
Fundamental Rights Protection under the 1999 Constitution: The Nigeria Example

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Abstract

This work analysed the fundamental rights protection of the Nigeria citizens under the 1999 Constitution of Federal Republic of Nigeria. It answered the question whether the 1999 Constitution of Federal Republic of Nigeria made adequate provision for fundamental rights protection of her citizens. The foundation of human rights in Nigeria and the Supremacy of the Constitution were considered. It also discussed the fundamental rights provisions provided in the 1999 Constitution of Nigeria. The work opined that the 1999 Constitution of Nigeria made adequate provisions and protections of the fundamental rights of her citizens and goes further to make recommendations.

1. INTRODUCTION

1.1 The Foundation of Human Rights in Nigeria

Nigeria is known to be the giant of Africa and the most popular Black Country with huge population of about 180 million¹. The country belongs to so many international organisations and has ratified most of these treaties. The United Nation Charter and the Universal Declaration of Human Rights formed the foundation upon which the protection of citizens' rights as an international yardstick rest². They set standard for evaluation by which the status and rights of citizens in any given society can be compared. In addition, at the regional and national level, the African charter on Human Rights and People's Right (1981) makes adequate provisions for the protection of the citizens' right in the state³. Indeed, the charter form part of the municipal law in Nigeria thus, providing a stronger normative standard for the protection of citizen's fundamental rights in conjunction with the constitution⁴. It stresses on the protection of rights and equal treatment of men and women in the society. The cardinal aim of the charter among others include: to provide a safeguard and protection to the rights of the citizens so as to resist any form of violation against their fundamental rights⁵. The protocol that came into force in 2004 has quite number of rights which include fundamental rights⁶.

The 1999 constitution is full of provisions on protection of rights. Section 17 (1) states that "the state social order is founded on ideals of social objectives, equality and justice". The subsection 2 states also that "in furtherance of social order (a) every citizen shall have equality of rights, obligations and opportunities before the law." Also, S.33-45 listed the fundamental rights guaranteed by the constitution. These provisions provide the basis for the promotion of

¹ National Population Commissions (N PC) 2015 www.population.gov.ng

² Article 13 (3) and 55 (c) of UN Charter; and 2 and 7 of UNDHR. Similar provisions are contained also in Articles 1 and 2 of the African Charter on Human Rights and People's Rights.

³ Articles 1 and 2 of the African Charter on Human Rights and People's Rights.

⁴ African Charter on Human and People's (Enforcement and Ratification) Act, 2004 Cap

⁵ Article 18 (3) of the African Charter.

⁶ Articles 3 – 21 of the Protocol

human rights and direction of state policy on human rights⁷. They are indeed , justifiable and form the basis upon which extra-judicial summary and arbitrary execution, torture, cruel, inhuman or degrading treatment or punishment and other forms of deprivation practices could be challenged as such violation is targeted on human right abuses on the citizens⁸. Interestingly, Nigeria's bid to display commitment towards the protection of human rights established the Nigeria Human Right Commission (NHRC) in 1995. Its primary objectives include to monitor human rights in Nigeria and help in the formulation of the Nigeria Government policies on human rights⁹.

It is worthy to note that the acceptance of any law within the legal system in Nigeria is on its agreement with the supremacy of the Constitution and that the law must not be in conflict with any section of the Constitution of the Federal Republic of Nigeria for the time being in force which the Anti-Terrorism is not an exception¹⁰. In addition, it is clear in section S. 21 that it is the responsibility of the state to protect, preserve and promote the Nigeria practices which enhance the human dignity and are consistent with the fundamental objectives provided in it¹¹. Interestingly, the fundamental right provision in the Constitution, the establishment of the Constitution, the establishment of the Human Right Commission and the International human rights standards ratified by Nigeria, form the pillar upon which the protection of fundamental rights of the citizens and other forms of human right abuses against the citizens is advocated¹². It is indeed worrisome that despite these provisions, Nigerian citizens still suffer all manner of human rights violations emanating from its anti-terrorism laws¹³. This calls for attention, having acceded to international treaties and enacted a constitution that abhors such practices¹⁴. It is within this context that this work critically examines the Nigeria anti-terrorism laws and its impact on the protection of fundamental rights of the citizens from the constitutional standpoint.

This account for the history of human rights in Nigeria predates the advent of colonial rule. Human rights and fundamental freedoms are recognised in the traditional Nigeria societies¹⁵. The idea of rights was not however conceived in the modern notion. Values such as right to family, kin and clan membership and association, right to enjoy private property and right to participate in governance of the affairs of the society were jealously guarded¹⁶.

The entrenchment of fundamental human rights in Nigeria, in the modern sense, could however be traced to the 1960 independence constitution and those that followed. The Independence Constitution of 1960 and the Republican Constitution of 1963 have provisions for the protection of fundamental human rights catering for civil and political rights in chapter iv and providing for fundamental objectives and directive principles of state policy in chapter ii,

⁷ Articles 1 and 2 of the African Charter on Human Rights and People's Rights

⁸ *ibid*

⁹ NHRC 1995 as Amended by NHRC Act 2010,

¹⁰ S.1 and S. 2 of 1999 Constitution

¹¹ S. 21 of 1999 Constitution

¹² Published by the Federal Ministry of Women Affairs and Social Development,(2000, 2009)and Chapter 4 of the 1999 Constitution

¹³ Amnesty "Stars On Their Shoulders, Blood on their Hands: War Crimes Committed by the Nigeria Military" (June 3, 2015)

¹⁴ ' Terrorism and Human Rights in Nigeria' (2014)< <http://www.hrw.org/world.../nigeria>>accessed11/07/15

¹⁵Umzurike U Omar, 'The African Charter and National Law: The Issue of Supremacy' (ed), *Current Themes in the Domestication of Human Rights Norms*, (Fourth dimension Publisher, 2005)

¹⁶ Ajomo M Amog 'Fundamental Human Rights under the Nigeria Constitution' in Awa Kalu &Osibanjo Young (eds) *Perspectives on Human Rights*,(Federal Ministry of Justice, 1992) 77.

which recognises economic, social and cultural rights¹⁷. The entrenchment of human rights provisions in our constitution is aimed at creating a society where there is political freedom, social and economic wellbeing of the people¹⁸.

Nigerians and human civil society groups condemn the activities of terrorists in the country but are clamouring for a better society governed by constitutionalism, the rule of law, social justice and respect for human rights¹⁹. Any law enacted to fight terrorism that does not seek for the promotion and protection of human rights in Nigeria is inconsistent with the provision of the Constitution. Such law seems not to have recourse to the supremacy of the constitution.

2. Supremacy of the Constitution

Every nation has a constitution which regulates its affairs by setting out the functions and powers of the different components of government via the executive, the legislature and the judiciary²⁰. In Nigeria the constitution is a basic or necessary document which also regulates the relationship between the citizens of the State²¹. It is the duty of the various arms of government to ensure the enforcement of the constitution since they are bound by the constitution. A constitution is defined as a fundamental body politic stating how organisation is constituted and governed as was said in *Imonikhe vs Attorney General of Bendel State*²² cited with much approval by the Court of Appeal in the celebrated case of *Adeleke vs Oyo State House of Assembly*²³.

The Nigerian Constitution is supreme and ranks very high above any other piece of legislation enacted by either the National or State House of Assembly²⁴. In *Registered Trustee of ECWA Church v Ijesha*, the Supreme Court held that S.390 CPC and S.28 of Area Court Edit that deprives a person right to counsel conflicts S. 36(6) of the 1999 constitution and the two sections were declared null and void to the extent of its inconsistency with the constitution²⁵. Also, in *Ukeje v Ukeje*, the Supreme Court held that the Native Law that deprives a person from property inheritance as discriminatory and in conflict with S.42 (2) of the 1999 Constitution, and the law was declared null and void²⁶. Its provision also has a binding force on every citizen, organ and agencies of Government both Federal, State and Local Government, also the functions, actions and all activities of every tier of Government are guided and regulated by the provisions of the Constitution²⁷.

Any action of either the Legislature or the Executive that is not in accordance with the Constitution is 'null and void' because the constitution is regarded as the 'ground norm'²⁸. Also, any piece of Legislation, Decree, Enactment, Edict or Statute that is inconsistent with

¹⁷ Ngwakwe Chioma, *Issues in Human Rights Guarantees*, (Hudson Jude Press, 2008) 1-6

¹⁸ Osita Nnoli, *Human Rights Law and Practice in Nigeria*, (Cidjap Publishers. 1999)

¹⁹ Banjo Williams 'Terrorism: A Short Overview' (1998)19 NIIA 11, 12

²⁰ Egburuonu Emmanuel and Harglar S Okorie, *Constitutional Law in Nigeria*, (Basic Rights Publication Ltd, 2011)

²¹ Ibid.

²²(1992) 7 SCNJ 97

²³(2007) 21 ALL FWLR 345 p 253

²⁴ S.1 of 1999 Constitution

²⁵ (1999)13 NWLR 668

²⁶ (2014) SC LPELR 2272

²⁷ S.1 (3) of the constitution

²⁸ S.1

any provisions of the Constitution is invalid or unenforceable to the extent of its inconsistency²⁹.

However where the Constitution provides for a pre-condition to the attainment of a particular situation, the pre-condition must be fulfilled or satisfied before the particular situation will be said to have been attained or reached as stated in *Olafisoyem v. Federal Republic of Nigeria*³⁰ and *Attorney- General of Ondo State vs. Attorney General of the Federal*³¹. Emphasizing on the supremacy of the constitution Ejiwunmi JSC said in the case of *Hon. Inajoku & ORS vs. Adeleke & 3 ORS*³² that “the constitution is supreme and its provisions shall have binding forces on all authorities and persons throughout the Federal Republic of Nigeria”. Niki Tobi JSC in *Abigun vs. The attorney-General of Oyo State*³³ states that the court will not hesitate to declare any law that conflicts with the constitution null and void and unenforceable. In same vein the Supreme Court observed such a position in *Ainabebholo vs. Edo State University Workers Farmers Multipurpose Co-operative society Ltd*³⁴.

3. Fundamental Rights Provisions

In *Uzoukwu v Ezeonu*³⁵ it was judicially decided that owing to our constitutional development, a distinction has emerged between “fundamental rights” and “human rights”. Fundamental rights are integral part of human rights but have remained in the area of domestic law. They are fundamental because they have been guaranteed by the Constitution. Human rights include much more than the domestically guaranteed fundamental rights and apply at the international level³⁶.

Against the foregoing and owing to the fact of justifiability and non – justifiability, it is evident that not every “human right” is a “fundamental right” in Nigeria³⁷.

Since the enactment of the Constitution of 1960, fundamental rights provisions have become an enduring feature of subsequent Constitutions. The fundamental rights provision, which appeared as Chapter III under the 1960 independence and 1963 Republic Constitutions, appear as Chapter IV under the 1979 and 1999 Constitutions³⁸. These rights which referred to as “Freedom” and “Deprivation” in the marginal notes of the Constitutions of 1960 and 1963 are referred to as “Rights” in marginal notes of the 1979 and 1999 Constitutions. It is instructive to note that from 1960 to 1999 the quality and quantity of rights guaranteed have increased even though not phenomenally³⁹.

From 1979, the Constitutions of Nigeria (i.e. 1979, 1989 and 1999) introduced the provision of non-justifiable economic, social and cultural rights under the fundamental objectives and directive principles of state policy in chapter II. Although the Constitution makes them non-justifiable, it is still possible to hold government functionaries responsible for non-compliance with the provisions of Chapter II⁴⁰.

²⁹ S.2

³⁰ (2004) ALL FWLR 1106,

³¹(2002) 9 NWLR 22

³² (2007) ALL FWLR 3

³³(1987) 2 NWLR 197

³⁴(2007) ALLFWLR 712

³⁵ (1991) 6 NWLR 200

³⁶ *Uzoukwu v Ezeonu* (1991) 6 NWLR 200

³⁷ *Ibid*

³⁸ *Ibid*

³⁹ Juriascope, “Understanding Human Rights & Laws Relating to Marriage”, (2006) LQP 47

⁴⁰ *Ibid*

If the essence of any rights lies in its enjoyment and compliance with the same, then their non – justifiability has not substantially abridged the rights so entrenched, except to the extent that they cannot be specifically litigated upon and enforced as in Chapter IV of the said Constitutions⁴¹ (i.e. human rights provisions.)

Chapter IV of the 1999 Constitution deals with fundamental rights, which are essentially civil and political rights. Chapter IV has a lot of rights, ranging from the right to life, fair hearing, freedom of expression and the press to the novel right to acquire and own immovable property anywhere in Nigeria amongst others⁴². Besides providing for these rights, the 1999 Constitution, like the others before it, has also provided for the appropriate machinery for the realisation and enforcement of these rights. In this regard, any person who alleges any breach or even likely contravention of his rights may seek redress in a High Court (Section 46 (4) (b) (i) and (ii).

It should be noted however, that these rights are not absolute and may be derogated from, in two specific circumstances: (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 freedoms of other persons (section 45 (1) (a) & (b), during any period of emergency proclaimed by the President in accordance with Section 305 of the Constitution. The National Assembly may also make laws that allow for measures that may derogate from the provisions of Charter⁴³. There is the added provision that any such measures taken must be reasonably justifiable in dealing with the emergency. Chapter IV is virtually a repetition of the rights as entrenched in the earlier Constitutions specifically these are: the right to life⁴⁴, the right to dignity of human persons⁴⁵, the right to personal liberty⁴⁶, the right to fair hearing⁴⁷, the right to private and family life⁴⁸, the right to freedom of thought conscience and religion⁴⁹, the right to freedom of expression and the press,⁵⁰ the right to peaceful assembly and association⁵¹, the right to freedom of movement⁵², the right to freedom from discrimination,⁵³ the right to acquire and own immovable property anywhere in Nigeria⁵⁴, and the right to prompt payment of compensation upon compulsory acquisition of property⁵⁵.

The fundamental rights provisions in the 1999 Constitution are also similar to those in the African Charter on Human and People’s Rights that was incorporated into the Nigeria legal system in 1983⁵⁶. The more serious issue is the status of the economic, social and cultural rights

⁴¹ Okorie Hagler. “Counter- Insurgency, Rule of Law and the Fight against Boko Haram in Nigeria”(2015) UUI 31

⁴² Chapter V 1999 constitution

⁴³Section 45 (2) of the 1999 Constitution

⁴⁴Section 33

⁴⁵S. 34.

⁴⁶S. 35.

⁴⁷S.36.

⁴⁸S.37

⁴⁹S.38.

⁵⁰S.39

⁵¹ S.40

⁵² S.41

⁵³ S.42

⁵⁴S.43

⁵⁵S.44

⁵⁶ the African Charter on Human and Peoples Rights (Ratification and Enforcement Act) cap 10 LFN 1990, with a commencement date of 17th March 1983)

¹⁰² *ibid*

in the African. This is particularly important as the Constitution was promulgated in 1999. Although some of the provisions of the African Charter are also in Charter II of the constitution, unlike the fundamental rights in Chapter IV, these economic, social and cultural rights of the African Charter Act are not enforceable because of their non-justifiability. However, the introduction of the fundamental rights to acquire and own immovable property anywhere in Nigeria under the 1999 Constitution is a significant inclusion of an aspect of economic right as a justifiable right. Indeed, the constitution made adequate provisions for fundamental rights of the citizens as could be seen from the foregoing. It is in this context that it can be better appreciated why Chapter IV has remained at the level of civil and political rights as the first generation of rights⁵⁷.

4. CONCLUSION AND RECOMMENDATIONS

Chapter IV of the 1999 Constitution deals with fundamental rights, which are essentially civil and political rights. Chapter IV has a lot of rights, ranging from the right to life, fair hearing, freedom of expression and the press to the novel right to acquire and own immovable property anywhere in Nigeria amongst others⁵⁸. Besides providing for these rights, the 1999 Constitution, like the others before it, has also provided for the appropriate machinery for the realisation and enforcement of these rights. In this regard, any person who alleges any breach or even likely contravention of his rights may seek redress in a High Court (Section 46 (4) (b) (i) and (ii)). Indeed, the constitution made adequate provisions for fundamental rights of the citizens as could be seen from the foregoing. It should be noted however, that these rights are not absolute and may be derogated from, in two specific circumstances as stated hitherto in this work.

It is highly recommended that the fundamental rights enforcement mechanisms should be strengthened in Nigeria to achieve maximum result. Fundamental rights courts should be established in Nigeria to have original jurisdiction to handle cases on fundamental rights abuses so as to decongest the High Courts. Nigeria should upgrade to human rights provisions in her constitution as giant of Africa since the fundamental rights provided in Chapter IV operates domestically and limits her citizens to catalogue of human rights that are obtainable globally. It argues that, despite Nigeria's obligations under the plenitude of international human right treaties, non-domestication of these treaties by Nigeria have rendered them insignificant⁵⁹.

REFERENCES

- Aja A.A, *Theory and Practice of Marxism in a World in Transition*, (Wily Rose & Appleseed 1997)
Allot A, *Essays in African Customary Law* (Butterworth 1960)
Alston P and Macdonald, *Human Rights: Intervention and the use of force*, (OUP 2008)
Austin J, *The Province of Jurisprudence Determined: 1832* (Weidenfeld & Nicolson 1955)
Bantekas I, *Public International Law* (Sweet & Maxwell 2002)
Bell B *JTransnational Terror* (AEI Hoover Institute 1978)
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⁵⁸ Chapter V 1999 constitution

⁵⁹ George E. Moose, "Nigeria: Which Way Forward?" (1993) 4 pt 2 Department of States Despatch 598 Hein Online

- Chesterman S, *Just War or Just Peace: Humanitarian Intervention and International Law* (1st edn, OUP 2002)
- Choomsky N, *Fateful Triangle* (South End 1983)
- Cranston M, *What Are Human Rights*, (Paplins Publication 1973)
- Denning M R, *What Next in the Law*, (OUP 1982) 278- 286
- Diallo Y, *African Traditions and Humanitarian Law*, (ICRC 1978)
- Dias R, *Jurisprudence*, (5th edn, Butterworth 1985)
- Duffy H, 'The War on Terror' and the Framework of International Law (CUP 2005)
- Egburuonu E and Harglars S, 'Constitutional Law in Nigeria', (Basic Rights Publication 2011)
- Ehrenfield R N, *Terrorism* (Basic books 1990)
- Elegido J M, *Jurisprudence* (Spectrum Books 2000)
- Eze O, *International Humanitarian Law and Intra-State Conflicts* (NIALS 2005)
- Eze O, *Human Rights in Africa: Some Selected Problems* (NIIA & Macmillan 1984)
- Ezejiofor G, *Protection of Human Rights under the Law*, (Butterworths 1964)
- Fearey R A 'Introduction to International Terrorism' in Livingston, M.H. (eds), *International Terrorism in the Contemporary World*, (Greenwood Press 1978)
- Felice W F, *Taking Suffering Seriously: The Importance of Collective Human Rights* (Albany State University of New York Press 1996)
- Fenwick C, *International Law* (Century Publication 1924)
- Finger S M, 'The United Nations Response to Terrorism' in Alexander Y and Kilmarx R, (eds) *Political Terrorism and Business: The Threat and Response*, (Praeger Publication 1979)
- Galtung J, *Human Rights in Another Key* (Polity Press 1994)
- Garner B A, (edited) *Black's Law Dictionary* (8th edn, Sweet & Maxwell 2001)
- Garthoff R L, *Reflections on the Cuban Missile Crisis*, (Brookings Institute 1987)
- Gluckman M, *The Judicial Process amongst the Barotse of Northern Rhodesia*, (MUP 1967)
- Guobadia D A & Azinge E, (eds) *Globalization, National Development and the Law*, (NIALS 2005)
- Hagler O & Anyanwu I, *General Principles of Nigerian Law*, (Divine Connection Concepts 2011)
- Hart H L A, *The Concept of Law*, (OUP 1961)
- Hoogvelt A, *Globalization and the Post-Colonial World: The New Political Economy of Development*, (Houndmills 2001)
- Iheme B A, *The Dynamics of Law in the Society*, (Law and Educational Publication 1994)
- Imobighe T A, 'Rethinking Terrorism and counter- Terrorism' in Imobighe T.A. and Eguavon, A.N.T. (eds) *Terrorism and Counter-Terrorism: An African Perspective*, (HEB Ibadan 2006) P.9.
- Jenkins B, *International Terrorism: A New Code of Conflict* (Crescent Publication 1975)
- Jessup P C, *A Modern Law of Nation* (Macmillan Company 1948)
- Jessup P C, *Transnational Law*, (Yale University Press 1956)
- Juliet L (edited) *Terrorism: A Challenge to the State*, (Martin Robertson 1981)
- Kittichaisaree K, *International Criminal Law*, (OUP 2001)
- Kozhevnikov I, (ed) *International Law* (Soviet Academy of Sciences 1961)
- Kyemba H, *A State of Blood: The Inside Story of Idi Amin* (Grosset & Dunlap 1977)
- Ladan M T, *Introduction to International Human Rights and Humanitarian Law* (ABU Press, 2001)
- Ladan M T, *Materials and Cases on Public International Law*, (ABU Press 2007)
- Laquer W, *Terrorism*, (Weidenfeld & Nicolson 1977)

- Macdonald E, *Human Rights, Intervention and the Use of Force* (OUP 2008)
- Magnarella P J, *Justice in Africa*(Aldershot 2000)
- Marx K & Engels F, *Manifesto of the Communist Party*(Progress Publication 1977)
- Mclean J & Mcmillan A, (eds) *Oxford Dictionary of Politics*, (OUP 2003)
- Morris J H C, *The Conflict of Law*, Sweet & Maxwell, (6th edn, McClean, D & Beevers K, 2005)
- Ngwakwe E C, *Issues in Human Rights Guarantees*, (Hudson Jude Press 2008) 1-6.
- Nimi Walson J, *Drug Trafficking and the Law in Nigeria* (Law Fair Communication 1993)
- Nnabue S F U, *Understanding Jurisprudence and Legal Theory*, (Bon Publications 2009)
- Oppenheim L, *International Law*, (Longman Green & Co 1905)
- Osita N O, *Human Rights Law and Practice in Nigeria*, (Cidjap Publicaton 1999)
- Palmer N & Perkins H, *International Relations*, (AITBS Publication 2004)
- Rebecca W, *International Law*, (Sweet & Maxwell, 2005)
- Schindler D & Torman J, *The Laws of Armed Conflicts*, (Martinus Nijhoff Publications 2004)
- Shaw M N, *International Law*, (CUP 1998.)
- Sheila B, *Osborn's Concise Law Dictionary*, (9th edn, Sweet & Maxwell 2001)
- Sliedrgt E V *The Criminal Responsibility of Individuals for Violations of International Humanitarian Law*, (TMC Asser Press 2003)
- Sterling C, *The Terror Network: The Secret War of International Terrorism* (Weidefeld & Nicolson 1981)
- Stiglitz J E, *Globalization and its Discontents*, (The Penguin Press 2002)
- Teson F R, *Humanitarian Intervention: An Inquiry into law and Morality*, (3rd Transnational Publication 2002) 377- 378.
- Umzurike U O, *Introduction to International Law*, (Spectrum Publication 2005)
- Umzurike U O, 'The African Charter and National Law: The Issue of Supremacy' in Nweze, C C, & Nwankwo O, (eds) *Current Themes in the Domestication of human Rights Norms*, (Fourth dimension Publication 2003)
- Uwaechua R, (ed) *Africa Today*, (Africa Books Ltd 1991)
- Waldron J, (ed) *Theories of Rights*, (OUP 1984)