CHALLENGES ON THE ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA: LESSONS FROM KENYA

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Abstract

Every Individual is ingrained with human rights which is inherent and inalienable and as such, the state has a corresponding obligation to ensure that these rights are respected, promoted and protected. Human right is fundamental to human existence and encapsulates the notion that every person has equal worth. This simple but profound concept means that every member of the human family has value that cannot be dismissed or ignored to every other person hence it is the onerous duty of the state to ensure its protection and equally forestall its breach. This article followed a doctrinal method of research and brings to the fore the importance of human right to human existence. There had been a number of International agreements and treaties dealing with humanitarian issues. Preservation and protection of human rights have also been considered germane and given attention in several legal instruments. Nigeria has all the laws and institutions in place for the enforcement of human rights in the country. For instance, the Constitution of the Federal Republic of Nigeria, (CFRN) 1999 recognizes human rights and provides for the procedure for its enforcement. The police and the courts are critical institutions for the enforcement of human rights. Nigeria is also a party to several international Human Rights instruments such as the African Charter on Human and Peoples' Right which she has domesticated. Despite all these efforts, human rights enforcement is still at an abysmal level in Nigeria. Nigeria continues to languish at the bottom on the global human rights protection index released by Amnesty International and the United Nations Human Rights Council. This article therefore sheds light on the enforcement of human rights in Nigeria inclusive of the socio-economic rights which is non justiciable, while comparing same with the constitutional architecture of Kenya which embraces and enforces socio economic rights in her jurisprudence. Furthermore, the article unearths the challenges of the enforcement of human rights in Nigeria and how the Nigerian Constitution has dealt positively with it comparing same with the position in Kenya and not forgetting how issues of corruption, impunity, illiteracy, poverty, insecurity and so on has hindered the enforcement and protection of human rights and in the final limb, recommendations essential for the protection and enforcement of human rights in Nigeria.

1.0 Introduction

Human Rights cannot be complete without a tribute to the early writers and political philosophers. These writers include social contractarians like John Locke of England, Thomas Hobbes, Jacques Rousseau of France, neo classical philosophers like Karl Marx of Germany, V.I Lenin of Russia and Thomas Jefferson of the United States of America.[1] John Locke defended personal rights and freedom as fundamental human rights.[2] He contended that all human beings have by nature been bestowed with

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[1] F F Odiebei, *Cases and Materials on Human Rights* (Pearl Publishers 2011).

[2] S Mukherjee Ramaswamy, *A History of Political Thought Plato to Marx* (Pretence –Hall of India Ltd 2007)200.

certain inalienable rights to life, personal liberty and freedom from arbitrary rule.[3] The Natural Law theorists saw human rights in the abstractions.[4] They saw human rights as specie of rights which can be said to inure to every human being. Thus, such rights being regarded as inalienable and immutable cannot be taken away without an affront to justice.[5] Therefore wherever there is wrong there must be remedy which calls for enforcement of these rights. Over the years, the enforcement of human rights have assumed a significant position in the development of human rights at the national and on the international scene. Human rights are recognized and protected under Constitution of the Federal Republic of Nigeria, 1999, Regional and International Conventions. The 1999 Constitution as well as other Regional and International Conventions guarantees the protection of these rights to all persons in Nigeria. Thus where any of these fundamental freedoms and guarantees are violated or has been violated, the person who alleges a breach is clothed with the right to seek redress in court against the violator be it individual or government authorities.

In Nigeria, the rights of Nigerians appear not to be respected or protected. On daily basis, the electronic and print media is awash with the sad and gory tales of Human Rights violations- man's inhumanity to his fellow man, which manifest itself in various actions, especially of both civil authorities and powerful individuals in the country. For instance, it is a known fact that police arrest persons indiscriminately on trumped up charges and in most cases without any shred of evidence. These suspects are hounded into police vans and dumped into police cells where they are tortured into false confession. Today the greatest weapon in the armory of the police is the confessional statement of the suspect. Suspects are tortured and beaten while in police custody. Some are even killed in police detention.

A visit to the detention centers and/or correctional centers across the country will reveal different levels of unbearable human conditions and breaches of Human Rights. For instance, the Human Right Committee of the Nigerian Bar Association, Port Harcourt Branch carried out a legal outreach and Clinic to the correctional center to interface with inmates in order to assist them with legal representation, it was reported that several inmates have been in prison for upwards of ten years without trial, while their offences were found to be within the range of simple offences and misdemeanors. This implies that even if they were tried and convicted, their penalty could not have exceeded imprisonment for a term of two years. The inmates stated that they were beaten, tortured and maltreated to confess to crimes they did not commit.

On the other side of the divide is the human rights violations perpetrated by civilian persons themselves against one another. Take the rising case of jungle justice in Nigeria for instance, on almost a daily basis, persons suspected of stealing or committing robbery are killed by mobs who prefer to take laws into their hands than report these incidents to the authorities. The most worrisome aspect of these cases of human rights violations is that more often than not, the perpetrators or violators go unpunished. The Police rarely arrest and where they arrest at all no prosecution is undertaken. In addition, it appears that most victims prefer to leave their grievances in the hands of God to avenge the evil deeds on their person. The enforcement of human rights in Nigeria is indispensable to the realization of the ideals of a free, just and prosperous state. The absence of human rights protection and enforcement will spell

[3] S T Hon, *Constitutional law and jurisprudence in Nigeria* in: Odiebei (n1).
[4] Odiebei (n1) 1.
[5] *Ibid.*

doom for any human society and is an open invitation to anarchy. It reduces the dignity and moral worth of the human person, triggers insecurity, discourages investments and makes the state a pariah state. This article is therefore undertaken in order to investigate the challenges which make the enforcement of Human Rights in Nigeria difficult and drawing lessons from Kenya on how improve human rights enforcement in Nigeria.

2.0 Definition and Meaning of Terms

Before delving into the actual discourse of this article, it will be germane to succinctly define the concepts relating to the topic.

2.1 Rights

According to Blacks Law dictionary,[6] Right is a legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong. Akolokwu[7] described rights as that which is appropriate under law, morality or ethics. Rights are recognized, claims, interests which a person have on one other. This is to say that rights impose duties on one person, while the duties to act or not to act are the rights of the other person. One thing is sure, whether right is anchored on ethics, morality or legal, what the recipients deserve is justice which in the view of Ndubuisi and Nathaniel[8] is correcting an erroneous positing of affairs.

The word in legal parlance attaches to a whole lot of things. It may be attached to something tangible or intangible, visible or invisible. A broad definition of right is given an entitlement to something, whether to concepts like Justice and due process, or to ownership of property or some interest in property, real or personal. These rights include various freedoms, protection against interference with enjoyment of life and property, civil rights enjoyed by citizens such as voting and access to the courts, natural rights accepted by civilized societies, human rights to protect people throughout the world from terror, torture, barbaric practices and deprivation of civil rights and profit from their labor.[9]

Rights maybe classified broadly into legal and moral rights. Right are legal when they are a set of entitlements backed by a formal legislative process. On the other hand, rights are moral when their existence is admitted but without a formal legislative backing.

2.2 Human Rights

Human Rights refer to those rights which are possessed by every individual by virtue of the fact that they are human beings. It is referred to as the 'birth right of mankind' in the sense that as far as you are a human being, you possess these rights and these rights can never be stripped away. To attempt to take away these rights from an individual would mean stripping away ones humanity and as it is impossible to cease to be a human, it is impossible to cease to possess these rights.

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[6] B A Garner (eds) *Blacks' Law Dictionary* (8th edn West Group 2004) 1436.
[7] G O Akolokwu and C. Chigbo, *Custodial Rights under Ekpeye Customary Law,* (Port Harcourt: Ledum Press 2019) 193.
[8] F N Ndubuisi and O.C Nathaniel, *Issues in jurisprudence and Principles of Human Rights* (Lagos: Dmodus Publishers 2007).
[9] The free on-line Dictionary https://legal-dictionary.the freedictionary.com/right.> Accessed 25/06/2022.

According to Kapoor,[10] "Human Rights may be regarded as those fundamental and inalienable rights which are essential for life as human beings." They are the rights which are possessed by every human being irrespective of his or her nationality, race, religion, sex, position, status etc simply because he or she is a human being. [11] He further opined that human rights are those rights which are inherent in our nature and without which we cannot live as human beings.

The above position is shared by Ogbe,[12] Muhammed Darkofa,[13] Chinwo[14] and Igwe.[15] Ogbe sees Human Rights as those rights that accrue to man solely by virtue of the fact that he is human. Muhammed and Darkofa contended that by nature and scope, human rights are universal, common, indivisible, interdependent, interrelated, inherent and inalienable to all human beings[16] while Chinwo defines human rights as rights that attach to human beings by virtue of the fact that they are human beings.[17]

Human Rights remain indeed rights that are inherent in the human person and so have attained that recognition above local status to an international status as opined by Stark. Stark saw human rights internationally recognized standards, norms or behavior of States and other persons in International law.[18]

According to Igwe, Human Rights can be defined as "rights human beings possess or bear by virtue of membership of the human family. He contended that the rights are innate, inalienable and inherent. They are bestowed by nature while the law containing these rights merely acknowledge what is already in existence."[19]

It can further be argued that human rights are claims asserted and recognized as a right, not claims upon love, or grace or brotherhood, or charity. They are claims under some applicable laws. They are rights upon society as represented by the government and its officials. The good society is one in which individual rights flourish and in which their protection are the fundamental objectives of government.[20]

Nsirimovu[21] describes human rights as the condition of life which men have right to expect by virtue of being a human being. The concept involves not a statement of fact but rather a yardstick against which conditions in practice may be measured. He further opined that rights are the ideals and distinguishing marks of a civilized society.

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[10] S K Kapoor, *International Law and Human Rights* (18th edn. Central Agency 2011) 806.
[11] *Ibid.*
[12] C D Ogbe, *Enforcement of Fundamental Rights in Nigerian Courts* (Chudanogs Publishers Ltd 2015).
[13] L T Muhammed and Y Dankofa, '*Human Rights, Security and Development: A Call for Effective Enforcement in Nigeria'.* [2012] (3), *Human Rights Review* 100.
[14] C A J Chinwo, *Principles and practice of Constitutional Law* (Amazing Grace Partners 2007)102.
[15] O W Igwe, '*Cultural Impediments to the Realization of Women's Human Rights in Igbo land, Nigeria.*'[2014] (4) (1) *Journal of Private and Property Law*, 160-171.
[16] Muhammed and Dankofa, (n 8) 100.
[17] CAJ ChInwo, (n14) 10.
[18] B Stark, 'International Human Rights and Family Planning: A Modest Proposal' [1989] (33) *Denver Journal of International Law and Policy*. 44-78.
[19] Igwe (n15) 160.
[20] L Henkin, *Human Rights Today* (Oxford: Clarendon Press, 1979) 1-2.
[21] A Nsirimovu, *Human Rights Educations Techniques in Schools* (Lagos: Macmillian, 1994) 24.

Human Rights connotes the rights that accrue to the individual against the background of the fact that he or she is a human being. They are natural, inherent and cannot be denied the individual except as permitted by law and where there is a breach, there must be a remedy. In this direction, following the natural law theorist Eso[22] declared as follows:

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

The United Nations (UN) defines Human Rights as those rights that are inherent in our state of nature and the absence or deprivation of which human beings will live as sub humans.[23] Rao opines that human rights are the inherent dignity and inalienable rights of all members of the human family, which themselves constitute the foundation of freedom, justice and peace in the world.[24]

From the above position, Human Rights are rights which every human being must assert, exercise, enjoy and obtain remedy for their violation through appropriate mechanism and the Constitution is a mere regulator of what divinity has granted man and thus human rights are not just mere rights but fundamental rights belonging to the citizen and have always existed even before orderliness prescribed the manner they are to be sought, they stand above the ordinary laws of the land and antecedent to the political society itself.

2.3 Enforcement

This is the act or process of compelling compliance with a law, mandate, command, decree or agreement.[25] It can also be seen as the act of giving force or effect to law to compel obedience.[26] Enforcement is also the process of making people obey a law or rule, or making a particular situation happen or be accepted.

3.0 The Domestic Legal Frameworks for the Enforcement of Human Rights in Nigeria

The domestic legal frameworks within the context of the above heading refers to the internal laws regulating the respect for human rights within the Nigerian society. The domestic legal framework for human rights regulation in Nigeria are as follows;

3.1 The Constitution of the Federal Republic or Nigeria (CFRN) 1999 (as amended)

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) is the supreme law of the land. It came into being in the year 1999 and has since undergone several amendments. It is the

[22] K Eso, *Thoughts on Human Rights and Education* (Ibadan St. Paul Publishing House 2008) 269.
[23] D J O Byme, *Human Rights: An Introduction* (Pearson Education Singapore, 2005) 5.
[24] R J Vincent, *Human Rights and International Relations* (Cambridge University Press, Cambridge 1986) 12-14.
[25] B A Garner, (eds) *Blacks' Law Dictionary* (8th edn West Group 2004) 569.
[26] *Ibid.*

mother law from which every other law in Nigeria derive its validity. In appraising the supremacy of the Constitution, Niki Toby[27] JSC declared as follows:

The Constitution is the *Fons et origo* not only of jurisprudence but also of the legal system of the nation. It is the beginning and the end of the legal system. In Greek language, it is the alpha and omega. It is the barometer with which all statutes are measured in line with the kingly position of the constitution, all three arms of the government are slaves of the constitution, not in the sense of undergoing servitude but in the sense of total observance to it.

In affirmation of this assertion, the CFRN 1999 in its section 1(1) & (3) authoritatively declares thus;

i) This constitution is supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria and
ii) If any other law is inconsistent with the provision of this constitution, this constitution shall prevail, and that other law, shall to the extent of the inconsistency be void.

The CFRN 1999 has enshrined in it certain rights referred to as Fundamental Rights in its Chapter IV. The Chapter is the human rights section of the Nigerian State even though there is clearly no use of the phrase 'human rights' throughout the Constitution. These rights are justiciable within the Nigerian milieu and are expressly provided for under Section 33 to 43 of the CFRN 1999. In affirmation of its enforceability, the CFRN further provides in another section but within the same Chapter IV, that "*any person who alleged that any of the rights provision of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that State for redress*[28]. In other words, the enforcement of these rights do not only arise upon the occurrence of a breach of any of them, but also arise where there is a perceived breach.

In the case of *Dilly v Inspector General of Police and Ors*[29], the Appellant instituted an action against the Respondents for the enforcement of her deceased son's fundamental rights to life following his arrest, detention and torture, which eventually resulted in his death. The High Court dismissed the suit, holding that the applicant cannot bring an application seeking redress for the violation of her deceased son's right to life under the Fundamental Rights (Enforcement Procedure) Rules 2009. On appeal to the Court of Appeal, the court upturned the decision of the High Court and held that the appellant could enforce the fundamental human right to life of her son as the right to life is of a special class whose violation ranges from an attempt which is an inchoate process before full violation occurs, which is when violation is completed. Before completion, the person can act for himself. When, however, such violation has gone to the irreversible stage such as death, such can only be litigated by a next of kin and that failure to accommodate this special class of right with its peculiarity will be against the spirit of the Constitution.

[27] *A.G. Abia v A. G. Federation* [2003]4 NWLR (pt.809) 124.
[28] CFRN 1999 (as amended) s 46(1).
[29] *(CD/L/12/2012)[2016]NGCA 21 (22 JUNE 2016).*

The bulk of rights known or expressed as fundamental rights by the CFRN 1999 (as amended) are the set of fundamental human rights known as civil and political rights, falling within the first-generation rights. These rights which are enshrined in the CFRN 1999 are:

a) Right to life;
b) Right to the dignity of human person;
c) Right to personal liberty;
d) Right to a fair hearing;
e) Right to private and family life;
f) Right to freedom of thought, conscience and religion;
g) Right to freedom of expression and the press;
h) Right to peaceful assembly and association;
i) Right to freedom of movement;
j) Right to freedom from discrimination; and
k) Right to acquire and own immoveable property anywhere in Nigeria.
l) Freedom from compulsory acquisition of property.

These rights are enforceable at the High Court by virtue of the provision of Section 46 (1) of the CFRN 1999 (as amended). The various individual rights recognized by the Constitution are as follows:

a. Right to life: The right to life is very important in our legal system. The said right is provided in Section 33[30]. The right to life presupposes the right to live freely as a human being. However, limitations are placed on the right to life. Limitations placed on the right to life are limitations which are permitted by law in Nigeria, they are;

b.

i. In execution of the sentence of a court in respect of a criminal offence for which a person has been found guilty in Nigeria.
ii. For the defence of any person from unlawful violence or for the defence of property
iii. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
iv. For the purpose of suppressing a riot, insurrection or mutiny.

It is important to emphasize that the Constitution sanctions intentional killings for the specified purposes only where the killings results from the use of force in circumstances and to an extent permitted by law. Killing in defence of a property is restricted to the defence of a dwelling house against thieves by a person in peaceable occupation of it and persons lawfully assisting him, provided that no more force is used than is reasonably necessary. Killings for the purpose of effecting a lawful arrest is limited to cases where a person who has committed a felony punishable with death or imprisonment for at least seven years takes to flight in order to avoid a police officer coming to arrest him but it has to been shown that the arrest could not be otherwise effected, and that the offence is one for which the victim could have been arrested without a warrant.[31] The circumstances in which killing is permitted by law for the purpose

[30] CFRN 1999, s 33
[31] Criminal Code, s 271.

of suppressing a riot or insurrection are that a proclamation has first to be made by a peace officer commanding the rioters to disperse peaceably;[32] if after a reasonable time there are still twelve or more people riotously assembled together, he may take action to disperse them and if resistance is offered, he and any persons assisting him may use force as reasonably necessary for overcoming it and any death resulting from the use of such force is justified.[33]

c. **Right to Dignity of Human Person** is provided for in Section 34[34]. The Constitution of the Federal Republic of Nigeria 1999, (as amended) in chapter four proclaims the right to dignity of the human person in the social objectives and also noted that the social order of the Nigerian State is founded on ideals of freedom, equality and justice. It provides that in furtherance of social order, the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced. Section 34 of CFRN, 1999 provides as follows: *Every individual is entitled to respect for the dignity of his person and accordingly -no person shall be subjected to torture or to inhuman or degrading treatment; be held in slavery or servitude; and or required to perform forced or compulsory labour except any labour required in consequence of the sentence or order of a court; or members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such. Other exceptions are any labour required which is reasonably necessary in the event of any emergency or calamity threatning the life or well-being of the community; or any labour or service that forms part of Normal communal or other civic obligation for the well-being of the community.*

Dignity of a person is protected by the prohibition of slavery, servitude and forced labour except where such labour is required in consequence of the sentence or order of a court or is reasonably necessary in the event of any emergency or calamity threatening the life or wellbeing of the community or forms part of normal communal or other civic obligations for the wellbeing of the community.

d. **Right to Personal Liberty** is provided in Section 35[35] of the CFRN, 1999: The Constitution provides as follows; e*very 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 a procedure permitted by law in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty; by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law; for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence; in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare; in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or for the purpose of preventing the unlawful*

[32] *Ibid*, s 72.
[33] *Ibid*, s 73.
[34] CFRN, 1999, s 34
[35] CFRN, 1999, s 35

entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.

The right to personal liberty requires that a person should not be subject to arrest and detention except as provided by law, and provided that neither the arrest nor detention is arbitrary. These rights applies to all forms of detention where people are deprived of their liberty. The right to personal liberty is one of the most central human rights as it is connected to the essential rudiments of an individual's physical freedom. The right to liberty requires that the arrest or detention of an individual must be in accordance to law. The right therefore protects an individual from the excesses of the government and its agents. This right is essentially a personal freedom in which no one including the government can abridge.

e. Right to Fair Hearing: This right is encapsulated in two latin maxims – *audi alterem patem* (which means hear the other party) and –*Nemo judex incausa sua* (which means you cannot be a judge in your own case). Section 36 (1)[36] provides thus:

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

From the wordings of this provision, fair hearing entails

i. Public hearing and adjudication of matters in court or any tribunal unless where in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice
ii. Hearing and adjudication of matters within a reasonable time.
iii. Right to be defended by a legal practitioner.
iv. Presumption of innocence until proven guilty by a competent court.
v. Informed promptly of the nature of offence in a language the presumed offender understands
vi. Given reasonable time to prepare for his defence including getting a legal practitioner of his choice if he so elects.
vii. Examine in person or by his legal practitioner of his choice his elected witnesses.
viii. Have without payment the services of an interpreter, if the language used by the court is unknown to him.
ix. Obtaining of copies of judgment in his case within seven days of the conclusion of that case.
x. Cannot be punished for an act or omission that does not constitute an offence in any law at the time of commission or omission and penalty duly prescribed.
xi. Cannot be tried again for an offence for which a court of competent jurisdiction have tried an acquittal, conviction or a pardon obtained.

[36]CFRN, 1999, s 36

e. Right to Private and Family Life: The right to privacy is one of the fundamental human rights enshrined in the Constitution. Section 37[37] of the CFRN, 1999 provides as follows;

The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

The right to private life is constitutionally guaranteed considering the daily development of science and technology which is likely to violate this right. The learned author, Lloyd Megwara[38] provides a broad exposition of what the right to privacy guaranteed by the Constitution entails in the following words; *The right to private life encompasses the right to live in isolation of others, [a reclusive life if you like], the right to protect one's social, interpersonal relationships, [inclusive of sexual and marital relationships] the right of concealment of one's nudity, [body anatomy] from public glare and the right of an individual over his own body [inclusive of what goes in and out of his body]. It follows that the right to privacy implies the right to protect one's body from unauthorized intrusion or invasion.*

The entrenchment of this right in the Constitution is very important. The reason is that Nigeria being a common law country does not have effective legal regime for the protection of individual privacy in her legal system. At common law, the only actions for trespass, copyright infringement and probably passing off are the only ways one can obtain relief for violation of one's privacy.[39] Thus modern developments like telephone tapping and hacking would not have been remedied had this provision not been included.

f. Right to Freedom of Thought, Conscience and Religion: Section 38 (1)[40] of the CFRN 1999 provides that: e*very person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.*

From the provisions of this section, a breach of this right will include: compulsion to receive religious instruction or to take part in or attend any religious ceremony or other religious activities or adherence without the person's due consent or the consent of the parent's or guardian.

i. Right for any religious denomination or community to give religious instructions to pupils in any educational facility maintained by them.

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This provision does not include or permit activities or engagements in any secret society.

g. Right to Freedom of Expression and the Press: Section 39 (1)[41] of the CFRN 1999 states as follows:

[37] CFRN, 1999, s 37
[38] M Lloyd, The Law and Practice of Human Rights in Nigeria (Akure: Olive Printing & Publishing House, 2010)
[39] J O Akande, Introduction to the Constitution of Federal Republic of Nigeria 1999 (Lagos: MIJ Publishers, 2000) 85
[40] CFRN, 1999, s 38
[41]CFRN, 1999, s 39

Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

The right entails the right to own, establish and operate any medium for the dissemination of information, ideas and opinion. However, any law made which is reasonably justifiable can stand as a limitation to the exercise of this right. This law that is reasonably justifiable can be for the purposes of

i. Preventing the disclosure of information received in confidence
ii. Maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films
iii. Imposing restrictions upon persons holding office under the Government of the Federation or a State, members of the armed forces of the Federation or members of the Nigerian Police Force or other Government security services or agencies established by law

It should be noted that freedom of expression are more jealously guarded against governmental interference than other rights. Speech concerning public affairs has rightly been said to be more than self-expression; it is the essence of self-government given the impossibility of government by all the members of a modern, complex society comprising millions of people spread over a large territory, free speech and free press are the means by which the society as a collection of individuals can participate in government; they are the very definition of democracy, the ultimate value of a democratic living.[42] It is also pertinent to state that an abuse of the said right to freedom of expression can make a person liable in the tort and criminal defamation which brings a person to a point where punishment is inflicted for what is said or published. One debatable question is whether the right to freedom of expression and the press is actually guaranteed and protected in Nigeria considering the attitude of the government and security agents in the country. It is our opinion that the guarantee of freedom of speech and of the press in the Nigerian Constitution is adequate, However, if it turns out not to be effective in practice, the fault would not be that of the Constitution but of the courts in which is reposed the responsibility for their interpretation and enforcement.

h. Right to Peaceful Assembly and Association: The 1999 CFRN provides in Section 40 (1)[43] that; e*very person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests*

This constitutional guarantee secures to everyone the right to join an association already formed, to remain a member; to participate in the affairs of the association, to contest offices and to share in other benefits of membership. It is the right to freely associate with other persons or join freely any association and a right to be able to freely resign as well from any association. As with freedom of speech and the press, the constitutional guarantee of freedom of association is subject to any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of other persons. For a restriction to be valid, such restriction must have a rational connection with defence, public safety,

[42] A Lewis, Politics in West Africa (1965) 75
[43] CFRN, 1999, s 40

public order, public morality or public health, or with the protection of the rights and freedom of other persons.

i. **Right to Freedom of Movement:** Section 41 (1) CFRN 1999[44] provides that e*very Citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom.*

Similarly, this provision does not invalidate any law or restriction duly made that is reasonably justifiable in a democratic society. These laws may be for the purposes of preventing the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria.

j. **Right to Freedom from Discrimination:** The term discrimination is defined by Miriam Webster Dictionary[45] *The practice of unfairly treating a person or group differently from other people or groups of people.*

Section 42[46] provides for circumstances under which a person may lay claims as to breach of his right to freedom from discrimination such as: i. Subjection either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject

ii. Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions

iii. Subjection to deprivation by reason of any disabilities or circumstances of birth.

The position of the law as above stated is a right enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to guide and protect against all forms of discrimination on any Nigerian Citizen. The right to freedom from discrimination as provided by the Constitution is indisputable and unquestionable as far as the constitution is concerned. It also formed the basis or the rationale of the Supreme Court decision in *Ukeje v Ukeje* where the plaintiff before the High Court of Lagos State, instituted an action against the appellants, wherein she claimed to be a daughter of the deceased Lazarus Ogbonnaya Ukeje, a native of Umuahia in Imo State who did intestate. The respondent alleged that her paternity was acknowledged by the deceased in his life time, and accordingly, she was entitled to the estate or was one of the persons entitled to the estate of the deceased.

Discrimination against a citizen of Nigeria, based on certain specified grounds or classifications is absolutely prohibited by the Constitution. It is to be noted that the protection against discrimination is restricted to Nigerians citizens only and secondly, that discrimination is prohibited when it is based

[44] CFRN, 1999, s 41
[45]Meriam Webster Dictionary, "Discrimination", http://www.meriam-webster.com/dictionary/discrimination (assessed on 28th of July, 2023)
[46] CFRN, 1999 s 42

on grounds of ethnicity, place of origin, sex, religion or political opinion. A further point which is necessary to note is that the reference to any law in force in Nigeria covers customary law, Islamic law and common law as well as the statute law. It follows that a rule of any of these systems of law in Nigeria which imposes special disabilities or restrictions or accords special privileges or advantages based on any of the specified grounds or classifications is unconstitutional and void. The point is particularly significant because of the inferior position accorded to women under both customary and Islamic law.

Also, noteworthy is the fact that section 42 does not invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.[47]

k. Right to Acquire and Own Immoveable Property Anywhere in Nigeria. Section 43 of the CFRN 1999[48] makes provision for this right and accordingly states thus; s*ubject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.*

l.

This right does not have any peculiar point of derogation except for the general provision made in section 45 of the Constitution.

m. Freedom from Compulsory Acquisition of Property. The CFRN 1999, under section 44 (1)[49] provides that *no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things.*

Every citizen of Nigeria is empowered by the Constitution to acquire and own immoveable property anywhere in Nigeria. However, the right to own immoveable property like every other right is not absolute but subject to certain qualifications. The law of compulsory acquisition of land in Nigeria is rooted in the country's Constitution. it provides that every Nigerian has the right to own private property and such private property shall not be acquired compulsorily, except in the manner and for the purposes prescribed by a law that requires both the payment of prompt compensation and compliance with the rule of law on access to the court. The land Use Act of 1978 provides that all lands comprised in the territory of each state in Nigeria are vested in the governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians, and the Governor may revoke a right of occupancy for overriding public interest.

The Constitution also imposed a solemn obligation on all persons exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of the CFRN 1999. Consequent upon its supremacy, the CFRN 1999 further prohibits inhumane actions of government and other authorities

[47] *Ibid,* s 42 (3)
[48] *Ibid*
[49] *ibid*

concerned. It also gives every person the right to apply to seek redress, upon any form of infringement. The right to seek redress in the event of an infringement was made laudable in Section 46[50] as follows:

Any person who alleges that any of the provisions of this chapter has been, is being or is likely to be contravened in any State in relation to him, may apply to a High Court for redress.

3.2 Fundamental Objectives and Directive Principles of State Policy, Chapter II of the CFRN 1999

An interesting aspect of the human rights discouse within the Nigerian context is the provision of Chapter II of the CFRN 1999 (as amended). That chapter embodies a collection of fundamental human rights of economic and social nature which are not recognized as rights, rather they are referred to as fundamental objectives and directives principles of state policy. The idea of Fundamental Objective and Directive Principle of State Policy within the CFRN 1999 was as innovation of the 1979 Constitution of the Federal Republic of Nigeria. According to the 1979 Constitution Drafting Committee (CDC), "fundamental objectives mean the identification of the ultimate objectives of the nation while Directive principles of State Policy refers to the part which leads to the objectives"[51].

Similarly, in interpreting the provision of Chapter II of the Constitution of the Federal Republic of Nigeria, the Court of Appeal in the case of *Okogie v Lagos State* stated that the fundamental objectives identify the ultimate objectives of the nation and the directive principles lay down the policies which are expected to be pursued in the efforts of the nation to realize their national ideals. In other words, the policy is a roadmap for the actualization of set out constitutional objectives by the government.

The Constitution of the Federal Republic of Nigeria 1999 also makes it clear that the fundamental objective and directive principles of state policy is a duty and responsibility placed on all organs of the Nigerian government to conform to, observe and apply.[52] Despite this clear provision of the CFRN, it is doubtful whether there is hope for the realization of these ideals of governance set out in the said Chapter II. This is because by the nature of a legal duty; which is an obligation imposed by law that its failure results in a legal wrong, and by the nature of a legal responsibility; which is an obligation to answer for an act done or omitted to be done and to repair any injury that may have resulted, the organs of the Nigerian government will never be held responsible in line with the afore-cited provision for failing to carry out the constitutional duties. This sad reality is made possible by the provision of section 6(6) (c) of the same CFRN 1999, which provides that the judicial powers of the court:

Shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission be any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

[50] CFRN, 1999, s 43
[51] Olu Awolowo, 'Fundamental Objectives and Directives Principles of State Policy, a Panacea for National Transformation and Sustainable Development in Nigeria'. (2017) (65) *Journal of Law, Policy and Globalization* 23.
[52] CFRN 1999 (as amended) s.13.

In the case of *A. G. Ondo v A. G. Federation*[53], the Supreme Court affirmed that the Nigerian Court cannot enforce any of the constituents of Chapter II of the CFRN 1999. It stated that they are mere declarations which cannot be enforced by any legal process except the National Assembly in exercising its primary constitutional powers, enacts a specific law for their enforcement as has been done with respect to s.15 (5) of the CFRN 1999 (as amended) otherwise where state organs act in clear disregard of Chapter II, it will only be viewed as a failure of duty and responsibility on their path.

However, the said Chapter II embodies a combination of human rights internationally described as Economic, Social and Cultural (ESC) rights often referred to as second generation rights and Solidarity or third generation rights. Nigeria, like most developing countries, provides for these combined class of rights in their constitutions as goals of government rather than as rights. This may probably be due to the argument that realizing the second-generation rights requires economic viability and so since developing countries which are mostly third world countries are characterized primarily by poverty, it is better set aside within their constitutions as goals to be achieved by the government through deliberate policies.

3.3 Child Rights Act 2003

The Child's Right Act,[54] is child rights specific and has gone beyond rights provided for under the Constitution of the Federal Republic of Nigeria and other legislations concerning the child. Notably the Child Rights Act incorporated those provisions in Chapter 2 of the Constitution of the Federal Republic of Nigeria and made them enforceable rights. The CRA spells out the duties and responsibilities of children and that of their parents. It provides for child justice system making it improper to try children in conventional courts. Importantly, the CRA now gives the child the right to enforce his parental responsibility to provide protection and care whether he is a legitimate child or not, it covers protection from willful assault, neglect, abandonment or maltreatment.[55]

3.4 African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act, 1983

Originally adopted by the Organization of African Unity (now the African Union) in 1981 as the African Charter on Human and Peoples' Right. Nigeria domesticated the provisions of this Charter through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act of 17th March 1983.[56] By this legislative action, the ACHPR has been made part and parcel of Nigerian Law. The ACHPR is an international instrument that is intended to promote and protect human rights and basic freedoms in the African continent. The African Charter on Human and Peoples' Rights epitomizes a seminal international human rights instrument. It delineates the array of civil, political, economic, social, and cultural rights to which individuals and collectives across the African continent are entitled, underscoring the profound significance that African states attribute to the safeguarding and upholding of human rights and human dignity. By enacting the African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act 1983, Nigeria unequivocally reaffirms its unwavering commitment to the principles and standards delineated within the African Charter. This act efficaciously endows the

[53] [2002] 9 NWLR (pt.772) 222.
[54] Child Rights Act, 2003, CAP C4 LFN, 2004. African charter on Human and Peoples' Rights (Enforcement and Ratification) Act No 2 of 17th March, 1983
[55] CRA, s.10
[56] Cap A10, Laws of the Federation of Nigeria (LFN) 2004.

guaranteed rights and freedoms enshrined within the African Charter with full enforceability and justiciability within the domestic legal framework of Nigeria.

In a definitive fashion, the act establishes meticulous mechanisms and procedures by which aggrieved individuals may seek redress for human rights violations transpiring within the purview of Nigeria's jurisdiction. It provides a judicious avenue for individuals to approach Nigerian courts, thus procuring requisite remedies for infringements upon their human rights, as protected by the African Charter. These encompass a vast panoply of civil, political, economic, social, and cultural rights, encompassing the right to life, equality, freedom of expression, freedom of association, and the right to education.

Moreover, the act sets in motion the establishment of the National Human Rights Commission in Nigeria, serving as an autonomous entity entrusted with the responsibility of promoting and safeguarding human rights within the nation. Imbued with the authority to investigate human rights violations, provide redress, and offer recommendations for necessary reforms, this commission assumes an indispensable role in the meticulous scrutiny and ensuring of adherence to the African Charter and other international human rights standards.

Concomitantly, the African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act 1983 underscores the paramount importance ascribed to public education and heightened awareness surrounding human rights. It fervently encourages the dissemination of information pertaining to human rights principles and standards throughout the Nigerian populace, thereby nurturing a pervasive culture of respect for human rights and the rule of law.

In sum, the African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act 1990 epitomizes Nigeria's unwavering dedication to upholding human rights and ensuring unfettered access to justice for its citizenry. By harmonizing the domestic legal framework with the internationally acclaimed human rights tenets delineated within the African Charter, Nigeria diligently nurtures an environment conducive to the promotion and preservation of human rights within its Jurisdiction.

3.5 Sheriffs and Civil Process Act

The Sherriff and Civil Processes Act[57] and the Enforcement of Judgment Procedure Rules provides guidelines for the enforcement of the Judgment of a court. The Sheriffs and Civil Process Act provides the different modes of execution of a court's Judgment. The writ of *fieri facias* referred to as the writ of fifa for short, basically directs the sheriff to seize and sell the judgment debtors' good to satisfy the judgment debt. The Garnishee proceedings as provided by the Sheriffs and Civil Processes Act simply enables a judgment creditor recover a judgment sum from a third party who is indebted to a judgment debtor. However, there are other modes of execution of a court judgment contained in the Sherriff and Civil Process Act.

[57] Cap S6 LFN, 2004.

4.0 Challenges on the Enforcement of Human Rights

Great and substantial efforts have been made in fashioning out measures to protect and promote human rights in Nigeria as well as enforcing these provisions through various mechanisms, yet human rights violations are still on the increase. It is on the strength of this, that we will examine the challenges of its enforcements and consider solutions to the said challenges

4.1 Individual and Institutional Enforcement of Human Rights

Indeed, an individual whose rights has been violated or is being threatened is entitled to take advantage of the Constitution which provides that 'any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress.'[58] It is against this background that human rights actions otherwise known as fundamental rights enforcements are filed in the courts which require the invocation of the judicial powers of the court.

In order to assist the individual, the FREPR 2009[59] was enacted to ensure that litigants gets justice and settle human rights disputes in court within the shortest possible time attainable. The Rules were made pursuant to the powers of the Chief Justice of Nigeria to make rules with respect to the practice and procedure of a High Court.[60]

The mode of commencement of application for the enforcement of fundamental rights is as provided by FREPR 2009,[61] which is to the effect that an originating process shall be without leave of the court and no issue of locus standi for a redress for the violation of his fundamental rights. The case of *Onah v Okenwa*[62] is a good example of a group or class of persons, associations and individuals' enforcement of human rights as envisaged in para 3 (e) (i) (ii) (iv) and (v) of the preamble to the FREPR 2009.

Another example is the case of *Anzaku v Gov. Nassarawa State*[63] The Executive Governor of Nassarawa State purportedly in June 1999 issued policy statement directing all unified Local Government Staff of the State serving in Local Government Council other than their Council of origin to relocate to their Local Government Councils on their existing rank and status. Staff of various Councils who were not of Nassarawa State of origin were directed to remain where they were. The appellants regarded the policy and action of the Government as a breach of their human rights entrenched in the 1999 Constitution and then applied to the High Court of the State for the enforcement of their said rights. The trial court heard the Appellants' application and dismissed the application. The Appellants were dissatisfied with the ruling and appealed to the Court of Appeal. The Court of Appeal considered S. 42 of the 1999 Constitution and allowed the appeal.

[58] The 1999 Constitution of the Federal Republic of Nigeria (as amended) Cap C23, Laws of Federation of Nigeria, 2004 s. 46 (1).
[59] Fundamental Rights (Enforcement Procedure) Rules 2009.
[60] The 1999 Constitution (n1) s 46(3).
[61] Order 11 r 2.
[62] [2010] 7NWLR (pt 1194)512.
[63] [2005]5NWLR (pt 919) 448.

4.2 Cause of Action/Issue of Principal and Ancillary Reliefs

This is one of the major problems of Litigants/Applicants. The Nigerian Courts have in some decided cases on human rights increased restriction on the scope of the application for the enforcement of human rights cases.

In *West African Examinations Council v Adeyanju*,[64] the Supreme Court held that under section 46 (1) of the CRFN 1999 and Order 1 Rules 2 and 3 of the FREPR 1979, a litigant must ensure that the main relieves and consequential relieves sought must point directly to a right under Chapter 4 of the CFRN 1999 and a clear deprivation of same to the party sued.[65] Hence, applications alleging various human right violation are routinely struck out or dismissed on the ground that they are mere ancillary reliefs.[66]

The right of workers to belong to trade union for the protection of the interest is guaranteed by the Trade Union Act, the Constitution and African Charter on Human and Peoples Rights. But in clear breach of such rights trade unions are either proscribed or derecognized by employer of labour. For some incomprehensible reasons enforcement of the fundamental rights of workers to freedom of association is viewed as an ancillary relief which cannot be enforced under the FREPR.

Also the 1999 Constitution provides for the cause of action in matters of enforcement of fundamental rights in s 46 (1). This must be in relation to the violations of rights enumerated in Chapter IV of the Constitution and its enforcement under Order 11 r 1 of the FREPR 2009 which provides thus:

> *Any person who alleges that any of the Fundamental Rights provided in the Constitution or African Charter on Human and People's Right Ratification and Enforcement) Act and which he is entitled, has been is being, or likely to be infringed, may apply to the court in the state where the infringement occur or is likely to occur, for redress.*

For the application to succeed in matters for the enforcement of fundamental rights, the Applicants relief must relate to the principal claim and not ancillary issue. Issues of principal claim and ancillary reliefs are one of the major headaches by the Applicants. The courts in some decided cases on fundamental rights have increased restriction of the scope of the applications for the enforcement of fundamental right cases. Indeed, applications alleging serious human rights violations are routinely struck out or dismissed on the grounds that they are mere ancillary reliefs. The violations of the fundamental right of workers to freedom of association is viewed as an ancillary relief which cannot be enforced under the FREPR 2009.

An application for the enforcement of human rights must necessarily pray for principal relief against a breach or an attempted breach of a right recognizable as a fundamental right under the Constitution.

[64] [2008] 9 NWLR (pt 1092) 270.
[65] *Ibid.*
[66] *Achebe v Nwosu* [2003] 7 NWLR (pt 818) 103 at 104.

Thus, in *Tukur v Govt of Gongola State*[67] the Supreme Court held that the right to a traditional seat was not within the contemplation of the fundamental rights protected under the Constitution. Therefore, it takes the ingenuity of an Applicant to identify what the principal claim is and the ancillary claim in order to avoid his claim being struck out. Similarly, in *Igwe v Ezeanochie*[68] the Court of Appeal held thus:

> Where the facts relied on disclose infringement of the fundamental right of the Applicant or the main basis of the claim then it is a clear case for the enforcement of such rights through the Fundamental (Enforcement Procedure) Rules, But where the main or principal claim is not the enforcement of a fundamental right, the jurisdiction of the Court cannot be properly be involved or exercised as the court will be incompetent to do so.

Thus, to invoke the jurisdiction of the court in the enforcement of human rights, the applicant must ensure that the relief sought is within the jurisdiction of the court otherwise the application will be thrown out for lack of jurisdiction.

4.3 The Issue of Jurisdiction

Jurisdiction is the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented for its decision. Such authority of the court is controlled or circumscribed by the statute creating the court itself or a condition precedent created by a legislation which must be fulfilled before the court can entertain the suit.[69] It is also the power and authority of a court to hear and determine a judicial proceeding and power to render judgment in a cause of action.t

Therefore, for a human rights cause to be heard, the issue of jurisdiction must be resolved otherwise its exercise becomes a nullity and of no effect. It is against this background that jurisdiction has now become one of the problems threatening the enforcement of human rights in Nigeria especially jurisdictional conflicts between the FHS and SHC. This is even made worst with the recent amendment of the 1999 Constitution. S.254 (C) which recognizes the exclusive jurisdiction of the National Industrial Court (NIC) over matters of human rights violations that have industrial or labour flavor.[70]

Fundamental human rights being guaranteed by Chapter IV of the 1999 Constitution provide a special provision for its enforcement under s. 46 of the same Constitution and by virtue of s.46,[71] the High Court is vested with jurisdiction of fundamental enforcement and as well as the FREPR 2009 where the High Court is defined to mean FHC or SHC or the High Court of the Federal Capital Territory, Abuja.[72] The issue however is whether that concurrent jurisdiction under s.46 and the FREPR 2009 is in anyway fettered by any other constitutional provisions that vest general powers in either of the courts.

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[67] [1989]4 (pt 117) 517 SC.
[68] [2010] 7 NWLR (pt 1192) 61.
[69] *Aladejobi v. N.B.A* [2013] 15 NWLR (pt 1376) 66 @ 70 r 1
[70] OO Olugbenga, Enforcement of fundamental Rights Actions in Nigerian Courts: '*A Critical Overview of a Jurisdictional Tussle*'. [2012] (11) *Nigerian Law and Practice Journal*. 170-178.
[71] The 1999 Constitution (n1).
[72] FREPR 2009.

In *Jack Grace v University of Agriculture, Makurdi* [73] The Supreme Court had to examine the respective jurisdiction of the Federal High Court and State High Courts in relation to enforcement of fundamental rights. The Supreme Court of Nigeria held that:

> The fundamental right case can be instituted against the Federal Government and its agencies in the State High Court. The section 42 of the 1979 Constitution (now section 46) of the 1999 Constitution that gives State High Court jurisdiction, being a special provision prevails over section 251 of the 1999 Constitution.[74]

In the opinion of the court, this concurrent jurisdiction is not fettered by the nature of the parties to such fundamental rights actions. In essence, the decision in Jack's case recognizes the existence of the unfettered jurisdiction of Federal and States High Courts over any or all matters of enforcement of fundamental rights, notwithstanding the nature of the subject matter or the parties to such action.

Nevertheless, in the case of *Gofar v. Government of Kwara State*[75] the Supreme Court held that each High Court can only exercise its concurrent jurisdiction in fundamental rights cases as long as the subject matter falls within its constitutional area of competence. Thus, in *Achebe v Nwosu*[76] the Court of Appeal held that the FHC had no jurisdiction on cases relating to title to land or right of occupancy under the Land Use Act, even if the Federal Government or any of its agencies is involved. With this decision, several human rights cases where human rights violations by Federal agencies occur, have always been defeated on the ground that the subject matter is not within the jurisdiction of the court if instituted the FHC. Recently, the 1999 Constitution was amended, with new provisions recognizing NIC and vested jurisdiction in it as a court of superior record. The Court has a president and a number of judges with jurisdiction that covers purely labour and employment matters. Most importantly, the NIC is now vested with the exclusive jurisdiction in matters relating to labour disputes in the context of Chapter IV of the Constitution. The amended provisions of the 1999 Constitution, section 254 (C) (1) (D) state as follows:

> Notwithstanding the provisions of sections 251, 257 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an act of the national assembly, National Industrial court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-
>
> (d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employers association or any other matter which the court has jurisdiction to hear and determine.

[73] [2004] ALL FWLR (pt.200) 1506.
[74] *Ibid.*
[75] [2007] 4 NWLR 9 (pt 1024)375.
[76] [2002] FWLR (pt 106) 1021.

Section 254 (C) (1) (D) of the Constitution seems to grant exclusive jurisdiction to the NIC in matters relating to alleged breach of fundamental rights arising from employment and labour related matters. Prima facie, jurisdiction over enforcement of fundamental right actions is now a three way affair among the three courts namely the FHC, SHC and the NIC. It is of interest that the amendment of the 1999 Constitution left the provision of s.46 intact, in its extant form. S. 46 is yet to be amended to categorically mention the NIC as one of the courts with the jurisdiction on enforcement of human rights actions.[77]

The consequence of the above position is that an infraction of worker's human right would invite remedy by the NIC, notwithstanding the distance of such court to the litigant. Section 254 (C) (1) (D) of the Constitution can therefore work to deny easy access to justice to workers whose rights are breached or threatened to be breached in their place of work. Would this trend rather not encourage impunity on the part of some employers, secure in the belief that as a result of the distance of the NIC from place of work or abode of such worker, justice will be denied? It is therefore suggested that this is an omission which ought to be corrected at the earliest opportunity.

4.4 The Issue of Domestication of International Laws on Human Rights

Human rights have become internationalized. The European region had in 1950, procured the European Convention on Human Rights whilst the America had the Inter-American Convention on Human Rights in 1969. With this background and Africa's abhorrent record on human rights violation including slavery and slave trade, colonialism, apartheid, military and dictatorial regimes (some associated with looting the national treasuries of their States), there was an urgent need, even pressure, both from within and outside the continent, for an African Human Rights Charter. Agitations were even stirred at the UN Level in the same direction.[78]

Nigeria has modestly ratified about 32 international human rights instruments, including the African Charter.[79] From an international context, the State party is unequivocally responsible and should be accountable for breaches resulting therefrom. This is a clear case when a state cannot escape liability by reliance on the defect of its domestic machinery. So this point is that when a state has not only signed a treaty but further ratifies same, at international law, that State is bound by the provisions of that treaty.[80] Although the position at the domestic level is that the said treaty must be incorporated and made a local instrument which enables the courts to implement same as part of their law. This position was clearly stated in the case of J.H. Rayner (Mincing Lane) Ltd. V. Dept of Trade and Industry, Where Lord Oliver held that:

> It is axiomatic that municipal courts have not and cannot have the competence to adjudicate upon or to enforce the rights arising out of transactions entered into by independent sovereign states between

[77] Olugbenga (n 70) 191 at 192.
[78] O W *Igwe The challenges of Domesticating the African Charter on Human and People's Rights Holus Bolus:* The case of Nigeria http://www. Researchgate.net/publication/275271741 accessed 23rd January 2023
[79] *Human Rights Law Journal* (HRLJ,) Vol. 28 No. 1-4 [2007], pp. 139-160.
[80] In the case of Exchange of Greek and Turkish Populations, PCIJ, 21 February 21 1925 Advisory Opinion, Series B. No. 10, on line :www. Ig.cij.org/www/cdecisions/ccpij/serie-B/B-10/0-Exchange-des-population-grecque Turques Avis-consultatif.pdf. accessed 23rd January 2023

> themselves on the plane of international law… Treaties, as it sometimes expressed, are not self- executing. Quite simply, a treaty is not part of English Law unless and until it has been incorporated into the law by legislation. So far as individuals are concerned, it is res inter alios acta from which they cannot derive rights and by which they cannot be deprived of rights or subjected to obligations; and it is outside the purview of the court not only because it is made in the conduct of foreign relations, which are a prerogative of the Crown, but also because, as a source of rights and obligations, it is irrelevant.[81]

Nigeria domesticated the African Charter on Human and Peoples' Rights holus bolus, i.e., completely and wholly with respect to her integral legal structure that is not yet suited to enforce all the rights enshrined in the said charter. The regime of the civil and political rights in Nigeria is enforceable through a special provision in section 46 of the 1999 Constitution which is a direct reflection of section 42 of the 1979 Constitution. It provides that "any person who alleges that any of the provisions of the chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High court in that state for redress". In realizing this provision, the then Chief Justice of Nigeria, Justice Fatayi Williams, on the 5th of December, 1979, in a supplement to the official Gazette No. 64, volume 66, made the Fundamental Rights (Enforcement Procedure) Rules. Also, on 11th November, 2009, the former Chief Justice of Nigeria Idris Legbo Kutigi, replicated the same act in a supplement of official Gazette No. 74 Volume 46. As the name suggests the rules apply to what was considered as fundamental rights as against the general notion of Human Rights. The rules restrictively apply to civil and political rights captured in Chapter IV, section 33-46, of the 1999 Constitution.

The Economic, Social and Cultural (ESC) rights and some of the solidarity rights are captured in Chapter II, sections 13-24 of the 1999 Constitution. The Constitution clustered them as fundamental objectives and directive principle of state policy. This nomenclature took away the 'rights' content from these human rights and made them non justifiable, unlike the Chapter IV rights that can be enforce through a special procedure. The ordinary legal impression created by this classification with respect to the charter rights is simply that the civil and political rights automatically assume the legal status of Chapter IV rights in the 1999 Constitution. Every other right outside the civil and political rights automatically assumes the legal status of Chapter 11, rights, meaning that legally they are non-justiciable.

The discriminatory disposition of the 1999 Constitution with respect to the rights enshrined in the charter which has not only been ratified but additionally domesticated defeats the whole essence of the regime of rights procured by the African Charter.

Nigeria merely ratifying and domesticating the African Charter without creating a legal environment for guaranteeing the protection of the ESC and solidarity rights makes human rights enforcement difficult and unrealizable.

[81] (*J.H. Rayner (Mincing Lane) Lt. V. Department of Trade and Industry)* (1990) 2 AC 418, House of Lords.

4.5 Poverty

Poverty has been identified as one of the greatest challenges affecting third world countries in their developmental strides and more to the enforcement of fundamental rights in Nigeria especially under the present dispensation. Poverty has the following characteristics:

1. Hunger starvation and malnutrition
2. Wretched degrading and inadequate shelter
3. Poor clothing and lack of any kind of luxury
4. Absence of kind of luxury
5. Above all eroding the dignity of human to the extent that he does not value his fundamental rights to protect and enforce them when beached.

No nation can develop and be happy when large portions of its members are hungry poor and miserable.[82] Extreme or abject poverty, violates the sacred right to life and makes mockery of the supreme value of human dignity. Besides according to Sachs.[83]

> Extremely poor individuals are the very embodiment of the provisions of social economic rights, because they are chronically hungry unable to get healthcare, lack safe drinking water and sanitation, cannot afford education for their children and perhaps lacks rudimentary shelter … basic articles of clothing like shoes.

Such persons are incapable of enforcing their fundamental rights. Thus, it is hard to imagine that these persons can never afford the legal costs that would be incurred by taking on those who violate their rights or the governments in bids to seek redress.

4.6 Illiteracy

The inability to read and write constitutes a serious challenge to the enforcement of human rights in Nigeria, A good number of Nigerians are illiterate who cannot appreciate or understand what human rights are. The freedom of expression makes very little meaning when one cannot read or write. With loss of their freedom of expression goes their rights to participate meaningfully in the Government.[84]

Illiteracy being the twin brother of poverty, also affects enjoyment of human rights in many ways including undermining of democracy. Democracy can hardly work in conditions where people are poor and ignorant.

With reference to African experiences on past elections in countries like Liberia, Nigeria, Benin Republic and Mali, the poor and illiterate may still be influenced to sell their vote for mere nothing.

Oputa JSC,[85] recounting the impacts of illiteracy on the enforcement of human Rights opined thus;

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[82] N Udombana, *'Life, Dignity and the Pursuit of Happiness: Human Rights and Living Standards in Africa'* www.austti.edu.au/aujournals/UTasiLawRx/2008/3< Last accessed 16th November,2022.
[83] J D Sachs, 'The End of Poverty' (2005*) The Time Journal* 40-47.
[84] M G Chiroma, '*Challenges of Enforcement of Fundamental Human Rights under the Constitution of the Federal Republic of Nigeria, 1999'* (LL.M Dissertation University of Lagos 2010) 38-84.
[85] C Oputa, 'Access to Justice' (1988) (1) *Law and Practice* 60-71.

In this search for justice and redress resulting in the effectuation of his rights the ordinary citizens of Nigeria is caught in a mess of a rather vicious circle.

a. The court cannot adjudicate upon and effectuate his right unless there is a suit complaining about the breach or threaten breach of these rights filed in court.
b. People especially the illiterate masses of our country do not even know what their rights are. They may therefore not even know when those rights have been or are being infringed.
c. Even if the ordinary citizen knows of his right and knows that they are being infringed he may be too afraid to sue the powers-that-be...

The above captures the picture of an average Nigerian in the enforcement of his right which till date is prevalent and requires a serious attention.

4.7 Undue Reliance on Technical Rules

According to Okogbule law is an inherently technical subject and this technicality is manifested in the various rules and procedures in place for a litigant to be able to approach the courts, he has to retain the services of a legal practitioner who will initiate the appropriate action on his behalf

The human right enforcement procedure like any other action in court is subject to this technicality of law. Therefore, it is not surprising to see many human right actions being defeated on the altar of technicalities like locus standi, service and filing procedures to mention but a few. The case of *R. Igbinedion v Bishop David Oyedepo & Anor*[86] was defeated on the ground of locus standi that the applicant was not the person directly affected by the violation of the human rights.

4.8 Cost of Litigation

In general harsh economy has indeed influenced everything in Nigeria such that people consider violation of their rights as secondary why the pursuit of the physiological needs as primary. This has also influenced litigation and its attendant consequences is the rise in cost of litigation such that only a few persons are ready to enforce their rights when violated. Oputa concluded thus:

> Where there is an awareness of the right and the knowledge or realization of its breach or threatened bleach and the courage to prosecute the claim, the prospective Litigant may be too poor to embark on the luxury of costly and prolonged litigation up to the Supreme Court.[87]

The awareness of the breach is just a part of it but its enforcement to a logical conclusion is the absence of major setback in the human rights violation saga.

4.9 Coverage and Accessibility

Beyond the challenges mentioned above, it is also not clear whether many individuals are aware of the remedies available to them to enforce their rights through the various Court such as the Federal High

[86] Suit No Mt/73/2012.
[87] Oputa (n 85)71.

Court the State High Court at the National Industrial Court as well as sub-regional courts like the African Court of Justice on Human Rights. An even more fundamental questions demanding an answer is whether the majority of the population can afford to seek redress in the sub-regional court assuming all remedies at the national level have been exhausted and these individuals are aware that such an opportunity is available to them. Clearly, the simple answer to this question is that only a very limited number of citizens would be in a position to do so. The question of whether individuals are even aware of the remedies at their disposal is perhaps more important because human right mechanisms are often elite-driven and therefore far-removed from and inaccessible to ordinary citizens.[88] In respect of the African Court on Human and Peoples' Rights and similar courts the exclusion of individual and engineers to submit cases before the African Court of Justice and human rights is a major challenge that will impede the effectiveness of this court.[89]

4.10 Lack of Physical Security

It is evident that there is an increase in crime, terrorism, kidnapping, armed conflict and ethnic agitations in Nigeria. All of these constitute challenges to the enforcement of human rights. Can there be the right of freedom of movement, right to own property, right to personal liberty, freedom of expression, freedom of association when one is not sure of his or her security or the security of the individual being guaranteed?

In his Agenda for peace, Boutros Ghali[90] underlined the relationship between peace and respect of individual rights in the following words:

> The sources of conflict and war is pervasive and deep. To reach them will require our utmost effort to enhance respect for human rights and fundamental freedoms, to promote sustainable economic and social development for wider prosperity, to alleviate distress and to curtail the existence and use of massively destructive weapons.

Kofi Annan is of the opinion that arms proliferation feeds exacerbates armed conflicts, which are not only a question of security but also one of human rights and of development in Africa and several parts of Nigeria especially in the North and the Niger Delta areas.[91] President Blaise, then Chairperson of the OAU maintained that security goes hand in hand with economic development, social development, with democratization and human rights.[92] It was even more vigorously and solemnly acknowledged by the OAU Assembly of Heads of State and Government as follows:

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[88] J D Ingange-Wa-Ingange, *'The African Human Rights System: Challenges and Prospects'.* (April 2010, University of South Africa) >http/hdl.handle.net/1050013698> Last accessed 24th December, 2022.
[89] *Ibid.*
[90] B B Ghali, *'An Agenda for Peace –Preventive Diplomacy, Peacemaking and peace keeping'* Report of the Secretary General A/45/1993,23 March 1993, para 5.<http //hdl.handle.net/1050013698>Last accessed 26th December, 2022.
[91] K Annan, *'We the Peoples: The Role of the United Nations in the Twenty-First Century'Report of the Secretary General,* The Millennium Assembly of the United Nations, A/54/2000, 27 March, 2000, http/hdl.handle.net/1050013698> Last accessed 26th December 2022.
[92] *Ibid.*

> The concept of security must embrace all aspects of society including economic political social and environmental dimensions of the human family and community local and national life. The security of a nation must be based on the security of the life of the individual citizens to live in peace and to satisfy basic needs by being able to participate fully in societal affairs and enjoying freedoms and fundamental human rights.[93]

Another challenge that affects the realizations of human rights in Nigeria is the high level of internal conflict in Nigeria. Nigeria is a nation of many nations with different cultures and people who are always at war with each other. Ethnic mistrust and rivalry has continued to slow down the pace of development and realization of human rights in Nigeria. From Independence till date, quite a lot of wars have been fought in Nigeria, the vast preponderance of them are inter and intra ethnic based. Several parts of the country have been affected by armed conflict, accounting for more than half of all war related deaths worldwide and resulting in internally displaced persons especially in the Northeast where Boko Haram has a stronghold of recent is the Fulani herdsmen attack in some parts of the Igbo land.

4.11 Inadequate Resources or Underfunding

The task of justice delivery by the court is indeed an enormous one that requires enough men and material resources. It is common to find courts loaded with several case files with a judge assigned to many of these files and few paralegal staff to his assistant. The negative impact of these ugly development is that human rights litigations are at the receiving end because human rights enforcement cases like all other cases suffer the same setbacks that prevents our Court from functioning optimally. Some of these challenges stem from such as unnecessary adjournments from application for defense Counsel matters starting the de novo and so on.

4.12 Lack of Independence and Impartiality of the Court

It is important to state here that the independence and impartiality of the court at the most vital ingredient needed not just in their first point of human right proceedings but in their adjudication process. It is not uncommon to find are called still tied with the wheel of the executives simply because the so-called judicial turn on me is still observed in breach. Touch it takes extra coverage for a judge to make an order against your property and even when made It is hardly Obeyed. This is because as it is often said that he who pays the Piper dictates the tune and until the most agitated financial economy is granted justice will never be served

4.13 Attitude of Some State Functionaries and Security Agents

In spite of the existence of fundamental human rights provisions in our constitution, the police and other state functionaries keep inmates for a long period of time without charging them to court for trials and even when granted bail by the court. A visit to the state special anti-robbery and kidnapping units of the Nigerian police Port Harcourt, confirmed the story of human rights abuse by the police. It is always a sad story for a lawyer to go and negotiate the bill of any suspect under their custody. This attitude of the police goes a long way to affect the promotion protection and enforcement of human Rights.

[93] *Ibid.*

Another issue that has come to the public domain is a recent arrest of Judges by the operatives of the men of the department of state security in DSS on the 7th and 8th of October 2016 respectively which has attracted several condemnation over allegations of corruption and false declaration of assets. Unequivocally the actions of the DSS completely amount to the breach of the fundamental rights of these judges as Justice John Inyang Okoro recounted his ordeal in the hands of the DSS as follows:

I requested to visit their office up on the break of the day but they refused. In view of the presence of the heavily armed men who accompanied them and who were pointing gun at me from all angles I had no choice than to follow them to the office that night. I was detained in the office till Sunday October 9th 2016 before they released me in the evening of that Sunday upon the intervention of his Lordships.[94]

The manner which these judges were arrested apparently speaks of a gross violation of their human rights even if there are colorations that judges are not immune from being arrested as they do not enjoy immunity clause in the constitution. It must be stated that the pointing of gun on an armless citizen in the Country amounts to an assault.

In 2016, Operatives of the DSS tortured a man to death in Lagos. The DSS were reported to be on the search for a man who has allegedly cloned the phone number of the former Governor of Lagos State Akinkumi Ambode, but in the process ended up arresting a friend to the suspect. The victim was tortured, given deep machete cuts and beaten until he died. The DSS later offered to pay the sum of Fifteen million Naira as compensation to the family[95]

At a Public hearing on police abuses in Nigeria held by the National Human Rights Commission (NHRC) and the Human Rights Law Services in 2017, Premium Times Newspaper documented the testimony of a victim who narrated before the panel how the police officers who arrested her on a trumped-up allegation beat her and sexually harassed her while in the custody of the Anti-kidnapping unit in Panti, Yaba in Lagos State.[96]

The very recent case of the Ikokwu four is a clear demonstration of the continued existing violations of the right to dignity in our society. The deceased and four others were arrested and detained by the police for allegedly being in possession of stolen vehicle but they maintained that they were innocent and were only working on the vehicle with the consent of its owner. The Police even upon confirmation from the owner refused to grant them bail and even continued to torture them until Mr. Chima Ikwudanor, one of the persons arrested died while in police custody.

4.14 Cost of Enforcing Judgments

A judgment of a court is the reasoned and binding decision of the court. Normally, a successful party is entitled to enjoy the fruit of his judgment and nothing should be done to make the victorious party leave the court with "victory" without victory. Unfortunately this has been the fate of many successful parties

[94]J Ojo, and others *'Amaechi, Umana Offered me bribe-Judge.'* (19th October, 2016) Sun Newspapers. www.sunnewspapers.ng.com. Accessed 7 July, 2023

[95] Pulse, 'DSS Operatives "Tortured" Man to Death, Pays family N15M Compensation'. Pulse (Lagos, 12 April 2016).

[96] B Ezeamalu, 'How Nigeria Police Force Tortured' Extorted Harassed US- Victim' Premium Times (Lagos, 1 November, 2017)<https://www.premuimtimesng.com/news/headlines/248017-nigeria-police-officers-tortured-extorted-harrased-us-victims.html accessed 23 September, 2022

in many human rights cases, particularly indigent members of the society who cannot afford the exorbitant fees required for the execution of a well-considered and reasoned judgment of the court. All superior courts of record established under the Constitution of the Federal Republic of Nigeria have a uniform procedure for enforcing their judgments. It is governed by the Sheriffs and Civil Process Act and judgment (Enforcement) Rules made under the Sheriffs and Civil Process Act. The Sherriff and Civil Processes Act[97] and the Enforcement of Judgment Procedure Rules provides guidelines for the enforcement of the Judgment of a court. However, in practice it appears cumbersome and frustrating by reason of the attitude of court officials saddled with the responsibility of enforcing the judgments of a court thereby depriving many litigants the fruit of their success. Owing to this difficulty, many judgment creditors are seen to have secured a pyrrhic victory as the fruits of their judgment is not realizable.

The expenses usually incurred by an Applicant in this process is sometimes outrageous. A litigant is made to undertake expenses which may become burdensome particularly for indigent members of the society lacking the financial ability to finance the process of execution. Some Sheriffs and Bailiffs of courts explore this opportunity to enrich themselves at the detriment of the judgment creditor, leaving the judgment creditor frustrated.

4.15 The Non-Justiciability of the Provisions of Chapter 11 of the Constitution

The rights as found in chapter 11of the CFRN 1999 spanning from sections 13 to 24 are known as second and third generation rights. These rights do not find the expression under the constitution as justiciable rights. Instead, they form the basis of chapter 2 titled fundamental objectives and directive principles. This includes political, economic, social, cultural, educational, foreign policy and environmental directives. It also outlines the national ethics applications of the mass media directives on Nigerian culture and the duties of Nigerian citizens.

However, the question hanging in the balance is whether the draft man intends that these rights should be enforceable. One can argue that the draftsman intended the provisions of this chapter to be enforceable.

This is against the backdrop of the various sections of that chapter which is to the effect that it shall be the duty and responsibility of all organs of the government and of all authorities and persons exercising legislative, executive and judicial powers to conform to observe and apply the provisions of the chapter of the Constitution.[98] This provision is akin to Kenyan constitution 2010 which provides that it is a fundamental duty of the state and every state to observe, respect, protect promote and fulfill the rights and fundamental freedoms in the Bill of Rights.[99] It further provides that the state shall take legislative policies and other measures including the setting of standards to achieve the progressive realization of these rights guaranteed under article 43.[100]

By the tenor of the draftsman, the use of the word ‘duty’ and a ‘responsibility’ implies an obligation on the part of the operators of the machinery of government whose breach would attract an action from the

[97] Cap S6 LFN, 2004.
[98] CFRN 1999 (n3) s 13.
[99] Constitution of Kenya 2010 article 21 (1).
[100] *Ibid* article 21 (2).

citizen, nevertheless this expectation is caught short by the provisions of the constitution which provides thus:

> The judicial powers vested in the courts are not except as otherwise provided by the constitution extend to any dispute or question as to whether any act or mission by any authority or person or as to whether by law or any judicial decision is in conformity with the fundamental directives and objectives principles of state policy set out in chapter 2 of this constitution.[101]

The Nigerian courts have always relied on the above provision to decline jurisdiction on any matter brought before it on issues of economic, social-cultural rights.

As opined above, Nwatu,[102] argues that the emasculation of chapter 11 has some intriguing in interpretative concerns. In the first place, the question may be asked if there is no apparent conflict between section 13 of the constitution which imposes a duty on all arms of government including the judiciary, to conform, observe and apply the provisions of chapter 11 and section 6 (6) (c) of the same Constitution which ousts the jurisdiction of the courts in respect of the same chapter.

Indeed, it is trite that in the interpretation of the Constitution, the whole provision must be considered together[103] and where two provisions, one enlarging in the court's jurisdiction and the other restricting its jurisdiction, the courts will guard its jurisdiction jealously by adopting a liberal interpretation in favour of assuming jurisdiction.[104] The philosophical underpinning of this judicial attitude is to enable the court avoid injustice and absurdity. It will be the height of injustice and profound absurdity to apply a restrictive interpretation which will allow the duplicitous provisions of section 6(6) (c) of the Constitution to cage the provisions of Chapter 11. This is particularly so in the face of the preamble of the constitution which pontificates that the essence of the constitution is 'for the purpose of promoting the government and welfare of all persons in the country'. Therefore, if Chapter 11 of the constitution will help us to achieve this then Section.13 of the Constitution ought to be preferred to section 6(6) (c)of the Constitution.

However, our courts have often relied on the common law tradition that the judges do not make laws and are concerned with legal and not social justice to refuse enforcing economic and socio-cultural rights. Nevertheless, where the bold steps are taken to enforce human rights, the following are the likely prospects.

5.0 Lessons from Kenya

A cursory study of the Constitution of Kenya in East Africa shows that legislative engineering has been done to remove any bottle necks in the protection, promotion and enforcement of human rights via its Constitution. Kenya's constitutional architecture and design not only enshrine robust bill of rights in

[101] CFRN 1999 (n3) s.6 (6) (c).
[102] S I Nwatu, *'Legal Framework for the Protection of Socio-Economic Rights in Nigeria'* (2012) *The Nigeria Juridicial Review, 23, 35.*
[103] *Naifu Rabiu v The State* (1980) 8-11 S.C.130.
[104]Nwatu (n 102), The Constitution of Kenya 2010, article 20 (1) (b) which provides that the court adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

her constitutional document but also animate them with express recognition of socio-economic rights as justiciable rights.

The novelty of constitutional recognition of socio-economic rights in Kenya can be found in the preamble which provides thus

We the people of Kenya are committed to nurturing and protecting the well-being of the individual, the family, the community and the nation, recognizing the aspiration of all Kenya's for a government based on essential values of human rights, equality freedom, democracy, socio justice and the rule of law… adopt enact and give this constitution to ourselves and future generations.[105]

The Constitution of Kenya 2010 is one of the few constitutions in the Africa that has entrenched socio-economic rights in the Bill of Rights. By entrenching a justiciable social economic rights, the constitution hopes to promote egalitarian norms in the Kenya society unlike the Nigerian Constitution which makes the enforcement of social economic rights non justiciable by the express provision of section 6 (6) (c) of the CFRN 1999. Socio-economic rights, in the Kenyan Constitution context are provided for under Articles 42, 43, 53, 54, 55, 56 and 57 [106]

5.1 Right to a Clean and Healthy Environment

Article 42 provides for the right to a clean and healthy environment and it states that" every person has the right to a clean and healthy environment, which includes the right to: have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and have obligations relating to the environment fulfilled under Article 70. This Part elaborates certain rights to ensure greater certainty as to the application of those rights and fundamental freedoms to certain groups of persons.[107]

5.2 Economic and Social Rights under the Kenyan Constitution 2010

Article 43 of the Constitution of Kenya 2010[108] provides as follows: Every person has the right to the highest attainable standard of health, which includes the right to: health care services, including reproductive health care; to access and adequate housing, and to reasonable standards of sanitation; to be free from hunger, and to have adequate food of acceptable quality. Other socio-economic rights includes: right to clean and safe water in adequate quantities; social security; and education. Furthermore a person shall not be denied emergency medical treatment and the state shall provide appropriate social security to persons who are unable to support themselves and their defendants.

5.3 Right of Children

Under the Constitution of Kenya 2010 Article 53[109] provides that**:** Every child has the right to: a name and nationality from birth; free and compulsory basic education; basic nutrition, shelter and health care; be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment

[105] *Ibid*, preamble, paras 5 and 6.
[106] Constitution of Kenya, 2010. Arts 42, 43, 53, 54, 55, 56 and 57
[107] *Ibid*, art. 42 and art 70
[108] Ibid art 43
[109] Ibid art 53

and punishment, and hazardous or exploitative labour; parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and not to be detained, except as a measure of last resort, and when detained, to be held for the shortest appropriate period of time; and separate from adults and in conditions that take account of the child's sex and age. A child's best interests are of paramount importance in every matter concerning the child.

5.4 Right of Persons with Disabilities

Article 54 provides as follows[110]**:** A person with any disability is entitled to: be treated with dignity and respect, be addressed and referred to in a manner that is not demeaning; have to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person; to reasonable access to all places, public transport and information; to use Sign language, Braille or other appropriate means of communication; and to access materials and devices to overcome constraints arising from the person's disability.

The Constitution places obligation on the state to ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.

5.5 Rights of Youths

Article 55 provides that the State shall take measures, including affirmative action programmes, to ensure that the youth: access relevant education and training; have opportunities to associate, be represented and participate in political, social, economic and other spheres of life; access employment; and are protected from harmful cultural practices and exploitation.[111]

5.6 Minorities and Marginalised Groups

Article 56 deals with the rights of minorities and the marginalized groups in a the context whereby the state is required to put in place affirmative action programmes designed to ensure that minorities and marginalised groups are: to participate and are represented in governance and other spheres of life; provided special opportunities in educational and economic fields; provided special opportunities for access to employment; to develop their cultural values, languages and practices; and have reasonable access to water, health services and infrastructure.[112]

5.7 Rights of Older Members of the Society

Article 57 of the Constitution of Kenya provides that the State shall take measures to ensure the rights of older persons to: fully participate in the affairs of society; pursue their personal development; live in dignity and respect and be free from abuse and to receive reasonable care and assistance from their family and the State.[113]

[110] Ibid, art 54
[111] Constitution of Kenya 2010 art 55.
[112] Ibid art 56
[113] Ibid art 57

6.0 State Responsibility Towards the Enforcement of Rights

The Kenyan constitution 2010 provides that it is a fundamental duty of the state and every state to observe, respect, protect promote and fulfill the rights and fundamental freedoms in the Bill of Rights.[114] It further provides that the state shall take legislative policies and other measures including the setting of standards to achieve the progressive realization of these rights guaranteed under various articles.

The constitution provides expressly in no uncertain terms for socio economic rights thus every person has the right to the highest attainable standard of health which includes the right to health care services including reproductive health care; to accessible and adequate housing, to reasonable standard of sanitation.[115]

The equivalence of section 46 of the CFRN 1999 which gives every individual the right to seek redress in a court of law where rights are breached is found in Article 23 of the Kenyan Constitution which is the authority of courts to uphold and enforce the Bill of Rights. Article 23 of the Kenyan Constitution provides as follows;

> *(1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.*

The underlying provisions confers legal status to socio economic rights and thus making them legally enforceable claims or entitlements, further the constitution gives equal treatment to the entire contours of human rights as are internationally recognized. The importance of socio-economic rights was emphasized in *John Kibui Mwai and 3 others v KNEC and 2 others*, where the court stated thus;

The realization of socio-economic rights means the realization of the conditions of the poor and less advantaged and the beginning of a generation that is free and less advantaged from socio-economic need.

In *Mitu-Bell Welfare Society v Kenya Airports Authority*[116], the Appellant, an organization, petitioned the respondent for rendering a good number of the former Mituumba community homeless, who found refuge on the land owned by the respondent after their original homes were destroyed. The action was instituted in order to prevent the Respondent from evicting the persons in question by praying the court to grant an injunction in that regard, pending the determination of the petition. The injunction was issued but the Respondent disregarded the order and evicted the said residents forcefully. The Appellant as a result changed its prayers to declaratory reliefs, relocation and compensation which were granted by the trial court. This decision of the trial court was subsequently upturned by the Court of Appeal on appeal.

[114] Ibid art 21 (1).
[115] *Ibid*, art 43
[116] S.C. petition 3 of 2018 <escr-net.org/case/2021/mitu-bell-welfare-soceity-kenya-airport-authority-sc-petition-3

In a further appeal to the Supreme Court, the Supreme Court, recognizing that international law and treaty form part of the Kenyan law,[117] asserted that the Kenyan Constitution protects the right to accessible and adequate housing and that Kenya has committed itself to progressively realize these under International Law. The court stated that contrary to the Court of Appeal's interpretation that not all Kenyans are to access this right at once, every individual in Kenya is entitled to this right of housing always and that the progressive realization unburdens the Kenyan government upon not fulfilling this obligation to prove that it lacks the resources to fulfill this right. The court categorically asserted that every Kenyan citizen has the right to housing regardless of whether they own land and this right is protected by the Kenyan Constitution and under international law such that when there is a failure on the part of government to provide all with housing, government must provide for those like the petitioners who live in informal settlements. The Court held that the Appellants comprising over 3,000 families be compensated by the Respondent.

Also, in the case of *Okwanda v The Minister of Health and Medical Services & 3 others*, the court stated that "Article 21 and 43 require that there should be progressive realization of economic and socio rights, implying that the state must begin to take steps, towards realization of economic social rights"[118]

Furthermore, Lenaola J. aware of the traditional distinction, stated in *MMM v Permanent Secretary, Ministry of Education & 2 others [2013] eKLR,* stated as follows;

For a very long-time socio-economic rights were regarded as secondary rights while civil and political rights were considered absolute. With the advent of various International Covenants such as the International Covenant on Economic, Social and Cultural Rights socio-economic rights are now part of Kenya's primary law through the Constitution of Kenya, 2010 and they are now at par with other fundamental rights which are provided for in Article 43 of the Constitution.

By the Constitution, it is provided that where issues of the Bill of rights are concerned the court must adopt the interpretation that most favours the enforcement of a right or fundamental freedom.[119] where the State claims that it does not have the resources to implement the right, a court, tribunal or other authority shall be guided by the following principles (a) it is the responsibility of the State to show that the resources are not available;[120] (b) in allocating resources, the State shall give priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals;[121] and the court, tribunal or other authority may not interfere with a decision by a State organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion.[122]

[117] Kenya Constitution article 2.
[118] *Mathew Okwanda v The Minister of Health and Medical Services & 3 others*, High Court of Kenya at Nairobi, Petition No. 94 of 2012.
[119] The Constitution of Kenya 2010, art 20 (3) b.
[120] *Ibid* art 20 (5) (a).
[121] Ibid art 20 (5) (b).
[122] *Ibid* 20 (5) (c).

From the above, it is quite obvious that the issue of protecting, promoting and enforcement of human rights are matters of will and concern as evident in Kenyan rather the employment of excuses by our policy makers and operators of the machinery of government.

7.0 Conclusions

The rate of human rights violations in Africa especially Nigeria today gives one great thought for concern. Every day, victims call for the enforcement of human rights. It is against this backdrop that the author found it necessary to explore the extent of enforcement of various human rights in Nigeria as well as the socio-economic rights which is made non justiciable. It is obvious from the Constitution of Kenya that Kenya has moved beyond mere entrenchment of the socio-economic rights in their constitution but has gone further by giving spirit to the letters of the law through its enforcement mechanism. If human rights provisions are not enforced its violation will be taken to mean a norm by our future generation. It is important to note that while we look up to the international and regional arena for the enforcement of human rights, we must not lose focus of the fact that the active enforcement of human rights must be at the domestic arena where the mechanisms of enforcement will be within the easy reach of aggrieved citizens and thus more widely utilized. Moreover, international protection or mechanisms are designed to complement the domestic protection of human rights Thus, this article has shown that at the domestic level, there exist a coherent body of laws for the protection of civil and political rights while the socio-economic rights remain unenforceable. However, most of these human right provisions remain mere skeletons without life. It is the enforcement that infuses into it that makes it a living organism,

8.0 Recommendations

In view of our findings, this paper recommends the following measures as a way of enforcing human rights in Nigeria.

(a). The Constitution should be amended to clarify the extent of the jurisdiction of the State High Courts, Federal High Court and the National Industrial Court (NIC) over fundamental rights matters. In particular section 46 of the CFRN 1999 should be amended to accommodate the NIC.

(b). The ouster clause provided in Chapter II of the constitution should be expunged to make Chapter II of the CFRN 1999 justiciable like the Kenyan Constitution. The economic, social and cultural rights should be made justiciable if not all at least some of them virtue of the domestication of the African Charter on Human and Peoples' Right and through a liberal interpretation of laws, statutes and the constitution.

(c). The use of NGO and the Civil rights group to create awareness of the existence of Human Rights provision and where possible lawyers should undertake pro bono the prosecution of cases of human right violations and the enhancement of legal aid scheme to indigent citizens seeking redress against human right violations

(d). A legislative engineering should be done to remove any bottle necks in the protection, promotion and enforcement of the civil and political rights as well as socio economic rights to enable people

approach the court whenever their rights are breached. The cost of enforcing judgment of courts should be reduced. To achieve this, there should be an amendment of the Sheriffs and Civil Processes Act to ensure that the enforcement of court judgments on human rights in Nigeria is without cost.

(e). Holistic observance of domesticated international laws on human rights notwithstanding the classification and/categorization that its emergence has attracted. Also, it has been demonstrated that to make socio-economic rights pragmatic and not esoteric, the court must rise to the occasion through progressive and broad interpretation to make Chapter II and the social and economic rights contained justiciable and it is by so doing that we can cherish the true meaning of the civil and political rights.