduct of constituent struggles by freedom-loving people against absolutism from France through Italy, to Germany and England, an unholy conspiracy between the church and the state, which led to widespread abuse of the rights of citizens. Such debasement of the human person led to agitation, resentment and rebellion.

In the case of England, this was a rebellion led by the barons against King John, the result of which was the formulation of the first unwritten constitution in modern times, which King John was compelled to sign into law at Runnymede. From the passage of this historic document, it was a matter of time before the freedom explosion engulfed other European states, leading to another momentous milestone in the history of freedom and the dignity of man. What were hitherto regarded as the

⁸ TO Elias, [he development of its land and constitutions 1967 Steven, 142.



exclusive preserves of the European cultures became international property in the true sense following the abolition of slavery in America and the gradual decolonisation of Africa and Asia, which began in the 1950s through the 1960s, expressed in several documents of universal application, notably the Universal Declaration of Human Rights. 1948, the African Charter of Human and Peoples Rights 1981 and the European Convention on Human Rights, among others. It has also been entrenched in the constitutions of many emergent states, including Namibia, South Africa, and even South Sudan.

3.0 HUMAN RIGHTS AND FUNDAMENTAL RIGHTS

The Constitution of the Federal Republic of Nigeria, 1999, guarantees in its Chapter Four certain rights.⁹ A distinction has been drawn between fundamental rights and Human rights. Thus, in the case of *Uzoukwu v Uzeonu II*,¹⁰ the Court of Appeal presided over by Nasir P.C.A. (as he then was) said:

Due to the development of constitutional law in this field, distinct differences have emerged between fundamental rights and human rights. It would be recalled that human rights were derived from the underlying concept of ‘Natural Rights’. They are rights which every civilised society must accept as belonging to each person as a Human being.

These rights are termed ‘Human Rights’. The United Nations defines human rights as ‘The rights which are inherent in one's nature and without which we cannot live as human beings.’ Human rights have been described as the common language of humanity. The declaration of basic philosophy underlining it is outlined in the very first Article, which states that

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. The application of the universal declaration does not matter whether you are male or whether you are a female or male. It does not matter what language you speak, religion, or the part of the world you come from or of political affiliation or family background, etc.

The Universal Declaration of Human Rights (UDHR) enumerates rights and freedoms that are meant to be enjoyed by everyone. Since its adoption, the UDHR has been translated into over 200 languages and has slowly become a guiding principle behind the Constitutions of many countries. In one of the formulations of the articles of the declaration, the framers outlined two groups of human rights. The first group is contained in Article 3, which forms the basis for the civil and political rights, which encompass Article 4.21. Article 3 states that everyone has the right to life, liberty and security of person. This is in *pari materia* with ‘section 13 of the 1999 Constitution of Nigeria’. The second group

⁹ Ojo J. D The development of the executive under the Nigerian Constitution 1960 81 '.

¹⁰ (1987) 4 NWLR 799.



is based on Article 22, which states: “everyone is entitled to the realisation of the right indispensable for his personality” Article 22 is akin to Article 23, 27, which in essence highlights man’s economic, social and cultural rights. Alexander Solzhenitsyn called the Universal Declaration the ‘best’ document ever written by the United Nations. Human Rights are fundamental because they have been guaranteed by the fundamental law of a country, namely the Constitution, as in the 1999 Constitution of Nigeria, as amended.

From the above, it is obvious that the concept of human rights is wider in scope than that of fundamental rights, the former being treated at a higher level of international law jurisprudence while the latter is dealt with within the *corpus juris* of domestic jurisprudence. It is from this perspective that the African Charter on Human and Peoples’ Rights must be seen, and some of these rights have been assimilated into the *corpus jus* of the Nigerian law through the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act 1983.

Conclusively, it should be noted that the distinction between human rights and fundamental rights is that the former are those rights not yet guaranteed and are still on a moral level and remain an aspiration yet to be attained, while the latter are those human rights which are guaranteed by positive Law and enforceable. This position was further expressed by Chukwudifu Oputa in *Ransome Kuti & Ors v A.G. Federation*,¹¹ where he posited that:

Not every civil or legal right is a fundamental right. The idea and concept of fundamental rights both derive from the premise of the inalienable rights of man, life, liberty and the pursuit of happiness. An emergent nation with a written constitution has enshrined in such a constitution some of these basic human rights or fundamental rights. Each right that is considered fundamental is clearly spelt out.

In the same vein, Niki Tobi JCA opined in another case that: *Human rights are more of an international concept, while fundamental rights are more of a municipal or domestic concept; the rights are either designed as human rights or fundamental rights. They cannot be both Uzoukwu II v Ezeonu.*¹² Having done this preliminary clarification, it is now intended to examine some of the fundamental rights enshrined in the Nigerian Constitution.

4.0. FUNDAMENTAL HUMAN RIGHTS

As we have seen, human rights represent demands or claims which individuals or groups make on society, some of which are protected by law and have become part of *ex lata*, while others remain

¹¹ (1985) 8 NWLR (Pt. 6) 211.

¹² (1991) 6 NWLR (Pt. 200) 708 See 27. ‘The judiciary in a democracy’ Obayi memorial lecture series. 1996 published by the faculty of law ESUT. Enugu.



aspirations to be attained in future. Every human being has certain fundamental rights which every individual or Government must uphold and respect. This concept is rooted in most of the world's religions and cultures and is reflected in many Legal systems. It can therefore be implied that in every community, despite cultural and traditional differences, people have the same basic aspirations and ideals of life. For brevity, a few of its provisions embodying these fundamental rights will be examined. The provisions are laid out under Chapter IV of the Constitution as follows:

4.1. Right to Life

Section 33(1) Of The 1999 Constitution provides that

Every person has a right to life, and no one shall be intentionally deprived of his right to life, save in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

Section 33(2) of the 1999 Constitution further provides that:

A person shall not be regarded as having been deprived of his life in contravention of the section, if he dies as a result of the use to such an extent and in such circumstances as are permitted by Law of such force as is reasonably necessary.

- (a) For the defence of any person from unlawful violence or for the defence of property.
- (b) 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 mutiny.

'Every person' here should be interpreted to include 'male' or 'female'. In *Ajunwa v State*¹³ it was held that under Nigerian Law, if a person is attacked in circumstances that make him to honestly believe that his life is in danger of serious bodily harm, he is entitled to use such force as is reasonably necessary to prevent and resist such attack, that if in the process the assailant is killed the man shall not be guilty of any crime even if the killing is intentional.

In *Laoye v State*,¹⁴ the provision asserts that everyone has the right to life, life is therefore sacrosanct and deliberate killing is abhorred world over. Everyone is entitled to respect for life and safety.

In other words, Government security agents are not entitled to kill indiscriminately, unless their own lives or the lives of others are in danger and there are no other means of averting the imminent danger. It is therefore illegal and morally reprehensible for anyone to take another person's life.

¹³ (1988) 4 NWULR (Pt 89) 380.

¹⁴ (1985) NWLR (Pt 10) 832.



In *Aliu Bello v A. G. Oyo State*,¹⁵ the accused had appealed against a death sentence which was pending in an appeal court, but the accused was prematurely executed before the determination of the case. The defendant (deceased) sued the Attorney General of Oyo State, who negligently recommended the execution,

The Supreme Court condemned the action of the Oyo State Government in its entirety and held that the unlawful termination of the life of the appellant's relation before his appeal was heard was a contravention of section 30(1), section 220(1) and section 213(1) of the 1999 Constitution Section 33 (2) (a) (b) (c).

The Court went further by restating four grounds on which a person may lawfully be deprived of his life.¹⁶ It lays down specific safeguards on lawful arrest and detention and provides that no more force than is reasonably required is inflicted, no offence is committed if death occurs, as listed in subsection (2), it is for the court to decide the reasonableness of the force used. If death occurs when affecting the lawful arrest, the court will have regard to the grave nature of the offence for which the arrest was being made, as well as the circumstances of its commission.

4.2. Right to the Dignity of the Human Person

The right to the dignity of the human person is guaranteed under section 34 of the 1999 Constitution in the following terms;

1. Every individual is entitled to respect for the dignity of his person and accordingly

- (a) No person shall be subjected to torture or to inhuman or degrading treatment.
- (b) No person shall be held in slavery or servitude, and
- (c) No person shall be required to perform forced or compulsory labour.

This provision makes it unlawful for law enforcement agents to torture prisoners, denying them food and subjecting them to other forms of pain with the intention of making them confess to criminal acts. In Nigeria, custodial arrest of an individual is fast becoming an automatic violation of the right to the dignity of a human person, and this has been attributed to the poor condition in which the police force operates. Despite the existence of this constitutional provision, the Police in Nigeria continue to detain persons under heart-rending conditions in prison and police cells. It is, however, commendable that the judiciary has condemned such acts perpetrated by the police. Thus, in the case of *Alhaji Mogaji & Ors*

¹⁵ (1986) 2 N. S. S. 1257 (1986) NWLR 828

¹⁶ There are five offences at present in Nigeria which are punishable by death Murder treason et. 208 of the communal code and conviction under the Robbery and firearms Decree 1970 as amended in 1974



v Board of Customs and Excise and Ors,¹⁷ some customs officers, with the help of a police officer, while looking for prohibited goods in a Lagos market, maltreated the trader, seized and detained their goods. The Lagos High Court held that the officer's action was tantamount to a violation of the fundamental human rights of the traders under section 31 (1) (1) of the 1999 Constitution.

However, in *Uzoukwu v Ezeonu*,¹⁸ in holding that mere vulgar abuse does not constitute inhuman and or degrading treatment, the Court of Appeal stated that the specific acts which Section 31(1) of the 1979 Constitution (i.e. Section 34 (1) 1999 Constitution) regards as inimical or antithetical to the word dignity are clearly enumerated under violation of human dignity.

Generally, a punishment that denies a person's status as a human being or which degrades his personality as a human being is inhuman, despite constitutional exceptions. Therefore, any punishment such as the rack, the thumb screw, the iron boot, the stretching of limbs, burning alive or at the stake, crucifixion, mutilation and suffering, etc., are inherently degrading and inhuman.

In the case of *Paul Weems v United States*¹⁹ appellant, who was a public officer, was charged and convicted under the Philippine Penal Code for falsifying a public and official document. He was to be imprisoned with hard labour for a period of 12 years. He was also to be subjected to accessories to the main punishment while in prison, to be chained at the ankle, hanging from the wrist for deprivation. He was also deprived of enjoying further political rights. On appeal, the Supreme Court reversed the decision and held that the sentence was cruel, unusual and that the purpose of punishment, which is to repress crime, is not fulfilled by the punishment, which is tormenting and severe.

4.3. Right to Personal Liberty

Section 35(1) of the 1999 Constitution provides the right of personal liberty for every citizen of Nigeria. This right implies that no person shall be deprived of his liberty by confinement in prison or otherwise except by due process of law. In *Onu Obekpa v Commissioner of Police*,²⁰ the plaintiff had been held in custody on an allegation of theft, and he was refused bail by the police. According to Idoko J., '...the spirit behind the provision in Section 35 (1) of the 1999 Constitution is to keep an accused out of incarceration until found guilty through the process of court trial. It is a constitutional privilege which he is entitled to under the constitution.'

¹⁷ (1982) NWLR 826.

¹⁸ (1991) 6 NWLR (Part 200).

¹⁹ 217 US 349 (1910).

²⁰ (1981) 2 N. C. I. R 420



The Court accordingly granted him bail and ordered his release.

Also, in *Dele Giwa v I. G.P.*,²¹ the applicant Dele Giwa, filed an application alleging a breach of this fundamental human right as provided in Section 35 of the 1999 Constitution. The applicant was released from custody following the order of the court.

From the foregoing, this section implies that no person shall be deprived of his liberty by confinement in prison or otherwise except by the due process of law. It is the manifestation that there are exceptions to the right of personal liberty. Besides the constitutional exception, Section 20 of the Police Act allows a police officer to arrest without a warrant, under this provision.

It shall be lawful for any person whom the arresting police officer may call to his assistance to arrest without warrant in certain cases, provided the Police Officer has a strong suspicion that an offence is likely to be committed.²²

A police officer, therefore, exercises subjective rather than objective judgment in deciding whether there exists a reasonable suspicion and thereby ends up arresting innocent people. Although it was held in the case of *Inspector General of Police v Ogbomo*²³ that the ground for reasonable suspicion upon which an arrest without warrant may be based may either be of fact within the officers' knowledge or a fact stated to him by another person, the lawfulness of such an arrest should depend on its compliance with objective reasonableness.

It is, however, important to emphasise that the law places a duration of detention, but there are occasions where it is essential to have the culprit detained while the trial is pending. Apart from serious criminal offences, no suspect is expected to remain in custody for more than the specified time frame.

The right to personal liberty has been in existence since the 18th century and recognised by the Court, whether military or civilian government. A Locus classicus case of *Entick v Carrington*²⁴ is a good example where the Secretary of State issued a general warrant to an officer to break into the house of Entick, whom they suspected was editing a seditious publication, the 'British Freeholder', and seized his books and papers. The Lord Chief Justice of the day castigated the government. The conduct was severe and awarded Entick £300 damages for trespass.

²¹ (1999) Constitution

²² 1999) Constitution

²³ 1957 NNLR 200

²⁴ (197685) 19 state trials 1029



4.4. Right to Fair Hearing

Section 36 of the 1999 Constitution explains in detail the right of an individual to a fair hearing. In other words, no one can be convicted or victimised without first hearing from the party concerned. The provision states thus;

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

Answering a question on fair hearing, Ademola C.J.N., in the case of *Isiyaku Mohammed v Kano N. A.*,²⁵ said:

It has been suggested that a fair hearing does not mean a fair trial. We think a fair hearing must involve a fair trial, and a fair trial of a case consists of the whole hearing. We therefore see no difference between the two. The true test of a fair hearing is the impression of a reasonable person who was present at the trial, whether from his observation, justice had been done in the case.

The role of a fair hearing is that justice must not only be done, but it must be manifestly and undoubtedly seen to be done. Parties to the dispute must be heard before decisions are taken. In *Nuhu v Ogele*,²⁶ the appellant alleged that the proceeding was conducted in chambers; the respondent alleged otherwise. The Supreme Court agreed with the appellant in support of the motion challenging the records of the trial court and annulled the decision of the trial court. Pats Acholonu J.S.C., who delivered the lead judgment, held thus:

...it is the indisputable right of the public to have undeniable and unlimited access to court proceedings. Courts exist for the citizenry; they adjudicate on disputes presented before them. At no time must an arbitrary decision be taken without hearing from both parties.

This concept of fair hearing is founded on two historical pillars of justice.

- (a) That one who decides must hear from the two parties to the dispute (*audi alteram partem*)
- (b) There should be no evidence of bias so that one should not be a judge in his own cause (*nemo judex in causa sua*).

²⁵ (1968) 1 ALL NLR.45

²⁶ (2004) FNLR (Pt 193) 362



In the case of *Dr Alakija v Medical Disciplinary Committee*,²⁷ A medical practitioner contended that the medical disciplinary committee did not conduct the inquiry in accordance with the principle of natural justice in that the Registrar, who was in fact the prosecutor, deliberated after taking part in the committee deliberations, after the appellant and his legal representative had been asked to retire from the room.

The Supreme Court held that the Registrar was neither by name nor by virtue of his position held in the service of the Federal Government as a member of the committee, and therefore, he should not have remained with the committee during the consideration of their decision.

Also, the right of fair hearing requires the representation of the litigant by legal practitioners. In *Joseph v State*,²⁸ the Supreme Court considered legal representation a *sine qua non* to a fair trial, especially in capital offences.

4.5. Right to Freedom of Expression and the Press

Section 39 of the 1999 Constitution provides, thus: *Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas without interference.* According to the dictum of Babatunde Belgore J. in the case of *Concord Press Ltd v I.G.P & Ors*,²⁹ it was stated thus:

The freedom of the individual should not surge or recede according to the nature of the power ruling the country. It should be as constant as the institution is in existence, because of its enormous irresistibility and power, the government should be a shock absorber to understand sense or nonsense, abuse or praise or imagined views or the actual personality of the government. It is part of the responsibility of governing.

Every Nigerian is free to say or write whatever they/ feel. But this freedom has its limitations and would not be tolerated where it goes beyond reasonableness, because it may result in the law of defamation and sedition.

Freedom of the press does not mean absolute freedom; it implies restraint and not immunity from the ordinary law of the land, as it is concerned with publication. The law of sedition in Nigeria does not require proof of the falsehood of the matter published if it would cause violent dissatisfaction against the Government. In *Director of Public Prosecution v Chike Obi*³⁰ the defendant was charged with

²⁷ 1959 4 FSL 38

²⁸ (1959) 4 FSL 38

²⁹ suit No THC/L/C'S/608/94

³⁰ (1961) ALL NLR 188.



sedition for a publication and the publication was directed to the federal Government. The question was whether Section 50 of the Criminal Code, which provided for sedition under which defendant, was charged was not in conflict with the constitutional provision. The court held the defendant guilty and said the right to freedom of expression was not absolute and that the constitution did not invalidate the provision of the Criminal Code.

It has been argued whether press freedom confers on journalists immunity from being compelled to divulge their sources of information. In Nigeria, judicial pronouncements support the view that journalists have immunity in the case of *Tony Momoh v Senate*³¹. The plaintiff was summoned to a Senate committee of inquiry to disclose the source of information which formed the basis of an article he published about senators. The court upheld his submission that disclosures could violate his right to freedom of expression guaranteed under the Constitution.

4.6. Right to Freedom of Movement

Every human being created by God has the right to freedom of movement. This is, however, in order for the person to have the ability to fend for herself. In other words, freedom of movement is essential to life. It brings about prospects and progress in society.

Section 41 of the 1999 Constitution give:

Every citizen of Nigeria has the right to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or excluded therefrom

In other words, every person born or registered or in whatever form is a citizen of Nigeria and can move from place to place in search of a legitimate job. No one shall be restricted or expelled from Nigeria or threatened by any individual or group. In the case of *Shugaba Darman v Minister of Internal Affairs*,³² the court held that Shugaba, a minority leader in Bornu state House of Assembly under the Second Republic, was a Nigerian when he was deported from Nigeria as a foreigner.

Damages were awarded to him for assault and unlawful interference with the applicant's right to move freely throughout Nigeria. In that case, the applicant's passport was seized, and he was deported from Nigeria to Chad. However, curtailing freedom or physical restraint is not the only means of violation of freedom of movement; seizures of travelling documents, which are the property of the Government, are also a violation of this right. Also, the court viewed with all seriousness the violation of the right of freedom of movement in the case of *Braithwaite v Chief of Staff Supreme Headquarters*. Where

³¹ (1981) INCLR 25

³² (UNREP) *Braithwaite v Chief of Staff Supreme Headquarters*



such a seizure was said to be unjustifiable and an unlawful derogation of a right, any citizen can proceed to have it enforced in court.

4.7. Right to Freedom of Assembly

Section 40 of the 1990 Constitution gives the people the right to peaceful assembly and association. It provides that;

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.

In other words, every citizen is democratically entitled to association with any body or association of his own interest. He/She is also entitled to join any political party of his choice or any trade union, for his own personal, family, community, Local or State interest.

By so doing, no one is expected to deprive any person of his right to association or political interest because of his personal aggrandisement, which will result in infringement of his right to peaceful association and assembly.

The right to association lawfully has even existed before the establishment of the Constitution, and without such an idea, the formation of Government would have been impossible. In fact, there could have been no religious gathering, the churches, social Clubs like Lions and lionesses.

However, without freedom to peaceful assembly and association, the constitution of Nigeria would not have been drawn by the delegates at the constitutional conference. It is pertinent to note that freedom of association and peaceful assembly are enshrined in the Constitution. Such a gathering may amount to a breach of the law of their object is unlawful, or where they pursue their object to an unlawful conclusion.

It is relevant to note that the right of assembly is closely linked with the freedom of expression guaranteed by the Constitution; these cumulative rights guarantee nothing but an ordered freedom.

In *Queen v Amalgamated Press of Nigeria Ltd*,³³ the section of the constitution relating to fundamental human rights guaranteed nothing but ordered freedom, and that section of the constitution cannot be used as a license to spread false news.

Though the police are authorised to quell situations of conflict or disturbances before they erupt, it will be foolhardy for the police to wait until violence has actually taken place before stopping such rash situations. However, the police are not authorised to disperse such a group; public order would have

³³ (1961) 1 ALL NLR 199



been threatened by such demonstrators. In the case of *Fiener v New York*,³⁴ the Supreme Court of the United States upheld the conviction for unlawful assembly of a sidewalk speaker who continued after being ordered by the only two police officers to stop because, in view of the responses of the audience, the police feared that a riot might ensue. It has also been held in *Adewole v Jakande*³⁵ that the abolition of fee-paying primary schools in the states constitutes a violation of the right of freedom of assembly of the children because they will be forced into schools that are of their own choice.

This right is important in relation to political parties and trade unions. The exercise of this right is to either discuss matters of interest or to protest, which is limited in so far as it would affect public peace and security. Moreover, in the wake of students' demonstrations and religious riots, some State governments have had cause to ban processions of any kind. This right is further restricted in the case of unlawful societies or quasi-military organisations and conspiracy to commit an offence. The right to belong to associations was also seriously limited during the military regimes that the country had over the years through their ban on political activities. To be sure, both the present and past civilian administrations in the country have largely respected and allowed citizens to exercise this right, which is fundamental to political activities in any democracy.

5.0 CONCLUSION

The centrality and relevance of human rights in the socio-economic and political development of any nation can hardly be overemphasised. Its protection and enforcement enable the citizens to exercise and actualise their innate potentials for the overall advancement of society. Through persistent agitations and struggles, the human rights corpus was entrenched in the constitutional framework of the country under the label of fundamental human rights. However, the enforcement of these rights has not been as smooth sailing as would have been expected due to the peculiar circumstances, idiosyncrasies and orientation of Nigerians. This makes it imperative for a reappraisal of our approach to their enforcement. Indeed, it calls for a new perspective on our perception of the relevance of those rights. This is the only way to ensure that the fundamental nature of these rights, as enshrined in the 1999 Constitution, can be meaningful to the ordinary Nigerian.

³⁴ 1951 340 U. S 315

³⁵ 1981 1 NCLR 262