

Human Rights and National Development in Nigeria

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Abstract

The development of the nation is measured largely by the availability of institutional and legal framework for protection of human rights inbuilt to its working system and the level of enforcement and practical enjoyment of such right by his people. This paper examines the concept of human right as conceived by ancient and contemporary writers, narrate the legislative development of human rights Nigeria and evaluate the role of the executive and judicial organs of government in the onerous task of enforcing such rights. Even though the paper appreciates the impediments to human rights development in Nigeria, the paper recommend that government should commit adequate funds for the provision of qualitative education, good health care delivery, efficient social welfare services and sustenance of the current effort geared towards a better electoral process needed for the evolvement of responsible leadership in order to guarantee the wellbeing of the people.

1. Introduction

Fundamental rights stand above the ordinary laws of the land and was antecedent to political society itself. It is a primary condition for civilized existence and all civilized societies use it as a standard by which the moral content of any law must be assessed.

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According to Umozurike, there is hardly any government today that does not, at least, profess human rights. The acid test of good government is the level of response to the human rights requirements of the citizens. The protection and promotion of human rights have become the fundamental purpose of government. The level of a state's development can be determined by the extent to which its citizens enjoy human rights in all their ramifications. Peace, progress and stability are predicated at both national and international levels with respect to human rights.¹

Human rights have become a potent instrument of diplomacy to which has been added democracy. Both have become the yardstick for the grant of aid by the developed countries to the developing ones. The concern for human rights does not, however, nullify the principle of non-interference in domestic affairs. Rather, breaches of human rights, especially gross breaches are taken out of domestic jurisdiction.²

Even though some human rights organizations in Nigeria have exposed several human rights violations to victims of various human rights violations, we still live in an age where every good and ill are committed in the name of human rights. Both the oppressor and the oppressed claim sanctuary in human rights.³

Human rights are however generally associated with the freedom of man and rights which only could be special and above all other rights.⁴

This paper aims at looking at the concept of human rights under the law in Nigeria, examine the extent to which such rights have been protected or violated and attempt to fix a nexus between human rights and national development in Nigeria.

¹ U.O. Umozurike, *The African Charter on Human and People's Right*, (Kluwer Law International, The Netherlands, 1997) p. 7.

² See U.O. Umozurike, "The Domestic Jurisdiction Clause in the OAU Chapter", *African Affairs* (London.) No. 311 April 1979, 197. cited in *ibid.*, p. 8.

³ Kayode Eso, *Thoughts on Human Rights Norms vis-à-vis The Courts and Justice. An African Court or Domestic Courts?* (Nigerian Institute of Advanced Legal Studies, 1995), p. 1.

⁴ *Ibid.*, p. 3.

2. Historical Development of Human Rights

Many learned writers have traced the history of human rights to the right of hearing given by the all knowing God to Adam and Eve when God even called the serpent as a witness in the Garden of Eden.⁵ The Greeks resorting to law as an instrument to regulate the conduct of persons in their society in the middle ages evolved the concepts of national law and advocated that it was a law that was superior to the state. The Greek monarchs also relied on the authority of the supreme God to support their claim to the obedience to the laws which they had enacted for the subjects. At this time, law was conceived as equal to the ruler, even though it was under the power of the law that the position of rulers was created and sustained.⁶

The fountainhead of natural rights is the concept of natural law. According to the Greek and Roman Philosophers of the Stoic School, who first formulated it, natural law was universal because it applied, not only to citizens of certain states but rather to everybody everywhere in the metropolis. It was superior to every positive law and embodied those elementary principles of justice which were apparent to the “eye of reason”.⁷

According to Cicero:⁸

It is for universal application, unchangeable and everlasting.... It is a sin to try to alter this law, nor is it allowable to try to repeal any part of it, and it is impossible to abolish it entirely. We cannot be free from its obligation by Senate or people.... And there will not be different laws at Rome or at Athens or different laws now and in the

⁵ See Genesis 3:1-19 *Holy Bible*; *R v Chancellor, Masters and Scholars of the University of Cambridge* (1716) 1 San 557 cited in Eso, *ibid*.

⁶ S. Gbenga, *Administrative Law in Nigeria*, (Unijos Press, 1996), p. 13.

⁷ Gaius Ezejiofor, “The Development of the Concept of Human Rights: Definition and Philosophical Foundations,” in A.O. Obilade, *et al*, eds., *Text for Human Rights Teaching in Schools*, (Constitutional Rights Projects, 1999), p. 1.

⁸ De Republic, IIIxx ii 33 quoted in Entreves, *Natural Law*, 1960, pp. 20-22 and cited in Gaius Ezejiofor, *ibid*.

future, but one eternal and unchangeable law will be valid for all nations and for all times.

According to Kasel Vasak, there are three generations of rights. Vasak submitted that the first generation is libertarian in nature and deals with the liberty and sanctity of human life. The second is egalitarian in nature and deals mainly with economic, social and cultural rights, while the third generation of rights relates to solidarity among the comity of nations.⁹

As we have seen above, concern for human rights certainly predates the modern era and can be traced from the time of the Greek city states through the various stages of socio-economic formations. According to Osita Eze, while concern for and debates on human rights could and invariably did have a promotional effect especially in respect of the sharpening of consciousness, a look at the history of the evolution of human rights protection reveals that any progressive shift in the nature and scope of human rights protected or promoted has generally resulted from a struggle between the privileged and the oppressed.¹⁰

Historically, civil and political rights made their appearance in Europe long before the nineteenth century. Economic, social and cultural rights followed much later and are to be traced to philosophical thought such as that embodied in Karl Marx's critique of nineteenth century capitalism and in the Roman Catholic Encyclicals (*Rerum Novarum* of Leo XIII, 1891, subsequently modified several times) to close the gap between the church and the ever-changing world. In contrast to the Marxist position, the Papal Encycloals defended private property and were more concerned with social reform.¹¹

⁹ Kasel Vasak, *A 30 year Struggle*, UNESCO Courier, 1977, p. 29.

¹⁰ Osita C. Eze, *Human Rights in Africa Some Selected Problems*, (Macmillan Nigerian Publishers Ltd., 1984), p. 1.

¹¹ See D.D. Raphael, 'Human Rights, Old and New,' in D Raphael e.d., *Political Theory and the Rights of Man*. (Bloomington, Indiana University Press, 1967), pp. 62-63; Milton Viorst, *The Great Documents of Western Civilization*. (London, Chilton Books Company, (1965), pp. 24-248 and Osita Eze, *ibid*, p. 6.

The theoretical foundations of these rights have varied over the years depending on the prevailing school of thought, even though in a spatial sense some of these theories may subsist concurrently at any given time.¹²

The English Bill of Rights of 1689 and the Virginia Declaration of Rights in 1776 clearly recognized and protected human rights. Also, the Universal Declaration by the United Nations Organization on December 10, 1948 made human rights an international affair. The United Nations have since then continued to place on its agenda, questions of human rights and the development of the rules. For instance, the second World Conference on Human Rights, in 1993 which held in Vienna reaffirmed in the universality of human rights.

Before then, the members of the then Organization of African Unity (O.A.U.) agreed on the African Charter on Human and Peoples Rights and made it an international instrument in Banjul and ratified it during the Nairobi Conference in 1981. The preamble to the charter declared that:

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, Zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race,

¹²

See Osita Eze, *ibid.*

ethnic group, colour, sex, language, religion, or political opinion:

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, the Movement of Non-aligned countries and the United Nations;

Firmly convinced of her duty to promote and protect human and people's rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa.

Consequently, Nigeria gave legislative backing to the African Charter in 1983 and they are today enshrined in the 1999 constitution of the Federal Republic of Nigeria.¹³

- (1) The Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.
- (2) The Federal Republic of Nigeria shall not be governed nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.
- (3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

Even though the constitution of Nigeria is the grund norm, most litigants prefer to invoke the provisions of the African Charter Act rather than the constitution because of the wide umbrella provided under articles I-IV of the charter which provides as follows:.

¹³ See African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap A 10, Laws of the Federation of Nigeria, (LFN), 2004, and Chapters II and IV of the 1999 Constitution of the Federal Republic of Nigeria.

Article 1

The member states of the Organization of African Unity who are parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

Every individual shall be equal before the law. Every individual shall be entitled to equal protection of the law.

Article 4

Human Rights are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

In many ways, the African Charter is consistent with its predecessors in Europe and America. But in contrast to those instruments, it goes well beyond civil and political rights, covering economic, social and cultural rights as well as a number of collective or peoples' rights. And, like the American Declaration, the earliest effort of the Inter-American system, the African Charter also explicitly lists duties. The rather ambitious scope of many of the rights covered by the charters put pressure on the enforcement bodies and requires significant resources.¹⁴

¹⁴ See M.T. Ladan, "International Human Rights Law. Development Scope and Enforcement Monitoring", in A.O. Obilade, et al, eds., *Text for Human Rights Teaching in Schools, (Constitutions Rights Project, 1999)*, p. 66.

3. Developments of Human Rights in Nigeria

Advocates of the various conceptions of human rights are in agreement that the state should guarantee such rights to the individual. Therefore following the American and the French examples most countries now recognize individual rights in their constitutions. Bills of Rights have become parts of the constitutions of practically all European States.¹⁵

Though in unwritten form, customary law recognized and protected human rights in Nigeria. Even before the British, the Local communities accepted the protection and recognition of human rights as the guiding principle of inter-personal relationship. But when Nigeria became a colony there have been a lot of modifications of the position of human rights under the customary law of the people. Judicial decisions have frowned at any customary law that violates the human rights of the people.¹⁶

Paradoxically, most nationalists suffered unlawful detentions and also have their rights to freedom of expression, fair hearing, peaceful assembly and association, freedom of thought and conscience and the right to freedom from discrimination violated under the same British rule.

It was therefore not surprising that all the constitutions of Nigeria since independence had all the basic tenets of human rights entrenched in them since 1960.

Chapter II of the 1999 Nigerian Constitution entitled “Fundamental Objectives and Directive Principles of State Policy” was introduced since the promulgation of the 1979 Nigerian Constitution. According to Alemika, this represents an explicit acknowledgement of the ends of government and the responsibility of the state to the citizens. The terms “Fundamental Objectives” and “Directive Principle” draw attention to the symbolic and ideological significance of the provisions of which portrays government as a

¹⁵ Gaius Ezejiofor, “The Development of the Concept of Human Rights: Definition and Philosophical Foundations,” *op. cit.*, note 7 at p. 7.

¹⁶ See e.g. *Muojekwu v Ejikeme* (2001) 1 CHLR 179; *Uke v Iro* (2001) 11 NWLR (Pt. 723) 196. *Akpalakpa v Igbaibo* (1996) 8 NWLR (Pt. 468) 537; *Agbai v Okogbue* (1991) 7 NWLR (Pt 204) 391.

relationship of rights and duty, a social contract between those who govern and those who are governed.¹⁷

The provisions range from fundamental obligations of the Government,¹⁸ Relationship between the Government and the People;¹⁹ Political objectives;²⁰ Economic objectives;²¹ Social objective;²² Educational objectives;²³ Foreign Policy objectives;²⁴ Environmental objectives;²⁵ Directive on Nigerian Cultures;²⁶ Obligation of the Mass Media;²⁷ National Ethics;²⁸ to Duties of the Citizens.²⁹

Since the same constitution has made these fundamental objectives and directive principles of state policy non-justiceable by virtue of 6(6) (c) thereof, it has been argued by many that they remain mere ideals which cannot be enforced by the Judiciary. This view has been given judicial approval in *Archibishop Olubunmi Okogie (Trustees of Roman Catholic Schools and Ors v Attorney-General of Lagos State)*³⁰ where the court in explaining the rationale for the provisions held that governments in developing countries have tended to be pre-occupied with power and its material prerequisites with scant regard for political ideals as to how the society can be organized and ruled to the best advantage of all. According to the court, heterogeneity of the society, the increasing gap between the rich and

¹⁷ Etanibi E.O. Alemika, "Fundamental Objectives and Directive Principle of State Policy within the Framework of a Liberal Economy", in I.A. Ayua, *et al*, eds., *Nigeria Issues in the 1999 Constitution*, (Nigerian Institute of Advanced Legal Studies, Lagos, 2000), p. 199.

¹⁸ Section 13 of the 1999 Constitution.

¹⁹ *Ibid.*, s. 14.

²⁰ *Ibid.*, s. 15.

²¹ *Ibid.*, s. 16.

²² *Ibid.*, s. 17.

²³ *Ibid.*, s. 18.

²⁴ *Ibid.*, s. 19.

²⁵ *Ibid.*, s. 20.

²⁶ *Ibid.*, s. 21.

²⁷ *Ibid.*, s. 22.

²⁸ *Ibid.*, s. 23.

²⁹ *Ibid.*, s. 24.

³⁰ (1981) 1 NCLR 218.

the poor, the growing cleavage between the social groupings all combine to confuse the nation and bedevil the concerted march to orderly progress.³¹

The Supreme Court invoked item 60(a) of the Exclusive list which confers exclusive powers on the National Assembly to establish and regulate authorities for the Federation or any part thereof, and to promote and enforce the observance of the provisions of chapter II when it read item 60(a) together with section 15(5) of the Constitution and held that the National Assembly has powers to legislate on corruption.³² The implication of this decision is that these “ideals” can become enforceable and therefore justiceable where there is an appropriate legal backing.

In the same vein, since as pointed out earlier, Nigeria has adopted the African Charter into her municipal law, the provisions of the charter are enforceable in the same manner as those of chapter IV of the Constitution which deals with economic, social and cultural rights.³³ Chapter IV of the Constitution provides for the right to life;³⁴ the right to dignity of human persons;³⁵ the right to personal liberty;³⁶ the right to fair hearing;³⁷ the right to private and family life;³⁸ the right to freedom of thought, conscience and religion;³⁹ the right to freedom of expression and the press;⁴⁰ the right to peaceful assembly and association;⁴¹ the right to freedom of movement;⁴² the right to freedom from discrimination;⁴³ and the right to acquire and own immovable property anywhere in Nigeria.⁴⁴ The provisions were virtually the same with the corresponding chapter under the 1979

³¹ See also the Report of the Constitution Drafting Committee, 1978.

³² See *A.G. Ondo v A.G. Federation and 35 ors* (2002) 27 WRN 1.

³³ See *Ogugu v The State* 1994) 9 NWLR (Pt. 366) 1.

³⁴ 1999 Constitution, section 33.

³⁵ *Ibid.*, s. 34.

³⁶ *Ibid.*, s. 35.

³⁷ *Ibid.*, s. 36.

³⁸ *Ibid.*, s. 37.

³⁹ *Ibid.*, s. 38.

⁴⁰ *Ibid.*, s. 39.

⁴¹ *Ibid.*, s. 40.

⁴² *Ibid.*, s. 41.

⁴³ *Ibid.*, s. 42.

⁴⁴ *Ibid.*, s. 43.

Constitution except the introduction of section 43 relating to the right to acquire and own immovable property anywhere in Nigeria by virtue of the 1999 Constitution.

The enactment of the Child's Rights Act, 2003 which implies the fundamental rights of a child under the Constitution is a welcome development of human rights in Nigeria.

It is also gratifying to note that Nigeria has ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). CEDAW establishes the universality of the principles of equality between men and women and makes provisions for measures to ensure equality of rights for women throughout the world. According to Adewale Taiwo, the "30-article Convention provides a framework for development and application of equality norms to address specific conditions in every country and every legal system. It sets out in legally binding form, internationally accepted principles and measures to achieve equal rights for women everywhere."⁴⁵

It is also a rule of customary international law that if a government unjustly and flagrantly represses its citizens; a foreign government is justified to intervene, on humanitarian grounds, in order to protect the oppressed citizens. The violation of the basic and elementary rights would justify such intervention. These rights include the right to life and the right to liberty.⁴⁶

The Freedom of Information Act, 2011 which has now been passed by the National Assembly and assented to by the President, is designed to address the problem of access to public records by private citizens. This is a potentially useful piece of legislation for media establishments. The Act seeks to confer a right on every Nigerian citizen to apply for and gain access to any record under the control of a government or public institution. This right is exercisable not

⁴⁵ Elijah Adewale Taiwo, "Women Rights and Gender Discrimination in Nigeria" *NJPL*, Vol. 1, No. 1, 2008, p. 247.

⁴⁶ Gaius Ezejiofor, "The Development and Concept of Human Rights: Definition and Philosophical Foundations, *op. cit.*, note at p. 8.

withstanding any inconsistency in any other legislation, such as the Official Secrets Act.⁴⁷

The Senate also passed the Discrimination Against Persons with Disabilities (Prohibition) Bill 2009 to outlaw discrimination against disabled persons and provides that government and public organizations should provide convenient access for disabled persons to enter and exit premises section on 7 of the Bill provides that “a public building shall be constructed with the necessary accessibility aids such as lifts (where necessary) ramps and any other facility that shall make them accessible and usable to persons with disability.”⁴⁸ The Bill has recently through the third reading in the House of Representatives and it is hoped that it will soon receive the assent of the president.

4. Enforcement of Human Rights in Nigeria

Any person can apply to the High Court in Nigeria for redress over any allegation that any of the provisions of chapter IV of the Constitution has been, is being or is likely to be contravened in any state against him.⁴⁹ Such a court shall hear or determine the application and make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any right to which the applicant may be entitled under chapter IV of the Constitution.⁵⁰

It follows therefore that some of the provisions can be enforced against the government alone,⁵¹ while others can be enforced both against the government and individuals.⁵²

⁴⁷ See Offornze D. Amucheazi & Chidi Onuwasoanya, *The Judiciary, Politics and Constitutional Democracy in Nigeria (1999-2007)*, (Snaap Press Ltd., 2008), p. 261. The scope and application of this new law will be critically examined in another paper especially in the light of the current controversy over the concurrent legislative competence of the states.

⁴⁸ Sufuyan, Ojeifo, “Senate Outlaws Discrimination Against Physically Challenged.” *This Day, March 11, 2009, p. 11.*

⁴⁹ See section 46(1) of the 1999 Constitution.

⁵⁰ *Ibid.*, s. 46(3).

⁵¹ *Uzoukwu v Ezeonu II* (1991) 6 NWLR (Pt. 200) 708.

⁵² *Peterside v I.M.B. (Nig.) Ltd.* (1993) 2 NWLR (pt 278). p. 712.

Also, by virtue of sections 6, 12 and 46 of the 1999 Constitution, the human rights under the African Charter on Human and People's Right (Ratification and Enforcement) Act are enforceable by the High Court in Nigeria. Even though the Executive and the Legislative have taken pragmatic steps to enforce human rights in Nigeria, the Judiciary has remained the most efficacious institution in the enforcement of rights in Nigeria.

According to Justice Oputa:

Access to the courts is a necessary adjunct of the rules of law and the effectuation of the rights by the citizens. It underlines the privilege of the few who are rich but should be available to all the citizens of our country. But access to the courts implies the payment of summon fees, the payment of lawyers fees, the payment for record of proceedings in the case of an appeal. All these are far beyond the reach of the poor and the unemployed who finding justice too expensive resign themselves to the denial of it. One of the best tests of the efficacy of the fundamental rights provisions of our constitution should be whether the rights enshrined therein are accorded to the poor, the employed, the weak, the oppressed and the defenseless. In theory our constitution in its preamble talks nobly of "promoting the good government and welfare of all persons in our country on the principles of freedom, equality and justice." But in actual practice one sees that it is the powerful, the rich and the dominant class that seem to have all the rights, while the only right left to the poor, the weak and the down trodden seems to be their rights to suffer in silence, to be patient and wait for their reward in heaven (if they are believers).⁵³

Notwithstanding this serious insinuation, the public hailed the judiciary when the court annulled the deportation order against Alhaji Shugaba Darman and awarded monetary damages against the Federal

⁵³ See Justice C.A. Oputa, *Idigbe Memorial Lectures, Human Rights in the Political and Legal Culture of Nigeria*, (Nigeria law Publications Ltd., 1989), p. 94.

Government under the second Republic.⁵⁴ The court also prevented the abolition of private primary and secondary institutions in Lagos State.⁵⁵ In *State v. Arthur Nwankwo*,⁵⁶ the court held that the law of sedition under the Criminal Code was contrary to sections 36 and 41 of the 1979 constitution.⁵⁷ The court has also held that a citizen had a right to challenge a violation of the law by government even where no special personal injury is disclosed.⁵⁸

In the words of the court:

It would definitely be a source of concern to any tax payer who watches the funds he contributed or is contributing towards running the affairs of the state being wasted when such funds could have been channeled into providing jobs, creating wealth and providing security to the citizens. If such an individual has no sufficient interest of coming to court to enforce the law and to ensure that his tax money is utilized prudently, who else would have sufficient interest in such manner than him.⁵⁹

The court has also held that the right to freedom of association and assembly also include the right to organize mass protests and embark on strikes.⁶⁰

And in *Inspector General of Police v All Nigeria People's Party & 11 ors*⁶¹, the Court of Appeal held that a rally or placard carrying demonstration has become a form of expression of views on current issues affecting government and the governed in a sovereign state. It is a trend recognized and deeply entrenched in the system of

⁵⁴ See *Shugaba Darman v Minister for Internal Affairs* (1982) 2 NCLR p. 915.

⁵⁵ See *Archbishop Okogie & ors v A.G. Lagos & ors.* (1981). 1 NCLR 218. See also *Basil Ikaegbu v A.G. Imo* (1983) 14 NSCC 160.

⁵⁶ (1985) 6 NCLR 228.

⁵⁷ See also *INEC & anor. v Balarabe Musa & ors.* (2003) NWLR (Pt. 145), 729.

⁵⁸ See *Gani Fawehinmi v President* (2007) 14 NWLR (Pt. 1054) 275.

⁵⁹ *Ibid*, at 341.

⁶⁰ See *Federal Government of Nigeria v Adams Oshiomole* (2004), 1 NLR (Pt. 2) 541.

⁶¹ (2007) 18 NWLR (Pt. 1066) 457.

governance in civilized countries. It will not only be primitive but also retrogressive if Nigeria continues to require a pass to hold a rally.

The court therefore held the provision of the Public Order Act,⁶² invalid for being inconsistent with section 40 of the 1999 Constitution and Article ii of the African Charter of Human and Peoples Right (Ratification and Enforcement) Act.⁶³

5. Human Rights Under the Military Regime

Military rule in Nigeria is forbidden by virtue of section 1(2) of the 1999 Constitution which provides that: “the Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of the constitution.”

Writers have argued that by the philosophical propositions of Hans Kelsen, Hobbes, Rousseau, John Locke and Principles of American declaration of Independence, military leaders were justified for snatching political powers from irresponsible leaders who abandoned their political obligations, thus leaving innocent citizens to suffer. The American declaration of Independence 1776, provides that... To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. Whenever any form of government becomes destructive of these ends; it is the right of the people to alter or abolish it...⁶⁴

It is difficult to justify military usurpation of power in Nigeria with the above argument in the light of the express provisions of the constitution forbidding takeover of power outside the provisions of the constitution. This is more so that the constitution has sufficient safeguards against irresponsible and unwanted leadership. The bad leaders are either impeached or recalled or voted out of office during elections. Military rule in Nigeria is therefore outside the

⁶² Cap P 42, LFN, 2004.

⁶³ Cap A10, LFN, 2004. C.f. *Chukwuma v Commissioner of Police* (2005) 8 NWLR (Pt. 927) 278

⁶⁴ See A.A. Idowu, “Human Rights, Democracy and Development: The Nigerian Experience,” *Research Journal of International Studies*. Issue 8 (November 2008) 37.

contemplation of the constitution and can at best be described as a revolution borne out of the doctrine of necessity.⁶⁵

Military rule in Nigeria was characterized with ouster clauses, human rights abuses, promulgation of decrees with retrospective effect, legislative *adhominem*, abrogation of right of appeal and usurpation of judicial powers by executive and legislative actions on pending suits etc.

For instance, the Military Government (Supremacy and Enforcement of Powers) Decree⁶⁶ provides that:

No court proceedings shall be or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if such proceedings are instituted before or on or after the commencement of this Decree, the proceedings shall abate or be discharged and made void.

The Decree also provided that “... the question whether any provision of chapter IV of the Constitution (Human Rights) has been or is being or would be contravened by anything done or purported to be done in pursuance of any Decree or an Edict shall be inquired into any court of law and accordingly no provisions of the Constitution shall apply in respect of any such question.”⁶⁷

In spite of all these, the judiciary in Nigeria has in most of the cases construed ouster clauses *contra Proferentes*, that is narrowly and strictly against the person claiming its benefit. Similarly, where a provision is capable of two interpretations – one ousting jurisdiction of the court, the other preserving same, the court is to normally adopt that interpretation which preserves and retains its jurisdiction.⁶⁸

The supervisory role of the court over the acts of inferior tribunals is formally recognized as an aspect of its jurisdiction statutory and inherent. Therefore, the courts have always invoked its

⁶⁵ See *Lakanmi v A.G. West* (1971) U.I.L.R. 213.

⁶⁶ No. 13 of 1984.

⁶⁷ See section 2(b)(i) & (ii) thereof.

⁶⁸ See *Onyeausi v Miscellaneous Offences Tribunal* (1995) 8 NWLR (Pt. 415) 631.

declaratory and interpretative jurisdictions to preserve the human rights of the citizens even under the military.

The court condemned in strong terms the Military Governor of Rivers State and his Aide-Camp for the inhuman and degrading treatment meted to a journalist.⁶⁹ In *Akaza v Co. P. Benue Plateau State*,⁷⁰ the court held that the phrase “in Police custody” was not synonymous with the expression “in a police station” and thereby declared the detention unlawful because the order was not made in the prescribed form.⁷¹

The court had also held in *Fawehinmi v Abacha*,⁷² that the African Charter enacted as a law in Nigeria is a law to which the court, the executive and the legislature, that is the Provisional Ruling Council under the Military dispensation by virtue of section 10(2) of Decree No. 107 of 1993 must give due recognition and enforce.⁷³ And another court also held that international treaties incorporated into the Nigerian laws are superior to other national laws.⁷⁴

6. Impediments to Human Rights Development in Nigeria

Human Rights are recognized and enforced to the extent that they are limited by the rights of others. This is why the Constitution has permitted some derogation therefrom.

⁶⁹ See *Minere Amakiri v Iwowari* Suit No. PHC/222/73 of 4/4/73 (Unreported).

⁷⁰ (1974). 4 ECSLR 443 cited in C.C. Nweze, “A Survey of the Shifting Trends in Judicial Attitudes to Fundamental Rights in Nigeria”, in L.A. Umezulike and C.C. Nweze (ed.) *Perspectives in Law and Justice*, (Enugu: Fourth Dimension Publishing Co. Ltd., 1996). p. 48.

⁷¹ See *Onyuike v Esiala* (1974) 1 ALNLR (Pt. 2). 151, (1974) 10 SC 77; *Ereku v Military Governor, Mid Western State of Nigeria & others* (1974) 10SC 45, 55 all cited and exhaustively discussed in C.C. Nweze, “A Survey of the Shifting Trends in Judicial Attitudes to Fundamental Rights in Nigeria”, op. cit., p. 48.

⁷² (1996) 9 NWLR (Pt. 475), p. 719.

⁷³ See also *Oshevire v British Caledonian Airways* (1990) 7 NWLR (Pt. 163) p. 507.

⁷⁴ See *Ogugu v The State* (1994) 9 NWLR (Pt. 366)) ; *Comptroller of Prisons v Adekanye & Others* (1999) 10 NWLR (Pt. 623) 400 at 426.

It has been argued that the right to life is inherent in every person but this right is limited by the penal system in the country which qualify the right to life by death penalty.⁷⁵

Again, section 39 (3) of the 1999 Constitution provides that “Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society – (a) for the purpose of preventing the disclosure of information....”

The Federal Supreme Court had construed a similar phrase to hold that the sedition law was reasonably justifiable in a democratic society in order to prevent disorder that might follow a publication made with the intention of exciting hatred and contempt or disaffection.⁷⁶

By virtue of section 6(6)(c) of the 1999 Constitution, judicial powers vested by the section shall not, except as otherwise provided by the constitution, extend to any issue or question as to whether any act or commission by any authority or person or as to whether any law or judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in chapter II thereof.

Although some of the provisions of the African Charter are also in chapter II of the constitution, unlike the fundamental rights in chapter IV, these economic, social and cultural rights of the African Charter are not enforceable because of their non-justiceability. Though individuals are unable to realize these rights at the municipal level certainly the state can be called upon to fulfill its international obligations. In this regard, the enforcement machinery at the international level can be relied upon.⁷⁷

Also section 224 of the 1999 constitution provides that the aims and objectives of political parties as well as party programmes shall conform with the provisions of chapter II Constitution. In furtherance of this provision, the former administration of President Olusegun Obasanjo established the Independent Corrupt Practices

⁷⁵ See Onye Gye-Wado, “Fundamental Human Rights and Corresponding Civic Obligations under the 1999 Constitution,” in I.A. Anyua eds., *op. cit.*, note 17 at p. 187.

⁷⁶ *DPP v Chike Obi* (1961) ANLR 197.

⁷⁷ Onye Gye-Wado, *op. cit.*, p. 194.

Commission under the Corrupt Practices and other Related Offences Act (ICPC),⁷⁸ the legislative competence of the Act was challenged but the Supreme Court overruled the objection in favour of an attempt by Federal Government to enforce one of the provisions of chapter II of the Constitution.⁷⁹

Most modern statutes enacted to curb economic crimes contain some provisions which tend to be in conflict with the Constitution and some of them have even shifted the onus of proof and reversed the presumption of innocence but it is gratifying to note that the new anti-graft bodies can only arrest but have no power to unlawfully detain suspects.⁸⁰

Many have also seen human rights issues as confrontational to government rather than seeing them as essential for peace, order, and good governance in the polity. Human rights issues are therefore usually misunderstood and easily get politicized.⁸¹

Osita Eze has argued that the reasons for the marked absence of socio-economic rights in African constitution is often based on the fact that unlike political and civil rights which attempt to limit the encroachment of state and its instrument on human rights, they require states to provide material means for their enjoyment. Since African countries are undeveloped it would be futile to encourage litigation based on instruction on socio-economic rights.⁸²

7. Human Rights and Development in Nigeria

⁷⁸ Cap C 31, LFN, 2004.

⁷⁹ See *A.G. Ondo State v A.G. Federation* (2002) 9 NWLR (Pt. 722) 222; (2002) 99 LRCN 1429.

⁸⁰ See generally the ICPC Act, the Economic and Financial Crimes Commission Act, 2004, the Money Laundering (Prohibition) Act, 2004, Advance Fee Fraud and other Fraud Related Offences Act, 2006. See also *Fasawe v A.G. Federation* (2006) WRN 134.

⁸¹ See P. Nnaemeka-Agu, "Ensuring Accountability and Good Governance Through the African Charter and People's Rights", in C.C. Nweze & Oby Nwankwo eds. *Current Themes in the domestication of Human Rights Norms*, (FDP, 2003), p. 120.

⁸² See Osita Eze, *op. cit.*, note 10 at p. 31.

Civil and Political Rights cannot be dissociated from economic, social and cultural rights. The satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.⁸³ The essential elements of the Senegalist Jurist, Keba M'Baye concept of development greatly influenced the report of the Secretary General of the United Nations on the essential elements of that concept which was briefly summarized by Nweze to include the fact that:

1. The realization of the potentials of the human person in harmony with the community should be seen as the central purpose of development.
2. The human person should be regarded as the active subject, not the passive object of development processes.
3. Development requires the satisfaction of both material and non-material basic needs as a basic priority.
4. Respect for human rights and redress of historic discriminations are fundamental to the development process.
5. People must be able to participate fully in shaping change in their social and physical environments; they have a basic right to do so.
6. The achievement of individual and collective self-reliance must be an integral part of these processes.

The United Nations Commission on Human Rights, after considering the above report, affirmed that the right to development is a human right.⁸⁴

The proclamation of Teheran declared that “since human rights in 1968 and fundamental freedom is indivisible, the full realization of civil and political rights without the enjoyment of economics, social and cultural rights, is impossible.”⁸⁵

The United Nations General Assembly also affirmed in 1977 that “The full realization of Civil and Political Right without the enjoyment of economics, social and cultural rights is impossible. The

⁸³ See the 7th paragraph of the preamble to the African charter.

⁸⁴ See C.C. Nweze, “Human Rights” *Abia State University Law Journal*, vol. 1, 1997, p. 9.

⁸⁵ Resolution VII titled “Economic Development and Human Rights of the International Conference on Human Rights” held in Teheran between April 22 and May 13, 1968.

achievement of the lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development.⁸⁶

The actual measure of sustainable development is the well being of the individual. An interpretation of human rights that does not accommodate the problems posed by human poverty, want and ignorance must be anemic and otiose. The right to life includes the right to live with human dignity and all that goes along with it, namely; the bare necessities of life, such as adequate nutrition, clothing and shelter over the head and facilities for reading, freely moving about, and mixing with fellow human beings.⁸⁷ It is therefore no surprise that the agencies of the United Nations have utilized every opportunity at their disposal to underscore the indivisibility of the rights.⁸⁸

Social opportunities and rights are not inherent in the nature of man and do not constitute some sort of natural attributes. Rights and freedoms of individuals in any state are materially stipulated and depend on the socio-economic, political and other conditions of the development of society, its achievements and progress.⁸⁹

The concept of national development has now become a major source of insight and inspiration for the reassured developmental perspective. There is a growing consensus all over the world that development must meet the needs of the present generation without compromising the ability of future generations to meet their own needs.⁹⁰ According to Senator Herbert Humphrey of the United States, "The moral test of government is how it treats those who are

⁸⁶ Ib. G.A. Resolution 32/130 of 16/12/77.

⁸⁷ See *Caroline v Union Territory of Delhi* .I.R. 1981 Sup. Ct. 746 (App. 5) cited in C.C. Nweze, *op.cit.*, note 84 at p. 16.

⁸⁸ G. Ezejiofor, "The Development and Concept of Human Rights: Definition and Philosophical foundation," *op. cit.*, note 7 at p. 12.

⁸⁹ Viadimir Kartashkin, "The Socialist Countries and Human Rights", in *The International Dimensions of Human Rights* ed. Karel Vasak (1982) UNESCO, p. 631.

⁹⁰ M.T. Ladan, "Human Rights and Environmental Protection," in A.O. Obilade, *et al*, eds., *Text for Human Rights Teaching in Schools*, *op. cit.*, note 14 at pp. 97-98.

in the dawn of life, the twilight of life, the aged; and those who are in the shadows of life – the sick, the needy and the handicapped”⁹¹

Good governance would in our circumstances, be directed to poverty alleviation and providing a reasonable living standard for the populace; guaranteeing the security of life and property of the people, the maintenance of law and order and the provision of an accepted level of infrastructural development of the democratic process under the rule of law. For, good governance metamorphoses into national development.⁹²

8. Conclusion

Governments in Nigeria must strive to attain the ideals provided for in chapter II of the 1999 Constitution of the Federal Republic of Nigeria. This will provide the basis for the citizenry to be adaptable to laws made for their welfare. The socio-economic rights in chapter II of the constitution once actualized will ensure eradication of poverty, insecurity, foster the concept of ONE Nigeria or National Integration and so on.⁹³

Government should commit adequate funds for the provision of qualitative, education, health care and social welfare services which are all crucial to the general wellbeing of the citizenry.

In the Western World, the importance attached to the education of the children is such that it is an offence, attracting stipulated penalties, for the failure of parents to enroll their children in school on their attainment of school age. In Nigeria, education is on the concurrent legislative list and the few states that have enacted education laws have not provided for obligatory sanctions. However, the African Charter on Human and People’s Rights provides that every individual (including the child) shall have right to education, by

⁹¹ Quoted in D.A. Guobadia, “the Legislature and Good Governance under the 1999 Constitution,” in I.A., Ayua, *et al*, eds., *Nigeria Issues in the 1999 Constitution*, *op. cit.*, note 17 p. 75.

⁹² *Ibid.*, at pp. 43-44.

⁹³ See J.T. Aese & M.M. Dura, “Impact of the Distinction Between Law and Morality on Nigerian National Orientation,” *NSULJ*, Vol. I, No. 1, 2004, p. 235.

virtue of Article 17(1).⁹⁴ To raise the level of awareness of the right to education among parents and children, awareness campaigns through the mass media and workshops and seminars should be organized. Both government agencies and non-governmental organizations can play a useful role in this regard through mass mobilization and advocacy programmes⁹⁵

For any organized society to develop there must be proper social engineering. This reassures that the legal system addresses itself to the issues of social and economic development of the country in the manner that guarantees each citizen a decent life.⁹⁶

The paradox in human rights is that their most effective protectors- government are also sometimes their worst violators. The challenges of the times are not only to lay down standards for states but also to ensure through implementation machinery that states carry out their human rights obligations. The importance of nurturing, through education, a culture of respect and demand for the appreciation and internalization of the values of human rights cannot be over-emphasized.⁹⁷

The improvement in infrastructural developments in certain states of the Federation is already attributed to the professed determination of the current leadership to forestall future rigging of election in Nigeria.

A responsible government with committed and credible leadership arising from a free and fair electoral process would no doubt accelerate the pace of development. This is why the recent 2011 elections widely adjudged to be free and fair has been attributed

⁹⁴ See M.A Ajomo & Isabella Okagbue, "Introduction" in I.A. Ayua & Isabella Okagbue, eds., *The Rights of the Child in Nigeria*, (Nigeria Institute of Advanced Legal Studies, (1996), p. 8.

⁹⁵ Simi Afonja, "The Right of the Child to Education." In I.A. Ayua & Isabella Okagbue, *ibid.*, at 103.

⁹⁶ T.A.T. Yagba, "Imperialism and the De-Legallization of Indigenous Customary Laws. The Nature and Functions of Law in Neo-coloural Nigeria (1992) 1 *ABULSJ* 92 at 99 cited in J.T, Aese & M.M. Dura, *op. cit.*, note 93 p. 218.

⁹⁷ U.O. Umozurike, *The African Charter on Human and People's Rights*, *op. cit.*, note 1 at p7.

to the electoral reforms embarked upon by the Federal Government under the leadership of His Excellency Dr. Goodluck Jonathan.