

Examination of the Legal and Institutional Framework for Protection of Fundamental Human Rights in Nigeria*

Abstract

Human rights are moral principles or norm, for certain standards of human behaviour and regularly protected as substantive rights in our various laws. An abuse of human rights refers to any conduct that harms a person's human rights. Human rights being inalienable need to be properly protected because it is the basis for human existence. In Nigeria, human rights abuses have become topical especially in view of the recent events culminating in the popular "EDSARS" protests nationwide by youths. The aim of this article is to examine the available legal and institutional framework for the protection of fundamental human rights in Nigeria.

1. Introduction

In Nigeria, the legislature, judiciary and even the Executive arm of government have been particular about development of laws and legal principles that operate to protect the rights of Nigerian Citizens. Beyond the inflow of International laws that have been domesticated into our system through the instrumentality of legislation, there are also municipal laws that exist to protect the right of citizens. This paper shall in the first instance examine the available legal framework for the protection of fundamental human rights in Nigeria.

Legal Framework for the Protection of Fundamental Human Rights in Nigeria

The Federal government of Nigeria through legislative intervention have enacted several laws that includes provisions for the protection of fundamental human rights of the citizens. The laws are hereunder examined.

1999 Constitution of Federal Republic Of Nigeria

The Constitution¹ is the *fons et origo* and the supreme law of our legal jurisprudence. The constitution in line with the provisions of Chapter IV has encapsulated a plethora of rights that are accrued to every Nigerian. For ease of reference, we shall reproduce verbatim the 12 rights enshrined under Chapter four of the Constitution and discuss some of those rights in which the police have constantly and frequently abused. These rights are as follows;

1. Right to life.²
2. Right to the dignity of the human person.³
3. Right to personal liberty.⁴
4. Right to fair hearing.⁵
5. Right to private and family life.⁶
6. Right to freedom of thought, conscience and religion.⁷
7. Right to freedom of expression and the press.⁸

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¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended)

² S. 33

³ S. 34

⁴ S. 35

⁵ S. 36

⁶ S. 37

⁷ S. 38

8. Right to peaceful assembly and association⁹

9. Right to freedom of movement.¹⁰

10. Right to freedom from discrimination.¹¹

11. Right to acquire and own immovable property anywhere in Nigeria.¹²

12. Compulsory acquisition of property.¹³

A. Right to Life

The right to life is provided for under Section 33 of the Constitution, stating that no one shall be deprived intentionally or arbitrarily of his life. The right to life is the mother of all rights and the foundation for the enjoyment of all other rights. Without life, the pursuit of other rights would be in vain. The enjoyment of the right prohibits police officers, or even soldiers, to resort to lethal force, such as firing live ammunition at people unless their own lives or the lives of others are in immediate danger and less extreme measures are not available to deal with the situation. Unfortunately, the police have abused the right to life of many Nigerians. These violations range from extra-judicial killing to torture and unlawful detention. Various newspaper reports are replete with horrendous accounts of extra judicial killings in Nigeria, particularly in the hands of members of the Nigeria Police Force. Allegations against the police in Nigeria of summary killings are widespread. While some of the killings occur at police traffic check-points and during patrol duty, others are committed in cold blood at police stations or during torture and interrogation of suspects. For instance, the Boko Haram insurgency that has claimed, and continues to claim, thousands of lives in the Northeast might not have assumed the deadly dimension it took, had the police not, allegedly, extra-judicially killed the first acclaimed leader of the sect, Mohammed Yusuf, a few hours after his arrest.¹⁴

B. Right to Dignity of the Human Person

The right to dignity of the human person is provided by Section 34 of the Constitution. It specifically prohibits torture, inhuman or degrading treatment. The Constitution forbid slavery or servitude and all forms of forced or compulsory labor. According to Professor B.O. Nwabueze,¹⁵ this covers not only the type of punishment meted out to an offender, but his treatment in police custody or prison. Similarly, section 8(1) of the Administration of Criminal Justice Act (ACJA), 2015 provides that: "A suspect shall be accorded humane treatment, having regard to his right to the dignity of his person; and not be subjected to any form of torture, cruel, inhuman or degrading treatment." The most common types of torture committed by the police in Nigeria, and as described by victims and perpetrators in reports from Human Rights Watch, includes "repeated and severe beatings with metal rods and wooden sticks or planks . . . other violations reported include the tying of arms and legs tight behind the body; suspension by hands and legs from the ceiling or a pole; resting concrete blocks on the arms and back while suspended; spraying of tear gas in the face and eyes; electric shocks; death threats, including holding a gun to the victims head; shooting in the foot or leg; stoning; burning with clothes irons or cigarettes; slapping and kicking with hands and

⁸ S. 39

⁹ S. 40

¹⁰ S. 41

¹¹ S. 42

¹² S. 43

¹³ S. 44

¹⁴ Owolola Adebola, 1000 Nigerians Killed Recklessly by Police in 10 Years-Investigation, Point (Jan. 6, 2017), <http://www.thepointng.com/1000-nigerians-killed-recklessly-by-pol> accessed May 18th, 2023

¹⁵ Benjamin O. Nwabueze, *The Presidential Constitution Of Nigeria* 411 (1983); K.M. Mowoe, *Constitutional Law In Nigeria* 310 (2008).

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boots; abusive language or threats; and denial of food and water.”¹⁶ There were also numerous cases of the molestation and rape of female detainees; use of pliers or electric shocks on the penis; insertion of broom bristles into the penis; beating the penis with cable wire; and spraying of tear gas on genitals. Most often, these types of torture have led to loss of life and permanent incapacitation.¹⁷ The Special Anti-Robbery Squad (SARS) of the police frequently committed torture and other ill-treatment during interrogations. For instance, In May 2016, Chubuike Edu died in police custody, after he was arrested for burglary and detained for two weeks by the SARS in Enugu. The police authorities investigated the incident, but no one had been held accountable for his death even at the end of the year.¹⁸ In June 2017, Kester Edun, a commercial bus driver was accused of being a cultist. He was stopped and searched on the road and substances suspected to be Indian hemp and cocaine were found on a passenger in his bus. Mr. Edun was chained to the back of a police patrol van and dragged along the street. Some horrified onlookers who pleaded on his behalf were assaulted by the police.¹⁹

C. Right to Personal Liberty

This right is contained in Section 35 of the Constitution, that “every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with the procedure permitted by law.” This means that no person shall be deprived of his liberty by confinement in prison or otherwise except by due process of law. The provision recognizes the occasional need for detention of persons pending trial, but places a limit on the duration of such detention. It also requires quick disposition of cases. Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person. “The appropriate authority or person” means an authority or person specified by law such as a police officer, Magistrate or a Judge. A person accused of an offense is entitled to be brought to trial within a reasonable time. Reasonable time is defined to mean a period of one day if there is a court of competent jurisdiction within a radius of forty kilometers or a period of two days in other cases. If a person is not tried within a certain period, two months in the case of a person in custody and three months for a person on bail, that person shall be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date. A longer period can only be allowed if the court considers it reasonable. Both the Constitution and the ACJA recognize the right to bail of any person charged to court on allegation of a criminal offense. The rationale behind the right to bail was clearly stated by Idoko J. (as he then was) in *Onu Obekpa v. COP*²⁰. It allows those who might be wrongly accused to escape punishment which any period of imprisonment would inflict while awaiting trial; to stay out

¹⁶Sonya Maldar, Rest in Pieces: Police Torture and Death in Custody in Nigeria, 17 Hum. Rts. Watch (July 2005), <https://www.hwr.org/report/2005/07/27/rest-pieces/police-torture-and-deaths-custody-nigeria>. Accessed 19th May, 2023

¹⁷ . Nigeria: Amnesty Calls for Immediate Investigation of Football Fan Killed by Police, Amnesty Int’l (Apr. 1, 2019), <https://www.amnesty.org.uk/press-release/Nigeria-amnesty-calls-immediate-investigation-football-fan-killed-police> ; Nigeria: Special Police Squad ‘Get Rich’ Torturing Detainees and Demanding Bribes in Exchange for Freedom, Amnesty Int’l (Sept. 21, 2016), <https://www.amnesty.org/en/latest/news/2016/09/nigeria-special-police-squad-get-rich-torturing-detainees/>; Amnesty International, How Nigeria Police Torture Detainees, Rob Them-Victims, Premium Times (Sept 21, 2016), <http://www.premiumtimesng.com/news/headlines/210951-nigeria-po>.

¹⁸ Amnesty Int’l, Nigeria 2016/2017, AI Index POL 10/6700/2017 (Feb. 2017), available at <https://www.amnesty.org/en/countries/africa/nigeria/report-nigeria/> accessed May 21st, 2023

¹⁹Editorial, Benin Police Brutality, Vanguard (June 21, 2017), www.vanguardngr.com/2017/06/benin-police-brutality-unacceptable accessed May 21st 2023

²⁰Onu Obekpa v. COP, [1982] 2 NCLR 420 (Nigeria)

of prison guarantees easy accessibility to counsel and witnesses who ensure unhampered opportunity for preparation of defense. Of much further advantages in this regard is this fact that unless the right to bail or to freedom before conviction is preserved, protected and allowed, the presumption of innocence constitutionally guaranteed to every individual accused of a criminal offence would lose its meaning and force. However, there are exceptions under Section 35 in which a person may be denied his constitutional rights to liberty without repercussions. These exceptions are execution of the sentence or order of court in respect of an offence of which the accused has been found guilty, failure to comply with the orders of a court, bringing an individual before a court on the orders of the court, upon reasonable suspicion of having committed a criminal offence. A person can also be lawfully deprived of his liberty if he is under age and such deprivation is in the interest of his education and welfare. Persons suffering from infectious or contagious disease, of unsound mind, drug or alcoholic addicts may be deprived of their liberty for the purposes of their care, treatment or the protection of the community.

D. Right to Fair Hearing

The right to fair hearing is contained in Section 36 of the Constitution, which provides that “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 constituted in such a manner as to secure its independence and impartiality.”²¹ Under this right, the twin pillars of justice are established: that a man must be given an opportunity of presenting his own side of a case (*audi alterem partem*) and that a man should not be the judge of his own cause (*nemo iudex in causa sua*). Also, the impartiality of the judge and the independence of the tribunal are important attributes of this right. According to Mpamugo, this right is a conglomeration of other rights which are so important themselves that they are sometimes referred to as fundamental human rights. These include:

- (a) The right to have proceedings and decisions held in public.²²
- (b) The right to make representations before administering authority.
- (c) The right to have the decision of administering authority reviewed by a higher organ.
- (d) The right to be tried in public within a reasonable time.
- (e) The right to be presumed innocent until proved guilty.
- (f) The right to be informed promptly in the language that he understands and in detail of the nature of the offence.
- (g) The right to be given enough time to prepare his defense.
- (h) The right to defend himself in person or by a legal practitioner of his own choice.
- (i) The right to examine the witnesses called by the prosecution and to bring his own witnesses before the court.

In the performance of their duties, the police have to some extent violated some or most of the attributes of this right. For example, the police have powers of bail regulated by the Constitution and the ACJA. Section 30(1) of the ACJA requires a person arrested without a warrant for a non-capital offence to be charged to court within 24 hours or released on bail. The police officers do not abide by this provision of the law. Although there are posters and

²¹ On the unconstitutionality of trying a defendant for an offence unknown to law, see Chike B. Okosa, ‘The Joseph Nwobike Case, The Void for Vagueness Doctrine and Clarifying an Otherwise Unexplored Jurisprudence,’ (2022) 7 *African Journal of Criminal Law and Jurisprudence*, [110-119]

²² See Chike B. Okosa, ‘Secret Trial of Terrorism Suspects in Nigeria’ (2022) 12 *Nnamdi Azikiwe University Journal of Public and Private Law* [129-139]

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signs indicating that bail is free, accused persons or their relatives are made to pay money to police officers in order to secure bail. In spite of such warnings, corruption of the bail process at the police stations still persists. Section 36(4) of the Constitution requires that an arrested person to be brought before a court of law within a reasonable time. However, the reality is that arrested persons are held for several weeks or months before being released or charged to court. This leads to overcrowding and unnecessary congestions in prison cells. For example, in *Isaac Sambo v. State*, the accused committed an offense on July 7, 1976 and was in custody till June 27, 1977 when he was charged to court for the first time and was later sent back to custody. Furthermore, Section 36(6) requires any arrested person be informed promptly in the language that he understands and in detail of the nature of the offence, and that he be given adequate time and facilities for the preparation of his defense. Unfortunately, research conducted by the Nigerian Institute of Advanced Legal Studies shows a gross abuse of this right by the police. In the report, 9.5% of the suspects claimed that they were not told the reason for their arrest until they appeared in court, 34.8% were told on arrival at the police station, 18.2% were not told until after questioning, 1.2% at the time of the formal charge, 3.1% just before being asked to make a statement, 6.8% after they had spent time in police custody. The report, reveals that 73.6% of those arrested were not informed of the details of the nature of the offence at the time of their arrest. Additional evidence of police derogation of this right to fair hearing is their power to prosecute suspects in court under section 23 of the Police Act. In practice, the police are responsible for most of the prosecutions of criminal suspects at the magistrates' courts. Some of the offenses tried in the magistrates' court relate to offenses punishable with less than 5 year imprisonment, such as stealing, manslaughter, and assaults generally among others. The objection here is that the police who prosecute suspected criminals lack training or competence.

E. Right to Privacy and Family Life

The Constitution guarantees every citizen the right to the privacy of their homes, correspondence, telephone conversations and telegraphic communications. This right requires the police to desist from tapping a person's telephone lines or subjecting one's house to search or seizure of his property.²³ Unfortunately, resorts of seizure of citizen's mails and correspondence in their offices and homes do continually occur in this country. Generally, the police have powers to enter private homes in the course of arrest of a suspected criminal or when investigating criminal matters, however, they must obtain a search warrant signed by the Judge, Magistrate or Justice of Peace. Some family members told Amnesty International that SARS officers stole their cars or withdrew all the money from their bank accounts. For instance, the brother of a detainee who had been arrested on suspicion of participating in an armed robbery told Amnesty International how a team of SARS officers raided his home in Nsukka. According to him, "The police team from SARS forcefully broke into boxes, locked furniture and drawers. By the time they left, several; items including watches, jewelry and shoes were missing. We were too scared to report the incident." In 2017, one Mrs. Ann Okpara was arrested in lieu of her husband whom the police alleged was an accomplice to Evans, the 'Billionaire Kidnapper' who is currently facing criminal trial. She narrated how the police manhandled her in the process of arrest. She was later led by the police to arrest her husband at their home in Igando. At the time of her arrest, she was nursing a baby who was

²³ For a further analysis of statutory violation of citizens' rights to privacy and family life, see Chike B. Okosa, 'Unconstitutionality of Anambra State's Sickle Cell Eradication Law: When Good Intentions are not Enough' (2022) 6(2) *African Journal of Law and Human Rights* [38-44]. See also Chike B. Okosa, 'Unconstitutionality of Compulsory Dress Codes in Nigeria's Higher Institutions', (2022) 3 (2) *Law and Social Justice Review* [9-22]

delivered prematurely. The police ignored it and took her into detention for over two weeks. She further said that the police collected N50,000 from her brother, purportedly to release her, took her to their home and collected valuables they could lay their hands on, including a rechargeable fan, lady's handbags, which she sells, and her husband's car, a 1999 model Toyota Camry. They further collected N40,000, N5,000, and N20,000 from her husband.

2. Anti-Torture Act 2017

This Act prohibits any form of torture of crime suspects, detainees and prisoners and prescribes a 25-year imprisonment term upon conviction of any person who violates the provision of section 2 of the Act which defines in detail what constitutes torture. By the dint and express provision of this Act, the law prohibits every kind of torture from being meted out on any individual. This aligns with the provision of Section 34 of the Constitution which is the grundnorm and also exists as one of the legal frameworks for the protection of Human Rights in Nigeria.

3. The Child Rights Act 2003

Enacted in 2003 as a federal law, this Act drew its provisions from the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Beyond the specific provisions dealing with the rights of children, the Act also extends the rights guaranteed under the Nigerian Constitution to children.

4. Violence Against Persons (Prohibition) Act 2015

This Act which was enacted on the 25 May 2015. As the social and legislative advocacy leading its adoption were largely championed by women groups and gender activists, the Act prohibits all forms of violence against women and girls, including sexual harassment/abuse, physical and domestic violence, and harmful traditional practices.²⁴

Institutional Framework for Protection of Human Rights in Nigeria

Having examined the relevant legal instruments in Nigeria that provide for the protection of fundamental human rights, we shall now examine the various institutions that have been put in place by the government and its agencies to protect and enforce the rights of citizens. These institutions are discussed as follows:

1. National Human Rights Commission

The National Human Rights Commission was established by the National Human Rights Commission Act, 1995²⁵ in line with the resolution of the United Nations which enjoins all member states to establish Human Rights Institutions for the promotion and protection of human rights. The commission serves as a mechanism to enhance the enjoyment of human rights. Its establishment aims at creating an enabling environment for extra-judicial recognition, promotion and enforcement of human rights, treaty obligations and providing a forum for public enlightenment and dialogue on human rights issues thereby limiting controversy and confrontation. The mandate of the commission is to carry out the following:

a. Deal with all matters relating to the protection of human rights as guaranteed by the Constitution of the Federal Republic of Nigeria, African Charter, the United Nations Charter and the Universal Declaration on Human Rights and other international treaties on human rights to which Nigeria is a party;

²⁴ See Chike B. Okosa & CV Odoeme, 'Review of the Violence Against Persons (Prohibition) Act, 2015' (2022) 4 *NILDS Journal of Law Review* [121-136]

²⁵ See Cap N46 LFN 2004 Vol. II. It came into effect on 27th September, 1995.

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- b. Monitor and investigate all alleged cases of human rights violation in Nigeria and make appropriate recommendations to the Federal Government for the prosecution and such other actions as it may deem expedient in each circumstance;
- c. Assist victims of human rights violation and seek appropriate redress and remedies on their behalf;
- d. Undertake studies on all matters relating to human rights and assist the Federal Government in the formulation of appropriate policies on the guarantee of human rights;
- e. Publish regularly reports on the state of human rights protection in Nigeria;
- f. Organize local and international seminars, workshops and conferences on human rights issues for public enlightenment;
- g. Liaise and cooperate with local and international organizations on human rights for the purpose of advancing the promotion and protection of human rights;
- h. Participate in international activities relating to promotion and protection of human rights;
- i. Carry out all such other functions as are necessary or expedient for the performance of these functions under the Act.

To carry out the above functions, the Commission has a Governing Council which consists of 16 members made up of a chairman who shall be a retired Justice of the Supreme Court of Nigeria or the Court of Appeal or a retired Judge of the High Court of a State and an Executive Secretary. The members of the Council are appointed by the President on the recommendation of the Attorney – General of the Federation. Since inception, the Commission has carried out activities in various fields in line with the law establishing it and the mandate. The Commission as the highest National Institution dealing with human rights has presented a common front on human rights and put in place adequate mechanisms for the effective promotion and protection of human rights in Nigeria. This it has done through public enlightenment and education, investigation of complaints, mediation and reconciliation, conflict resolution, peace building, research advocacy and training programs on contemporary issues in the field of human rights. Through a consultative and collaborative process, the commission has developed a National Action Plan for the promotion and protection of human rights in Nigeria. The National Action Plan includes effective complaint mechanism, regular hosting of enlightenment seminars, workshops, rallies and continuous reengineering of its strategies. It is expected to be a benchmark on which Nigeria's human rights records can be judged. For effective performance and result oriented approach to its work, the Council identified fifteen (15) main thematic areas of focus on the National Human Rights Commission and these include:

1. Women and other Gender Related Matters;
2. Children
3. Corruption and Good Governance;
4. Police, Prisons and other Detention Centers;
5. Environment and the Niger

The Commission's Strategic Work Plan is based on the thematic focus mentioned above and includes the following: public education and enlightenment, training, mediation, on – the-spot assessment, policy – oriented research and so on. It includes strategies targeted at promoting democracy and good governance, rights of vulnerable groups, conflict situation and issues relating to extra – judicial killings/torture and other violence. The commission's mandate rests squarely on two platforms: promotion and protection of human rights. Under promotions, the commission has held workshops, seminars, conferences, and interactive sessions with relevant institutions. Similarly, it has continued to observe and mark International Human Rights Day, publish the Human Rights Newsletter and collaborate with

NGOs in the field of human rights. A lot of sensitization, education and enlightenment programs have been carried out by the Commission. The Commission hosted the first ever Nigeria Human Rights Summit that brought together all the stakeholders in the human rights community towards drafting the National Action Plan for the promotion and protection of human rights in Nigeria. It provides opportunity for various enlightenment and interactive programs between the Commission and members of the public particularly the less privileged in society. Village Square meetings are also held across the country to discuss the mandate of the commission and other issues relevance to the specific local environment. In its effort to protect human rights, the Commission monitoring activities remain a cardinal point of its statutory mandate. In a bid to add impetus to its role and become more proactive, the commission set up a Monitoring Unit under the office of the Executive Secretary. This is in the belief that with adequate monitoring of human rights abuses, many violations could be prevented rather than commence redressing after violations.

2. Public Complaints Commission

The Public Complaint Commission was established by the Public Complaints Commission Act 1975. Under the Act, the Public Complaint Commission is given wide powers to inquire into complaints by members of the public concerning the administrative action of any public authority and companies or their officials and other matters ancillary thereto. The commission shall consist of a Chief Commissioner and such number of other Commissioners as the National Assembly may from time to time determine. The commission may establish such number of branches of the Commission in the states of the Federation as the National Assembly may from time to time determine. The powers and duties of Commissioners are enumerated in Section 5 of the Act. It provides that all Commissioners shall be responsible to the National Assembly but the Chief Commissioner shall be responsible for co-ordinating the work of all other Commissioners. Under the Act, a Commissioner shall have power to investigate either on his own initiative or following complaints lodged before him or any other person, any administrative action taken by;

- (a) Any Department or Ministry of the Federal or any State Government;
- (b) Any Department of any Local Government Authority (however designated) set up in any State of the Federation;
- (c) Any Statutory Corporation or Public Institution set up by any Government in Nigeria;
- (d) Any company incorporated under or pursuant to the Companies and Allied Matters Act whether owned by any Government aforesaid or by private individuals in Nigeria or otherwise howsoever; or
- (e) Any officer or servant of any of the aforementioned bodies.

For effective protection of human rights, every Commissioner shall ensure that administrative action by any person or body mentioned in subsection (2) above will not result in the commitment of any act of injustice against any citizen of Nigeria or any other person resident in Nigeria and for that purpose he shall investigate with special care administrative acts which are or appear to be contrary to any law or regulation; mistaken in law or arbitrary in the ascertainment of fact; unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs; improper in motivation or based on irrelevant considerations; unclear or inadequately explained, or otherwise objectionable. Under the Act, in every case where a commissioner discovers that a crime may have been committed by any person, he shall report his findings to the appropriate authority or recommend that, that person be prosecuted. Also in every case where a Commissioner is of the opinion that the conduct of any person is such that disciplinary action against such a person be taken, he shall make a report in that regard to the appropriate authority which shall take such further action as may

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be necessary in the circumstances. By section 9 (1) of the Act, a Commissioner in the discharge of his function shall have power to summon in writing any person who in the opinion of the Commissioner is in the position to testify on any matter before him, to give evidence in the matter and any person who fails to appear when required to do so shall be guilty of an offence under the Act. Any person guilty of an offence under section 9 shall on conviction be liable to a fine of N500 or imprisonment for six months or to both such fine and imprisonment. The writer is not aware of any one who has been prosecuted under the Act.

3. Truth and Reconciliation Commission

The Judicial system is perhaps, the most popular mechanism for human rights protection. However, the judicial system produces victors and the vanquished and may not provide the healing effect where massive and grave human rights violations have polarized the society. Furthermore, the judicial system is usually expensive, protracted and may in some cases not produce justice, as a result of some facts such as the bias of evidence, and the technicality of the law. Though Truth and Reconciliation Commissions may not in most cases, lead to legal (retributive) justice tribunals, they may result in some other dimensions of justice- restorative justice or corrective justice – which aim at moving away from the traditional punitive verdicts and towards truth seeking and reconciliation. The Argentine experience was however, peculiar in that there were prosecutions of the members of the military and their collaborators for gross human rights abuses. President Olusegun Obasanjo in less than ten days after being sworn in as a democratically elected President of Nigeria inaugurated a Judicial Commission known as Human Rights Violations Investigation Panel on 7th June, 1999, headed by a renowned retired Justice of the Supreme Court, Justice Chukwudifu Oputa. The commission is popularly known as the Oputa Panel. The emergence of the Commission was received by members of the public with great enthusiasm. The commission called for and received memoranda from members of the public. It began hearing of the past human rights abuses in Nigeria from October 23, 2000. However, the laudable initiative was almost totally scuttled when the Supreme Court held in *Fawehinmi v. Babangida*²⁶ that: The Tribunals of Inquiry Act, 1966 promulgated by the Federal Military Government for the entire Federation under the enabling laws is an existing law pursuant to section 315 of 1999 Constitution and is deemed to be an Act enacted by the National Assembly for the Federal Capital Territory, Abuja only and a law enacted by a State House of Assembly under the residual powers of both legislatures. This is because the National Assembly has no power under the 1999 Constitution to enact a general law on tribunals of inquiry. Before the setting up of the Oputa Panel, Nigeria went through nearly two decades of military dictatorship under the regimes of Generals Mohammed Buhari, Ibrahim Babangida and Sani Abacha. Government agencies were at their worst during the Babangida and Abacha regimes. Cases of torture and wanton killing abound. Abacha allegedly went all out to eliminate significant members of the opposition. Prominent pro-democracy activists assassinated during the reign of Abacha include, Alhaja Kudirat Abiola, activist wife of the late Chief Moshood Abiola; Chief Alfred Rewane, a National Democratic Coalition Leader; Admiral Emmanuel Omotechinwa (rtd). So many narrowly escaped death while others went into exile to save their lives. The security agencies were allegedly empowered to kill and maim any person perceived to be opposed to Abacha's self-succession bid. Right to life, guaranteed under the Constitution allegedly meant nothing to the regime. Deprivation of right to liberty was rampant. Military tribunals instead of the regular courts were used to try specific individuals in order to secure their conviction.

²⁶[2003] F.W.L.R. (Pt. 146) 835 @ 879

The climax was the hanging in 1995 of Ken SaroWiwa and other environmental rights activists after a trial which international observers described as flouting established legal norms. The manner of selecting members of truth commission differs from country to country. In the case of Nigeria, the former President (Olusegun Obasanjo) appointed the members who were of high reputation and integrity with terms of reference.

3.3 International Legal Framework for the Protection Of Human Rights

Protection encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (human rights, humanitarian and refugee law), without discrimination of any kind. The international legal framework for protection is primarily composed of three interrelated and mutually reinforcing bodies of treaty law: international human rights, humanitarian and refugee law. Everyone, everywhere has the same rights as a result of our common humanity. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. All human beings are born free and equal in dignity and rights.”²⁷ Human rights such as the right to life are inherent and inalienable in human beings simply by the fact of their being human. Individuals and groups cannot voluntarily give up their human rights, nor can others take them away. The United Nations set a common standard on human rights with the adoption of the Universal Declaration of Human Rights in 1948. Although the Declaration is not part of binding international law, its acceptance by all countries around the world gives great moral weight to the fundamental principle that all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status, are to be treated equally and with respect. The United Nations has since adopted many legally binding international human rights treaties and agreements, including the Convention on the Rights of the Child. These treaties are used as a framework for discussing and applying human rights. The principles and rights they outline become legal obligations on the States that choose to be bound by them. The framework also establishes legal and other mechanisms to hold governments accountable in the event they violate human rights. The instruments of the international human rights framework are the Universal Declaration of Human Rights and the nine core human rights treaties:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention on the Rights of the Child
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention on the Rights of Persons with Disabilities
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- The International Convention for the Protection of All Persons from Enforced Disappearance.

Every country in the world has ratified at least one of these, and many have ratified most of them. These treaties are important tools for holding governments accountable for the respect for, protection of and realization of the rights of individuals in their country.

Understanding this framework is important to promoting, protecting and realizing children’s rights because the Convention on the Rights of the Child and the rights and duties contained

²⁷Article 1, Universal Declaration of Human Rights 1948

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in it and are part of it.²⁸ Activities for protection will vary according to specific institutional mandates and capacities. For example, human rights workers may protect women and girls by monitoring and investigating abuses and working with national authorities to open judicial inquiries and pursue prosecutions of perpetrators. The international legal framework for protection is primarily composed of three interrelated and mutually reinforcing bodies of treaty law: international human rights, humanitarian and refugee law. Customary international law, which is derived from a consistent practice by States rather than a legal text, also contains a number of important rights and, for instance, prohibits acts such as arbitrary detention, extra-judicial killings, slavery and torture. Under international human rights law, States have the obligation to respect, protect and fulfil human rights. The obligation to respect requires that a State, principally, refrain from interfering directly or indirectly with the enjoyment of the right; the obligation to protect means preventing third parties from interfering with the enjoyment of the right; and fulfilling human rights means taking steps to realize the right in question, progressively in the case of economic, social and cultural rights. In order to meet these obligations, States should, inter alia, put in place appropriate policies; review and ensure (by amending, enacting or repealing) that national legislation is in conformity with international standards; ensure that an effective institutional framework (e.g. police, judicial system, prisons, etc.) exists to protect and claim rights, and offer possibilities for individuals and groups to seek remedy when their rights have been violated; implement programs to give effect to rights; and seek international assistance and cooperation as needed.

The International Covenant on Civil and Political Rights

ICCPR is an international human rights treaty adopted in 1966. The UK agreed to follow ICCPR in 1976. It enables people to enjoy a wide range of human rights, including those relating to: freedom from torture and other cruel, inhuman or degrading treatment or punishment, fair trial rights, freedom of thought, religion and expression, privacy, home and family life, equality and non-discrimination.²⁹ Human rights enjoy legal protection through codification in seven core international treaties. Some of the treaties are supplemented by optional protocols dealing with specific issues. Many regional treaties also protect and promote human rights. Taken together, these instruments and national law provide safeguards against actions and omissions that interfere with human dignity, fundamental freedoms and entitlements. States establish their consent to be legally bound by a treaty, and to implement its provisions nationally, through the act of ratification or accession. For example, 156 States have so far ratified the ICCPR, thus undertaking to guarantee to all individuals within their territory and subject to their jurisdiction (even if not situated within the territory of the State) the rights in the Covenant. The ICCPR prohibits distinction on the basis of sex, and specifically commits States to ensuring the equal right of women and men to the enjoyment of all rights enshrined in the Covenant, including:

- The right to life;
- Freedom from torture or cruel, inhuman or degrading treatment or punishment;

²⁸ Unicef, the international human rights framework: ‘All human beings are born free and equal in dignity and rights,’ <<https://www.unicef.org/armenia/en/stories/international-human-rights-framework#:~:text=The%20instruments%20of%20the%20international,Economic%2C%20Social%20and%20Cultural%20Rights>> accessed 22nd June 2023

²⁹ Equality and human rights commission: The International Covenant on Civil and Political Rights, <<https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-civil-and#:~:text=ICCPR%20is%20an%20international%20human,or%20degrading%20treatment%20or%20punishment>> accessed 22nd June 2023

- Freedom from slavery, servitude and forced or compulsory labour;
- the right to liberty and security of person and freedom from arbitrary arrest or detention;
- the right of detained individuals to be treated with humanity and dignity;
- equality before the law and equal protection of the law;
- the right to a fair trial; and
- Freedom of religion, expression, assembly and association.³⁰

The International Covenant On Economic, Social And Cultural Rights

The International Covenant on Economic, Social and Cultural Rights is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 through GA (General Assembly). It came into force in 1978 and together with its sister Covenant, the International Covenant on Civil and Political Rights (ICCPR), forms part of the International Bill of Human Rights. The ICESCR is composed of thirty-one articles contained in six sections: the preamble and parts I to V. Part I, which is identical to the parallel part of the ICCPR and comprises solely article 1, proclaims the right of all peoples to self-determination, including the right to freely pursue their economic, social and cultural development and to freely dispose of their natural wealth and resources. Although the inclusion of a right of peoples may be problematic (particularly where the definition of the people remains difficult), it could be said to provide a necessary context within which the realization of rights within the Covenant is to take place. The heart of the Covenant is found in part III, articles 6-15, which outlines the rights to be protected. These include, broadly, the right to work (art. 6), the right to fair conditions of employment (art. 7), the right to join and form trade unions (art. 8), the right to social security (art. 9), the right to protection of the family (art. 10), the right to an adequate standard of living, including the right to food, clothing, and housing (art. 11), the right to health (art. 12), the right to education (art. 13) and the right to culture (art. 15). The protection given to economic rights in the Covenant is broad but general. Article 7, for example, provides for a right to equal remuneration for work of equal value (rather than just the more restrictive equal pay for equal work), and gives recognition to a wide range of other rights such as the right to safe and healthy working conditions and the right to reasonable limitation of working hours. Similarly, article 8 provides not only for the right to join and form trade unions but also a right of trade unions to function freely and the right to strike.³¹ The ICESCR protects the following rights, which correspond to sectors of humanitarian assistance:

- the right to education;
- the right to an adequate standard of living, including food, clothing and housing;
- the right to the highest attainable standard of physical and mental health; and
- The right to work and to favourable conditions of work.

The Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child is an international human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained

³⁰ The international legal framework for protection, <<https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/Gender%20Handbook%20Legal%20Framework.pdf>> accessed 22nd June 2023

³¹ Circle of rights: economic, social and cultural activism, "Introduction To The International Covenant On Economic, Social And Cultural Rights" <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module3.htm#_edn3> accessed June 22, 2023

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earlier.³² The Convention on the Rights of the Child (CRC) is the most universally accepted human rights instrument, ratified by every country in the world except two. The Convention incorporates the full range of human rights - civil, political, economic, social and cultural rights of children into one single document. The Convention was adopted by the UN General Assembly on 20 November 1989 and entered into force in September 1990. The Convention outlines in 41 articles the human rights to be respected and protected for every child under the age of eighteen years.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly on 10 December 1984. It completed the codification process to combat the practice of torture. As part of this instrument, a monitoring body, the Committee against Torture, was set up. Its main function is to ensure that the Convention is observed and implemented by all States parties. After being ratified by the 20th State party, it came into force on 26 June 1987. The Committee met for the first time in April 1988 in Geneva. The Convention absolutely prohibits torture and other acts of cruel, inhuman, or degrading treatment or punishment. States parties agree to prevent acts of torture in connection with activities that include:

- returning, expelling or extraditing someone to another country where there are grounds to believe they will face torture;
- arrest, detention and imprisonment;
- interrogation; and
- The training of police (civil or military), medical staff, public officials and anyone else who may be involved in the arrest, detention and questioning of a person.³³

International Convention on the Elimination of all Forms of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is a United Nations convention. A third-generation human rights instrument, the Convention commits its members to the elimination of racial discrimination and the promotion of understanding among all races. On 21 December 1965, the United Nations General Assembly adopted Resolution 2106, which established the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD). It is among the oldest conventions in the UN Human Rights Office arsenal to target oppression and discrimination. The Convention essentially resolves to “to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination.” Indeed, even after half a decade since its adoption, ICERD continues to remain relevant to the issues that we face today. As one opinion put it, “The Convention, as a living instrument, must be interpreted and applied taking into account the circumstances of contemporary society.” Over the past 45 years, the committee has effectively addressed new

³² United Nations: convention on the rights of the child, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child#:~:text=For%20the%20purposes%20of%20the,child%2C%20majority%20is%20attained%20earlier.>>> accessed 22nd June 2023

³³ United Nations: background of the convention, “committee against torture” <<https://www.ohchr.org/en/treaty-bodies/cat/backgroundconvention#:~:text=The%20Convention%20against%20Torture%20and,against%20Torture%2C%20was%20set%20up.>>> accessed June 22, 2023

and emerging issues within the framework of the Convention and adopted innovative practices to improve its efficiency and effectiveness.³⁴ The UK agreed to follow ICERD in 1969 to take action on eliminating racial discrimination in all its forms, including:

- eradicating racial hatred and incitement to hatred
- combatting prejudices which lead to racial discrimination
- Guaranteeing the enjoyment of civil, political, economic, social and cultural rights without discrimination on grounds of race, colour, or national or ethnic origin.³⁵

Conclusion

Nigeria has a legal framework for protection of fundamental rights. The primary document that safeguards fundamental rights in Nigeria is the Constitution of the Federal Republic of Nigeria 1999. The Nigerian Constitution, in its Chapter IV, contains a range of provisions that protect fundamental rights and freedoms. Some of the key rights enshrined in the constitution include the right to life, the right to personal liberty, the right to fair hearing, the right to freedom of expression, the right to freedom of thought, conscience, and religion, the right to peaceful assembly and association, and the right to private and family life, among others.

The legal framework for the protection of fundamental rights in Nigeria includes the establishment of specialized institutions, such as the National Human Rights Commission (NHRC), which is tasked with promoting and protecting human rights in the country. The NHRC investigates human rights violations, mediates in disputes, and makes recommendations for redress. In addition to the Constitution, Nigeria is also a signatory to various international human rights treaties and conventions, which further contribute to the protection of fundamental rights. The international legal framework for the protection of human rights plays a crucial role in promoting and safeguarding the inherent dignity and fundamental freedoms of individuals worldwide. Over the years, significant progress has been made in establishing and developing a comprehensive system of international human rights law. The cornerstone of this framework is the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations general assembly in 1948. Numerous international treaties and conventions have been established to address specific aspects of human rights, such as civil and political rights, economic, social and cultural rights, and the rights of women, children, and minorities, as well as prohibition of torture, genocide and discrimination. Prominent examples include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These legal instruments not only outline the rights and freedoms but also create mechanisms for monitoring and enforcing compliance. Finally, these international legal frameworks for the protection of human rights provides a solid foundation for upholding the principles of dignity, equality, and the freedom for all individuals.

³⁴ United Nations: International Convention on the Elimination of All Forms of Racial Discrimination; “50 years of fighting racism” <<https://www.ohchr.org/en/treaty-bodies/cerd/international-convention-elimination-all-forms-racial-discrimination-50-years-fighting-racism>> accessed June 22, 2023

³⁵ Equality and human rights commission:” International Convention on the Elimination of All Forms of Racial Discrimination (CERD)” <<https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-convention-elimination-all>> accessed June 22, 2023

