



OBSTACLES TO HUMAN RIGHTS ENJOYMENT IN NIGERIA- A NEW NORMAL IS POSSIBLE

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ABSTRACT

During the period Nigeria was under military rule, it was thought that their undemocratic regime and governance by fiat was responsible for human rights violations and infractions. However, with the return to democratic rule in Nigeria in 1999, the human rights violations situation in Nigeria continues to exacerbate. Following this ugly tide, this paper examined the obstacles that militate against the enjoyment of human rights under the present civilian administration with a view to suggesting ways to curbing them. The paper identified assortment of factors that militate against human rights enjoyment chief of which are poverty, ignorance and illiteracy and a judiciary that is not courageous all which are carry overs from prolonged military rule in Nigeria. To enhance the enjoyment and enforcement of human rights in Nigeria, it was recommended among other things that the constitutional dichotomy between justiciable civil and political rights and non-justiciable economic, social and cultural rights must be abrogated while the judiciary must not be tepid in the discharge of its constitutional duty as the last hope of the common man. Hence, any encroachment on the rights of the individual or any coercive action should be appropriately redressed.

Keywords: economic, enforcement, justiciable, obstacle, war

1.0 INTRODUCTION

This paper critically analyses the obstacles to enjoyment of human rights in Nigeria. This interrogation is important given that Nigeria has enjoyed uninterrupted civilian rule since 1999 till date. Before the return to civilian rule in 1999, Nigeria was under military rule with the attendant consequences that the military suspended the national constitution, abrogated the legislature and flagrantly trampled on the human rights and fundamental rights of Nigerians. It was thought or widely believed that return to civil rule will increase the democratic space and consequently bring an end to arbitrariness, reduce human rights infringements and violations. However, with the military out of the way for more than twenty-five years, Nigeria's human rights records have not improved. Rather than diminish, new variants of human rights violations have emerged. It is therefore of compelling importance to identify the obstacles to human rights enjoyment in Nigeria and recommend the way forward. Against this background, this paper will be divided into the following segments namely-



2.0 GUARANTEED FUNDAMENTAL RIGHTS IN NIGERIA

Shorn of the pretence that there is no division between justiciable and non-justiciable human rights in Nigeria, the reality is that the following are the twelve constitutionally guaranteed fundamental rights in Nigeria namely:

- (i) Right to life¹ in section 33;
- (ii) Right to dignity of human person² in section 34;
- (iii) Right to personal liberty in section 35;
- (iv) Right to fair hearing³ in section 36;
- (v) Right to private and family life in section 37;
- (vi) Right to freedom of thought, conscience and religion in section 38;
- (vii) Right to freedom of expression and the press in section 39;
- (viii) Right to peaceful assembly and association in section 40;
- (ix) Right to freedom of movement in section 41;
- (x) Right to freedom from discrimination in section 42;
- (xi) Right to acquire and own immovable property anywhere in Nigeria in section 43; and
- (xii) Right to prompt payment of compensation upon compulsory acquisition of property in section 44.

In *Obu & Ors v SPDC Ltd & Anor*⁴ the Court of Appeal, per Fasanmi, JCA, clarified that ‘A right is justiciable when it is capable of being legally enforced when it is derived from the existence of reciprocal rights, duties and obligations between the created by statute.’ For the purposes of enforcement of these rights, the Fundamental Rights (Enforcement Procedure) Rules, 2009 made pursuant to the CFRN 1999 as amended, section 46(3) exist solely to effectuate or fast track litigations or judicial proceedings bordering on infraction or violation of these vested first generation rights among the retinue of other available legal or statutory enforcement mechanisms. This applies to enforcement of rights provided under the African Charter on

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¹ This was the decision in the cases of *Bello v Attorney-General Oyo State* (1986) 5 NWLR 828; *Onuoha Kalu v The State* (1998) 12 SCNJ 1; and *Peter Nemi & Ors v The State* (1994) 10 SCNJ 1.

² See *Uzoukwu & Ors v Igwe Ezeonu II*, (1991) 6 NWLR (Pt. 200) 708.

³ See *Garba & Ors v University of Maiduguri* (1986) 1 NWLR 550 and *Isiyaku Mohammed v Kano Native Authority* (1986) 1 ALL NLR 424.

⁴ (2013) LPELR-21241(CA) (Pp. 15 paras. A).



Human and Peoples’ Rights (Enforcement and Ratification) Act, 1983. However, by reason of the provisions of the CFRN, 1999 as amended, section 6(6)(c), the Fundamental Rights (Enforcement Procedure) Rules, 2009 does not extend to enforcement of economic, social and cultural rights found in Chapter II of the CFRN 1999 as amended styled as ‘Fundamental Objectives and Directive Principles of State Policy’ or their equivalent economic, social and cultural rights under the African Charter on Human and Peoples’ Rights (Enforcement and Ratification) Act, 1983.

The debate whether human rights is holistic, interdependent and mutually reinforcing is clearly outside the purview of this paper. Suffice it to say however that notwithstanding the flowery textual constitutional provisions called ‘Fundamental Objectives and Directive Principles of State Policy’ found in Chapter II of the CFRN, 1999 as amended, they remain non-justiciable. This is because of the constitutional dichotomy between the fundamental rights (mainly civil and political rights) found in Chapter IV and the fundamental objective and directive principles of state policy (economic, social and cultural rights) found in Chapter II. This dichotomy has grossly devalued the juridical and practical utility of the economic, social and cultural rights. Under the national Constitution, while the fundamental rights are constitutionally guaranteed and justiciable, the fundamental objectives and directive principles of state policy remain mere aspirations to be attained in the future and are non-justiciable. Practically, the fundamental objectives are empty platitudes and hallow admonitions as their provisions are not judicialized or brought within the remit of the law and often obeyed more in breach than observance. This amorphous or nebulous distinction was judicially acknowledged to exist in the case of *Uzoukwu & Ors v Igwe Ezeonu II*.⁵

Furthermore, in the earlier case of *Okogie v Attorney-General Lagos State*,⁶ it was held with respect to the fundamental objectives and directive principles of state policy that the ‘fundamental objectives’ are the ideals towards which the nation is expected to strive while the ‘directive principles’ laid down the policies which are expected to be pursued in the efforts of the nation to realise the national ideals. That whilst the CFRN, 1999 as amended, section 13 makes it the duty and responsibility of the judiciary amongst other organs of the government to conform to and apply the provisions of Chapter II, section 6(6)(c) of the same Constitution makes it clear that no Court has the jurisdiction to pronounce any decision as whether any

⁵(1991) 6 NWLR (Pt. 200) 708.

⁶(1981) 6 NWLR (Pt. 200) 708, (1981) 1 NCLR 218. See also *Ransome-Kuti v A-G Federation* (1985) 8 SC 246.



organ of government has acted or is acting in conformity with the fundamental objectives and directive principles of state policy.

3.0 OMINOUS PRESAGES AND OBSTACLES TO ENJOYMENT OF HUMAN RIGHTS

In Nigeria, the notorious obstacles to human rights include but are not limited to the following-

(a) Executive lawlessness

This is another cliché for arbitrariness in a rule of law society. The executive picks and chooses which Court judgments, decisions, rulings or orders to obey or disobey. They remain unwilling to commit to observance and enforcing the observance of human rights of citizens. In *James v Gov of Edo State*,⁷ the Court of Appeal, per Oho, JCA, held as follows

Black's Law Dictionary defines: "Arbitrariness" as the quality of being arbitrary or uncontrolled in exercise of will. Where legislative enactments are therefore not based on discernible principles then the test of "arbitrariness" gets utterly satisfied. In the locus classicus of *Military Governor of Lagos State v Ojukwu*, (1986) LPELR-3186 (SC) ESO, J.S.C. (OBM) called: "Arbitrariness" by its appropriate sobriquet when he described it as: "Executive Lawlessness". In his immutable words the CICERO of the Nigerian Judiciary as he was fondly called, had this to say on the subject: 'Executive lawlessness is tantamount to a deliberate violation of the Constitution. When the Executive is the Military Government, which blends both the Executive and the Legislative together and which permits the Judiciary to co-exist with it in the administration of the Country, then it is more serious than imagined.'

(b) Legislative rascality

Contrary to the stipulation in section 4 of the CFRN, 1999 as amended that the legislature shall make laws for the peace, order and good government, in many cases, the legislature has become law unto itself as well as lawless. This is a grave affront to human rights. The legislature is sometimes law unto itself and very seldom willing to obey court orders and judgements

⁷ (2021) LPELR-54203(CA) (Pp. 61-62 paras. B).



requiring that elected members of opposing political parties to be sworn into office as lawmakers. Lawmakers should not be law breakers.

(c) Overzealous security agents

Consistent overzealousness and mindless brutality by security agencies in Nigeria constitute a past, present and future obstacle to enjoyment of human rights.

(d) Poverty, ignorance and illiteracy

This trio remain the traditional obstacles to enjoyment of human rights. Unfortunately, incidences of poverty and ignorance are assuming alarming proportions by the day. The 18.3 million out of school children⁸ remain staggering while an estimated 133 million Nigerians are multi-dimensionally poor.⁹

(e) Prohibitive cost of litigation

Restrictive access to justice via prohibitive costs of litigation and legal services remain obstacles to enjoyment of human rights.

(f) Diplomatic and Consular immunities

Immunity of certain political office holders from legal process hinders access to justice. The immunity clause in the CFRN, 1999 as amended, section 308 has made not a few political office holders (President/Vice President, Governor/Deputy Governor) to act like demi-gods.

(g) Ouster of Court's jurisdiction and issue of *locus standi*.

(h) Political turmoil and instability

The electoral process is murky. There are no consequences for electoral misbehaviours even as there is no established culture of internal party democracy.

(i) Violent or undemocratic regime changes

Military rule used to be the case before the return of civil rule on 29 May 1999. However, the unilateral dissolution of democratically elected Local Government Councils by State Governors contrary to the provisions of the CFRN, 1999 as amended, section 7 is an undemocratic regime change. It is left to see how the decision of the Supreme Court in the Local Government Autonomy Case of *A-G Federation v A-G Abia State & Ors*¹⁰ will restore sanity in the Local Government governance and fiscal system in Nigeria.

(j) Wars and armed conflicts

⁸ Punch, "Children's Day: 18.3m out-of-school kids ticking time bomb, experts warn" available at <https://punchng.com/childrens-day-18-3m-out-of-school-kids-ticking-time-bomb-experts-warn/> accessed 11/11/25.

⁹National Bureau of Statistics, Nigeria Multidimensional Poverty Index (2022).

¹⁰(2024) LPELR-62576(SC).



There are many theatres of war and armed conflicts in Nigeria resulting in gross human rights abuse. Herders/farmers clashes have left scores dead, wounded and homeless.

(k) Xenophobic policies and attacks

Sadly, many State governments deliberately erect discriminatory policies and economic destabilisation agenda targeted at or against persons and citizens who are not of their ethnic or cultural or linguistic stock.

(l) Human rights are violated because of internal displacements arising from natural and man-made disasters.

(m) Insecurity caused by insurgency, banditry, terrorists, agitators for secession and other non-state actors constitute the latest and greatest obstacles to human rights enjoyment in Nigeria.

(n) Pandemics, epidemics and endemic diseases. Ebola, HIV/AIDs and COVID-19 are very recent examples of how pandemics adversely affect human rights enjoyment.

(o) Chaotic human rights protection mechanism in the national constitution particularly the notorious dichotomy between justiciable and non-justiciable human rights constitutes a major hindrance to human rights enjoyment.

(p) Judicial timidity and timorousness

The judiciary has also not helped matters regarding human rights violations. Apart from delays in determination of human rights cases (justice delayed is justice denied), punitive and exemplary costs and damages are not awarded to deter human rights violators.

(q) Corruption in the judiciary is a major obstacle to human rights enjoyment. The Judiciary has become enmeshed in allegations of corruption. It is widely believed that there are two sets of laws in Nigeria- one for the rich and another for the poor. Meanwhile, the judiciary should be the sentinel of justice and the last hope of the common and uncommon man.

(r) Harmful customs, customary and cultural practices

These are readily noticed in matters of inheritance rights of women. Female genital mutilation/cutting. The open grazing culture is another degrading and inhuman practice sustained by repugnant cultural practices.

(s) Religious intolerance has continued to be a major national fault line in Nigeria. Ethno-religious conflicts have continued to rear its ugly heads leaving many either maimed or killed. In some cases, allegations of genocide and ethnic cleansing have been levelled

(t) Hate actions and hate speeches



This is another variant of obstacle to human rights in Nigeria. Government at all levels have refused to pay heed to the provisions of inclusivity embedded in the CFRN, 1999 as amended, section 14. Particularly, it is provided in section 14(3) and (4) as follows:

(3) The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few State or from a few ethnic or other sectional groups in that Government or in any of its agencies.

(4) The composition of the Government of a State, a local government council, or any of the agencies of such Government or council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the peoples of the Federation.

(u) Internet and Social media abuses have become worrisome obstacles to human rights enjoyment. Contrary to the provision of the CFRN, 1999 as amended, section 36 on presumption of innocence, this is obeyed more in breach on the internet and social media platforms by bloggers and content creators. The internet and social media have their undeniable advantages but their abuses have impacted negatively on the rights to dignity, privacy, fair hearing and freedom of expression, among others. Rampant incidences of cyberbullying, hate speech, cyberstalking, harassment, cajoling, profiling misinformation and other privacy violations thrive because of legal ignorance on the part of the patrons and poor regulation of internet and social media use in Nigeria.

4.0 ADVOCACY ON THE WAY FORWARD AND CONCLUSION

There is no gainsaying the fact that the above identified obstacles to human rights will not abate, reduce or go away on their own if there is no intentional and coordinated effort in that regard. It is therefore recommended as follows-



(a) A virile, courageous and independent judiciary is needed to reduce if not completely eradicate incidences of violations of human rights. The apex Court demonstrated such courage when it described the acts of the Lagos State Government in the celebrated case of *Governor of Lagos State v Ojukwu*¹¹ as ‘executive lawlessness’, where they acted in utter contempt of subsisting Court orders. This was during military regime. In *FSC v Laoye*,¹² Oputa, JSC also exhorted Courts in these words:

It is the duty of Courts to safeguard the rights and liberties of the individual and to protect him from any abuse or misuse of power or what, my learned brother, Eso, JSC in *Governor of Lagos State v Ojukwu* (1986) 1 NWLR (Pt. 18) 521 at p. 694 described as "executive lawlessness." Executive functionaries ought to abide by the terms of the contracts which they themselves made with their employees. When the Court is described as the last hope of the common man that implies that it is the duty of the judiciary (a duty which it owes to the course of justice) to ensure that any encroachment on the rights of the individual, any coercive action is justified by law.

(b) The limitation of enforcement of economic, social and cultural rights imposed by the CFRN, 1999 as amended, section 6(6)(c) has become counterproductive. Thus, this limitation provision should be abrogated and all economic, social and rights declared justiciable as is obtainable either under the Kenya Constitution 2010 or Republic of South Africa Constitution, 1996. The exemplary integrative practices obtainable in South Africa and Kenya are outstanding and commend themselves to emulation because in their separate ‘Bill of Rights’ contained in their respective national Constitutions, all human rights are declared as equal and constitutionally accorded judicial recognition without much ado which is not the case with Nigeria.

(c) Finally, there is no substitute for good governance. Good governance will ensure that the human right and fundamental freedoms of citizens are upheld and protected. It is the surest way towards reduction in the alarming rate of human rights violations in Nigeria.

¹¹(1986) 1 NWLR (Pt.18) 621 at 634.

¹²(1989) LPELR-1264(SC) (Paras B-E).



In conclusion, it is indubitable that the Constitution envisages that the security and welfare of the Nigerian people shall be the primary purpose of government. This has however become utopian because of gross human rights violations, hunger, poverty, insecurity, unemployment and monumental despondency in Nigeria. It is a paradox that Nigeria is a rich country of poor nationals. It is believed that with purposeful, responsible and responsive governance, this constitutional ideal will be attained and the identified obstacles to human rights frontally confronted and combated.