

NATIONAL LEGAL FRAMEWORKS FOR THE PROTECTION OF HUMAN RIGHTS IN NIGERIA

By

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Abstract

All over the world human rights are violated on a daily basis, and would continue to be violated. This is largely so because of our different value systems, behavioral antecedents and the society we have found ourselves in. Every responsive government therefore promulgates laws for the protection of the rights of its citizens against abuses whether by security agencies that are statutorily empowered to safeguard lives and properties or private citizens in the form of jungle justice, lynching or mob attacks these laws are enacted by the National Assembly. Every day in Nigeria there are cases of human rights violations perpetuated by security agencies and private persons. Although Nigeria is a signatory to many international conventions and treaties, these conventions are not valid or enforceable until domesticated by the National Assembly as stipulated by s. 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This article examines the National Legal framework for the protection of human rights in Nigeria. It will state relevant provisions of these legal frameworks, identify perceived gaps and proffer recommendations for the overall effectiveness of these legal frameworks.

1.1 Definition of Human Rights

The term 'human rights' appeared in the public domain for the first time in the years 1942-1944 in the course internal policy discussions in the united states on the subject of the principles on which the post-war organizations would be based.¹ Human rights are universal. This implies that human rights belong to all human beings, wherever they live on earth. No individual, country, minority, religious or other groups should be denied the universality of human rights². The Universal Declaration of Human Rights of 1948 affirmed the universality of human rights. This proposition was reinforced by the First World Conference on Human Rights held in Teheran in 1948 which postulated that the declaration was an obligation on the members of the international

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¹ I Brown, *Treaties and Indigenous Peoples: The Robb Lectures*, Brookfield, (ed.) (Oxford: Clarendon Press, 1992)

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² C Lacumiere, *Human Rights at the Dawn of the 21st Century* (1933) Council of Europe 7

community. The universality of human rights was firmly affirmed by the Vienna Declaration adopted in 1993 by the World Conference on Human Rights which proclaims as follows:

All human rights are universal; indivisible, interdependent and inter related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states regardless of their political, economic, and cultural system, to promote and protect all human rights and fundamental freedoms.³

Umozurike defined human rights as:

Claims which are invariably supported by ethics and which should be supported by law, made on society especially on its official managers by individuals or groups on the basis of their humanity. They apply regardless of race, colour, sex or other distinction and may not be withdrawn or denied by the governments, people or individuals they are those rights which every individual claims or aspires to enjoy irrespective of colour, race, religion or status in life.⁴

National Legal Frameworks for the Protection of Human Rights in Nigeria

2.1.1 Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the supreme law of Nigeria. It affirmed the principle of fundamental rights pursuant to Chapter IV of the Constitution of the Federal Republic of Nigeria 1999(as amended). It contains a bill of civil and political rights, drawn mostly from the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966. Sections 33 to 44⁵ specifically makes provision for fundamental rights, they are regarded universally as rights of individuals developed through the age long history of the evolution of organised society and human struggle for freedom. These rights include:

1. Right to Life,⁶ stipulates that no one shall be deprived, intentionally, of his life, save in execution of the sentence of a court in respect of criminal offence of which he has been found guilty in Nigeria.

³ Vienna Declaration 1993

⁴ U.O Umozurike, *The African Charter on Human and Peoples Right* (Maritus Njuwhoff Publishers 1977), 5.

⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁶ *Ibid* s. 33.

2. Right to Dignity of Person,⁷ provides that 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 nor held in slavery or servitude nor required to perform forced or compulsory labour except in accordance with the law.
3. Right to Personal Liberty,⁸ states that no person shall be deprived of such liberty save as provided by the constitution or in accordance with a procedure permitted by law.
4. Right to Fair Hearing,⁹ stipulates that in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.
5. Right to Private and Family Life,¹⁰ provide for the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communication are guaranteed and protected.
6. Right to Freedom of Thought, Conscience and Religion,¹¹ stipulates that every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom to manifest and propagate his religion or belief in worship, teaching, practice and observance.
7. Right to Freedom of Expression and the Press,¹² provide that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.
8. Right to Peaceful Assembly and Association,¹³ stipulate that every person shall be entitled to assembly 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.
9. Right to Freedom of Movement,¹⁴ provides that every person 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 thereto or exit there from.

⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended)
s. 35

⁹ *Ibid*, s. 36

¹⁰ *Ibid*, s. 37

¹¹ *Ibid*, s.38

¹² *Ibid*, s. 39

¹³ *Ibid*, s. 40

¹⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended),
s.4.

10. Right to Freedom from Discrimination,¹⁵ provides that a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person be subjected to any form of discrimination.
11. Right to Acquire and own Property anywhere in Nigeria¹⁶.
12. No Immoveable 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.¹⁷

2.1.2 The Anti-Torture Act, 2017

The Anti-Torture Act 2017 prohibits any form of torture of crime suspects, detainees and prisoners and prescribes a 15 years jail imprisonment term upon conviction of any person who violates the provision of S.2 of the Act, which defines in detail what constitutes torture.

The Anti-Torture Act 2017,¹⁸ was passed by the 8th National Assembly and signed into law by President Muhammadu Buhari on December 29, 2017. Prior to the coming into effect of the Anti-Torture Act 2017, there was no law in Nigeria whose sole objective is the prohibition and punishment of torture and other forms of cruel, inhuman or degrading treatment. Although S. 34¹⁹ provides that (1) every individual is entitled to respect for the dignity of his person, and accordingly (a) no person shall be subjected to torture or to inhuman or degrading treatment; the Constitution of the Federal Republic of Nigeria 1999 (as amended) did not explicitly state that the freedom from torture, cruel and inhuman treatment is a derogable right. This perhaps explains the acceptance and continued use of torture, cruel, inhuman, degrading treatment by law enforcement officers. The Anti-Torture Act 2017 fills the existing legislative gaps by explicitly making the right to freedom from torture, cruel, inhuman and degrading treatment a non-derogable right, criminalizing torture and protecting victims and witnesses of torture.²⁰

The Anti-Torture Act is a very concise legislation. It has a title, explanatory memorandum and 13 Sections. S.1 of the Anti-Torture Act 2017 is titled 'Duty of Government', it imposes an obligation on government to ensure that all persons, including suspects, detainees and prisoners are respected at all times and that no person under investigation or held in custody is subject to any form of

¹⁵ *Ibid*, s.42

¹⁶ *Ibid*, s. 43

¹⁷ *Ibid*, s. 44

¹⁸ Anti-torture Act 2017.

¹⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended)

²⁰ C. Okeke. 'Anti-torture Act 2017: Issues, Implication for Police Officers', (Vanguard Newspaper 31 May 2018) accessed 23 June 2021

physical or mental torture. It admonishes government to adhere to domestic and international standards on absolute condemnation and prohibition of torture.

2.1.3 The Child Rights Act 2003

In 2003, Nigeria enacted the Child's Rights Act,²¹ The Child's Rights Act of 2003 expands the human rights bestowed to citizens to children. Although, this law was passed at the federal level, it is only effective if states also codify the law. The bill was first introduced in 2002, but did not pass because of the opposition from the Supreme Council for Sharia.²²

The Act was assented to law in 2003 by former President Chief Olusegun Obasanjo as the Child's Rights Act 2003, in large part, because of the media pressure that national stakeholders and international organizations put on the National Assembly. The Child's Rights Act itself is 230 pages long and contains 278 sections. It is divided into 25 parts. It mandates that when a child is concerned, their best interest is to take precedent. It goes on to state that the parent or legal guardian is obligated to fulfill the duty to give the child basic protection.²³ Also, it specifies that the chapter IV of the constitution,²⁴ and any other federal law which deals on fundamental rights should be seen as being part of the Act²⁵. This part details the rights, freedoms and responsibilities of children. It goes on to state specific right for children including the right to: survival, a name, family life, private life, dignity, recreation, cultural activities, health services and education.²⁶ The act discusses the ways in which a child shall be protected. These include protection from child marriage as well as the punishments for the act to the adult parties involved. Other protections include: not being harmed (including being marked with tattoos) or from sexual violence, being shielded from exploitative labour or being enlisted in any military operation²⁷.

2.1.4 Violence against Persons (Prohibition) Act 2015

The Violence against Persons (Prohibition) Act 2015 was signed into law on the 25th of May 2015 after over ten years on the legislative process. It is an amalgamation of different bills which sought to abolish all obsolete laws relating to matters such as rape, assault and so on. The act is a national law and its provisions are applicable throughout the country. This is a significant development because of the previously detached nature of law against violence, particularly gender-based violence. For instance, only five states have specifically legislated against domestic violence in the past (Ebonyi, Lagos, Jigawa), only a few other states have legislated against female genital

²¹ Child Rights Act 2003

²² D. Oguniyi, 'The Challenge of Domesticating Children's Right Treaties in Nigeria and Alternative Legal Avenues for Protecting Children', *Journal of African Law* 2017, 62; 447-470 – via Cambridge University Press

²³ Child's Rights Act 2003 part 1

²⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended)

²⁵ E. Uchenna, *Proportionality and Best Interest; Calibrating the Twin Pillars of Child Justice in Nigeria* (2014) 72

²⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended).

²⁷ Child's Rights Act 2003 part 111

mutilation (Edo, Cross River) a few others have developed legislation prohibiting traditional harmful widowhood practices (for example Anambra and Cross River),²⁸ while only Ekiti State has developed legislation prohibiting all gender based violence.²⁹ A major significance of the Violence against Persons (Prohibition) Act 2015 is its broad definition of ‘violence’.

The Act defines ‘violence’ thus:

Violence in this Act, unless the context otherwise requires; violence means any Act or attempted Act, which causes or may cause any person physical, sexual, psychological, verbal, emotional or economic harm whether this occurs in private or public life, in peace time and in conflict situation.³⁰

The definition appears all encompassing as it captures every form of imaginable nature of violence; like violence against men, women children, political violence and so on. The act is enacted to eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders. The Violence against Persons (Prohibition) Act 2015 provides for 26 offences, it is divided into 6 parts. Section 46 of the Act incorporates the rights guaranteed under the constitution.

2.1.5 Administration of Criminal Justice Act, 2015

The Act³¹ was signed into law in May 2015. It has 495 sections of law divided into 49 parts, providing for the administration of criminal justice and for related matters in the courts of the Federal Capital Territory and other federal courts in Nigeria. With this law, Nigeria now has a unique and unified law applicable to offences contained in federal legislations. The law repeals the erstwhile Criminal Procedure Act as applied in the South and the Criminal Procedure Code (Northern states) Act, which applied in the North and the Administration of Justice Commission Act.

The Act by merging the major provisions of the two principal criminal justice legislations in Nigeria, that is Criminal Procedure Act and Criminal Procedure Code, preserved the existing criminal procedures while introducing new provisions that will enhance the efficiency of the justice system and help fill the gaps observed in these laws over the course of several decades. s. 1,³² is overtly apt in explaining the purport of the act thus. The purport of the Act is to ensure that

²⁸ Violence against Persons (Prohibition) Act 2015.

²⁹ C. Onyemelukwe, ‘*The Violence Against Persons (Prohibition) Act*’: (A CHELD brief Centre for Health Ethics Law and Development (CHELD), 2015) available **Error! Hyperlink reference not valid.** 24 June 2021.

³⁰ Violence Against Persons (Prohibition) Act 2015, s. 1

³¹ Administration of Criminal Justice Act 2015

³² *Ibid.*

the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the rights and interests of the suspect, the defendant and the victim.

One essential feature of the Administration of Criminal Justice Act is its paradigm shift from punishment as the main goal of the criminal justice to restorative justice which pays serious attention to the needs of the society, the victims, vulnerable persons and human dignity generally. The general tone of the act puts human dignity in the fore, from the adoption of the word defendant instead of accused, to its provision for humane treatment during arrests.

2.1.6 Criminal Code Act 2004³³

The Criminal Code Act is an act enacted by the Nigerian parliament that criminalized certain acts as an offence punishable. The Nigerian Criminal Code derives from Nigeria Criminal Code Act 1916, Nigeria Penal Code Act 1960 and other criminal laws enacted by Nigerian parliament from time to time. The latest consolidated version of the code is contained in Nigerian Criminal Act 2004. It has been adopted from different laws in force in the country in different periods since its colonial occupation by foreign governments. It includes the local African common laws and English law borrowed from British dependencies. It may be noted that the criminalization in Nigeria does not apply uniformly to all people in all provinces of the country. The Criminal Code Act has about 521 sections, 55 chapters and 8 parts. The Criminal Code Act 2004 contains some provisions touching on the human rights of the individual. It criminalizes certain acts and prescribes punishment there in. Worthy of mention is Section 252.³⁴ It stipulates thus:

A person who strikes, touches or moves otherwise applies force of any kind to, the person of another either directly or indirectly without his consent or with his consent, if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, in such circumstances that the person making the attempt or threat has actually or apparently a present ability to affect his purpose, is said to assault that other person, and the act is called an assault.

The term “applies force” include the case of applying heat, light, electrical force, gas, odour or any other substance of thing whatever if applied in such a degree as to cause injury or personal discomfort. This is a human right provision consistent with the constitutional provision and other treaties ratified by Nigeria.

³³ Criminal Code Act, 2004

³⁴ *Ibid.*

Similarly S. 306³⁵ makes it unlawful to kill any person unless such killing is authorized, justified or excused by law. s. 316 gives a lucid definition of murder: it stipulates thus:

Except as hereinafter set forth – a person who unlawfully kills another under any of the following circumstances, that is to say –

- (1) If the offender intends to cause the death of the person killed, or that of some other person.
- (2) If the offender intends to do to the person killed or to some other person some grievous harm.
- (3) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life.
- (4) If the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender maybe arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence.
- (5) If death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid. (6) If death is caused by willfully stopping the breath of any person for either of such purpose is guilty of murder. The punishment for murder is the death penalty.

2.1.7 Penal Code Act 2004³⁶

The Penal Code Act is a domestic law in Nigeria that codifies criminal offences and stipulates punishment attached to the various offences under the Act. The Act is applicable only in the Northern Nigeria. The act is divided into 25 chapters and 409 sections. The Penal Code Act also embodies some human rights provisions. It criminalizes certain acts and prescribes punishment for violation Sections 220, 242, 254, 268, 271 and 282 all bother on human rights.

Section 55(1) provides that:

Nothing is an offence which does not amount to the inflicting of grievous hurt up on any person and which is done.

(d) By a husband for the purpose of correcting his wife, such husband and wife being subject to any native law or custom in which such correction is recognized as lawful.

The above provision does not promote human rights and so should be expunged from the Penal Code Act. It violates Section 34 which bothers on dignity of the human person. The act is also not comprehensive. It covers limited forms of violence against women. The protection given to a child is also minimal. The Act encourages early child marriage.

³⁵ Penal Code Act Cap P3, Laws of the Federation, 2004

³⁶ Penal Code Act Cap P3, Laws of the Federation, 2004

2.1.8 Nigeria Police Act 2020

The Police Act brings about innovations which would impact the police institution and the administration of criminal justice in Nigeria. The act repeals the Police Act and enacts the Nigeria Police Act 2020 to provide a more effective and well organized police force driven by principles of transparency and accountability in its operation and management of its resources and to protect human rights and freedom.³⁷

Among new conspicuous innovations of the Nigeria Police Act 2020 is the integration and recognition of fundamental rights in the Police Act and making it part of the primary functions of the police, in all its operations, to safeguard and uphold the fundamental rights of every person in Nigeria. The core objective of the Nigeria Police Act 2020 includes promotion and protection of fundamental rights of every citizen while in its operations.³⁸

2.1.9 The Nigerian Correctional Service Act 2019

Nigerian Correctional facilities fall short of the approved standard for the rehabilitation and reformation of inmates. The Standard Minimum rules for the treatment of Prisoners as adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955 sets out rules that preserve the rights of prisoners. According to the Comptroller-General, the facility built in 1955³⁹, to shelter 800 inmates now holds about 3,113 inmates as at December 3, 2019⁴⁰. The newly signed Nigerian Correctional Service Act may foster the desired change in the system if it takes effect in practice⁴¹.

On August 14, 2019, President Muhammadu Buhari signed the Nigerian Correctional Service Bill into law. Many circumstances necessitated and led to the signing of the bill; such as the dilapidated and congested nature of the facilities. For instance, as at August 2018, the Port Harcourt prison built in 1918 and designed to shelter 800 inmates now accommodates 5,000, while Kirikiri Maximum Prison in Lagos built to hold 956 inmates has become home to 2,600 inmates⁴². 3 Poor feeding of inmates, lack of adequate medical care for inmates due to lack of requisite facilities and

³⁷ Police Act 2020 s. 1

³⁸ *Ibid* s. 4

³⁹ Approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 197

⁴⁰ O. Ramon, "PRAI Sues FG Over Electrocution of Ikoyi Inmates", available at <https://punchng.com/prai-sues-fg-over-electrocution-of-ikoyi-inmates/> (accessed 15 June 2020).

⁴¹ C. Ezeilo and P. Akinseye-George, A Review of The Nigerian Correctional Service Act 2019, (2020) *Unilag Law Review* Vol. 4, No. 1, 6.

⁴² O. Agede and S. Agiobu-Kemmer, "Reforming Nigerian Prisons beyond Name Change", available at <https://guardian.ng/saturday-magazine/cover/reforming-nigeria-prisons-beyond-name-change/> (accessed 27 December 2019).

the lack of recreational and vocational training for inmates are also contributing factors. The Act has 47 sections and 2 parts. Part 1 deals with custodial service, Part 11 deals with a Nigerian Non-Custodial Service system.

2.10 National Security Agency Act 1986

The National Securities Act came into force in 1986. It repeals the National Security Agencies Act. It has 8 sections. It establishes the Defence Intelligence Agency, the National Intelligence Agency; and the Department of State Security Service. The function of the Defence Intelligence Agency shall be the prevention and detection of crime of a military nature against the security of Nigeria; the protection and preservation of all military classified matters concerning the security of Nigeria, both within and outside Nigeria; and such other responsibilities affecting defence intelligence of a military nature, both within and outside Nigeria, as the President, or the Chief of Defence staff, as the case may be, may deem necessary⁴³. The duties of the National Intelligence Agency includes; the general maintenance of the security of Nigeria outside Nigeria, concerning matters that are not related to military issues; and such other responsibilities affecting national intelligence outside Nigeria as the National Defence Council or the President, as the case may be, may deem necessary⁴⁴.

The State Security Service shall be charged with responsibility for the prevention and detection within Nigeria of any crime against the internal security of Nigeria; the protection and preservation of all non-military classified matters concerning the internal security of Nigeria; and such other responsibilities affecting internal security within Nigeria as the National Assembly or the President, as the case may be, may deem necessary⁴⁵. The DSS has been routinely involved in human rights violations. This will be addressed in chapter four of this work.

2.11 The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1988

The African Charter on Human and Peoples Rights (also known as the Banjul Charter) is a now a national human rights instrument that is intended to promote and protect human rights and basic freedoms in Nigeria. It emerged under the aegis of the Organization of African Unity (OAU) since replaced by the African Union (AU) which at its 1979 Assembly of Heads of State and government, adopted a resolution calling for the creation of a committee of experts to draft a continent wide human rights, similar to those that already existed in Europe (European Convention on Human Rights) and the American Convention on Human Rights. This committee was duly set

⁴³ National Securities Act 1986 s.2(1) a-c

⁴⁴ National Securities Act 1986, s.2(2) a-b

⁴⁵ National Securities Act 2004 s.2(3) a-c

up and it produced a draft that was unanimously approved at the OAU's 18th Assembly held in June 1981, in Nairobi, Kenya.⁴⁶ The charter came into effect on 21st October 1986. The African Charter on Human and Peoples' Rights includes a preamble, 3 parts, 4 chapters and 63 articles.

3.1 Conclusion

This article has examined the national legal frameworks for the protection of human rights in Nigeria. It has analysed the Constitution of the Federal Republic of Nigeria 1999 (as amended), Anti Torture Act 2017, Childs Rights Act 2003, Violence against Persons (Prohibition) Act 2015, Criminal Code Act 2004, Police Act 2020 and the Nigerian Correctional Service Act 2019. Some of these legislation contains loopholes and constitutes drawbacks to the effectiveness of the legal framework; for instance, the VAPP is of limited application; it is limited to the Federal Capital Territory, also the Child Rights Act, 2003, only 25 of the 36 states in Nigeria have localized the Child's Rights Act.⁴⁷ The VAPP Act also contains duplicity of laws.

4.1 Recommendations

1. S. 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) should be expunged. There should be no requirement of domestication of international conventions and treaties. Once ratified, they should become part of our domestic legislation.
2. The Violent against Persons (Prohibition) Act 2015 should be given universal application. The jurisdiction should be extended to the Federal High Court.
3. Every state of the Federation should localize the Childs Rights Act 2003. They should enact their own Childs Rights Law to give all children equal footing and protection under the law.

⁴⁶ The Organization of African Unity (O.A.U) has metaphorsed into the African Union (AU) this is pursuant to the adoption of the Charter of the Africa Union.

⁴⁷ UNICEF, "Nigeria : Child Protection" <https://www.unicef.org/nigeria/child-protection> accessed 28 May 2020