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HUMAN RIGHTS AND INSTITUTIONS FOR THE PROTECTION OF HUMAN RIGHTS; AN OVERVIEW

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Abstract

The promotion and protection of human rights have engaged the attention of the global community, Nigeria as a country in Africa has signed regional and international treaties for the enforcement and protection of human rights. Notwithstanding the foregoing, Human Rights violations are still imminent and of daily occurrences in Nigeria. This work appraised the National, regional and International institutions and instruments for the protection of Human Rights, their functions, achievements and, diverse challenges which have constrained meaningful enjoyment of human rights both at the national, regional and international levels. It points out the shortcomings of the dualist model under a nation called Nigeria and stresses the objectionable wide amplitude of the derogation clauses. It also makes suggestions for reform.

KEYWORDS:
Human, Rights, Protection, Institutions, Overview

INTRODUCTION

It is not in doubt that human rights protection and enforcements have become a global subject. The fact that human rights have gained remarkable attention, prominence, and significance in our world of pluralism, diversity, and interdependence stems from their very nature. Human rights are rights which all human beings have by virtue of their humanity, such as right to life, right to food right to shelter, right to dignity of human person, personal liberty, fair hearing and freedom of thought, conscience and religion.

They provide a common standard of behavior among the international community. To demonstrate the important character of human rights, a learned author insightfully declared that: "the issue of human rights in the recent past, has penetrated the international dialogue, become an active ingredient in interstate relations and has burst the sacred bounds of national sovereignty." It is for the foregoing reason that virtually all nations of the world, including Nigeria, have subscribed to the major international human rights instruments, such as the Universal Declaration of Human Rights, 1948; the International Covenant on Civil and Political Rights, 1966 (ICCPR); The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR); and other regional human rights instruments. However, it must be remembered, as perceptibly noted by an astute author —that "human rights are more than a collection of formal norms, they are dynamic political, social, economic, juridical, as well as moral, cultural and philosophical conditions which define the intrinsic value of man and his inherent dignity." The practical implication of this is that international human rights promotion, protection, and enforcement transcend mere formal subscription to their ideals or - more poignantly put-mere domestication. As Bhagwati has noted, "The language of human rights carries great rhetorical force of uncertain practical significance.
At the level of rhetoric, human rights have an image which is both morally compelling and attractively uncompromising. But what is necessary is that highly general statements of human rights which ideally use the language of universality. Inalienability and indefeasibility should be transformed into more particular formulations, if the rhetoric of human rights is to have major impact on the resolution of social and economic problems in a country". Although Nigeria, as a nation, is a signatory to many international human rights instruments and has a good number of domestic instruments for their protection, there are varying degrees of human rights violations in the nation, and governance is characterized by acute disregard for, and sadistic undermining of, these basic rights and fundamental freedoms. Indeed, today, as in the inglorious days of military rule, frequent cases of extra-judicial, unjustifiable torture of detainees by security agents, unbridled curtailment of freedom of the press," and objectionable discrimination against women,' are still witnessed both nationally and international. Also, politically motivated arrests and detention' have continued unabated and lengthy pre-trial detentions of suspects have continued with impunity. -

CONCEPTUAL CLARIFICATION

This work introduces some major concepts that need to be defined for the purpose of this study. These concepts are: 'Human Rights'. 'Instruments or treaties responsible for the protection of Human Rights', 'Institutions for the

Protection of Human Rights, their functions, challenges and recommendation'.

HUMAN RIGHTS

The starting point in understanding human rights is the appreciation of the term 'rights' which is covered by the wider concept of claims - for example, the wants, desires and aspirations that people have and express. Those claims which are also supported by or in accordance with some objective standards' or general theory, whether those of a code of morality or ethical theory or those of a political system or political theory, or of a legal system, are usually and aptly called rights'.

Although human rights is key concept in international law and relations, its precise meaning and content remain as controversial as ever. The UN Charter, to which the development of human rights law is often attributed, is prototype. Article 1(3) includes, as part of the purposes of the organization, the promotion and encouragement of a respect for human rights and fundamental freedoms for all, but without defining them'. The Universal Declaration also shies away from a definition. Its preamble merely declares that 'recognition of the inherent dignity and of the equal and inalienable rights of all, members of the human family is the foundation of freedom, justice and peace in the world". The operative part of the Universal Declaration merely listed the rights and freedoms guaranteed without any definition. This pattern is repeated in the other major international human rights instruments. However, for the purpose of this work, the definition of Henkin is adopted and he posited thus: "Human rights are claims asserted and recognized as a right, not claims upon love, or grace, or brotherhood, or charity... They are claims under some applicable law. They are rights upon society as represented by the government and its officials. The good society is one in which individual rights flourish and in which their protection and promotion are the fundamental Objectives of government".

Boutros-Boutros Ghali, the former Secretary-General of the UN, emphasised on the historical context of human rights when, at the opening of the World Conference on Human Rights held in Vienna in 1993, he declared: "Human rights should be viewed not only as the absolute yardstick, which they are, but also as a synthesis from a long historical process. As an absolute yardstick, human rights constitute the common language of humanity. Adopting this language allows all peoples to understand others and to be the authors of their own history. Human rights, by definition, are the ultimate norms of all politics.

INTERNATIONAL JOURNAL – HSS
VOL. 11 NO.6 JUN-2020 ISSN: 1021-3197

INTERNATIONAL INSTRUMENTS (TREATIES) RESPONSIBLE FOR THE PROTECTION OF HUMAN RIGHTS

1. **International Bill of Human Rights**

2. **Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) is a UN General Assembly declaration that does not in form creates binding international human rights law. Many legal scholars cite the UDHR as evidence of customary international law.

More broadly, the UDHR has become an authoritative human rights reference. It has provided the basis for subsequent international human rights instruments that form non-binding, but ultimately authoritative international human rights law.

2. **International Human Rights Treaties**

Besides the adoption in 1966 of the two wide-ranging Covenants that form part of the International Bill of Human Rights (namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), other treaties have been adopted at the international level. These are generally known as human rights instruments. Some of the most significant include the following:

- The Convention on the Prevention and Punishment of the Crime of Genocide (CPCG) (adopted 1948 and entered into force in 1951);
- The Convention Relating to the Status of Refugees (CSR) (adopted in 1951 and entered into force in 1954);
- The Convention on the Elimination of All Forms of Racial Discrimination (CERD) (adopted in 1965 and entered into force in 1969);
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEJAW) (entered into force in 1981);
- The United Nations Convention Against Torture (CAT) (adopted in 1984 and entered into force in 1987);
- The Convention on the Rights of the Child (CRC) (adopted in 1989 and entered into force in 1990)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) (adopted in 1990 and entered into force in 2003);
- The Convention on the Rights of Persons with Disabilities (CRPD) (entered into force on 3 May 2008); and

- The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) (adopted in 2006 and entered into force in 2010).

UNITED NATIONS AS THE TREATY BODIES RESPONSIBLE FOR THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS

The United Nations human rights treaties are associated with the task of monitoring the implementation of treaty obligations. The treaty bodies are composed of members who are by the states parties to each treaty (or through the UN Economic and Social Council (ECOSOC) in the case of CESCR). In principle, treaty members are elected as experts who are to perform their functions in an independent capacity. Meeting periodically throughout the year, the treaty bodies perform a number of functions in accordance with the provisions of the treaties that created them. These include:

1. Consideration of State parties' reports.
2. Consideration of individual complaints or communications.

They also publish general comments on the treaties and organize discussions on related themes.

INTERNATIONAL INSTITUTIONS FOR THE PROTECTION OF HUMAN RIGHTS

In itemizing the international Institutions for the protection of Human Rights, it is pertinent to state that the term "International human rights institutions are those bodies established by (international) agreements entrusted with the task to interpret, monitor and observe the implementation and enforcement of human rights law.

The International protection of human right on the African continent has a number of dimensions. The United Nations (UN) is heavily involved in human rights work on the African continent. UN agencies provide relief work, technical assistance and a number of other functions. The UN High Commissioner for Human Rights has established offices in a number of African countries.

On the formal level, African countries have a record more or less comparable to the rest of the world in terms of acceptance the UN Human right treaties. Some notable exceptions are Genocide Convention and the Optional Protocol to the Covenant on Civil and Political Rights relating to the abolition of the death penalty, which have received significantly less ratification in Africa than on the global level. The Refugee Convention and its additional Protocol on the other hand have a much higher percentage of ratification in Africa than on the global level.

The UN has created an ad-hoc criminal court concerning the genocide in Rwanda. Namely the International Criminal Tribunal for Rwanda, based in Arusha, Tanzanian. The Sierra Leone Special Court constitutes a combine effort between the UN and the government of Sierra Leone.

The prosecutor of the newly established International Criminal Court is investigating alleged atrocities in a Democratic Republic of Congo and in Uganda, both of which have ratified the statute establishing the court. After a referral by the UN Security Council, the Prosecutor is now also investigating the situation in Darfur, Sudan.

On the regional level, the African Union (AU) (since 2001) and its predecessor, the Organization of Africa Unity, (OAU) (since 1963) have created a continental human rights mechanism for Africa. Whereas, the Charter of OAU of 1963 hardly made any references to Human Rights, the Constitutive Act of the AU of 2000 identifies the protection of Human Rights as the central objective of the AU.

In 1981, the OAU adopted the African Charter on Human and Peoples' Rights (also called the Banjul Charter), which created the Africa Commission on Human and Peoples' Rights. All member states of the AU have ratified the charter. There are two protocols to this Charter.

The first is the 1998 Protocol on the African Court on Human and People's Rights, which entered into force on 25 January, 2004 and created a Human Rights' Court for Africa to compliment the jurisdiction of the African Commission on Human and People's Rights. A Protocol to the African Charter on the Rights of Women was adopted at the AU Summit in Maputo in July 2003 but has not yet enters into operation.

In addition, the African Charter on the Rights and Welfare of the Child was adopted in 1990 and entered into force in 1999. The treaty established the Committee on the Rights and Welfare of the Child as Monitoring body. As with the African Charter, state are require to report regularly to the committee.

The development program of the AU, the New Partnership for Africa's Development (NEPAD), has created the African Peer Review Mechanism, which has a mandate to review both economic and political governance, the latter including human rights.

Human rights violations cause conflict and conflicts cause human rights violation. It is not surprising then that there is an increasing focus on human rights and humanitarian law found in peace treaties in the hope of ending the many conflict that have ravaged the continent. In 1993, the OAU established a conflict prevention mechanism with limited success. A protocol to the Constitutive Act of the AU establishing an African Peace and Security Council

as an institution of the African Union was adopted in 2002 and entered into force on 26th December, 2003.

The mandate, competences and modus operandi of the international institutions for Human Rights are defined in international law and the institutions include:

- United Nations
- UN Human Rights Council
- human rights treaty bodies
- independent experts known as "special procedures'
- Universal Periodic Review
- Africa
- African Court on Human and Peoples' Rights
- African Commission on Human and Peoples' Rights
- The Americas
- Inter-American Court of Human Rights
- Inter-American Commission on Human Rights
- Europe
- European Court of Human Rights
- European Committee of Social Rights
- Council of Europe Commissioner for Human Rights
- The Middle East & North Africa
- Arab Human Rights Committee
- Southeast Asia
- ASEAN Intergovernmental Commission on Human Rights

POTENTIAL FUNCTIONS OF THE INTERNATIONAL AND NATIONAL HUMAN RIGHTS INSTITUTIONS

The Paris Principles list a number of responsibilities that these institutions should assume. While national human rights institutions should have as broad a mandate as possible, specified either in the constitution or in legislation, the Paris Principles stipulate that these institutions should:

- Monitor the implementation of human rights obligations of the State party and report annually (at least);
- Report and make recommendations to the Government, either at the Government's request or on its own volition, on human rights matters, including on legislation and administrative provisions, the violation of human rights, the overall human rights situation in the country and initiatives to improve the human rights situation;

INTERNATIONAL JOURNAL – HSS
VOL. 11 NO.6 JUN-2020 ISSN: 1021-3197

- Promote harmonization of national law and practice with international human rights standards; Encourage ratification of human rights treaties;
- Contribute to reports that States parties are required to submit to the United Nations treaty bodies on the implementation of human rights treaties;
- Cooperate with regional and United Nations human rights bodies as well as with human rights bodies of other States;
- Assist in the formulation of human rights education programmes; and Raise public awareness about human rights and efforts to combat discrimination.
- **Monitoring National Law and Practice**
  It is common for national institutions to have a mandate to ensure that national law conforms to human rights standards, as recommended by the Paris Principles. This can be achieved by examining existing laws, and by monitoring and commenting upon the development of new laws. A number of institutions dedicate resources to monitoring proposed legislation so that they might consider and, if necessary, comment upon compliance of the proposed law with human rights obligations. Depending on the degree of impact that a proposed law may have on human rights, national institutions might also raise public awareness so that individuals and organizations can, if they choose, make submissions to the Government.
  Initiatives to improve the human rights situation within countries Ideally, States will establish a national human rights action plan outlining the strategy or actions to be taken to implement obligations under human rights instruments. States will often consult the national human rights institution when developing these strategies or actions plans. Independent of the State's national human rights action plan, the national human rights institution might develop its own plan to promote respect for human rights. In either case, appropriate government agencies and civil society should be consulted as these strategies are being drafted. The Convention stipulates that civil society, particularly persons with disabilities and their representative organizations, children with disabilities and individuals who care for persons with disabilities, should be involved in this process.
- **Resolving disputes**

Consistent with the recommendations made in the Paris Principles, a common function of national human rights institutions is to help resolve disputes concerning alleged violations of human rights. A mandate to help resolve disputes should also be accompanied by powers to gather information and evidence.

- **Education and public awareness**
- The Paris Principles specifically recommend the promotion of human rights education programs. It is essential that individuals, private entities and government entities know about human rights and the corresponding responsibilities if those rights are to be respected and effectively monitored. Programs might need to be tailored to the needs of particular groups. For example, programs targeting persons with disabilities should issue their material in accessible formats such as Braille, large print, plain language, close-captioning or accessible electronic formats.

  National institutions might also establish codes of practice that relate to certain rights in particular situations. For example, codes of practice may relate to: the application of a specific right or the elaboration of the specific steps needed to implement the right; the conduct of a particular government agency or a class of agencies; a particular type of public or private activity per class of activities; or a particular industry or profession. Given the regulatory nature of such codes, they must be established by law and will normally be adopted after wide consultations.
- Article 35 of the Convention requires States parties to report periodically to the Committee on the Rights of Persons with Disabilities on measures taken to comply with their obligations under the Convention. The combine effect of articles 4(3) (consultation with and involvement of persons with disabilities) and 35(4) of the Convention means that States should consider preparing these reports in close consultation with persons with disabilities, including children with disabilities, and their representative organizations. National institutions can play a role in preparing reports and can facilitate consultation between civil society and the Government in the reporting process.

NATIONAL HUMAN RIGHTS INSTITUTIONS AND COMPLAINTS' MECHANISMS

The Paris Principles call for national institutions to have adequate powers of investigation and the ability to hear complaints. Existing national

INTERNATIONAL JOURNAL – HSS
VOL. 11 NO.6 JUN-2020 ISSN: 1021-3197

institutions that assume the monitoring functions under the Convention might have to adjust their mediation and conciliation procedures in order to ensure that persons with disabilities and their representative organizations have access to the process. There are various methods by which such institutions can fulfill these roles, including:

- **Mediation and conciliation**
  At the most basic level, many national human rights institutions help enforce-the realization of rights by providing mediation and conciliation services. An aggrieved person can directly contact conciliation or mediation officer of a national human rights institution to discuss his/her concerns. Such officers are asked to register the complaint and are often empowered to provide general advice on options available to the aggrieved person and depending on the wishes of that person, to initiates communications with the other party involved in the dispute. This may include informal telephone or face-to-face discussions, although many national institutions do not accept anonymous or unsigned complaints. More often, the national institution will have to rely on more formal requests, such as written communications. Depending on the nature of the dispute and the outcome of initial discussions, a meeting of the parties involved might be organized during which the mediator or conciliator will attempt to resolve the matter.
- **Human rights tribunals**
  Failing successful mediation or conciliation, or failing adherence by one or both of the parties to the terms of the settlement of a dispute, some national human rights institutions have mechanism through which they, or the parties to a dispute, may initiate proceedings before a tribunal, including a national human rights tribunal. The ability to initiate such proceedings, and the tribunal itself, must be established by statutory authority. A national human rights tribunal can act as a bridge between formal legal proceedings and the more informal process of investigation and conciliation.
- **Intervention in legal proceedings**
  Another possible role of national human rights institutions is to intervene in proceedings that are held within the normal judicial system. In Australia, for example, the Human Rights and Equal Opportunities Commission has the power to intervene as amicus curae (a friend of the court) in court proceedings that raise disability-discrimination issues.

This allows the Commission to present its views on the interpretation of the law and how it should be applied in the given circumstances.

- National human rights institutions often keep records of mediation and conciliation processes as a way of tracking the patterns through which disputes are resolved. Records might also be included in the annual report, be used to launch a special report, be included in a shadow report to treaty bodies, and/or be used to train conciliation and mediation staff and establish consistent practices and results. These records should be kept secure and any references to past actions should not identify the parties involved.
- Mediation and conciliation may be linked to other grievance-resolution mechanisms so that a failure to resolve a grievance at this level will lead to action by the national institution at a higher level.

SUCCESSES OF HUMAN RIGHTS INSTITUTIONS

Since the operation of the national human rights institutions in 1993 till date, the following are recorded as part of their achievements which includes: Economic, social, cultural, civil, and political rights and the right to development are recognized as universal, indivisible, and mutually reinforcing rights of all human beings, without distinction. Non-discrimination and equality have been increasingly reaffirmed as fundamental principles of international human rights law and essential elements of human dignity.

1. Human rights have become central to the global conversation regarding peace, security and development.
2. New human rights standards were built on the 1948 Universal Declaration of Human Rights and the implementation of international human rights treaties is significantly imposed.
3. Additional explicit protections in international law now exist covering, among others, children, women, victims of torture, persons with disabilities, and regional institutions. Where there are allegations of breaches, individuals can bring complaints to the international human rights treaty bodies.
4. Women's rights are now acknowledged as fundamental human rights. Discrimination an acts of violence against women are at the forefront of the human rights discourse,
5. There is global consensus that serious violations of human rights must not go unpunished. Victims have the right to claim justice, including within processes to restore the rule of law following conflicts. The

International Criminal Court brings perpetrators of war crimes and crimes against humanity to justice.

6. There has been a paradigm shift in the recognition of the human rights of people with disabilities, especially and crucially, their right to effective participation in all spheres of life on an equal basis with others.
7. There is now an international framework that recognizes the challenges facing migrants and their families which guarantees their rights and those of undocumented migrants.
8. The rights of lesbians, gays, bisexuals and transgender individuals have been placed on the international agenda.
9. The challenges facing indigenous peoples and minorities are increasingly being identified and addressed by the international human rights mechanisms, especially with respect to their right to non-discrimination.
10. The Human Rights Council, set up in 2006, has addressed vital and sensitive issues and its Universal Periodic Review, established in the same year, has allowed countries to assess each other's human rights records, make recommendations and provide assistance for improvement.
11. Independent human rights experts and bodies monitor and investigate from a thematic or country-specific perspective. They cover all rights in all regions, producing hard-hitting public reports that increase accountability and help tight impunity.
12. States and the United Nations recognize the pivotal role of civil society in the advancement of human rights. Civil society has been at the forefront of human rights promotion and protection, pinpointing problems and proposing innovative solutions, pushing for new standards, contributing to public policies, giving voice to the powerless, building worldwide awareness about rights and freedoms and helping to build sustainable change on the ground.
13. There is heightened awareness and growing demand by people worldwide for greater transparency and accountability from government and for the right to participate fully in public life.
14. National human rights institutions have become more independent and authoritative and have a powerful influence on governance. Over a third of all countries have established one or more such institutions.
15. The United Nations Fund for Victims of Torture has assisted hundreds of thousands of' victims of torture to rebuild their lives. Likewise, the United Nations Voluntary Trust Fund on Contemporary Forms of

Slavery, with its unique victim-oriented approach, has provided humanitarian, legal, and financial aid to individuals whose human rights have been violated through more than 500 projects.

16. Victims of trafficking are now regarded as entitled to the full range of human rights and are no longer perceived to be criminals.
17. A growing consensus is emerging that business enterprises has human rights responsibilities.
18. There are now guidelines for States which support freedom of expression while defining where speech constitutes a direct incitement to hatred or violence.
19. The-body of international human rights law continues to evolve and expand, to address emerging human rights issues such as the rights of older persons, the right to the truth, a clean environment, water and sanitation, and food.

CHALLENGES OF INTERNATIONAL AND NATIONAL INSTITUTIONS FOR THE PROTECTION OF HUMAN RIGHTS

A. **The Problem of Primacy between International Human Rights Norms and Domestic Legislation**

International agreements particularly those relating to human rights employ two approaches, namely the 'treaty' method and the 'non-treaty' method. Whereas the treaty method creates legally binding obligations on state parties, the non-treaty method establishes non-legal commitments to guide signatory states. Nigeria's international obligations, primarily those concerning human rights, are treaty-based. For instance, the National Assembly in March, 1983 incorporated holus bolus, the text of the African Charter on Human and Peoples' Rights, into the corpus of domestic legislation. The wholesale incorporation of the charter raises certain fundamental issues which appertain to any domesticated human rights treaty. For instance, the 1999 Constitution draws a distinction between justiciable and non-justiciable human rights. The Charter, on the other hand, makes no distinction between economic, social, and cultural rights, on the one hand and civil and political rights on the other. One important question which arises therefore is the implication of the wholesale domestication. Again, in the event of conflict between the Nigerian Constitution, Nigerian statutes, and the Charter, as incorporated, which one prevails? This last question raises the issue of primacy between international human rights norms and domestic legislation. On the relationship between

international human rights instruments and domestic law—which includes the Constitution—two principal schools of thought have emerged, viz monism and dualism. In addition to these dominant theories, a lesser theory that has also been propounded is the harmonization theory. Monism asserts that international law and municipal law form part of a universal legal order serving the needs of the human community one way or another. By this theory, any international treaty, including those concerned with human rights, ratified or assented to by a state is directly enforceable within the municipal system. On the other hand, dualism holds that international law and municipal law are two distinct legal orders. Thus, each may isolate the other, and as such, ratified treaties are not enforceable until the parliament enacts a law to incorporate them into the municipal law. The harmonization theory holds that man is the focus of both areas as Man lives in both jurisdictions. Harmonization theorists contend that both systems are concordant bodies of doctrine, autonomous but harmonious in their aim of achieving the basic good and therefore reject the presumed conflict between international law and national law. In Nigeria, the dualist or indirect system applies by virtue of the provision of section 12 of the 1999 Constitution. It is for this reason that the Supreme Court unequivocally held that no treaty applies unless it is ratified. Further, the court held that the Constitution, by virtue of its supremacy, has primacy over international law in the event of conflict between the two, in the words of the court, any treaty enacted into law in Nigeria by virtue of section 12(1) of the 1999 Constitution, is circumscribed in its operational scope and extent as may be prescribed by the legislature as relating to the conflict between international law and other national law, the Supreme Court unfortunately did not make an' unequivocal pronouncement. However, the court noted that "in incorporating African Charter, this country (Nigeria) provided that the treaty shall rank at par with other ordinary municipal laws". Therefore, if there is a conflict between it and another statute, its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation, thus, it possesses a greater vigor and strength than any other domestic statute. The view that international instruments, including human rights instruments, should take precedence over domestic legislation, it is submitted is a better and preferred view. The subscription of Nigeria to those norms by

ratification of the treaties means that the Nigerian governments and their judicial agencies are not legally permitted to derogate from those norms. Accordingly, international human rights norms should be interpreted and enforced in such a manner as to confer primacy on international human rights instruments over domestic legislation.

B. **Reservation Clauses in Human Rights Instruments:**

A careful and painstaking content analysis of the various international human rights instruments reveals that there are many High- defined instances of permissible derogations inherent in them. In other words, many of the human rights guaranteed in international human rights instruments are not sacrosanct or granted in absolute terms. Rather, the various instruments create instances where it is legitimate and legally sustainable for the rights to be violated. Although virtually all the rights granted by the Universal Declaration of Human Rights, 1948 are not qualified, the same thing cannot be said of the two Covenants which elaborated on the provisions of the Declaration. For instance, Article 4 of the International Covenant on Civil and Political Rights recognizes and provides for permissible derogations in the following terms: In time of public emergency which threatens the life of the nation, and the existence of which is officially proclaimed, the state parties ... may take measures derogating from their obligations under the present covenant. Similarly, Article 4 of the International Covenant on Economic, Social and Cultural Right allows restrictions and limitations on the rights it guarantees. The Article provides that: The states parties to the present covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to limitations as are determined by law only in so far as this may be compatible with the nature of these rights aid solely for the purpose of promoting the general welfare in a democratic society. The African Charter also contains derogation clauses. For instance, Article 6 provides inter alia that "no one may be deprived of his freedom except for reasons and conditions previously laid down by law..." while Article ii, in limiting the right to assemble freely, permits "necessary restrictions provided for by law." The practical and legal implication of these derogation clauses is simply that a state is permitted to limit, restrict, abridge, or suspend the enjoyment of these rights. While it may be inappropriate to contend that all the rights should he given in absolute terms, it is a matter of grave concern that the instances of permissible derogation are not well-

defined and as such, susceptible and amenable to abuse. For instance, no definition is offered by the Convention on Civil, and Political Rights of what constitutes a "public emergency." Apart from the problem of definition, how do we react to derogations during a state-induced public emergency? It is respectfully submitted that the wide and ill-defined permissible derogations from' the enjoyment of the rights guaranteed by some international human rights instruments is a veritable tool to avoidable curtailment of the protection and promotion of human rights at the domestic level; contextually in Nigeria.

C. **Absence of True Judicial Independence:**

One of the enduring and indeed imperishable attributes of the common law is the notion of judicial independence. So important is this notion that it has become entrenched not only in the English judicial system, but in most judicial systems across the globe. The term judicial independence, otherwise referred to as the independence of the judiciary, does not lend itself to a generally accepted definition. Consequently, an examination of some attempts which have been made to define it will suffice for the present purpose. According to Oyeyipo, Judicial independence postulates that no judicial officer should directly or indirectly, however remote be put to pressure by any person whatsoever, be it government, corporate body or an individual to decide any case in a particular manner for the executive and the citizens, whatever their status.,. From the above premise, it can be safely concluded that judicial independence is not yet a reality but a mere aspiration in Nigeria till date. The appointment and removal of judges are not insulated or isolated from politics, ethnicity favoritism, and other primordial considerations, Lamenting on the constraint against judicial independence in Nigeria, Tobi insightfully declared that "there were instances in the past where appointing bodies by sheer acts of favoritism and nepotism overturned the A.J.C. (Advisory Judicial Committee's) list and planted their own by way of replacement." Other authors have also categorically noted that "the appointment of judges cannot through the institutional mechanism of NJC (National Judicial Council) be insulated from political consideration and control." Apart from the problem of appointment and removal, the judiciary is faced with other formidable problems which inevitably compromise its independence and impartiality. The Nigerian Judiciary lacks financial autonomy in the real sense of the word, even though under the present constitutional dispensation, a measure of financial autonomy is sought

to be enthroned. Besides, the remuneration of judicial officers is not only inadequate but laughable. The implication of this is that judicial officers are exposed to avoidable temptations of being corrupt such that their judgments are not the result of legal rule, forensic argument of counsel, precedent, and cold facts of the case, but are rather dictated by extraneous considerations. The plight of many judges is worsened by environmental challenges of absence of social security and bloated extended family. From the above, the challenge posed by the absence of true judicial independence is formidable, Similarly, its implications for human rights promotion and protection are no less daunting.

D. **Problem of Disobedience to Court Orders:**

Without doubt, accessibility to court by litigants is one thing, while the impartiality of the judge is another. Respect and obedience to the judgment and orders of the court is yet another important consideration. It is a notorious fact that judgments and orders of-courts are not self-executing and the judiciary does not have its own body or institution charged with the responsibility of enforcing its judgments. The implication of this fact is that the judiciary inevitably depends on the executive for the enforcement of its judgments. The executive branch, without doubt, is the greatest violator of human rights. It is the major "predator" from which judicial protection is often sought. This being the case, there is little guaranteed that when an order is made against the executive branch, the same will be treated as sacrosanct. On the contrary, the unfortunate and regrettable experience has been regular disobedience of the executive to lawful and subsisting court orders. Often, government chooses the orders to obey. It obeys those it is comfortable with and disobeys those which are in conflict with its interest, ignoring the consequences to the individuals whose rights have been violated. This is true both under military rule as well as democratic dispensation. For instance, the Federal Government refused to obey the Supreme Court's judgment which declared illegal the withholding of revenue to the Lagos state local government. The inevitable question therefore is: what is the value of a judgment and order which is disobeyed? Disobedience to court orders undoubtedly undermines- the authority, dignity, and integrity of the court and can promote anarchy. But much more, it constitutes a remarkable challenge to the development and realization of human rights.

E. **Weak Institutional Infrastructure:**

A major deficiency in the development of human rights is one of enforcement. Since the enforcement of human rights largely depends on the domestic machinery of national governments, Nigeria has erected seemingly firm institutional infrastructure to safeguard human rights in the country. The institutional infrastructure includes the judiciary, the National Human Rights Commission, the Public Complaints Commission and the Legal Aid Council. Regrettably, the various institutional mechanisms are not strong enough or capable of providing adequate and effective platforms for meaningful human rights promotion and protection. This is especially so because many of these institutional mechanisms are not independent and do not have the financial and logistical capability to meaningfully function as they ought to. This article earlier highlighted some of the problems confronting the judiciary. The extra-judicial bodies are in a more precarious position. Being controlled, directly or indirectly, by the government through funding, composition of membership, and provision of operational guidelines, among others, government interference or influence becomes not a mere possibility but a reality. For instance, it is widely believed that the redeployment of Kehinde Aioni, the erstwhile Executive Secretary of the National Human Rights Commission CNHRC), was a result of the scathing human rights report she presented at the 9th session of the United Nations Human Rights Council65 held in Geneva, Switzerland on Monday, February 9, 2008.

RECOMMENDATIONS

a. **Suggestion for Constitutional And Institutional Reforms:**

It is the state, with its various institutions, which is primarily responsible for guaranteeing the implementation and enforcement of human rights. This mandate is explicitly stated in the Charter of the United Nations as follows: All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of 'universal' respect for, and observance of human rights and fundamental freedom. Consequently, to overcome the innumerable challenges stated above, it is imperative that necessary constitutional and institutional reforms be undertaken in addition to the need for government to demonstrate pragmatic political will to promote and protect human rights. It is therefore intended in this part to briefly propose the following reforms which, if faithfully

implemented, will ensure better protection to the protection of human right in Nigeria.

b. **Segregating of Human Rights Instruments from the Ambit of Section 12 of the Constitution:**
Human rights instruments should be excluded from the provision of section 12 of the 1999 Constitution requiring the National Assembly to enact treaties to which Nigeria is a party into law before they become binding and enforceable in Nigeria. This means that any international human rights instrument to which Nigeria is a party will automatically become applicable and enforceable in Nigeria without the necessity of the same being enacted into law by the National Assembly. This way, Nigeria will be bound by all human rights treaties ratified on the basis of pacta sunt servanda.

c. **Abridgement of Limitation Provisions:**
The domain of permissible constitutional derogations must be severely limited. Accordingly, the various sections—such as sections 33 and 45 of the 1999 Constitution which provide wide and sometimes nebulous limitation on some of the rights must be amended. The danger posed by these derogation clauses informs their condemnation by Honorable Justice Bhagwatti. In his words: We must therefore take care to ensure that in no situation, however grave it may appear, shall we allow basic human rights to be derogated from, because once there is a derogation for an apparently justifiable cause, there is always a tendency in the wielders of powers in order to perpetuate their power, to continue derogation or human rights in the name of security of the state. Effective respect for human rights must place two kinds of restrictions on the forces of derogation. It must limit the circumstances and specify the procedures under which derogation may be legitimately invoked and it must also identify and reserve certain core human rights such as the right to life or the right to personal liberty, or freedom ex post facto from criminal laws which are the most vital from a political science perspective, as absolutely non-derogatable. We consider it appropriate to recommend this to the Nigerian State,

d. **Strengthening of the Extra-Judicial Bodies:**
Extra-judicial bodies for human rights enforcement must be strengthened to promote their efficiency and efficacy in human rights promotion and protection. Judicial enforcement of human rights is characteristically protracted and expensive. This is why over-reliance and dependence on the judiciary must be deemphasized and

discouraged in favor of these extra-judicial bodies which are less cumbersome, less technical and inexpensive. Accordingly, the human rights agencies should enjoy reasonable independent to free them from executive interference. In addition, the agencies especially, the National Human Rights Commission, and the Public Complaints Commission must be strengthened and adequately funded. The constituent instruments of the Commissions should be amended to grant them financial autonomy so that they can discharge their noble statutory mandate. Apart from ensuring the financial autonomy of the Commissions, government should be charged with the responsibility of providing technical and infrastructural support and solidarity for their work and those of other human rights organizations, important, and compelling duty to ensure prompt compliance with the orders o the courts. Human rights should no longer be a matter of rhetoric. Rather, the government must constantly and deliberately seek to advance the cause of human rights-friendly legislation, policies, and actions. It is fitting and commendable that the Federal Government of Nigeria, in response to the recommendation of the Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in Vienna Australia in 1963, has drawn up a comprehensive National Action Plan for the promotion and protection of' Human Rights in Nigeria. In furtherance of the mandate of the Vienna Declaration, the Nigerian National Action Plan has carefully identified and drawn up an integrated and systematic national strategy to help realize the advancement of human rights in Nigeria. This noble and laudable effort will be meaningless and remain dead letters if the government fails to honestly and sincerely pursue the program of action articulated therein. In discharging this commitment, the Government must always ensure that persons of proven integrity with high moral character are those appointed to the bench and bodies consecrated for human rights promotion and protection.

CONCLUSION

The attempt to map relevant instruments and institutions for the protection of human rights at the national, regional and international levels produces the picture of a diverse, multifaceted and multilayered human rights protection landscape whose complexity is hard to grasp. To date, there is a multitude of different instruments, institutions and mechanisms at global, regional and national levels that are inter-linked by an extended and complex cooperation

network. Civil society organizations have a key role at all levels. They provide information to international and national institutions, contribute to agenda setting and policymaking in the field of human rights, observe implementation and play an important role with regard to awareness rising.

At the global level, the UN is the central organization which gradually developed a comprehensive and extensive human rights system. It is a sophisticated system and has a leadership role concerning the setting of new human rights standards, National systems are diverse with regard to scope, institutional arrangements, obligations and mechanisms. The African system is one of the most extensive and differentiated system with far-reaching obligations, monitoring and adjudication capacities with enormous challenges. Without doubt, concern for human rights is universal, which is why the concept of human,, rights has gained remarkable appeal and significance in our world of pluralism, diversity, and interdependence. Regrettably, the enjoyment of human rights in Nigeria—as in many nations across the globe—has been cramped by varied and multidimensional challenges. This is why atrocious violations of human rights still exist in Nigeria and many other states till date. Many of the hindrances to human rights protection in Nigeria have been sustained, and remain unabated, partly because of a lack of genuine and practical commitment on the part of the government to ensure meaningful enjoyment of these rights. Successive Nigerian governments like many governments have not been able to match the impressive record of codification and prescription of the rights with equally rigorous application and enforcement. Rather, they have been contented with mere codification presumably because—as noted by Haleem generally, governments find it difficult to vote against what is deemed to be good and what makes prudent political sense in light of the fact that human rights issues now form part of the equation of international relations.

Since human rights are most effectively protected at the national level, it is therefore imperative for each national government to take all legislative, judicial, and administrative measures in order to prevent, prohibit, and eradicate all human rights violations. It should not merely be fashionable to accept and adopt international human rights instruments. Rather, practical commitment ought and should be demonstrated at all times towards the realization of' their noble objectives. Accordingly, it is hereby advocated that meaningful steps be taken to adopt the proposals for reform stated in this article among others. Specifically, the ambit of permissible derogation must be well defined and severely limited. Further, the dualist model on the applicability of international human rights treaties should be abolished as 'it

constitutes a significant drawback to human rights protection in Nigeria. Finally, the courts must at all times adopt a generous interpretation of human rights provisions—and avoid what has been called the austerity of tabulated legalism—suitable to give individuals the full measure of the fundamental rights and freedom.

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