

AN APPRAISAL OF LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE IMPLEMENTATION OF INTERNATIONAL BILL OF RIGHTS IN NIGERIA*

Abstract

An appraisal of legal and institutional framework for the implementation of International Bill of Rights in Nigeria which is the crux of this discourse is one of the principles of human rights law that seeks to examine the level of human rights compliance in Nigeria. It was found that Nigeria separated the provisions of International Covenant on Civil and Political Rights (ICCPR) 1966 which are made justiciable in Chapter IV of the Constitution from the Provisions of International Covenant on Economic, Social and Cultural (ICESCR) right 1966 which are rendered non-justiciable by virtue of Section 6 (6) (c) of the same Constitution. It was also discovered that Nigerian Judiciary has been dogged in ensuring that citizens who are victims of human rights abuses obtain justice within the shortest possible time. It was equally revealed inter alia that Nigeria is still practicing capital punishment and no Nigerian can lodge his human right abuses at an international level. Accordingly, it is recommended that Nigeria should make the provisions of Chapter II justiciable as its counterpart of Chapter IV in line with the dictates of the indivisibility characteristic of human rights. It is further recommended that Nigeria should ratify the Two Optional Protocols of the ICCPR so that Nigerians can bring up their complaints of human rights infraction at an international tribunal or court as well as abolish death penalty.

Keywords: International Bill of Rights, Implementation, Legal and Institutional Framework, Nigeria

1. Introduction

The advancement of human rights is now the greatest concern of governments at all levels. In order to achieve this noble objective a lot of treaties, conventions, covenants and laws have been put in place at international, regional and municipal levels as guide. The United Nations on her own part laid the foundation upon which regional and municipal treaties on human rights spring from. The major human rights regimes enunciated by the United Nations include: the Universal Declaration of Human Right (UDHR) 1948; the International Covenant on Civil and Political Rights (ICCPR) 1966 and its Protocols; the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. These three instruments collectively are referred to as the International Bill of Rights. The various regions of the world followed the footsteps of the United Nations and came up with their own treaties on human rights. Some notable regional human rights regimes are: the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and the Protocols; the Inter-American Convention on Human Rights 1969; and the African Charter on Human and Peoples Rights otherwise known as the Banjul Charter on Human and Peoples' Rights 1981. Other regional human rights treaties are: the Human Rights Chamber of Bosnia and Herzegovina, the CIS Convention on Human Rights and Fundamental Freedoms, and the Organization for Security and Co-operation in Europe (OSCE). This study shall hereunder examine in detail the International Bill of Rights, the African Charter on Human and Peoples Rights, the Nigerian Constitutional Provisions on human rights, human rights under other Nigerian Laws as well as the institutional framework which ensures the protection and observation of human rights statutes in Nigeria.

2. Legal and Institutional Framework on Human Rights

2.1. Legal Framework

Universal Declaration of Human Rights 1948 (UDHR)

This instrument can be accurately referred to as the mother of all other human rights treaties. Though at the time of promulgation, it was not intended to be binding on member states of the United Nations but with the passage of time, it graduated into the elevated position of Customary International Law having the force of compulsion universally. The Preamble of the UDHR speaks eloquently of the need for the protection of human rights devoid of discrimination on basis of sex, colour, religion, race or any other distinction. It is meant to apply universally in relation to the human family anywhere in the world. In the words of Siniko,

The General Assembly recognizes that the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, human rights should be protected by the rule of law, friendly relations between nations must be fostered, the peoples of the United Nations have affirmed their faith in human rights, the dignity and worth of the human person, the equal rights of men and women and are determined to promote social progress, better standards of life and larger freedom and have promised to promote human rights and a common understanding of these rights¹

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1. Siniko, p. 147; Siniko is a production of Amnesty International as part of the world wide campaign to mark the 50th Anniversary of the Universal Declaration of Human Rights on 10 December, 1998 as cited in Okpara Okpara *Human Rights Law and Practice* in Nigeria Vol. 1, Publicom International Ltd, 2009, P. 357.

The UDHR contains 30 Articles which give protection to individual rights, social rights, political rights, legal rights and duties of both the states and individuals. These rights are classified into three categories: first generation rights, second generation rights and third generation rights. The First generation rights encompasses the civil and political rights or liberty oriented rights. The Second generation rights are economic, social and cultural rights or security based rights. The third generation rights are environmental and developmental rights. Our own jurist T. O. Elias (of the blessed memory) was emphatic on the importance the public ascribed to UDHR when he penned down as follows:

It seems that the Universal Declaration of Human Rights of 1948 may come to be judged as perhaps the most important document to have emerged from the United Nations Organization as the fountain of its existence and indeed its *raison d'être*. If we give a political document a biological interpretation, it is the nucleus of an organism which is in the process of rapid growth to great dimensions by its own inner dynamics. The United Nations architects of San Francisco planted in the Charter the seed of the idea of human rights as one of the cornerstones upon which the post 1945 world should be built and the organization lost no time in drafting and adopting the Declaration of 1948 to be later supplemented by the two complementary covenants. By this single act was set in motion the unprecedented process of decolonization and the inevitable principles of the right of self-determination of peoples, thus by the one fell swoop of the adoption of this modern Magna Carta releasing the greater bulk of mankind from political bondage².

Be it emphasised that all other human rights treaties at international, regional and domestic levels of governance are modeled after the hallowed provisions of the UDHR. I must also state that the UDHR derived its potency from the Charter of the United Nations which provide for human rights enjoyment for all categories of members of the human race without any iota of discrimination. The UDHR not only acts as a human rights instrument but set the pace in motion for decolonization and eradication of underdevelopment in the less developed states of the United Nations. The document was unanimously agreed not to be having a binding effect due to the criticisms emanating from the Eastern Bloc particularly USSR (Russia). In order to ensure that the draft document was passed at the General Assembly of the United Nations, Roosevelt the then American delegate and Chairperson of the Commission on Human Rights stated as follows:

The draft declaration was not a treaty or international agreement and did not impose legal obligations; it was rather a statement of basic principles of inalienable human rights setting up a common standard of achievement of all peoples and all nations. Although it was not legally binding the declaration would nevertheless have considerable weight³.

The UDHR has in recent times been transformed into an international customary law, binding on all human beings in the world and which no government wants to flout its content. As at today the treaty has satisfied the yearnings of the twin major blocs namely the Western and Eastern Blocs. The Declaration no doubt does not qualify as a treaty but in view of the fact that states of the world have resorted to it for aid, it has assumed a higher position than a treaty – international customary law (*jus cogens*). Some of the cases where municipal jurisdictions have utilized the UDHR are as follows: *in re Flesche*,⁴ *extradition of Greek National (Germany)*⁵ and *Charan Lal Sahu v. Union of India*⁶. The UDHR has been invoked by the European Court of Human Rights as an aid to the Interpretation of the European Convention on Human Rights (ECHR)⁷ and by the International Court in relation to the detention of hostages ‘in conditions of hardship’⁸. It is gladdening to observe that the criticisms leveled against the UDHR which border on state sovereignty and communal rights in relation to the contents of the declaration are neatly diminished by the state parties to the declaration. Finally, the declaration has become a major torch light illuminating the nooks and crannies of human rights globally.

²Elias T. O., *New Horizons in International Law*, Sijthoff Noordhoff, Netherlands, 1979 p. 162 as cited in Okpara Okpara, *Human Rights Law and Practice op cit* vol. 1 p. 359.

³G. Ezejiofor, *Protection of Human Rights Under the Law*, (London: Butterworths, 1964) 86 as cited in Eseni Azu Udu, *Human Rights in Africa Mbeyi & Associates Nig Ltd*, 2011, p. 48.

⁴(1949) 16 ILR 266, 269 as cited in Crawford J; *Brownlie's Principles of Public International Law*, Oxford Unity Press, 2012 *op cit*. p. 636.

⁵(1955) 22 ILR 520, 524 as cited in *Brownlie's Principles op cit* p. 636.

⁶(1989) 118 ILR 451 cited in *Brownlie's Principles op cit* p. 636.

⁷4 November 1950, ETS 5: eg. Golder (1975) 57 ILR 200, 216 – 17 as cited in *Brownlie Principles op cit* pp. 636 – 637.

⁸*United States Diplomatic and Consular Staff in Tehran (US v. Iran)*, ICJ Reports 1980 p. 3, 42 as quoted in *Brownlie's Principles op cit*. p. 637.

International Covenant on Civil and Political Rights (ICCPR) 1966 and its Protocols

This covenant was adopted in 1966 and came into force in the year 1976⁹. The rights guaranteed by this covenant include: right to life, right not to be tortured or subjected to slavery, right to liberty and security of the person, freedom of thought, conscience and religion, freedom of association and assembly, right of the minorities and the right of people to self determination. The state parties to the United Nations all concurred that this covenant shall have the binding force of law quite unlike the UDHR. Other rights accorded coverage in this covenant are: freedom from arbitrary arrest and detention, equality of all persons before the law, right to privacy of individuals, family, home or correspondence, right to vote and be voted for. The covenant further provides that nobody shall be imprisoned merely due to the fact that he/she did not perform his/her part in any contractual agreement. In a bid to accomplish its desired goal, the covenant in Part IV established the Human Rights Committee which shall consist of eighteen members responsible for the implementation of the provisions of the articles as therein contained. According to the covenant such persons to be in the committee must be 'persons of high moral character and recognized competence in the field of human rights' with 'consideration being given to the usefulness of the participation of some persons having legal experience'. Membership of the committee shall be drawn from the nationals of the state parties to the covenant. The covenant assigned four basic functions to the Human Rights Committee¹⁰.

- (i) First of all, the Committee receives and examines reports from the states parties (States which have ratified or acceded to the covenant) on the steps they have taken to give effect to the rights spelled out in the Covenant. The Committee makes specific recommendations to the state parties, based on the study of their reports.
- (ii) The Committee also makes general comments which take the form of interpretations of the scope and meaning of certain provisions of the covenant, and which are designed to help the state parties to give effect to the provisions of the covenant.
- (iii) If certain requirements are met, the Committee may also receive communications from one state party claiming that another state party is not carrying out its obligations under the covenant, propose its good offices, and if other means fail, appoint a conciliation commission.
- (iv) Finally – and perhaps most significantly – the Human Rights Committee receives and considers communications from individuals who claim that their human rights have been violated by a state party to the covenant. This function was established in the First *Optional Protocol* to the covenant. The *Optional Protocol* (first one) was adopted by the General Assembly at the same time as the covenant itself- on 16th December 1966.

The acceptance of individual complaint is of course subject to the state party from where the petition emanates having ratified the *First Optional Protocol*. If the contrary is the situation, the Committee lacks the competence to entertain such individual's complaint. It is noted that some rights in the UDHR are not reflected in the ICCPR namely right to property and right to asylum. Sequel to the adoption of this covenant Two Additional Protocols have emerged. The First Optional Protocol was adopted by Resolution 2200 (XXI) of the General Assembly of the United Nations which provides for an international system for dealing with communications from individuals alleging violations of the rights guaranteed by that covenant.¹¹ This protocol in effect grants individuals the competence to lay complaint of violations of the rights as enshrined in the covenant at an international level. *The Second Optional Protocol* which major aim is the abolition of death sentence was similarly adopted by the General Assembly in 1989 but took effect from 11th day of July 1991. Even though Nigeria ratified the ICCPR she has failed and/or neglected to ratify the protocols thereby frustrating the desire of Nigerians to bring up violations of the rights guaranteed by the covenant at international fora. In a like manner, that failure has made Nigeria not to abolish death sentence as demanded by the Second Optional Protocol. For purposes of clarity the Nigerian Constitution stipulates that every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria¹².

No doubt, the non-signing of the two protocols has really set the clock back in the observance of human rights in Nigeria. It is submitted that the Federal Government should make haste and ratify the two protocols in order to enhance her human rights records thereby joining other countries which did so in the community of Nations. It is pertinent to do so especially the abolition of death sentence because no president or governor in Nigeria is ever willing to sign the death warrant of any convict on death row. Some of the rights guaranteed in the ICCPR are domesticated in Chapter IV of the Nigerian Constitution (*supra*). Ghana like Nigeria has also not ratified the

⁹ Rehman, *International Human Rights Law* p. 83 as quoted in M. N. Shaw, *International Law op cit* p. 314.

¹⁰ United Nations, *Civil and Political Rights: The Human Rights Committee*, Fact sheet No 15, p. 2.

¹¹ Tony Nwazuoke, *Introduction to Human Rights Law*, Copy craft In't Ltd, 2006 op. cit p. 17.

¹² S. 33 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended); S. 13 of the Constitution of the Republic of Ghana 1992.

two protocols of ICCPR which means that a Ghanaian cannot carry his/her complaint of infraction of the rights under the covenant beyond the territory of Ghana. In the same token death penalty is still practised in Ghana as her Constitution acknowledges such practice¹³. The enjoyment of the rights protected by the covenant is based on the rights of others, public interest, public health and public morality as aptly expressed in the covenant and our dear country Nigeria's Constitution.¹⁴

International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

This covenant was adopted by the General Assembly of the United Nations on the 16th day of December 1966 the same day the ICCPR was adopted and the two treaties came into force on the 3rd day of January, 1976. The ICESCR amplified the rights highlighted in the UDHR and went a step further to include the right to asylum and the right to property which are conspicuously absent in the UDHR. The ICESCR in Article 1 emphasized that:

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may for their ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The state parties to the present covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of Self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Using the foregoing as a springboard the covenant astutely forged ahead in putting in place other rights provided and protected by it as follows:

- (i) The right to work and free choice of jobs;
- (ii) The right to just and favourable conditions of work;
- (iii) The right to equal pay for equal work;
- (iv) The right to safe and healthy conditions of work, and to rest and leisure;
- (v) The right to form and join trade unions;
- (vi) The right to family protection, assistance and special protection accorded to mothers and children;
- (vii) The right to an adequate standard of living for everyone, including adequate food, clothing and housing;
- (viii) The fundamental right of everyone to be free from hunger;
- (ix) The right to the highest attainable standard of physical and mental health to education;
- (x) The right to acquire a nationality etc.¹⁵

This covenant has no machinery of implementation as the ICCPR. In order to provide a mechanism of implementation the covenant authorizes the UN Economic and Social Council to handle the implementation strategy. The Council rather delegated the assignment of implementation to the committee on Economic, Social and Cultural Rights. Worthy of emphasis is that this covenant has up till now no protocol of any kind as seen in the ICCPR. Our country Nigeria replicated some of the contents of this covenant in Chapter II of the Constitution¹⁶ but rendered them powerless by virtue of the fact that they are not justiciable in any court¹⁷.

As laudable as the provisions of the ICESCR rights are, the same treaty gives the state parties the discretion to enforce or not to enforce¹⁸ which accounts for the lukewarm attitude of most state parties in giving vigour and life to the provisions of ICESCR which is the hub of human existence. Its absence of enforcement in most state parties is the remote and immediate causes of frictions and squabbles. In any state where social security is not provided it will create all sorts of security challenges ranging from armed robbery, banditry, kidnapping, murder etc which sets the clock back by 360° in human rights observance. If the social security is available to individuals, satisfaction and peace will be enthroned thereby nipping in the bud all sorts of security impediments. There is therefore urgent need for the amendment of Article 2 of the ICESCR to reflect the compulsory state of the covenant in order to catapult the provisions of the ICESCR from obscurity to the limelight. The present situation whereby some state parties failed and/or neglected to implement the provisions of the ICESCR is equivalent to a father who is unable to provide the essential things in life (food, shelter and clothing) for his children. Alternatively a protocol can be made setting a time frame within which all independent states are expected to comply with the

¹³ S. 13 of the Constitution of the Republic of Ghana 1992.

¹⁴ S. 45 of 1999 Constitution of Nigeria (As Amended).

¹⁵ Okpara Okpara, *Human Rights Law and Practice* vol. 1 *op cit*, p. 360.

¹⁶ 1999 Constitution of Nigeria (As Amended).

¹⁷ S. 6 (6) (C) of the 1999 Constitution of Nigeria (As Amended).

¹⁸ Article 2.

provisions of this covenant. It is my humble view that if these recommendations are considered on their merit it will go a long way towards achieving the main aim of the United Nations Charter.

African Charter on Human and Peoples' Rights (ACHPR) 1981

The Continent of Africa was the third in initiating a treaty on human and peoples' rights. This came to fruition in 1981 after series of meetings, conferences, negotiations and deliberations towards having a human rights instrument to guide the observance and protection of human rights in Africa. This treaty was concluded in 1981 in Banjul hence the name African Charter on Human and Peoples' Rights 1981 or otherwise known and called the Banjul Charter. The Charter came into effect on 21st October 1986. The Charter was championed by the Organization of African Unity (OAU) now (AU) which is the umbrella body that united all the countries of Africa which was later re-baptized or called the African Union (AU) in recent times. The OAU Charter of 1963 refers to human rights in general in its Preamble as set out below:

Conscious of our responsibility to harness the natural and human resources of our continent ... (persuaded that the Charter of the United Nations and the universal Declaration of Human Rights, to the Principles of which we reaffirm our adherence, provide a solid foundation for peaceful and positive co-operation among states. One of the purposes of OAU is to promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights¹⁹.

This charter is composed of 68 articles and divided into three parts:

Part I Rights and Duties;

Part II Measures of safeguard including the establishment and working of the African Commission on Human and Peoples' Rights;

Part III General Provisions relating to ratification and special protocols, and amendments²⁰.

In addition to protecting civil and political rights, economic, social and cultural rights, the African Charter went a step forward to according recognition to group rights thereby distinguishing itself from other human rights instruments. The African Charter equally guarantees all the civil and political rights as endorsed by the UDHR. The Charter further mandates every member state to domesticate the charter provisions and enforce them in their respective jurisdiction. Article 3 stipulates that everyone is equal before the law as well as equal protection of the law for everybody. The Charter in this regard envisages substantive or relative and not mathematical formal or absolute equality. In his dissenting judgment in the case of *South-West Africa Cases (Second Phase)*²¹, Judge Tanaka said that the principle of equality does not mean absolute equality, but recognizes relative equality, namely, different treatment proportionate to concrete individual circumstances. Similarly equal protection is the affirmative right of non-discrimination. A mere declaration of equality does not necessarily and practically achieve it in all cases and so a different category of rights may be necessary to carry it into effect²².

The African Charter no doubt is tailored to meet the need and aspirations of the African Continent; in other words it reflects the cultural background of Africa thereby lending itself to be a proponent of cultural relativism of human rights. Moreover the Charter has become the first regional treaty on human rights to provide for the duties of individuals to the community. In the Charter the issue of morality is accorded prominence indicating that Africans cherish very well the issue of morality which is believed to be able and capable of molding individuals into refined human beings. The rights protected and duties imposed by the Charter include individual's rights, peoples' rights, duties imposed on state parties to the Charter and duties imposed on individuals.

In order to implement the Charter provisions to the letter, it established the African Commission on Human and Peoples' Rights. The Commission is made up of eleven members which must be 'Africans of the highest reputation and of acknowledged high moral integrity, impartiality and competence in matters of human and peoples' rights'. The functions of the Commission are as follows:

- (1) To promote Human and Peoples' Rights.
- (2) Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
- (3) Interpret all the provisions of the present Charter at the request of a state party, an institution of the OAU or an African Organization recognized by the OAU.

¹⁹U. Oji Umzurike, *The African Charter on Human and Peoples' Rights*, Martinus Nijhoff Publishers, The Hague Netherlands, 1997, p. 25.

²⁰ *Ibid* p. 26.

²¹ ICJ Rep. 1966 as quoted in U. O. Umzurike 'The African charter on Human and peoples' Rights *op cit* p. 30

²² Ie Economic, Social and Cultural Rights; see also K. A. Acheampong, The African Charter and the Equalization of Human Rights, Lesotho 7 (2) Lesotho LJ 1991, 21 – 34, as quoted in U. O. Umzurike, *The African Charter op cit* 30.

- (4) Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government²³.

In an effort to accomplish the assignment of implementing the Charter the African Commission on Human and Peoples Rights in 1988 devised Rules of Procedure of the African Commission on Human and Peoples' Rights which was further amended and adopted on 6th October 1995. The Rule of Procedure act as a guideline to the commission on how to obtain communications or petitions, from state parties to the Charter, sieve them, and decide on them as to whether the petitions scale through the admissibility hurdles before in depth analysis of either having merit or not. The Commission is empowered to entertain interstate communications or petitions²⁴ which are grievances leveled by one state(s) against another state(s) which are state parties to the Charter. The commission is authorized to attempt at amicable resolution of such disputes in the spirit of African States failing which other formal methods can be employed in order to restore peace among the states concerned. The commission equally is granted the competence to handle other communications.²⁵ One outstanding further qualification of admissibility *inter alia* is that such communication must have exhausted local or domestic remedies²⁶. Our country Nigeria has ratified and domesticated this African Charter as required by the Constitution.²⁷ The domestication is evidenced in the constitution²⁸. In the light of the foregoing Nigeria is bound to implement the provisions of the African Charter despite divergent views on the implementation or otherwise of the Charter provision in Nigeria. An eminent jurist Robertson has stated that in International law, the relationship between treaties and national law is governed by well known principles to wit, a state which is a party to a treaty is under an obligation to ensure that its national law conforms to its international obligations²⁹. This position is further reaffirmed by the decision of the Permanent Court of International Justice (PCIJ) in 1925 in the case of *Exchange of Greek and Turkish Populations Advisory Opinion*³⁰. Furthermore, the Vienna Convention on the Law of Treaties is eloquent enough that international law takes precedence over domestic or municipal law³¹. Based on the foregoing principle, a Lagos High Court ruled in the case of *Constitutional Rights Project v The President*³² that the provisions of the Africa Charter on Human and Peoples' Rights cannot be ousted by domestic law and the African Charter is superior to domestic laws. His Lordship relied heavily on the decision of Ogundare J. C. A. (as he then was) in the case of *Oshevire v. British Caledonian Airways Ltd*³³:

In this regard an international treaty like the Warsaw Convention in the instant case is an expression of agreed compromise principles by the contracting states and is generally autonomous of the municipal laws of states as regards its application and construction. It is useful to appreciate that an international agreement embodied in a convention or treaty is autonomous as the High contracting parties have submitted themselves to be bound by its provisions which are therefore above domestic legislations. Thus, any domestic legislation in conflict with the convention is void.

However, in the case of *Abacha v. Fawehinmi*³⁴ the court of first instance and Court of Appeal toed the line of this age long tradition. On further appeal to the Supreme Court, Ogundare JSC (delivering the lead judgment of the Supreme Court) held that the African Charter CAP 10, though a statute with international flavor, is not superior to the Constitution or Decrees under a military regime. It also held that the National Assembly or the Federal Military Government can remove it from the body of our municipal laws by repealing it. The Supreme Court (Per Achike JSC who gave a dissenting opinion lambasted the Court of Appeal for not toeing precedent of the

²³ Article 45.

²⁴Articles 47 to 54 of the *African Charter*

²⁵Articles 55 and 59 of the *African Charter*.

²⁶Articles 56 of the *African Charter*.

²⁷ S. 12 (1) of the 1999 Constitution of Nigeria.

²⁸The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP 10 Laws of the Federation 1990.

²⁹ Robertson, A. H. *et al*, *Human Rights in Europe: A Study of the European Convention on Human Rights* (Manchester: Manchester University Press 1993) p. 25 as cited in Ogbu *Human Rights Law and Practice in Nigeria* Cidjap Press, 1999, pp. 60 – 61.

³⁰ PCIJ, Series B., No 10, p. 20 as cited in Ogbu, *Human Rights Law and Practice op cit*, p 61.

³¹Article 27 of the Vienna Convention on the Law of Treaties (1969).

³²Judgment delivered by Hon. Justice M. O. Onalaja of the Lagos High Court in Suit No: M/M/102/93 on the 5th of May 1993 as cited in Ogbu, *Human Rights Law and Practice op cit*, 61.

³³(1990) 7 NWLR (Part 163) 507 – 520; see also *Aeroflot v. Air Cargo Egypt* (1987) 2 *Uniform Law Review Biannual*, p. 669 as quoted in *Tony Nwazuoke Introduction to Human Rights Law, op cit*, 73.

³⁴(2000) 6 NWLR 28; Also reproduced in *Human Rights in Nigeria* by N. O., Obiaraeri (2001) p. 371 as cited in Tony Nwazuoke, *Introduction to Human Rights Law op cit*, p. 72.

superiority of laws in Nigeria as laid down in the case of *Labiya v. Anretiola*³⁵ under a military regime. According to *Labiya (supra)*, the order of superiority of laws is as follows:

1. The Constitution (Suspension and Modification Decree 1984);
2. Decree of the Federal Military Government;
3. Unsuspended Provisions of the 1979 Constitution;
4. Laws of the National Assembly (before 31/12/83) or having effect as if so made;
5. Edicts of the Governor of a State;
6. Laws enacted (before 31/12/83), by the House of Assembly of a state or having effect as if so made.

In any case the Supreme Court further held that the provisions of the African Charter can be enforced based on the rules of practice and procedure of each court in Nigeria. At the conclusion of the African Charter the Heads of Government of the Organization of African Unity (OAU) now African Union (AU) never contemplated of having a court to enforce the provisions of the Charter in line with the Charter's predecessors, the European Human Rights and the American Human Rights regimes. This is because they were of the view that African problems should be amicably settled in African way. Precisely on 9th day of June 1998, the Assembly of Heads of State and Government of the African Union in Quagadougou, Burkina Faso, deemed it necessary and adopted a protocol which ushered in the African Court on Human and Peoples Rights. Currently all human rights violations which cannot be amicably settled in the spirit of African brotherhood are to be forwarded by the African Commission to the African Court.

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

In Nigeria, the 1999 Constitution is the *grundnorm* of all other laws, human rights laws inclusive. The prominent provisions of the Constitution dealing on human rights is Chapter IV of the Constitution captioned 'Fundamental Rights' ranging from Sections 33 – 46 of the said Constitution. The other cardinal provisions of the same Constitution on human rights is Chapter 11 headed 'Fundamental Objectives and Directive Principles of State Policy' commencing from Sections 13 – 24 of the same Constitution. Every other Acts or laws on human rights derive their validity from the constitution. The stipulations of Chapter IV of the Constitution have their root from the provisions of the International Covenant on Civil and Political Rights 1966 (ICCPR) while the Chapter 11 of the Constitution highlights the hallowed dictates of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR). It is manifest therefore that human rights provisions in the Constitution comprise of the Fundamental Rights and the Fundamental Objective and Directive Principles of State Policy. In this discourse I wish to examine the two components one by one.

Fundamental Rights

These rights are liberty oriented human rights which are as encapsulated in the ICCPR. The rights accorded protection under this part of the Constitution include: Right to life³⁶, right to dignity of human person³⁷, right to personal liberty³⁸, right to fair hearing³⁹, right to private and family life⁴⁰, right to freedom of thought, Conscience and Religion⁴¹, right to freedom of expression and the press⁴², right to peaceful assembly and association⁴³. Other rights recognized therein are freedom of movement⁴⁴, freedom from discrimination⁴⁵ and right to acquire and own immovable property anywhere in Nigeria⁴⁶. Worthy of mention also is guidelines on compulsory acquisition of property,⁴⁷ restrictions on and derogation from fundamental rights⁴⁸. In otherwords the last section are the circumstances under which a citizen of Nigeria can be denied his fundamental rights without incurring the wrath of the law. The special jurisdiction of High Court and legal aid in cases involving fundamental rights abuses are also highlighted.⁴⁹ In fact any person who alleges that any of the provisions of Chapter IV 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 redress⁵⁰.

³⁵(1992) 8 NWLR (Part 258) 139 as cited in Tony Nwazuo *op cit* pp. 77 to 78.

³⁶ S. 33

³⁷ S. 34

³⁸ S. 35

³⁹ S. 36

⁴⁰ S. 37

⁴¹ S. 38

⁴² S. 39

⁴³ S. 40

⁴⁴ S. 41

⁴⁵ S. 42

⁴⁶ S. 43

⁴⁷ S. 44

⁴⁸ S. 45

⁴⁹ S. 46

⁵⁰ S. 46(1)

Fundamental Objectives and Directive Principles of State Policy

I had earlier on hinted that human rights in the Constitution of the Federal Republic of Nigeria are divided into two: Fundamental Rights as x-rayed in Chapter IV and the Fundamental Objectives and Directive Principles of State Policy which are contained in Chapter II therein. The provisions of this chapter are enacted to act as torch light to the Federal Government and State Governments in Nigeria to enhance social order in the country. It aims also to promote economic progress, health etc for the citizenry. Fundamental Objectives strive to promote and protect these aims: Fundamental Obligations of the government,⁵¹ the government and the people,⁵² political objectives,⁵³ economic objectives,⁵⁴ social objectives,⁵⁵ educational objectives⁵⁶ and foreign policy objectives.⁵⁷ Others include environmental objectives,⁵⁸ directive on Nigerian cultures,⁵⁹ obligation of the mass media,⁶⁰ national ethics⁶¹ and duties of the citizen.⁶² As laudable as the fundamental objectives are in outlook, it is disappointing that no citizen of Nigeria can savour and enjoy the provisions of the fundamental objectives since the Constitution makes the same non-justiciable.⁶³ They therefore remain aspirations and goals which governments at various levels seek to accomplish failing which nobody can seek redress in any law court in Nigeria. An overview of the fundamental objectives indicates that they are enacted to promote the well being of the citizens. Assuming the government at various levels of governance strives to implement the contents of the fundamental objectives the people's standard of living will be enhanced.⁶⁴ It needs to be put on record that the bane of our country is the non-implementation of the items enshrined in the International Covenant on Economic, Social and Cultural Rights 1966 which Nigeria hand picked and domesticated in Chapter II of the Constitution. Frictions, killings, kidnapping, Boko Haram insurgents and other inimical situations culminating in security challenges in Nigeria can rightly be traced to the unavailability of the items in ICESCR. The government should understand that absence of employment, excellent health care system, well funded educational system, decent living environment and housing, fair and transparent transition of political power and economic progress etc account for the ninety nine percent of the setbacks starring various governments on the face. Once the governments understand this position they will strive to implement these social and economic packages to the letter. The enforcement of the fundamental objectives is desirable and the federal government is urged to implement them.⁶⁵ The Federal Government is also urged to place both the fundamental objectives and fundamental rights under one chapter and one caption 'fundamental rights' as obtainable in the Republic of Ghana. It is hoped optimistically that such a step will greatly improve and eradicate the security challenges facing the country currently which gulps billions of Naira in attempt to quell same. The implementation of the fundamental objectives will restore the confidence of the electorates on the government of the day which will ultimately earn re-election of the government in the next election otherwise the contrary will manifest during the next polls. In view of the fact that this is a constitutional issue, the National Assembly is urged to embark on the constitutional amendment to reflect on the reality of the time. The giant of Africa, Nigeria cannot afford to trail behind in the community of nations. Further Nigeria should lead while other African countries should emulate. Moreover, God has lavishly blessed our father land in many respects which will enable her accomplish this feat. What she fails to spend in providing for the items listed in the fundamental objectives the country is daily wasting in funding the security agents to curb the incessant security challenges rearing its ugly head in every nook and cranny of our societies. An adage says that a stitch in time saves nine. A citizen of Nigeria who is in a good employment will not have the time to indulge in all sorts of nefarious activities such as banditry, kidnapping, armed robbery etc. It is a common axiom that an idle mind is the devil's workshop. The recent End Sars saga in Nigeria is an indication of accumulated anger on the part of the youths for being idle for years even after graduation. Government should step up effort in enhancing the people's welfare. Some other human rights laws in Nigeria are: the Child Rights Act 2003, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). There are some statutes which seek to promote and discriminate against human rights namely the Criminal Code, the Penal Code, Law on Refugees, the Police Act, Customary laws and religious practices.

⁵¹ S. 13.

⁵² S. 14.

⁵³ S. 15.

⁵⁴ S. 16.

⁵⁵ S. 17.

⁵⁶ S. 18.

⁵⁷ S. 19.

⁵⁸ S. 20.

⁵⁹ S. 21,

⁶⁰ S. 22.

⁶¹ S. 23.

⁶² S. 24.

⁶³ S. 6(6) (c).

⁶⁴Ogun P. I. *Fundamental of Government and citizenship Education*, Kuba and Publishing company, 2004, Warri.

⁶⁵Okeke G. N. (2011) 'Fundamental Objectives and Directive Principles of State Policy: A viable Anti – corruption Tool in Nigeria' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, vol. 2.

2.2. Institutional Framework

There are some institutions in Nigeria which have been working assiduously to ensure that the foregoing legal framework achieve their aims and objectives. These institutions include: National Human Rights Commission of Nigeria, Commonwealth Forum of National Human Rights of Nigeria (CFNHRI), the law enforcement agencies, the Judiciary, the prisons or correctional centres and the Nigerian Bar Association.

National Human Rights Commission of Nigeria (NHRC)

The National Human Rights Commission came into existence in order to enhance the observance of human rights principles in Nigeria. According to Justice Uche Omo, 2nd Chairman of the National Human Rights Commission:

The importance of human rights is also clearly demonstrated by the fact that it was in order to secure relief from the suffocating effect of the sanctions imposed following the murder of Ken Saro-Wiwa that the National Human Rights Commission was decreed in 1995 and its Governing Council inaugurated on 17th June 1996.⁶⁶

Be that as it may, the National Human Rights Commission is not a court of law but a mere institution put in place to check excessive violation of human rights via its action which are not expensive and are easily accessible. The Commission has a Governing Council headed by a chairman who is a retired Supreme Court judge or Court of Appeal or retired judge of the High Court of a State. The Chairman and other members of the council are to be appointed by the President on the recommendation of the Hon. Attorney General of the Federation. Members must be persons of high integrity. The cardinal objectives of the commission include:

- (i) Facilitate Nigeria's implementation of its various treaty obligations, including but not limited to the Universal Declaration of Human Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, and the African Charter on Human and Peoples' Rights;
- (ii) Foster an enabling environment for extra-judicial recognition, promotion and enforcement of all rights recognized and enshrined in the Constitution of the Federal Republic of Nigeria and under other laws of the land;
- (iii) Raise a forum for public enlightenment and dialogue on and to limit controversy and confrontation over allegations of human rights violations by public officers and agencies and to reaffirm the sacred and inviolable nature of human and other fundamental rights.⁶⁷

The enormity of its powers is capable of erasing human rights violations in our country but there are human rights abuses in Nigeria growing in geometrically in number. The major root cause is that NHRC is a creation of government and funded by the same government. At the same time government agencies are the greatest violators of human rights. In case of human rights truncation, the commission will be incapable of standing firm against her creator and sponsor. This makes nonsense of the setting up of such an establishment. There is therefore urgent need for the commission's budget to be charged in the Consolidated Fund so that the commission can be much more vocal in the task of being a watch dog on human rights.

Commonwealth Forum of National Human Rights Institution (CFNHRI) of Nigeria

This is a network of 46 organizations including national human rights institutions. This organization engages in effective collaboration, networking and exchanges of good practice.⁶⁸ This CFNHRI liaises with all the national human rights commissions of all member states of the Common Wealth of Nations in ensuring that human rights are made available to all the citizens and residents in such member state. Nigeria and Ghana being members of the Commonwealth of Nations worldwide have such institutions in their jurisdiction. This body ensures that no member state of the union is left behind in human rights observance. In the event of any member state erring in human rights tenets the organization will bring them back within the ambit of human rights principles. If such stubborn member state persists in flouting human rights dictates the organization can employ sanctions of varying degrees to obtain compliance.

Judiciary

The judiciary is another major actor in the realization of human rights in Nigeria. The Constitution establishes the Judiciary in Chapter VII thereof. The courts recognized by the Constitution include: the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the High Court of Federal Capital Territory, Abuja, a High Court of a State⁶⁹ etc. The fundamental rights in Chapter IV of the Constitution of Nigeria are under the umbrella

⁶⁶ Uche Omo, *The Role of the National Human Rights Commission in the Promotion and Protection of Human Rights in Nigeria in Current Themes in the Domestication of Human Rights Norm*, in C. C. Nweze and Oby Nwankwo (eds). CIRDOCC, Enugu 2003 P. 2 asscited in Okpara Okpara, *Human Rights Law and Practice volume 2 op cit Chapter Five at 139*.

⁶⁷ Preamble to the Act; Okpara Okppara, *Human Rights Law and Practice volume 2 op cit at 141*.

⁶⁸ <https://cfnhri.com> accessed on 23/3/22.

⁶⁹ S. 6 (5) (a – k) of the 1999 Constitution of Nigeria (as amended).

surveillance and protection of the judiciary.⁷⁰ Section 46 of the Constitution is vocal in placing the burden of protecting fundamental human rights on the judiciary when it says: 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 in that state for redress. In a like manner the judiciary maintains the rule of law which presupposes that no person is above the law, all persons are equal before the law and the independence of the judiciary shall be guaranteed and maintained. Above all the judiciary places her eagle eyes on the three arms of government as well as the citizens both juristic and non-juristic persons. The Chief Justice of Nigeria (CJN) made the Fundamental Rights Enforcement and Procedure Rules 2009 to guide the courts in their onerous task of determining fundamental rights infraction which come before the courts. The CJN derived the competence to do so from the Constitution.⁷¹ The National Industrial Court of Nigeria is also empowered to hear and determine fundamental rights cases which arose out of industrial disputes.⁷² The President of the National Industrial Court is constitutionally empowered to make rules of court which will assist the court in hearing and determining such fundamental rights cases embedded in the industrial squabbles. The Supreme Court has held that life could be taken lawfully, in the execution of a death sentence passed by a court of law in respect of a criminal offence of which one has been found guilty in Nigeria.⁷³ However once such a convict is on appeal he should not be executed before his appeal is heard.⁷⁴ The Nigerian Courts have to a great extent ensured that other human rights are made available to every Nigerian.

Law Enforcement Agencies

In Nigeria, the law enforcement agencies comprise of the Nigerian Police Force, the Nigerian Army, the National Drug Law Enforcement Agency (NDLEA) The Nigerian Security and Civil Defence Corps (NSCDC), the DSS etc. These agencies arrest, investigate and prosecute offenders for flouting the laws of the land. After investigations the suspects who have *prima facie* evidence against them are arraigned in the courts of law for trial. The courts after trial will convict those who really committed the offence based on the evidence before the courts. From inception the law enforcement agencies were put in place for the safety of the society and guarantee the citizens their fundamental rights as constitutionally guaranteed them. Today the situation is very appalling as the law enforcement agents have become the greatest violators of human rights. A visit to their detention camps is nothing to write home about as about six to ten persons are often incarcerated in one room without bed or mattresses. The doors and windows of such detention camps are small in nature and the odour emanating therefrom is like rotten eggs.

The issue of presumption of innocence is not at all observed once a suspect is arrested.⁷⁵ These law enforcement agents will immediately conclude that the suspect committed the alleged offence even when the law court has not made any pronouncement over it. In most of the detention camps torture reign supreme in order to extract a confessional statement from the suspect. International treaty frowns against torture⁷⁶ and our Constitution hates such practices.⁷⁷ In the case of *Uzokwu v. Ezeonu (supra)* the court came up with a novel decision that a fundamental right accruable to a citizen of the Federal republic of Nigeria can be enforced against individual(s) as well as government or her agencies. Still on the same issue of torture the court of first instance in the case of *Peter Nemi & ors v. AG of Lagos State & Anor*⁷⁸ held that where a person on death row applied to enforce his fundamental rights against torture, inhuman and degrading treatment, he cannot because a condemned convict has no fundamental right to enforce. The Court of Appeal reversed the decision of the trial court and held that it was a fundamental misconception of the constitutional provision to hold that a condemned convict has no right to life or that he can be subjected to inhuman or degrading treatment. The Court of Appeal allowed the appeal and ordered a retrial. This case establishes that a convicted person should not be allowed to stay too long or indefinitely on the death row without being executed. It is therefore urged that our law enforcement agencies should adhere to the rule of law in their bid to put the law in motion.

⁷⁰ Gillbert Tor, The role of the Judiciary in National Development: The Nigerian Perspective in Aja C. Ogbu *et al* (ed.), *NJI Law Journal* (2010) Volume 3, National Judicial Institute, Abuja, 2010.

⁷¹ S. 46 (3) of the Nigerian Constitution 1999.

⁷² S. 254A – 254F of the 1999 Constitution of Nigeria (as amended).

⁷³ *Kalu v. State* (1998) 13 NWLR (Part 583) 531.

⁷⁴ *Bello v. Attorney General of Oyo State* (1986) 2 N. S. C. C. 127.

⁷⁵ S. 36 (5) of the Nigerian Constitution 1999 (as amended).

⁷⁶ The United Nations Convention Against Torture as passed by the General Assembly Resolution 345 (XXX) of 9/12/75; Art 1 of the Torture Convention; Article 7 and 8 of ICCPR; Articles 1, 4 and 5 of UDHR and Article 5 of ACHPR.

⁷⁷ S. 34 of 1999 Constitution of Nigeria; see also *Uzokwu v. Ezeonu II* (1996) 6 NWLR (Part 200) 708;.

⁷⁸ (1996) 7 NWLR (Part 452) 42.

Nigerian Bar Association

This body comprises of all legal practitioners called to the Bar as solicitors and advocates of the Supreme Court of Nigeria. They are the ministers in the temple of justice who in most cases act as torch bearers in the matters presented before the court to enable the court arrive at a substantial justice. They do everything within the ambit of the law to obtain justice for their clients. The Rules of Professional Ethics enjoins legal practitioners to even cite the legal authorities which are against the case at hand though they can easily distinguish it. Counsel in the ministry of justice must not secure conviction at all costs as they are prosecutors not persecutors. In fact lawyers do a lot of things to assist the court in matters before them. The absence of the roles of legal practitioner would have inevitably sent so many innocent suspects to their untimely death. It is therefore glaring that the bench cannot exist without the bar as legal practitioners espouse the law and not expanding it. Human rights cases is one area where the roles of lawyers are made manifest as trumped up charges come up in geometrical numbers on daily basis. The roles of legal practitioners are also noticed in all fields of human endeavours such as contract, education, politics, business transactions, both private and public sectors of the economy.

3. Challenges of Enforcement of International Bill of Rights in Nigeria

So many frustrating factors of enforcement of International Bill of Rights exist in Nigeria which can be briefly classified as legal obstacles, political constraints and economic bottlenecks. I wish to examine them one by one paragraphically below. Legal obstacles can be seen in the non-justiciability of the provisions of Chapter II of our Constitution as earlier X-rayed hereinbefore. The items of Chapter IV have so many grounds which makes a citizen of Nigeria not to be entitled to it as shown in Section 45 of the Constitution. Moreover, Nigeria has failed and/or neglected to ratify the Two Protocols of ICCPR so that a Nigerian can bring his human rights abuses at an international tribunal or court and death sentence abolished as practised in other advanced states of the world. In a like manner legal practitioners who handle murder cases do not exhibit vigour in their profession due to poor remuneration from their clients. Even when they agree to do a capital offence on *pro bono* the interest is always lacking⁷⁹ As regards political constraints, the type of government in power to a great extent influence the enjoyment of human rights in a particular country. A military or totalitarian state has the lowest ebb in human rights compliance. On the other hand, democracy boosts human rights realization. It is on record that Nigeria during the military regimes witnessed the suspension and abrogation of some fundamental rights provisions which were replaced with draconian decrees and edicts. The greatest violators of fundamental rights are governments and when such ugly incidence occurs nothing will happen to compensate the victims of such unwelcoming developments. On the economic factor, it is manifest that when the economy of a country is at an optimal level, human rights enjoyment will be enhanced. In Nigeria, hunger, unemployment, absence of health facilities, insecurity, poor performances in most sectors of the economy retard the level of human rights observance to a zero point. It is humbly urged that our government should step up effort in boosting our economy so that our citizens will smile like their counterparts in more advanced countries of the world.

4. Conclusion and Recommendations

Nigeria is endowed with a lot of potentialities which if properly harnessed will definitely catapult us to Eldorado. It is my humble belief that if the International Bill of Rights are Implemented in our country Nigeria with the abundant and human resources at her disposal, she will be a country worthy of emulation. This will stem the tide of exodus of our professionals in various fields of endeavours to other countries in search of greener pasture. In this way satisfaction will be enthroned while friction and security challenges gulping our scarce resources will be a story of the past. It is most disgusting and frustrating to observe that notwithstanding all these elegant legal and institutional frameworks put in place in Nigeria, human rights implementation is still millions of miles away. The scenario obtainable in the days of slave trade is far better than what is currently in vogue. These days, human parts have become articles of trade where husbands kill wives, brothers their sisters etc. There is urgent need for the government to step up efforts to bring humanity to the right part of reasoning where cannibalization of human beings should be stopped forthwith. It is strongly suggested that our country should without further delay ratify the First and Second Optional Protocols to the International Covenant on Civil and Political Rights 1966. Furthermore, the provisions of Chapter II of our Constitution should be made justiciable as is obtainable in our neighbouring sister country Ghana. Our country should establish factories where graduates from our universities can be gainfully employed which will have the noble effect of nipping security challenges in the bud. The End Sar protest was a product of unemployment and unsatisfaction. There should be improvement in our health institutions to avoid Nigerians travelling abroad in search of health care.

⁷⁹ *Josiah v. The State* (1985) 1 NWLR 125.