

Essays in Honour of Mr. Adetunji A. Oyeyipo, SAN.
**RULE OF LAW AND THE ENFORCEMENT OF HUMAN RIGHTS IN
NIGERIA: A CRITIQUE OF THE NORM AND ADDRESSING THE
IMPEDIMENTS**

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ABSTRACT

By the virtue of being human, all persons are entitled to human rights, which are fundamental to their existence. Therefore, irrespective of origin, sex, nationality and other social standards, human rights are intrinsic, inherent and ontological to every person living or dead. The rule of law is the foundation upon which human rights can strive. The constitution of the Federal Republic of Nigeria recognizes the significance of protecting the human rights of its citizens and as a result dedicated a chapter therein to provide for human rights which are fundamental and guided not only from infringement but also likelihood of infringement. Hence, this paper will assess the rule of law and human rights' enforcement in Nigeria, critique the norm and at the same time address the Impediments.

INTRODUCTION

The United Nations in 1948, made a Universal Declaration of Human Rights (UDHR)⁴⁶³ in recognizing and providing optimism for a greater world, where human rights are protected and promoted. Nevertheless, the protection and promotion of human rights and prevention of human rights abuses are possible only in a functioning democratic society, which has its foundation submerged in

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⁴⁶³ Mbanugo O.& Arinze-Umobi C., 'Human Rights and Duties in Nigeria: The Rule of Law' [2019] 15 *UNIZIK Law Journal*.

rule of law. Historically, the origination of rule of law by Chief Justice Edward Coke before it was further propounded by A.V Dicey was to water-down the 'Divine Concept' and ensure both the government and the governed were under the law in promoting the rights of man.⁴⁶⁴

This made the rule of law to be defined as the supremacy of the law and justification of actions of the government and the governed according to the law. Ranging from rights to life, dignity, expression, movement, right to freedom of association and others, the rule of law is the vehicle, structure and the normative framework through which human rights are enforced, protected and guaranteed.

ENFORCEMENT OF HUMAN RIGHTS AND THE RULE OF LAW IN NIGERIA: A GLANCE

Generally, the rule of law as expatiated by A.V Dicey entails; the absolute supremacy of the law; equality before the law and rights of individuals as entrenched in the constitution, defined and enforced by the court.⁴⁶⁵ In strict adherence and liberal implementation of the rule of law, *section 46(1) of the 1999 Constitution of the Federal Republic of Nigeria, as amended (1999CFRN)* provides for means of enforcement of human rights, which are enforceable in law as entrenched in *section 33 to 45 of the 1999 CFRN and the African Charter on Human and People's Rights (Ratification and Enforcement)*, where there is a breach or likelihood of infringement of such

⁴⁶⁴ Preethi R., 'Development of the Rule of Law'

<<https://www.legalserviceindia.com/legal/article-85-development-of-the-rule-of-law.html>>
accessed 5th October 2022

⁴⁶⁵ Haruna B.A. & Yusuf A.M., 'A Conceptual Analysis of the Rule of Law in Nigeria' [2017] *Bayero Journal of International Law and Jurisprudence*

rights. **Section 46(1) of the 1999 CFRN** states; '*Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress*'

In interpretation of the provision, the court held in the case of ***F.U.T. Minna v Olutayo (2018) 7 NWLR (pt.1617) 176*** that; '*Section 46(1) of the 1999 Constitution...vests concurrent jurisdiction in both the Federal High Court and the State High Court in matters for the enforcement of a citizen's fundamental right*' Apart from the provision of the State⁴⁶⁶ and Federal High Court⁴⁶⁷ as the avenue to enforce and ventilate human rights' abuses, where such human rights' abuses relate to employment discrimination, the National Industrial Court may be competent to hear such.⁴⁶⁸ In addition **section 46(3) of the 1999 CFRN** states that; '*the Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purpose of this section*'

Prior to 1999 Constitution in 1979, ***the Fundamental Human Rights Enforcement Procedure Rules*** first came into force and was repealed and replaced by the ***Fundamental Human Rights Enforcement Procedure Rules 2009 (FREP Rules)***⁴⁶⁹ to advance the procedure in realizing the enforcement of human rights and enhance access to justice.

A CRITIQUE OF THE NORM

⁴⁶⁶ 1999 CFRN s. 272

⁴⁶⁷ 1999 CFRN s. 251

⁴⁶⁸ 1999 CFRN s. 254 (C)

⁴⁶⁹ Action 4 Justice, 'What is Fundamental Human Rights Procedure Rules and What is its Purpose?' available at : <https://nigeria.action4justice.org/legal_areas/access-to-justice-in-nigeria-the-fundamental-rights-enforcement-procedure/the-legal-framework-of-the-fundamental-rights-enforcement-procedure/> accessed on the 6th of October 2022

To begin with, the norm is that to institute action for enforcement of human rights in Nigeria, it must be sought as the main or principal claim and not the auxiliary relief. In the case of *Gafar v Govt. Kwara State (2007) 4 NWLR (pt.1024) 375*, the Supreme Court held;

...a condition precedent to the exercise of the court's jurisdiction is that the enforcement of human rights or securing the enforcement thereof should be the main claim and not an accessory claim. Where the main claim is not the enforcement of a fundamental human right, the jurisdiction of the court cannot be properly exercised as it will be incompetent

A perusal of this rule of law in the enforcement of human rights in Nigeria shows that human rights' claims cannot be sought as auxiliary claims to a major suit unless it is separately instituted. This apart being a waste of precious time of the court and parties involved, it would be a strain and drain on litigants or aggrieved person (s) who do not have enough funds to institute such actions separately.

Moreover, considering that only high courts have jurisdiction on human rights' infringement, people such as those in the labor force would find it difficult to add human rights' claims as ancillary to their main claims when instituting actions against their employer (s) at the National Industrial Court, which is the only court that has jurisdiction on trade or labor disputes.

Also, the law states clearly as emphasized in the case of *C.B.N v Okemuo (2018) 15 NWLR (pt.1642) 367* that;

Before a claimant...can successfully bring an action for the enforcement of fundamental human rights under the Fundamental Human Rights (Enforcement Procedure) Rules...applicant must be restricted to the enforcement of rights guaranteed under Chapter 4 of the Constitution...and/or at best the provisions of the African Charter for Human and Peoples Rights.

A critique of this made it evident that human rights outside the African Charter and Chapter 4 of the Nigerian Constitution, particularly socio-economic rights as drawn out in Chapter 2 of the 1999 CFRN are non-enforceable in Nigerian courts. The provisions of *section 6(6) (c) of the 1999 CFRN* worsens the threshold by making Chapter 2 non-justiciable and some rights therein.

In addition, the law under *section 84 of the Sheriff and Civil Process Act 2004* requires the consent of the Attorney-General of the Federation to enforce human rights' cases against the government, its agencies and commissions. This was further pinpointed in the case of *C.B.N v Hydro Air PTY Ltd (2014) 16 NWLR pt.1434 482*, where it was held;

Prior consent of the attorney-general under section 84 of the sheriffs and civil process Act is necessary and mandatory before the judgement of a court can be properly enforced against the state. Obtaining such a condition precedent which must be complied with before a judgement creditor can enforce a judgement against the state and failure....to obtain same robs the court of the jurisdiction over the...Proceedings and renders the proceedings a nullity.

Since the Attorney-General of the Federation is a minister of the government, it is always impossible for a judgement creditor to enforce a court's judgement against the federal government (his employer) where the consent of the Attorney-General of the Federation is required. This has been a major factor discouraging litigants to institute and seek to enforce human rights cases against the state, even where it is obvious there is an infringement or likely infringement on their rights.

Apart from the issue of consent, making security agencies comply and abide by the rule of law and orders of courts as regards human rights enforcement is nearly an unrealistic endeavor. For instance, in 2019, the Nigerian State Security Service (SSS) on two different occasions failed to comply with court orders to release Omoyele Sowere held captive, which was an infringement of his fundamental human right to freedom of liberty.⁴⁷⁰

ADDRESSING THE IMPEDIMENTS

- **Human Rights Enforcement should be not be limited to Principal Claim**

The limitation of human rights' enforcement to principal or main claim by Nigerian courts has been hindering many citizens who could not afford to institute human rights' cases as a distinct claim under the FREP Rules.

⁴⁷⁰ Ogundipe S., 'Again SSS Refuses to Release Sowore Despite Pledging to obey Court Order' <<https://www.premiumtimesng.com/news/headlines/361674-again-sss-refuses-to-release-sowore-despite-pledging-to-obey-court-order.html>>accessed on the 12th of October 2022

Moreover, it constitutes a major factor against which Nigeria could not meet up with developed nations such as Switzerland, New Zealand and Denmark topping the list in human rights enforcement, protection and freedom across the globe.⁴⁷¹ Hence, starting from the Supreme Court, there is a need to overturn the decision that human rights could only be instituted and enforced as principal claim and allow it to be sought alongside a main suit as an ancillary relief.

- **Extension of Court's Jurisdiction and Alternative Dispute Resolution (ADR)**

The provisions of *section 46(1) of 1999 CFRN and Order II Rule 1 of the FREP Rules* need amendment to cover the magistrate courts so as to provide room for wider accessibility to court in seeking rights enforcement. Also, there is a need to provide Alternative Dispute Resolution (ADR) mechanisms such as mediation to facilitate communication and settlement between parties involved in human rights infringement or likelihood of infringement.

The ADR's approach will help protect the privacy and confidentiality of parties. For instance, where trade unions such as the Academic Staff Union of Universities (ASUU) needs to sue the federal government for breach of employment agreement and payment of salaries, which consequently affects some of their fundamental human rights such as right to life, they can comfortably approach the National Industrial Court or any arbitration house to enforce same. This will save time of instituting a separate claim for trade claims at the National Industrial Court and human rights claims at high courts.

⁴⁷¹World Population Review, 'Freedom Index by Country 2022' available at <<https://worldpopulationreview.com/country-rankings/freedom-index-by-country>>accessed on the 15th of October 2022

- **Removal of the Consent of the Attorney-General**

There is a need for the total eradication of *section 84 of the Sheriff and Civil Process Act 2004*, which requires the consent of the Attorney-General before court's judgment can be enforced against the government. Although the rationale for this is to avoid embarrassment of unknowingly diverting earmarked government funds for a specific purpose in satisfaction of judgement debts,⁴⁷² however the harm caused is more than the advantage as the Attorney-General most times intentionally fails to give such consent. Even where an order of mandamus is sought to enforce the same, it is sometimes used to be a rigorous process.

- **Need to Respect the Rule of Law by Security Agencies, Government and Citizens of Nigeria**

A society where the orders of court are flouted and with loose regard as evident in Nigeria today where security agencies and government fail to obey court orders is a total disrespect to the rule of law and would further limit human rights' enforcement. And as held in the case of *Nigerian Army v Mowarin*⁴⁷³ that; 'An order of court must be obeyed even if such an order is perverse, until such a time that the order is set aside by a competent court...a flagrant flouting of an order of the court by the executive is an invitation to anarchy'

⁴⁷² FGN v Interstella Communications Limited (2015) 9 NWLR (pt.1463) C.A 1

⁴⁷³ [1992] 4 NWLR (pt.235) 345 at 358

Therefore, human rights' enforcement can be better promoted only if the rule of law is respected, followed and promoted strictly alongside compliance with the orders of courts by citizens, government and security agencies.

CONCLUSION

Flowing from the above, it is clear beyond the need of microscopic scrutiny that rule of law and human rights' enforcement are two sides of a coin that cannot be separated. This paper has made a critique of the norms as regards rule of law and human rights' enforcement. If the address made on the impediments is implemented, it is axiomatic that Nigeria would meet up with other countries across the globe with standard human rights' protection and enforcement.