



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF ARTS AND SOCIAL SCIENCES

COURSE CODE: CSS 432

**COURSE TITLE:
HUMAN RIGHTS PROVISION IN NIGERIA**

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1.0 INTRODUCTION

CSS 432 HUMAN RIGHTS PROVISION IN NIGERIA is a one Semester course. It will be available for you to take towards the core module of the **Bachelor of Criminology and Security studies**. This course is suitable for **degree in Criminology and Security studies** students seeking to understand and obtain the required skills necessary for carrying out research in the provision of Human Rights in Nigeria.

This course consists of 25 units; it examines in detail the concept of human rights, the fundamental objectives and directive principle of state policy, the fundamental human rights and enforcement of human right in Nigeria.

1.1 What you will learn from this course

The overall objective of CSS 432 **Human Rights Provision in Nigeria** is to enhance your knowledge about human rights and the constituents of Human rights, identify the rights and how they affect you as an individual. It provides you with the practice in Legal reasoning, by way of self-assessment and Tutor-marked Assignments, the development and evolution of Human right.

Your thorough understanding of this course will expose you to the available provisions of Human Rights and the extent to which they can be enjoyed as citizens of Nigeria. How they can be enforced when breached by anybody.

1.2 Course Aims

The basic aim of this course is to enhance your knowledge about human rights and the constituents of Human rights. Help you to identify the rights and how they affect you as an individual and it will provide you with practice in legal reasoning.

1.3 Course Objectives

On successful completion of the course, you should be able to:

1. Identify the constituents of Human Rights
2. Describe the evolution of Human rights
3. Identify International mechanisms for protecting Human rights
4. Discuss the concept of Human Rights in contemporary Nigeria

5. List the Human Rights agencies Nigeria.
6. Discuss the various attempts made at the International Plane
7. Discuss the functions of various Commissions
8. Explain the optional protocol of CEDAW
9. List the content of the International Bill of Rights

10. Discuss the effects of ratification Bill of Rights
11. List all the contents of chapter 2 of the 1999 Constitution
12. Describe the Nigeria National Ethics
13. Explain the various objectives and how they work
14. Explain the disparity between fundamental rights and fundamental objectives and directive principles of state policy
15. Discuss the imminent and similarities between chapter 2 and 4 of the constitution
16. Define the concepts of judicial activism and locus standi
17. Explain the rules of interpretation
18. Explain the duties if state party under the commission
19. The membership of the Commission
20. Explain the petitioning procedure
21. List the content of chapter 4 of the constitution
22. Describe how these rights affect individuals
23. Explain the workings of these rights in Nigeria
24. Explain the court system in Nigeria
25. Define the term ouster clauses
26. Define the rationale for ouster clauses

1.4 Working through this Course

To complete this course you are required to read the study units, the recommended textbooks and other materials provided by the National Open University of Nigeria (NOUN). Most of the units contain self-assessment exercises, and at points in the course you are required to submit assignments for assessment purposes. At the end of this course there is a final examination. Stated below are the components of the course and what you are expected to do.

1.5 Course Material

1. Course Guide
2. Study Units
3. Textbooks and other Reference Sources
4. Assignment File
5. Presentation

In addition, you must obtain the text materials. They are provided by the NOUN. You may also be able to purchase the materials from the bookshops. Please, contact your tutor if you have problems in obtaining the text materials.

1.6 Study Units

There are twenty units in this course, as follows:

MODULE 1

Unit 1: The Notion of Human Rights

Unit 2: Historical Developments of Human Rights

Unit 3: Evolution of Human Rights in Nigeria

Unit 4: Other Rights Enforcement Agencies in Nigeria

Unit 5: International Discourse on Human Rights

MODULE 2

Unit 1: Content of Fundamental Objectives and Directive Principles of State Objectives

Unit 2: The Non-Justifiability of Fundamental Objectives and Directive Principles of State Policy

Unit 3: The African Charter on Human and Peoples Rights

Unit 4: Judicial Activism and Locus Standi in Nigeria

Unit 5: Minority Rights in Nigeria

MODULE 3

Unit 1: Right to life, Rights to dignity of Human person and personal liberty

Unit 2: Right to fair hearing

Unit 3: Right to private and family life, rights to freedom of thought conscience and religion, Right to freedom of expression and the press

Unit 4: Rights to peaceful Assembly & Association, Right to freedom of movement, freedom from Discrimination

Unit 5: Right to acquire property, compulsory acquisition of property, Restriction and derogation from Fundamental Rights

MODULE 4

Unit 1: Procedure for the Enforcement of Human Rights in Nigeria

Unit 2: The Roles of the Judiciary, Lawyer and Police in the enforcement of Human Rights in Nigeria

Unit 3: Legal Aid in Nigeria

Unit 4: Issues Raised in Promoting Human Rights in Contemporary Society:

1. Death Penalty
2. Abortion and Right of an unborn child

Unit 5: Ouster of Court Jurisdiction

Each unit contains a number of self-test. In general, these self-test questions you on the materials you have just covered or require you to apply it in some way and, assist

you gauge your progress as well as reinforcing your understanding of the material. Together with tutor-marked assignments, these will assist you in achieving the stated learning objectives of the individual units and of the Course.

1.7 Set Textbooks

1. OsitaNnamaniOgbu (1999) Human rights Law and Practice in Nigeria an Introduction.
2. KayodeEso (2008) Human Rights and Education
3. S.E Deko (2002) Fundamental Issues in Nigeria Constitutional Law
4. Joseph Ikogho (1999) Nigeria Constitution eith Topic Finder
5. EseMalemi (2006) The Nigeria Constitutional Law
6. Bob Osamor (2006) Fundamentals of Criminals Procedure in Nigeria
7. Olakanmi& Co (2007) Handbook on Human Rights

1.8 Assignment File

There are two aspects to the assessment of this course. In this file, you will find all the details of the work you must submit to your course facilitator for marking. The marks you obtain for these assignments will count towards the final mark you obtain for this course. Further information on assignment will be found in the Assignment file itself, and later in this Course Guide in the section on assessment.

There are many assignments for this course, with each unit having at least one assignment. These assignments are basically meant to assist you to understand the course.

1.9 Assessment Schedule

There are two aspects to the assessment of this course. First, are the tutor-marked assignments; second, is a written examination.

In tackling these assignments, you are expected to apply the information, knowledge and experience acquired during the course. The assignments must be submitted to your course facilitator for formal assessment in accordance with the deadlines stated in the Assessment File. The work you submit to your course facilitator will account for 30 per cent of your total course mark.

At the end of the course, you will need to sit for a final examination three hours duration. This examination will account for the 70 per cent of your total course marks.

1.10 Tutor Marked Assignments (TMAs)

There are 20 tutor-marked assignments in this course. You only need to submit all the assignments. The best four (i.e the highest four of the 20 assignments will be counted. Each assignment counts for 20 marks but on the average when the five assignments are put together, then each assignment will count 10% towards your total course mark. This implies that the total marks for the best four (4) assignments which would have been 100 marks will now be 30% of your total course mark.

The Assignments for the units in this course are contained in the Assignment File. You will be able to complete your assignments from the information and materials contained in your set books, reading and study units. However, it is always desirable

at this level of your education to research more widely, and demonstrate that you have a very broad and in-depth knowledge of the subject matter.

When each assignment is completed, send it together with a TMA (tutor-marked assignment) form to your Course Facilitator. Ensure that each assignment reaches your course facilitator before the assignment is due to discuss the possibility of an extension. Extensions will not be granted after the due date unless there are exceptional circumstances warranting such.

1.11 Final Examination and Grading

The final examination for CSS 432 Human Rights Provision in Nigeria will be of three hours' duration and have a value of 70% of the total course grade. The examination will consist of questions which reflect the practice exercises and tutor-marked assignments you have previously encountered. All areas of the course will be assessed. Use the time between the completion of the last unit and sitting for the examination, to revise the entire course. You may find it useful to review your tutor-marked assignments and comment and comment on them before the examination. The final examination covers information from all aspects of the course.

1.12 Course Marking Scheme

Table 1: Course marking scheme

ASSESSMENT	MARKS
Assignments	Best four marks of the Assignments @ 10% each (on the average) = 30% of course marks
Final examination	70% of overall course marks
Total	100% of course marks

1.13 How to get the most from this Course

In distance learning, the study units replace the university lecturer. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at your own pace, and at any time and place that suits you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way a lecturer might give you some reading to do, the study units tells you when to read, and which are your texts materials or set books. You are provided exercises to do at appropriate points, just as a lecturer might give you in an in-class exercise.

Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives. These objectives, lets you know what you should be able to do by the guide your study. The moment a unit is finished, you must go back and check whether you have achieved the set objectives. If this is made a habit, then you will significantly improve your chances of passing the course.

The main body of the unit guides you through the required reading from other sources. This will be either from your set books or from a reading section.

The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutorial facilitator. Remember that your tutorial facilitator's job is to help you. When you need assistance, do not hesitate to call ask your tutorial facilitator to provide it.

The following is a practical strategy for working through the course

1. Read this Course thoroughly, it is your first assignment.
2. Organize a Study Schedule. Design a 'Course Overview' to guide you and note the time you are expected to spend on each unit and how the assignments relate to the units. You need to gather all the information into one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide on and write down your own dates and schedule of work of each unit.
3. Once you have created your own study schedule, do everything to stay faithful to it. The major reason that students fail is that they get behind with their course work. If you get into difficulties with your schedule, please let your tutorial facilitator know before it is too late for help.
4. Turn to unit 1, and read the introduction and the objectives for the unit.
5. Assemble the study materials. You will need your set books and the unit you are studying at any point in time.
6. Work through the unit. As you work through it, you will know what sources to consult for further information.
7. Review the objectives for each unit to confirm that you have achieved them. If you are unsure of about any objectives review study material or consult your tutorial.
8. When you are confident that you have achieved a unit objective, you can then start on the next unit. Keep to your schedule. When the Assignment is returned, pay particular attention to your tutorial facilitator's comment, both on the tutor marked as well as written assignment. Consult your tutorial facilitator if you have any problems.
9. Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study materials or consult your tutor.
10. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to space your study so that you can keep yourself on schedule.
11. When you have submitted an assignment to your facilitator for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the Assignment is returned, Pay particular attention to your tutorial

facilitators comments, both on the tutor-marked assignment form and also the written comments on the ordinary assignments.

12. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the Course Guide)

1.14 Tutors and Tutorials

There are 15 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of these tutorials, together with the name and phone number of your tutorial facilitator, as soon as you are allocated a tutorial group.

Your tutorial facilitator will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and provide assistance to your progress and on any difficulties you might encounter and provide assistance to you during the course. You must mail your tutor marked assignments to your facilitator well before the due date (at least two working days are required). They will be marked by your tutorial facilitator and returned to you as soon as possible.

Do not hesitate to contact your tutorial facilitator by telephone, email, or discussion board. The following might be circumstances in which you will find help necessary. Contact your tutorial facilitator if:

- You do not understand any part of the study units or the assigned readings
- You have difficulties within the exercises.
- You have a question or problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutorials facilitator and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefits from course tutorials, prepare a question list before attending to them. You will learn quite a lot from participating in the discussions.

1.15 Summary This course guide has introduced you to every aspect of your course on Human Rights Provision in Nigeria. We wish you success in your studies.

MODULE 1: THE CONCEPT OF HUMAN RIGHTS

UNITS:

- (1) The Notion of human Rights**
- (2) Historical Development of Human Rights**
- (3) Evolution of Human Rights in Nigeria**
- (4) Other Rights Enforcement Agencies in Nigeria**
- (5) International Discourse on Human Rights.**

MODULE 2: THE FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLE OF STATE POLICY

UNITS:

- (1) Content of Fundamental Objectives and Directive Principles of State Policy.**
- (2) The Non-Justifiability of Fundamental Objectives and Directive Principles of State Policy.**
- (3) The Africa Charter on Human and people's Rights.**
- (4) Judicial Activism and Locus Stand in Nigeria.**
- (5) Minority Rights in Nigeria.**

MODULE 3: THE CONCEPT OF HUMAN RIGHTS

UNITS:

- (1) Right to life, Right to dignity of Human person and personal liberty.**
- (2) Right to fair hearing.**
- (3) Right to private and family life, Right to freedom of thought conscience and religion, Right to freedom of expression and the press.**
- (4) Right to peaceful Assembly & Association, Right to freedom of movement, freedom from Discrimination.**
- (5) Right to acquire property, compulsory acquisition of property, Restriction and derogation from Fundamental Rights.**

MODULE 4: ENFORCEMENT OF HUMAN RIGHT IN NIGERIA

UNITS:

- (1) Procedure for the Enforcement of Human Rights in Nigeria.**
- (2) The Roles of the Judiciary, Lawyer and Police in the Enforcement of Human Rights in Nigeria.**
- (3) Legal Aid in Nigeria.**
- (4) Issues Raised in Promoting Human Rights in Contemporary Society;**
 - 1. Death penalty**
 - 2. Abortion and Right of an unborn child**
- (5) Ouster of Court Jurisdiction.**

MODULE 1

THE CONCEPT OF HUMAN RIGHTS

- UNIT 1: The Notion of Human Rights**
- UNIT 2: Development of human Rights**
- UNIT 3: Evolution of human rights in Nigeria**
- UNIT 4: Other Rights Enforcement Agencies in Nigeria**
- UNIT 5: International Discourse on Human Rights.**

UNIT 1: THE CONCEPT OF HUMAN RIGHTS

CONTENTS

- 1.0 Introduction**
- 2.0 Objectives**
- 3.0 Main Concept**
 - 3.1 What Is Human Rights?**
 - 3.2 Human Rights and Fundamental Rights.**
 - 3.3 Who Are The Protectors Of Human Rights?**
 - 3.4 International Discourse on Human Rights.**
- 4.0 Conclusion**
- 5.0 Summary**
- 6.0 Tutor-Marked Assignment**
- 7.0 References/Further Reading**

1.0 INTRODUCTION

Today it has become an almost universally recognized and accepted concept that individuals possess certain definite political, civil, economic and social rights which governments have the duty and responsibility of protecting and enforcing such rights. The concept of Human Rights cannot be taken away from man because these are rights to which we are entitled because we are human. As such every man is entitled to such rights and cannot be eroded by another.

It is then very important as students that we know these rights and how they can be enforced when breached by anybody, private individuals or government officials.

In your study, you will be able to identify these rights and the extent to which they can be enjoyed as citizens of Nigeria to which these rights are available and their limitation as enshrined in the constitution and on the international plane.

THE OBJECTS OF THE MATERIAL ARE:

- To enhance your knowledge about human rights and the constituents of Human Rights.
- To identify the rights and how they affect you as an individual.
- To provide you with practice in legal reasoning, by way of self-assessment exercises and Tutor-Marked Assignments.

In units 2 and 3, you will learn about the Development and Evolution of Human Rights.

2.0 OBJECTIVES:

At the end of this unit, you should be able to;

- Identify the constituents of Human Rights.
- Describe the evolution of Human Rights.
- Identify International Mechanisms for protecting Human Rights.

3.0 MAIN CONTENT

3.1 THE NOTION OF HUMAN RIGHTS

The word 'right' is derived from the Latin word **rectus** which means that to which a person has a just and valid claim, whether it be land, a thing or the privilege of doing something or saying something. The notion of 'human

rights' which originally is referred to as 'the rights of man', each individual within the society possesses certain claims and rights that cannot be taken away and the major reason for individuals coming together to form a government, is for the protection and fostering of these rights and to allow for the continuity of humanity.

These rights are inherent in any human being simply because of humanity – the birth right of all mankind. The expression “human rights” in its entirety embraces those civil, political, economic social, cultural, groups, solidarity and developmental rights which are considered indispensable to a meaningful human existence.

On the other hand, legal human rights are those human rights that are enshrined in the constitution and guaranteed by positive law (*lex lata*), while moral human rights are claims which fall within the positive law (*lex feranda*).

These rights are inalienable to human. They are part of the very nature of a human being; he will become less than human. They are part of the very nature of a human being, and attach to all human beings everywhere in all societies. These rights are not creation of the Constitutions and other codes do not create human rights but declare and preserve existing rights. That is why the first generation human rights are couched in negative terms. For example, to say that no person shall be deprived of his personal liberty presupposes that personal liberty is an existing right. Without the observance of human rights, there can be no justice and the state is nothing but a prison camp. Any country where the Fundamental rights of the people are denied and repressed, the people cannot achieve true development and greatness without human rights there can be justice, constitution only declares and preserves existing rights. That is why the first generation human rights are framed in negative terms.

From history, based on this philosophy, different societies have struggled for and enshrined human rights on their understanding of this, in their constitutions and political tradition. Major examples of this, which have perhaps most substantially influenced later constitutional and legal developments all over the world, can be found in the Magna Carta of England (1215), the United States Declaration of independence (1776) and the French Declaration of the Rights of Man and the Citizen (1789).

3.2 HUMAN RIGHTS AND FUNDAMENTAL RIGHTS

Human Rights that have been guaranteed by a positive law are the enforceable human rights, while those not yet guaranteed are so bound on the ground of morality and remain as aspiration yet to be attained. It has been argued that

where the human rights are entrenched in a written constitution, they are called Fundamental Rights. This position received judicial assent in **Ransome Kuti and ors. V.A.G. Federation (1985) 8 NWLR (Part 6) P.211.**

In addition, Fundamental rights are those species of human rights which have been recognized and incorporated into the constitution of any nation. However, in view of this constitutional incorporation, Nigerian Jurists have drawn a line of difference between “human rights” and “Fundamental rights” see **uzoukwu & ors v. Ezeonu II & Ors. (1991) G N role (PT 200) 708 at 761** the court of Appeal (per Nasir P.C.A) said “Due to the development of constitutional Law in this field distinct difference has emerged between ‘Fundamental Rights’ and ‘Human Rights’. It may be recalled that human rights were derived from and out of the wider concept of national rights. They are rights which every civilized society must accept as belonging to each person as a human being. These were termed human rights. When the United Nations made its declaration, it was in respect of ‘Human Rights’ as it was envisaged that certain Rights belong to all human beings irrespective of citizenship, race, religion and so on. This has now formed part of International Law. Fundamental Rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country;

Nike Tobì, JCA as he then was has opined that human rights is more of an International concept while Fundamental rights is more of a municipal or domestic concept. According to his Lordship, the rights are either designated as human rights or Fundamental rights.

It should be noted that the International bills of rights – the Universal Declaration of Human Rights, the International covenant on Economic, social and cultural Rights and the international covenants on civil and political Right – use the expression “Fundamental Human Right” so also the charter.

3.3 THE PROTECTORS OF HUMAN RIGHTS

The courts or judge are the interpreters of the law and arbiters of disputes have a unique role to play in the protection of human rights.

The court is of paramount importance to the democracy of any society and protection of human rights.

OTHER HUMAN RIGHTS ENFORCEMENT AGENCIES IN NIGERIA ARE:

The National Human Rights Commission

The Public Complaints Commission

Some of the problems that hamper the effective operation of these commissions as grievance redress mechanism are;

- (1) The Commission is inadequately staffed
- (2) Lack of basic equipment and facilities
- (3) The decisions made are merely recommendations and have no binding effect.
- (4) Limited jurisdiction
- (5) The requirement of Exhaustion of administrative and legal remedies is a pre-action requirement that will shut out many complaints.
- (6) Lack of public awareness of its existence and activities.
- (7) The time limit is not reasonable in-view of the requirement of exhaustion of other remedies.

The Fundamental rights provisions are omnibus provisions covering every other area of law, as a breach of constitutional provisions can occur in any area of law. Therefore, necessitating the need to rely on a relevant Fundamental rights provision in pursuing a claim as the case may be, in a society based on rule of law, all laws and actions should be in conformity with the constitution. As such, all the co-operation of all persons is a necessity for protection of Humans rights.

4.0 CONCLUSION

We have had an introduction to the concept of Human rights and have discussed briefly about the concept. We have also identified that these rights are inalienable rights and are given by virtue of being human.

These rights are sacrosanct to humans and their violation questions the very existence of the person or individual whose rights are violated.

5.0 SUMMARY

Human rights is peculiar to humanity as the need while it should be given consideration by both the governed and the government as well as at the international level since it is the very essence on Man and will allow for the continuous existence of civil government and will not give room for such recent civil protects in countries like Egypt, Tunisia and Libya.

6.0 TUTOR – MARKED ASSIGNMENT

Human rights are inalienable rights, they are God- given rights hence they are sacrosanct. Discuss.

7.0 REFERENCE/FURTHER READING

- (1) Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria an Introduction.
- (2) Kayode Eso (2008) Human Rights and Education
- (3) S. E. Deko (2002) Fundamental Issues in Nigeria Constitutional Law.
- (4) Joseph Ikogho (1999) Nigerian Constitution with Topic Finder.
- (5) Ese Maleni (2006) The Nigerian Constitutional Law.
- (6) Bob Osamor (2008) Fundamentals of Criminal Procedure in Nigeria.
- (7) Olakanmi & Co (2007) Hand Book on Human Rights.

UNIT 2: HISTORICAL DEVELOPMENT OF HUMAN RIGHTS

CONTENTS

- 1.0 Introduction**
- 2.0 Objectives**
- 3.0 Main Concept**
 - 3.1 Historical Development**
 - 3.2 Universality of Human Rights.**
 - 3.3 Classes of Human Rights**
- 4.0 Conclusion**
- 5.0 Summary**
- 6.0 Tutor Marked Assignment**
- 7.0 References/Further Reading**

1.0 INTRODUCTION

You are already familiar with the concept of human rights, the distinction between Fundamental Rights and Human Rights and the agencies that are to protect Human Rights, how then did Human Right begin, when and how.

2.0 OBJECTIVES

- State the historical analysis of Human Rights
- Describe how Human Rights started in Nigeria

3.0 MAIN CONCEPT

(1) HISTORICAL DEVELOPMENT

The concept of Human Rights has its history in the natural law school. Although have been commonly called different names at different times in history such as divine rights, natural rights, natural Justice, moral rights, human rights, democratic freedoms, constitutional Rights, civil liberties and so on. Thus Professor Maurice Cranston defines human rights as a “twentieth century” name for what has been traditionally known as natural rights or in more exhilarating phrase rights of man.

F. E. Dowric went further to assert that natural rights are the more appropriate words for natural law. Fundamental rights, natural justice or natural rights started as a part of natural law.

Its principles were first formulated by Greek and Roman Philosophers of the stoic school, theologians and others through the ages. The Ancient Greek thinkers conceive natural law as a body of imperative rules imposed upon mankind by nature.

These philosophers and theologians were of the view that the world or universe was governed by law; divine law and positive law. They posited that positive law, that is manmade law, applied to given city or state, while divine law or natural law which includes natural rights applied to everybody everywhere in the world, that is, to the people of every country. They posited that natural law, which includes all the principles of natural justice, was apparent to the eye of reason.

Describing the universality and superiority of natural law, natural justice or human rights to positive law or manmade law Cicero said.

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.

Natural rights continued to develop through the centuries with jurists, scholars, statesmen and others lending support to it, and with the advent of political systems, constitutions and modern government, natural rights or human rights were enshrined in constitutions in order to give them constitutional protection and constitutional force as Fundamental Rights.

Locke led the English puritan revolution of 1688 – 1689. This revolution and resulting bill of rights provided a rationale for the wave of revolutionary agitation that swept America and France. Both countries borrowed largely from English experience and thought, especially as embodied in the writings of Locke, and in the case of America, Coke's commentary on Magna Carta and Blackstone's commentaries (1765). After excessive taxation by the English crown without their consent, the American colonies united against the crown and seceded from the British Empire. They successfully established a Republic which was founded on the view that the authority of the government derived from the people, not the king. Thomas Jefferson, who had studied Locke and Montesquieu and who asserted that this country men were a "free people claiming their rights as derived from the laws of nature and not as the gift of their government", gave poetic – eloquence to the theory of social contract in the Declaration of independence proclaimed by the thirteen American colonies on July 4, 1776:

We hold these truths to be self-evident that all men are created equal; that they are endowed by their creator with certain inalienable rights that among these are; life, liberty and the pursuit of happiness. That to secure these rights governments are instituted among men deriving their just powers from consent of the governed; that whenever any form of government became destructive of these ends, it is the right of the people to alter or to abolish it and to institute new government.

In spite of this pious declaration, the constitution of America as adopted in 1789 did not contain Fundamental Rights provisions. The bill of rights was incorporated into the constitution in 1791 in the form of the first ten amendments.

The French people followed such in 1789 when the representatives of the people assembled in the National Assembly, dispensed with the king, took control of the state and assumed – sovereignty. They considered that ignorance, neglect or contempt of human rights, are the causes of public misfortunes and corruption in Government and resolved to set forth in a solemn declaration these natural, imprescriptibly and inalienable rights.

It was the outbreak of the second world war provoked by a state imbued with the aggressive will for the domination of the world coupled with ruthless denial of human rights, that strengthened the conviction that the international recognition and protection of human rights was in accordance not only with an enlightened conception of the objects of

international law but also with an essential requirement of international peace, for regimes that deny these rights often go further to seek foreign domination and pursue belligerent foreign Policy. Adolph Hitler perpetrated atrocities against hundreds of thousands of individuals and groups and subsequently exterminated more than six million Jews based on conceived inferiority of some human beings, hence their elimination by the supposedly superior race. Shocked by these acts, the International community came to realize that human rights could no longer be left to domestic jurisdiction. Furthermore, with the dropping of the atomic bomb in the cities of Hiroshima and Nagasaki came, the prospects of the end of mankind. It is then obvious that it is only when human rights are respected that democracy will be secure, and the chances of war will be remote.

The term “human rights” appeared in the public domain for the first time in the years 1942 to 1944 in the course of internal policy discussions in the United States on the subject of the principles on which the post-war organization would be based. The expression became an everyday parlance only after the Second World War and the founding of the United Nations in 1945. It replaces the phrase ‘natural rights’ which fell into disfavour in part because the concept of natural law to which it was linked had become a subject of great controversy and the later phrase, the rights of man was universally understood to include the rights of women.

The Charter of the United Nations (1945) begins by reaffirming “faith in fundamental human rights, in the dignity and worth of the human or persons, in the equal rights of men and women and of nations large and small. It states that the purpose of the United Nations are among other things, “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples (and) to achieve international co-operation in promoting and encouraging freedoms for all without destination as to role, sex, language or religion”. And all members ‘pledge themselves to take joint and separate action in co-operation with the organization for the achievement of these and related ends”. Never the less attempts to include a Bill of Rights in the Charter failed. Rather it was agreed that a Bill of Rights would be subsequently considered for adoption.

Recognition of human rights received its greatest impetus on 10th December, 1948, when the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. The prayer of Thomas Paine was thus hard. In dedicating the Rights of man to George Washington, Paine had prayed.... “that the rights of man may become

as universal as your benevolence may wish and that you may enjoy the happiness of seeing the New world regenerate the old... though the Universal Declaration of Human Rights did not, at the time it was adopted, impose any legal aspiration to which member states strive to attain.

It took the world eighteen more years after the Universal Declarations to prepare and adopt other bills of right ideological and political differences – human rights versus national sovereignty individual liberty versus communal needs – prevented a consensus. The dispute revolved around the question: whether economic social and cultural interest should be recognized as rights at par with the civil and political rights. The capitalist countries – the United States of America and her allies – were opposed to the uplifting of the status of economic social and cultural rights, to a position of equality with the civil and political rights. The communist countries – the former Soviet Union and her allies – held contrary position, and were supported by the newly independent states from the third world. To resolve the statement, the drafters agreed to prepare two covenants, one dealing with civil and political rights, while the other one would deal with economic, social and cultural rights, giving states the option to ratify either or both of them.

Consequently, on 16th December, 1966, the international covenant on Economic, social and cultural Rights and the International covenant on civil and political Rights were adopted. The peculiar aspect of the African, Charter on Human and peoples' Rights is the inclusion of peoples' rights in this document. This indicates a major departure from the traditional format adopted by most international instruments on human rights document in which the term 'peoples' as applied in connection with rights. As far back as 1990, the decree of the French constituent Assembly made reference to both rights of man and rights of peoples.

(2) **HUMAN RIGHTS ARE UNIVERSAL**

In the world is born with human rights. Human Rights are what make a person a human being, without them a human being is completely debased. Human Rights are what enables a person to continue his humanity without human rights life is meaningless, worthless and a mere shadow. Human Rights are common to all mankind. They are the basic requirements for meaningful life, every civilized state is expected to ensure for its citizens. Human Rights are universal. Describing natural rights or human rights, M. Cranston said that human rights are;

“Not the particular privileges of citizens of certain states, but something to which every human being everywhere, is entitled”.

However, Human Rights are not the creations or entitlement of some special societies as against others. However, all over the world, some societies or countries have been more forthcoming, eager has willing to articulate or give expression to them, recognize and give them force of law by enactment into law, observe, enforce and protect human rights than other countries. Thus while some are willing to recognize, enforce and protect human rights, other countries have been slow, and are not eager to observe and protect human rights.

The observance of human rights amount to justice and a state where these rights are not enforced will be like a prison camp. Any country where the fundamental rights of the people are denied and repressed, the people cannot achieve their full potentials, they cannot be truly happy and such a country cannot achieve true development and greatness.

Fundamental rights are rights which impose limitation on the government, especially the executive arm of government, and they are accordingly easily justifiable stressing the international nature and importance of human rights, Pro Itsejuwa saying SAN said; So important are human rights that the human rights of the individual are now recognized under international law.

(3) **CLASSES OF HUMAN RIGHTS**

Several categories of classifications of human rights have been adopted by various scholars. Human Rights have been classified into personal rights, political and moral rights, proprietary rights, procedural rights and equality rights. Personal rights include rights to life, to dignity of human person, the right to personal liberty and right to freedom of expression, freedom of Association and Assembly, freedom of conscience and religion. Proprietary rights include rights to property and privacy. Procedural (due process) rights include rights to fair hearing and to have one's cause heard. Equality rights include the right to freedom from discrimination.

Human rights have also been classified according to the period in which they emerged. The concept to human rights is not static but dynamic. There are so far three marked stages in the development of human rights. These stages have been called “generations”. Correspondingly,

we have three generations of human rights. This classification was advanced by the French Jurist Karel Rasak.

The first generation rights – the civil and political rights emerged from the ashes of the English, American and French revolution. They are aimed at securing the liberty of the individual from the arbitrary actions of the state. Included in this category of rights are the claim rights set out in Article 2-21 of the Universal Declaration of Human Rights. Also belonging to this category are all the rights guaranteed under Chapter IV of the 1999 constitution of Nigeria. These rights are called negative rights because they entail negative obligations on Government not to interfere with the exercise of these rights by individuals.

What is constant in this first generation conception is the notion of liberty, a shield that safeguards the individual alone and in association with others against the abuse and misuse of political authority the second generation of rights corresponds to economic, social and cultural rights. These rights emerged with the Russian revolution and were echoed in the welfare concepts which developed in the west as a response to the uses and abuses of capitalism which tolerated the exploitation of the working classes and colonial peoples.

Historically, it is a counter point to the first generation of civil and political rights, with human rights conceived more in positive rights than negative (“freedom from”) terms. This category of rights is predicated on the assertion that the attainment of a certain level of social and economic living standard is a necessary condition for the enjoyment of the negative rights. These rights therefore entail positive Obligations on government to provide the living conditions without which the negative rights – cannot be enjoyed. This class of rights is contained in articles 22-27 of the Universal Declaration of Human Rights and Chapter II of the 1999 Constitution of Nigeria (Fundamental objectives and Directive principles of state policy). The African charter on Human and peoples ‘Rights also guarantees some second generation human Rights. And the International covenant on Economics, social and cultural Rights is essentially concerned with this category of rights.

The third generation of solidarity rights is a response to the progressive unfolding phenomenon of global interdependence. They are products of the rise and decline of the Nation – state in the last half of the twentieth century foreshadowed in Article 28 of the Universal Declaration of Human Rights which proclaims that “everyone is entitled to a social and International order in which the rights set forth in this Declaration can be fully realized, some of these rights reflect the emergence of third

world nationalism and its demand for a global redistribution of power, wealth and other important values. The rights in this category include the right to development, right to clean and healthy environment; and the right to International peace and security. These rights require international cooperation for their realization. The idea is that the economic development of under development countries is necessary for their social well being and political stability, without which they cannot ensure, effectively, the civil, political, economic, social and cultural rights. The general concern felt in many countries and International organizations about the need for the protection of the environment.

There is however controversy over the notion of three generation of human rights. There is no general acceptance of three categories of rights. For instance, proponents of the first generation human rights do not include the secondary and third generation rights in their definition of human rights. First generation proponents inspired by the natural law and laissez faire traditions, are partisan to the view that human rights are inherently independent of civil society and are individualistic. To them, liberty is conceived negatively as absence of restraint.

The proponents of the primary or the negative rights contend that man is first and foremost a human being and only secondarily a social being. According to Professor Ben Nwabueze, human (negative) rights constitute the intrinsic attributes of body, mind and soul and to enable them to be fully realized and developed.

Some schools of thought have expressed the fear that emphasis second generation rights might lead to the subordination of the first generation rights to the former. On the other hand defenders of second and third generation rights contend that the first generation human rights are indifferent to the material needs of man. To them, the basic necessities of life, food, shelter and clothing – fall within the second generation. Human rights, they however, as sign such rights a low status and therefore treat them as long-term goals that will come to pass only with Fundamental economic and social transformation to ensure the welfare of all.

(4) SELF ASSESSMENT EXERCISE

- 1) The right to life and right to privacy how realizable are they without the second generation rights.
- 2) Explain the distinctions between the first, second and third generation of rights.

4.0 CONCLUSION

We have learnt about the various classifications and dimensions of rights however it need be said that there are divergent views on the existence, inherent universality or relativity of human rights while others contend that their precepts are not universal but relative, other schools of thought posit yet quite different positions.

5.0 SUMMARY

We must move away from the intricacies involved in the classification and dimension of human rights, the nation of its universality and even its historical developments and endeavour to consider these generation rights from a liberal point of view so as to appreciate the significance of these rights to nationhood as whole.

6.0 TUTOR – MARKED ASSIGNMENT

- 1) Discuss the various classifications of rights.
- 2) Human rights irrespective of the generation are a concept common to man. Explain.

7.0 REFERENCES/FURTHER READING

- (1) Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria an Introduction.
- (2) Kayode Eso (2008) Human Rights and Education
- (3) S. E. Deko (2002) Fundamental Issues in Nigeria Constitutional Law.
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UNIT 3: EVOLUTION OF HUMAN RIGHTS IN NIGERIA

CONTENTS

- 1.0 Introduction**
- 2.0 Objectives**
- 3.0 Main Concept**
 - 3.1 Evolution of Human Rights in Nigeria**
 - 3.2 The Crisis of Human Rights in Contemporary Nigeria**
- 4.0 Conclusion**
- 5.0 Summary**
- 6.0 Tutor - Marked Assignment**
- 7.0 References/Further Reading**

1.0 INTRODUCTION

We have looked at human right historically on an International plane and now we want to discuss the Nigerian conceptualization of human rights that is how it started IN Nigeria the antecedent problems and other agencies involved in the enforcement of human rights in Nigeria. The various international attempts to protect human rights.

2.0 OBJECTIVES

At the end of this unit, you should be able to;

- Discuss the concept of Human Rights in Nigeria.
- State the problems of Human Rights in contemporary Nigeria.

- List other Human Rights agencies in Nigeria.
- Discuss the various attempts made at the International plane.

3.0 MAIN CONTENT

3.1 EVOLUTION OF HUMAN RIGHTS IN NIGERIA

According to Justice Chukwudifu Akunne Oputa, a retired Supreme Court of Nigeria Justice, we in the common law countries have a common political and legal inheritance. We are co-heirs to the Magna Carta of 1215, the petition of rights of 1628 and the Bill of Rights 1689. One of Britain's legacies to the Commonwealth is the libertarian tradition of the common law and its system of justice. During the colonial era, there were legislative encroachments administer a colonial territory. For instance the law of sedition had to be made a little harsher to guard against the possibility of an articulate section of the population to incite the populace to rebellion. Apart from such cases, civil liberties were up to time to internal self-government enjoyed in the colonial territories.

Despite the provisions of civil liberties contained in the aforementioned documents, the colonial masters deliberately failed to inculcate fundamental rights in any of the various constitutions under which Nigeria was administered all through the colonial dispensation.

In accordance to the Natural law theorists, human rights is viewed as an abstract concept, they are the specie of rights that are inherent in all human being and are regarded as inalienable and immutable see. **Chief (Mrs.) Olufunmilayo Ransome – Kuti & Ors V Attorney General of the Federation** (1985) 6 SC 245 at 276 – 277.

When independence was ripe, a question that agitated the minds of people was how to preserve the libertarian heritage in the face of ethnic rivalry and ambition to dominate which was the major concern of Nigerian politics. The 1951 Macpherson constitution of Nigeria which introduced representative government in Nigeria provided for one central and three regional governments. And there were three major political parties corresponding to the three regions. The Northern People's Congress (NPC) was the dominant party in the North and supporters were the Hausa, Fulanis and Kanuris. In the West, the Action Group (AG) held sway and its main supporters were the Yoruba who are by far the largest tribe in the region.

The National Council of Nigeria and Camerouns (NCNC) which was conceived as a broad – based national party later degenerated into party for the Igbos, the dominant tribe in the Eastern Region.

There was unhealthy rivalry among those parties in 1953. There were crises at the centre arising from the motion for self – government in 1956 sponsored by AG and supported by the NCNC but vehemently opposed by the NPC. This led to demonstration in Lagos during which the leaders of the NPC were booed and jeered at. There was a counter action by supporters of the NPC against the AG members when they attempted to campaign in the North. As a result of these and other developments, the colonial secretary invited the political leaders to London for a review of the constitution. The AG allied with NCNC and proposed an amendment to the constitution which will incorporate a declaration of certain basic human rights. The aim being that such measure would allow them to campaign freely in the North. But the proposal was turned down at the London conference in 1953 by the colonial secretary.

The conference culminated in the 1954 Lyttleton Constitution which made the Regions autonomous certain minority groups within the Regions apprehensive of being dominated by the major ethnic groups started agitating for the own states.

Another conference was convened in 1957. At the 1957 – Constitutional Conference, the AG led a number of minority who demanded their recognition as separate regions for ethnic minority groups the party also raised the issue of the incorporation of a Bill of rights in the Constitution. Both measures were calculated to weaken the predominance of the NPC in the North and to allow other parties campaign in the North. The colonial Secretary constituted a commission headed by Sir Henry Willink to look into the fears of the minorities and the means of allaying them. The commission rejected the demand for the creation of more regions and, though not convinced of the constitutional guarantee of rights, nevertheless recommended a long list of human rights for inclusion in subsequent Nigerian Constitutions. In the opinion of the commission, the sobering fact is that any government determined to abandon the democratic course could always find ways of violating such rights, but still, their conclusion in the constitution, it is hoped would be of great value in preventing a steady deterioration in standards of freedom and the unobstructive encroachment of government on individual rights. The Commission's recommendations on human rights were accepted; the recommendations consequently formed Chapter III of both the independence constitution of 1960 and the Republican constitution of 1963.

The 1979 Constitution made advancement by the inclusion of Chapter II that is Fundamental Rights contained in Chapter IV. The aborted 1989 constitution

contained same so also the 1999 constitution however while the former is non Justifiable the later is Justifiable with all antecedent legal rights and remedies. The claim that fundamental human rights was entrenched in the Nigerian Constitution so as to protect ethnic minorities from domination will be a fowl cry as the Bill of Rights that was inculcated into the 1960 constitution was to a large extent lifted from the European Convention on Human Rights as well as the constitutions of Pakistan and Malaysia.

In conclusion, since inception till date, save for the inclusion of Directive Principles of State Policy in 1979 Constitution till date, our law makers have not made frantic effort to enlarge the scope of the fundamental rights provision in Nigeria even when there are improvement globally.

3.2 THE CRISES OF HUMAN RIGHTS IN CONTEMPORARY NIGERIA

For some time now, Nigeria has been facing a crisis of human rights with the resultant effect on the country being rated as having very poor human rights records with series of human rights violation mostly during the military regimes of Ibrahim Babangida and Sanni Abacha, it needs be said that ever since inception of democracy in 1999 though not eradicated, has been reduced to the barest minimum.

The Second Republic was modeled after the American system. That is a presidential system which was based on the principles of separation of Powers.

However, after about four years of the experimentation it was vividly clear that Nigeria was an infertile soil for the presidential system of government. Although having experienced various systems of government, we are back to the presidential system of government anchored on the tenets of separation of power.

Worthy to note is the Shugaba's case, wherein Alhaji Shugaba Darma who was the majority leader of the Borno State House of Assembly was deported and declared a prohibited immigrant by the Federal Minister of Internal Affairs. The deportation was a violation of his human rights (freedom of movement) and right to liberty and a flagrant disregard to the constitutions. However, the Shagari regime was overthrown in a coup d'tat on 31st December, 1995 with Major General Muhammadu Buhari, becoming Head of State.

3.3 OTHER INSTANCES OF HUMAN RIGHTS VIOLATION DURING THE SECOND REPUBLIC INCLUDE;

- a) Refusal by the Inspector General of Police in 1983 to be served service of court processes from the High Court of Lagos.
- b) Intimidation of the Judiciary.

The Buhari/Idiagbon regime on seizing power enacted the following Decrees; Decree No.1 of 1984, Decree No.2 of 1984, No.3 of 1984, Decree No.4 of 1984. Others include Decree No. 3, 7, 8, 20, 9, 16, 17 all the total draconian degrees had negative effect on our human rights rating at the international plain as they either suspended or modified the rights.

The above enactments were not limited to the Military reign of Buhari alone; other successive Military regimes followed the same procedure by enacting draconian laws without following due process.

4.0 CONCLUSION

This unit is based on the evolution of human rights in Nigeria and this development is twined with Nigeria's political development and this can account for the high spate of human rights development in Nigeria especially during the military regimes wherein the various violations enhanced human rights development in Nigeria.

5.0 SUMMARY

The evolution of human rights in Nigeria is incomplete without a preview into Nigeria political terrain considering the clamour for minority right during the colonial era, the various ranglings in the regions and the party system all led to the development of human rights in Nigeria.

6.0 TUTOR – MARKED ASSIGNMENT

- Discuss the human rights crises in contemporary times.
- Explain the evolution of human rights in Nigeria.

7.0 REFERENCES/FURTHER READING

- (1) Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria an Introduction.
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UNIT 4 OTHER RIGHT ENFORCEMENT AGENCIES IN NIGERIA

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 3.1 National Human Rights Commission
- 3.2 The Public Complaint Commission
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

The creation of these commissions was necessitated by the numerous problems encountered by the society as a whole, although it was a child of a military regime their creation should however be applauded as this was another milestone in the progress achieved by human rights in Nigeria. As the Courts seems to be over crowded with so many cases and these are alternatives to the delays suffered by litigants in our Court system.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Discuss the functions of the various Commissions
- Explain the membership of the various Commissions

3.0 MAIN CONTENTS

3.1 NATIONAL HUMAN RIGHTS COMMISSION

In the face of mounting Local and International criticism and sanctions in some cases for wanton human rights violations the general Sanni Abacha's regime in 1995 established the National Human Rights Commission. Pursuant to Decree 22 of 1995, The NHRC commission has a Governing Council vested with the responsibility of discharging the functions of the Commission. The council consists of a Chairman, a representative each of the Federal Ministry of Justice, Foreign Affairs and Internal Affairs, three representatives of registered human rights organization in Nigeria, two legal practitioners, three representatives of the media, three other persons to represent a variety of interests and an executive secretary. The members of the committee were appointed by the Head of State on the recommendation of Attorney general of the Federation and thus removed.

The Functions and Powers of the Commission are contained in Sections of the Decree

- (1) The commission is mandated to deal with all matters relating to the protection of human rights as guaranteed by the constitution of the Federal Republic of Nigeria, the African Charter on Human and People's Rights the United Nations Charter and universal Declaration of Human Rights and other International Treaties on Human Rights to which Nigeria is a signatory.
- (2) To monitor and investigate all cases of alleged human rights violation in Nigeria and make appropriate recommendation.
- (3) To undertake studies on all matters pertaining to human rights and assist the Federal Government in the formulation of appropriate policies on the guarantee of human rights' public reports on human rights for sermons, workshops and conferences on Human rights.
- (4) Also empowered to participate in all International activities relating to the promotion and protection of human rights, maintain a library, collect data and disseminate information and materials on human rights generally.

PROBLEMS OF THE COMMISSION

- (1) The Commission lacks the power either to render binding decisions or to compel action or co-operation from individuals or public and private agencies recommendations.
- (2) The commission has no financial autonomy
- (3) Another issue is the fact that representatives of the governments are members of the commission.

The poor performance of the commission so far, coupled with the circumstances of its birth, has created doubts about the usefulness of the Commission. Curiously, the 1999 Constitution made no provision in respect of the Commission. It is submitted however, that given a proper legal framework, the National Human Rights Commission is a desirable development.

3.2 THE PUBLIC COMPLAINT COMMISSION

Is a Government Institution created to examine complaints of inefficient administration, corruption and unjustified treatment by over 3 countries public authorities or official against citizens?

Modern governments have grown in complexity and affect people's lives in diverse ways. This has led to numerous cases of administrative injustices which can best be remedied through the ombudsman's office. The ombudsman has come to fight the cause of the unfortunate who are victims of unfair actions of the administration in circumstances that they cannot go to court. The rationale behind the establishment of this grievance redress system stems from the background that the various forms of redress provided by the legal system to check the excesses of the administration are inadequate because they are fraught with a number of defects that make the realization of full justice impossible in most cases. The limitations in the formal system of administration of justice through the courts which justify the establishment of the ombudsmen include the technical and formalized system of judicial settlement as opposed to the informal and flexible system of the ombudsmen. In addition, court processes are protracted and very expensive, and victory may be pyrrhic.

Judicial settlement is usually not amicable and may produce a victor and vanquished. In some cases, the amount in dispute may be too infinitesimal to justify going to court. And an administrative action may be legal but unfair.

There is therefore the need for the ombudsmen to exercise control over the activities of government officials with little effort and less expense on the part of the Government and thereby supplement the various legal and internal administrative devices which have failed to adequately guarantee administrative justice.

The ombudsman as an institution started its life from Sweden since 1809. It was from there transplanted to Denmark and other neighboring countries.

In 1971, Finland established the office of Ombudsman. In 1962, New Zealand became the first English speaking country to establish the office of the ombudsmen outside the Scandinavian countries. In 1996, Tanzania, established the permanent commission of inquiring, while in 1967 Britain established the parliamentary commissioner for Administration. By 1995 about 75 countries of the world have established some sort of public watch – dog to protect its citizens from administrative injustice/maladministration.

The public complaints commission in Nigeria was established under Decree 31 of 1975 (amended by Decree 21 of 1979) and also known as Ombudsman. Although 1975 was the year the commission was established Nationwide by the Federal Military Government, it should however be noted that historical counterparts to the commission predated the October 1975 enactment. For instance, while Edict No. 5 of 1st April 1974 established the Kaduna State public complaint Bureau. The call for the institution of the ombudsman in Nigeria was made in the Report of the Public service panel (Udorji report).

The Following are the Powers and Duties of the Commission

- (1) The Commission is empowered to investigate either on his own initiative or following complaints lodged before him by any person, any administrative action taken by; any Department or Ministry of the Federal State or Local Government Authority etc.
- (2) The commission has access to all information necessary for the efficient performance of its duties under the Act and for this purpose may visit and inspect any premises belonging to any person or body.
- (3) The commission is empowered to ensure that all administrative actions by any person or body within its jurisdiction will not result in the commitment of any of injustice against any citizen of Nigeria or any other person resident in Nigeria.

It is important to note that in exercise of the powers conferred upon a commissioner, he shall not be subject to the direction of any body or person

required by a commissioner to furnish information to comply with such within 30 days.

The Commissioner however has no Powers to Investigate Matters Contained in Section 6(1) and they include:

- (1) Matters clearly outside its terms of reference that are pending before any court of law in Nigeria, National Assembly the National Council of ministers or of State.
- (2) Matters relating to anything done or purported to be done in respect of any member of the Armed Forces in Nigeria or the Nigeria Police force under the Nigerian Army Act, the Navy Act, the Air Force Act or the Police Act.
- (3) Matters in which the complainant on the opinion of the commissioner have not exhausted all available legal or administrative procedures or relating to any act or thing done before 29th July, 1975 or where the complainant has no personal interest.

PROBLEMS OF THE COMMISSION

The following problems hamper the effective operations of the public complaints commission as grievance redress mechanism

- (1) The commission is inadequately staffed
- (2) It lacks basic office equipment and facilities
- (3) It does not give binding decisions only recommendation and its jurisdiction is limited, that is, can only investigate and make recommendations.
- (4) The requirement of exhaustion will shut and many complaints.
- (5) The limitation period is not reasonable in view of the requirement of exhaustion of other remedies.
- (6) Lack of public awareness of its existence and activities.
- (7) Lack Secrecy

4.0 CONCLUSION

The National Human Rights Commission and the public complaint commission are the other various bodies saddled with the responsibility of enforcing human rights although not judicially they have been an effective mechanism taking cognizance of some of the defects of the judicial means.

5.0 SUMMARY

These bodies are not without their problems but if well managed by the appropriate authorities will enhance the enforcement of Human Rights in Nigeria curbing all the difficulties encountered in adopting the judicial enforcement.

6.0 TUTOR MARKED ASSIGNMENT

1. Discuss some of the problems of the Public Complaint Commission
2. How effective are these Commissions to the Court system?

7.0 REFERENCES/FURTHER READING

- (1) Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria an Introduction.
- (2) Kayode Eso (2008) Human Rights and Education
- (3) S.E. Deko (2002) Fundamental Issues in Nigeria Constitutional Law
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UNIT 5 INTERNATIONAL DISCOURSE ON HUMAN RIGHTS

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 The United Nations and Human Rights
 - 3.2 The United Nations Charter
 - 3.3 The International Bill of Rights
 - 3.4 Cedaw
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

International Law has brought a lot of development to the concept of human rights and the various International treaties had improved the world view of human rights. And the various protocols had greatly affected the domestic laws of the various member States. The International Bills of rights have brought about unification of the world system.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

1. Explain the optional protocol of CEDAW.
2. List the content of the International Bill of Rights.
3. Discuss the effects of ratification of the International Bill of Rights.

3.0 MAIN CONTENT

3.1 THE UNITED NATIONS AND HUMAN RIGHTS

Due to the emergence of new states with their attendant sovereignty, the states thus possess the basic features of independent states such as territory, government and in essence the right to determine their own polices both domestic and foreign. International relations was then required so as to guide the relationship between these sovereign states. Thus the emergence of International law whose subjects are sovereign nations.

The outcry for the need to protect human rights on the International plane was adduced to the flagrant disregard for human values and concerns, for instance slavery, world war in the 19th century. To this end treaties were signed thus making illegal the activities of slave trade. The 1919 treaty of Versailles protected minority groups and guaranteed certain rights without discrimination as to language, nationality religion and birth.

The outbreak of the second world war and the ills of the Nazi Germany caused total breakdown of law resulting into a state of anarchy where denial of rights was the order of the day, instances of the denial was the 6 million Jews exterminated in gas chambers on the conception that some human beings are inferior, the atomic bomb incidence in Hiroshima and Nagasaki all led to the calmour for a new world order based on universal respect for human dignity. International law seeks international peace which can be achieved only through the protection of human rights.

3.2 **THE UNITED NATIONS CHARTER**

The United Nations aimed at protecting human rights for all without bias as to sex, race, language or religion. This thus ushered in a new order clearly different from the domination tendency obtainable in the early 19th century. Hence since 1945, the concept of human rights had taken a new dimension attracting sanctions and legitimacy at the international level.

THE UNITED NATIONS

The United Nations Organisation came into existence in 1945, whose emergence was as a result of the failure of the League of Nations formed in 1919, after the First World War (1914 – 1918), so as to prevent similar re-occurrence Second World War (1939 – 1945). The following Nations, U.S.A, Britain, China, Soviet Union, France and about 50 other States came together to draw a charter on the 24th of October 1945, at Dumbarton oaks San Francisco in U.S.A.

The essence of this charter was the desire to maintain peace and security among Nations of the world. Membership into the U.N.O which is a monolithic body is open. Nigeria was the 99th member and was so admitted after her independence.

The United Nations Charter thus affirmed “faith in fundamental human rights, in the dignity and worth of human persons, in the equal rights of men and women and of Nations large and small”. Article 1, paragraph, 3 provides for

promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. The General Assembly is also empowered to initiate studies and make recommendations for the purpose of assisting in realizing human rights and fundamental freedom.

This Fundamental achievement of the United Nations Charter was reached through the lobbying efforts of the delegates and 42 representatives of the various private organizations drafted into the writing session of the United Nations at San Francisco as consultant. Again the effort of this Charter, have brought individual rights under the purview of international law contrary to the old belief that the concept affects only sovereign states.

Some of the problems that hamper the United Nations Charter progress are:

- (i) It was feared that international bill of rights will remove the individual from the authority of the state.
- (ii) That the UN should be confined to promulgating rights while enforcement was a matter of purely domestic concern.

This would later become the greatest achievement of the International community in regard to the protection of human rights.

3.3 **THE INTERNATIONAL BILL OF RIGHTS**

The UDHR (Universal Declaration of Human Rights); ICCPR – International Covenant on Civil and Political Rights and ICESCR – International Covenant on Economic, Social and Cultural Rights are called the bill of rights.

(a) **THE UNIVERSAL DECLARATION OF HUMAN RIGHTS**

The Commission on Human Rights was established in 1964 under Article 68, ECOSOC (Economic and Social Council) and was saddled with the primary duty of drafting an International bill or rights. This commission comprises of eighteen representatives of different countries under the Chairmanship of Eleanor Roosevelt.

The United Nations Charter on human rights provision having been enmeshed in controversies bordering on the extent of International concern for human rights to derogate from the sovereignty of nations. There were divergent opinions on certain clauses of the charter as a result of which in order to salvage the bill, it was divided into:

- (a) A Declaration
- (b) A Covenant and

(c) Machinery of Implementation

The declaration was intended to be a mere statement of principles and declarations which the General Assembly could adopt; while the covenant will contain legally binding obligations based on the declaration, with optional protocols which nation states have the choice of adopting.

The General Assembly adopted the universal Declaration by a vote of forty-eight to zero, with eight abstentions: the Soviet Union, South Africa the Ukraine, Czechoslovakia, Poland, Yugoslavia and Saudi Arabia having received the final draft of the declaration Late 1948.

The universal Declaration provided for the first and second generation human rights, while the first generation rights include, the right to life, liberty and security of person, freedom from torture, cruel, in human or degrading treatment; recognition as a person; remedy for acts violating fundamental rights, liberty; fair hearing; privacy; movement; asylum, and nationality; property; freedom of thought; conscience and religion, expression; assembly and association; participate in government and equal access to public service. (Articles 1 – Articles 21).

The second generation rights encapsulate; social security to free choice of employment to work under just and favourable conditions rest and leisure, standard of having adequate for health and well being, education, freely to participate etc.

The universal Declaration, human rights instruments serve as a vision of the international community, which further states that the “..... 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.

This provision recognizes the equal and inalienable rights of all members of the human race is in consonance with the natural law schools of thought of the origin of human rights.

In essence, the Universal Declaration of Human Rights (UDHR) Covers Civil and Political rights, economic, social and cultural rights as well as solidarity or group rights.

The United Nations established the Economic and Social Council which under the authority of the General Assembly is to promote higher standards of living, full employment, and conditions of economic and social progress and development. Another concern of the council is the promotion of “Universal respect for, and observance of human rights and fundamental freedoms without

discrimination as to race, sex, language or religions over the years, the UDHR had given birth to other International human rights. Instruments which provide for specific areas that is, concentration on specific issues, these are:

- (a) International Covenant on Civil and Political Rights 1966
- (b) International Covenant on Economic, Social and Cultural Rights, 1966
- (c) Convention on the Elimination of Discrimination against Women (CEDAW), 1979
- (d) Convention on the Rights of the child
- (e) Convention against Torture (CAT)

The various continents have taken due hence the African charter on Human and People's Rights 1981, European convention on Human Rights, 1950, later American Convention on Human Rights.

Human rights on the International plane from the emergence of the United Nation UDHR in 1945 had made substantial progress, such that the clamour on Sovereignty has shifted to the rights of individuals, the doctrine of non-Interference in the Internal affairs of nation States is now replaced with the call of duty on the International Community to protect all and sundry irrespective of language, sex, religion.

The following happenings have however attracted international outcry and condemnation, the extra judicial execution by the despotic government of General Sani Abacha of Ken Saro Wiwa, the Clamp – down by the Chinese Government on the rights of Tibetans, Charles Taylor, the former leader of Liberia went on trial for his acts of violation of human rights while in office, recent issues attracting international outcry are the crises in Cote d' Ivore, Libya etc.

It is the increasing recognition of the above that led to the establishment of the International Criminal Court which was establish by the Rome State and has commenced sitting at the Hague.

(b) **THE INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS (ICCPR)**

The international Covenant on Civil and Political rights was adopted by the General Assembly on 16 December 1966 and came into force on 23rd March, 1976. The covenant recognizes the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, Justice and peace in the world.

The covenant adopts the civil and political rights in the universal declaration and further recognizes states rights as against the position of the universal

Declaration which was based on individual rights. The rights to property and asylum are omitted from the 51 Articles of the covenant.

(c) **PROTOCOLS TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

On December 16, 1966, the General Assembly adopted the protocol and entered into force on 23rd March 1976 in order to achieve the purpose of international covenant on civil and political Rights and the implementation of its provisions, the two optional protocols were set up to enable individuals relay cases of violations of rights as enshrined in the covenant. Article 2 of the 1st optional protocol is to the effect that aggrieved individuals must have exhausted all available domestic remedies may then submit a written communication to the committee. It should be noted that the committee will not consider any communication which is anonymous or which amounts to an abuse of the right of submission.

The General Assembly adopted the second optional protocol in 1989 and entered into force on 23rd March 1996, the second optional protocol was aimed at abolishing death penalty and this is based on the belief that death penalty contributes to the enhancement of human dignity and progressive development of the right to life.

Nigeria has ratified the international covenant on civil and political right but has not ratified any of the optional protocols.

(d) **THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

The (ICESCR) provides on a broader plane for the economic, social and cultural rights as enshrined in the universal Declaration and also added new rights such as the right to strike Article 8(d), right to social insurance Article 9, right to mental health and further provided for maternity leave for pregnant women and stipulates minimum age limits for child labourers Article 10.

The (ICESCR) provides for futuristic implementation depending on the economic resources of state partners while the supervisory responsibility is rested on the committee on Economic, social and cultural rights. The mechanism for enforcement is such that state parties submit reports to ECOSOC enumerating steps they have taken in the realization of rights. The ECOSOC thus consider the reports in accordance with the provisions of the

covenant and transmit same to the Human Rights Commission for study and recommendations.

(e) **CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

It is no gain saying that the charter of the United Nations provides for the fundamental human rights, in the dignity and worth of the human person and in equal rights of men and women and the international covenants on human rights is to ensure equal rights of men and women to enjoy all economic, social, cultural, civil and political rights, however, despite all the above instruments flagrant and extensive discriminations against women continues.

The convention was adopted by the United Nations General Assembly on 18 December, 1979 opened for signature on March 1980 and entered into force on 3rd September 1981 after 20 states have ratified or acceded.

The 30-article convention provides for a frame work to achieve equal rights for women everywhere in the world. The convention seeks exclusion and restriction practiced against women solely on the basis of their sex, by calling for equal rights for women irrespective of their marital status, in the political, economic, social, cultural and civil spheres, include changing models of socio cultural behavioural patterns that perpetuate discrimination, equal rights of women in political and public life, equal access to education, non-discrimination in employment and pay, guarantee job security in the event of marriage and maternity, social services needed especially child care facilities for combining family obligations with work responsibilities and participation in public life, non-discrimination health services to women, while special attention be given to the problems of rural women.

IMPLEMENTATION

In practice the implementation of the convention rests majorly on nation states' willingness of government to incorporate terms of the convention into their domestic legislation. The convention is a viable tool in the hands of activists and legislators, judges and educators, politicians and professionals who can use score to influence legislature processes and Government policies for instance the present clamour in Nigeria for the involvement of women in politics.

Again, courts in many countries refer to the convention in domestic legislation to advancing women in areas such as sex harassment at work, nationality, inheritance or violence against women, for instance Article 6 of CEDAW was referred to **Mojekwe V. Ejikeme (2 1997) 7 NWLR pt 512,238** wherein it

was held that the Nnewi practice where a man keeps one of his daughters unmarried perpetually is discriminatory.

The convention allows reservations where a state is allowed to waive certain provisions by which it cannot or does not wish to be bound, while being a party to the treaty. Some of the reasons adduced for waivers are: national legislation in force, customary or religious freedom. It should be noted that a reservation which is incompatible with the object and purpose of the treaty will not be allowed.

OPTIONAL PROTOCOL

Only until December 1999, when the United Nations General Assembly adopted the optional protocol to CEDAW victims of human rights violations had no means of seeking individual redress for violations. The optional protocol permits women to lodge individual complaints with the committee concerning violations of the convention by their governments and empowers the committee to conduct investigations into the abuses of which women are victims in countries that have signal the protocol. The coming into force of the optional protocol to the convention will entrance the realization of women's equality.

Nigeria over the years has signed a number of treaties thus becoming a member of various conventions such as International labour organization, convention relating to the treatment of prisoners of war etc. worthy of note is regional efforts toward the promotion and protection of Human Rights hence the African charter on human and people's rights was adopted in 1981 at the 18th Assembly of Heads of state and Government of the O.A.U meeting in Nairobi, Kenya. The charter came into effect on 21st October, 1986 after its ratification by a majority of African states.

EFFECT OF RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES

Any treaty signed or ratified by any state or nation becomes binding on such members internationally. However application of such treaties is not always instantaneous, since this depends primarily on the constitutional system of each state. In the common law Jurisdiction, for a treaty to become enforceable at the domestic level, such must have passed through transformation process of the local legislation of such state see **Attorney General for Canada V Attorney General for Ontario**.

In Nigeria, section 12 of the 1999 constitution of the Federal Republic of Nigeria provides; "No treaty between the Federation and any other country

shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly”.

From the foregoing, it is evident that transformation of such treaty into our domestic law is required for such to be enforceable in Nigeria. The argument is that it amounts to the executive making law if such treaty becomes effective upon ratification by the executive as such eroding the principle of separation of powers.

4.0 CONCLUSION

From the foregoing trend and analysis it seems Human rights in Nigeria evolved as a child's play but has now blossomed into the corner piece of Nigerian society and even universally such that at the International plane human rights is not considered with levity as individual violations can now gain attention at the International level.

5.0 SUMMARY

Ever since the evolution of human rights in Nigeria it had since been a common re-occurrence in the Nigerian constitution but yet to be fully realized as a notion despite the Nigerian involvement in various International Organizations that tends to safeguard these sacrosanct rights.

6.0 TUTOR MARKED ASSIGNMENT

- (1) Human rights in Nigeria has a political origin, discuss
- (2) Explain the concept human right is as old as Nigeria in evolution in Nigeria.
- (3) Explain an ouster clause
- (4) Discuss the optional protocol of the United Nations.

7.0 REFERENCES/FURTHER READING

- (1) Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria an Introduction.
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- (3) S.E. Deko (2002) Fundamental Issues in Nigeria Constitutional Law
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MODULE 2

THE FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY

UNIT 1: CONTENTS OF FUNDAMENTAL AND OBJECTIVES AND DIRECTIVE OF STATE POLICY.

UNIT 2: THE NON JUSTICIABILITY OF FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY.

UNIT 3: JUDICIAL ACTIVISM AND LOCUS STANDI IN NIGERIA

UNIT 4: THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

UNIT 5: MINORITY RIGHTS IN NIGERIA

UNIT 1: CONTENTS OF FUNDAMENTAL AND OBJECTIVES AND DIRECTIVE OF STATE POLICY.

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 - 3.2 Political Objectives
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 - 3.4 Social Objectives
 - 3.5 Educational Objectives
 - 3.6 Foreign Policy Objectives
 - 3.7 Environmental Objectives
 - 3.8 Directive on Nigerian Culture
 - 3.9 Obligation of Mass Media
 - 3.10 National Ethics
 - 3.11 Duties of the Citizens
- 4.0 Conclusion
- 5.0 Summary

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1.0 INTRODUCTION

One of the fundamental changes in the 1979 Constitution of Nigeria is the inclusion of a chapter on fundamental objectives and Directive principles of State Policy. According to the drafters of that constitution, Fundamental objectives means the ultimate objectives of the nation that is the hall mark of a nation whilst directive principles of State policy indicate the road map that leads to those objectives.

The philosophical foundation for the inclusion of the Fundamental objectives in the Constitution is that governments of developing countries are observed with power and its attendant affluence such that they daily disregard the very institution they ought to protect.

It is however by these provisions of Chapter 2 of the 1999 Constitution, which the duties and responsibilities of the various organs of government and other authorities are prescribed and are meant to be observed, preserved and applied as contained in the provisions of the said chapter.

In essence, the government and its various arms are not without a guide and road map on what to do, when and how it should be done so as to enhance rapid development. This chapter is basically a contraction of the second generation rights which include right to housing, right to education, right to social security, right to health, etc.

It should be noted that the first generation and second generation rights are not divisible but are interrelated and inseparable as the realization of the first generation rights cannot in anyway be realized without the fulfillment of the second generation rights.

Recent development and clamour have shown that our government believes in the principle of progressive realization of socio-economic rights as they claim so as not to distract the government from its executive function. See **Archbishop Okogie & Ors V. Attorney – General (1981) 2NCLR 337** where the plaintiffs successfully challenged the power of the Lagos State Government to demolish private schools in the State, where it was contented that it was a violation of their right to establish schools and other medium for the dissemination of information. See also **A.G. Ondo State V. A.G Federation (2002) WSCM.**

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- List all the contents of chapter 2 of the 1999 Constitution.
- Describe the Nigeria National Ethics
- Explain the various objectives and how they work.

3.0 MAIN CONTENT

3.1 THE GOVERNMENT AND THE PEOPLE

Section 14 of the Constitution provides for the Fundamental principles of democratic government:

1. The Federal Republic of Nigeria shall be a State based on the principle of democracy and social justice;
2. It is hereby accordingly declared that;
 - a. Sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority;
 - b. The security and welfare of the people shall be the primary purpose of government; and
 - c. The participation by the people in their government shall be ensured in accordance with the provisions of this constitution.
3. The composition of the government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the Federal character of Nigeria and the need to promote national unity and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government or in any its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the Federal character of Nigeria and the need to promote national unity and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government or in any its agencies.
4. The composition of the government of a state, a local government council, or any of the agencies of such government or council, and the conduct of the affairs of the government or council or such agencies shall be carried out in such manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the Federation.

The above provisions provide that the Federal Republic of Nigeria shall be a nation based on the principles of democracy and social justice. In essence sovereignty and power in the country belongs to the people which is exercisable by them through the Constitution and their elected representatives in government and by their votes during elections, referendum, recall etc.

In summary, the security and welfare of the people shall be the basic purpose of the government and the responsibility of the government and its agencies at every level, whether Federal, State and local government levels. Appointments or composition of the federal government and its agencies is to reflect the Federal character of Nigeria and the need to promote national unity and to command national loyalty thus ensuring that there shall be no form of dominance of persons or group of persons from a section or states over others.

Although the principle of federal character is fraught with so many flaws, it is meant to achieve the following:

- (a) Equality and fairness among the various groups in Nigeria
- (b) Create a sense of belonging among the Nigerian people.
- (c) Protect the right of the minorities and erase the fear of domination.
- (d) Create an atmosphere of mutual co-existence.

3.2 **POLITICAL OBJECTIVES**

Section 15 provides as follows:

1. The motto of the Federal Republic of Nigeria shall be Unity and faith, peace and progress.
2. Accordingly, national integration shall be actively encouraged whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.
3. For the purpose of promoting National integration, it shall be the duty of the state to:
 - (a) Provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation;
 - (b) Secure full residence rights for every citizen in all parts of the federation;
 - (c) Encourage inter-marriage among persons from different places of origin or of different religious, ethnic or linguistic association.
 - (d) Promote or encourage the formation of associations that cut across ethnic, linguistic, religious or other sectional barriers.

The Nigerian motto is unity and faith, peace and progress which forms the foundation of the Nigerian state and which both the government and the governed should pursue to attainment. This constitutional provision aimed at

promoting the integration of the nation while it does not allow for any form of discrimination either as an individual or collectively.

These sections of the constitution provide a wide range of means for promoting our national unity and oneness by encouraging residence, association and inter marriages across all divides. As a state we are implored to encourage a feeling and sense of belonging among the various sections of the Nigerian state such that the affinity and loyalty to the nation will supersede that of any ethnic affiliation. Also that the people will pay total loyalty to the Nation, it is however the responsibility of the government to protect and defend the people, enforce the rule of law, ensure the efficient function of government institutions and services, and government is to abolish corruption and abuse of power. See the cases of **Director of SSS V. Agbakoba (1999) 3 NWLR pt 595, pg 314 sc** and **Shugaba V. Minister of Internal Affairs (1981) 2NCLR 459** wherein the issues of providing free mobility and that of discrimination were adjudicated upon respectively. Hence chapter 4 of the constitution thus provides for the freedom from discrimination of any sort and kind against anyone in Nigeria.

Finally it is the duty of the government to promote National integration having provided adequate facilities as are required to enhance such integration.

3.3 ECONOMIC OBJECTIVES

Section 16 of the 1999 constitution provides:

1. The state shall within the context of the ideas and objectives for which provisions are made in this constitution:
 - a. Harness the resources of the Nation and promote National prosperity and an efficient, a dynamic and self-reliant economy;
 - b. Control the National economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
 - c. Without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy.
 - d. Without prejudice to the right of any person to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.
2. The state shall direct its policy towards ensuring:
 - a. The promotion of a planned and balanced economic development
 - b. That the material resources of the nation are harnessed and distributed as best as possible to serve the common good

- c. That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and
- d. That suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.
3. A body shall be set up by an Act of the National Assembly, which shall have power:
 - a. To review from time to time, the ownership and control of business enterprises operating in Nigeria and make recommendations to the president on same; and
 - b. To administer any law for the regulation of the ownership and control of such enterprises.
4. For the purposes of subsection (1) of this section:
 - a. The reference to the ‘major sector’ of the section shall be constructed as a reference to such economic activities as may, from time to time, be declared by a resolution of each house of the National Assembly to be managed and operated exclusively by the Government of the federation on the date immediately preceding the day when this section comes into force, whether directly or through the agencies of a statutory or other corporation or company, shall be deemed to be major sectors of the economy.
 - b. “Economic activities” includes activities directly concerned with the production, distribution and exchange of wealth or of goods and services; and
 - c. Participate includes the rendering of services and supplying of goods.

A very good example of the major sector of the economy is petroleum managed by the NNPC as an agency for the Nigerian government. In view of the above provision is at liberty to garner, manage and control all resources within the Nigerian State so as to be self reliant and provide for the wellbeing of the people and the state.

The constitution compared to some other nations provide for a mixed economy, where there is the participation of both the private and public sectors. This implies that individuals are allowed to participate in business and commercial enterprises alongside the government and its agencies.

Nevertheless the government is empowered to manage and control the major sectors such as PHCN, NNPC, etc this however explains the new trend of

privatization of some sectors since the government is duty bound to protect the right of every citizen to engage in any economic activities within the economy. It is also required of the government to harness all resources and provide for the happiness of all especially the indigent ones and to provide a minimum living wage, the question is how 'living' is the Nigerian minimum wage, see the case of **Agbor v. Metro police comm.. (1969) 1WLR 703CA, Momodu v. NULGE (1994) 8NWLR pt 362 p336 CA.**

The role of the government is thus synonymous to that of a mother with a large heart hence playing a leading role; determine who gets what and a price determinant so that citizens are not exploited. And that the wealth of the Nation is not concentrated in the hands of a few at the expense of the Nation.

It will not amount to exaggerating to say that the government control of our economy in some ways has hampered the growth of our economy and had reduced private initiative in the development of the economy, for instance ever since privatization the communication sector of the economy has regained life since there is healthy competition among the private operators hence the clamour for the privatization of PHCN. As such the lack of competitors in some sphere of the economy can hinder the rate of performance or development.

3.4 SOCIAL OBJECTIVES

Section 17 of the 1999 constitution provides:

1. The state social order is founded on the ideas of freedom, equality and justice.
2. In furtherance of the social orders:
 - a. Every citizen shall have equality of rights, obligations and opportunities before the law;
 - b. The sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced;
 - c. Government actions shall be humane;
 - d. Exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community, shall be prevented, and
 - e. The independence, impartiality and integrity of courts of law and easy accessibility thereto shall be secured and maintained.
3. The state shall direct its policy towards ensuring that:

- a. All citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.
- b. Conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life
- c. The health, safety and welfare of all persons in employment are safeguarded and not endangered or abused
- d. There are adequate medical and health facilities for all persons
- e. There is equal pay for equal work without discrimination on account of sex, or on any ground whatsoever.
- f. Children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect
- g. Provision is made for public assistance in deserving cases or other conditions of need.
- h. The evolution promotion of family life is encouraged.

Social order is founded on the principles of freedom, equality and justice and this is opened to all and sundry such that the sanctity of the human person is recognized and human dignity is maintained and enhanced see **Dele Giwa v. IGP unreported suit No:m/44/83 of 30/7/84 and Bello v. A.G (1986) 5 NWLR pt 45, pg 828 C.A.** Our courts are to be independent, impartial, uphold integrity and accessible to all See **LPDC v. Fawehinmi (1985) 1NWLR pt7, pg SC.**

The section also provides specifically for children, young persons and the aged to be protected against any form of exploitation and against moral and material neglect by the government and all of its agencies.

In addition, this section is a guide for the activities of the government and its agencies and creates a basis for the provision of fundamental rights as contained in chapter four of the 1999 constitution.

The tenets of the social objectives are freedom, equality and justice hence there should be no form of discrimination against anyone on the ground of sex, religion etc also to encourage the evolution and promotion of family life as contained in the United Nation Charter.

3.5 EDUCATIONAL OBJECTIVES

Section 18 of the 1999 constitution provides:

1. Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels
2. Government shall promote science and technology

3. Government shall strive to eradicate illiteracy and to this end government shall as and when practicable provide:
 - a. Free, compulsory and universal primary education
 - b. Free secondary education
 - c. Free university education and
 - d. Free adult literacy programme

Education by the purport of this section should be free for all since the education is the future and hope of any nation and no nation anywhere can develop without education. The bane of developing nations in the world over is ignorance and illiteracy and this is accountable for the spate of their development.

The power of education cannot be overemphasized as such education is not a luxury but a necessity for all citizens and a sine qua non for development, as an educated society is a prosperous society. Therefore no effort or resources should be spared by the government and its agencies to make education available to all at all levels.

Furthermore, this provision provides that government shall promote science and technology and strive to eradicate illiteracy. It should be noted that if this policy is vigorously pursued then the nation will witness unprecedented development and not just the theoretical learning that obtain in Nigeria today.

3.6 FOREIGN POLICY OBJECTIVES

Section 19 of the 1999 constitution provides:

The foreign policy objectives shall be:

- a. Promotion and protection of the national interest
- b. Promotion of African integration and support for African Unity
- c. Promotion of international co-operation for the consolidation of universal peace and mutual respect among all Nations and elimination of discrimination in all its manifestation.
- d. Respect for International law and treaty obligations as well as the seeking of settlement of International disputes by negotiation, mediation, conciliation, arbitration and adjudication
- e. Promotion of a just world economic order

Nigeria at all spheres belongs to one International body or the other. Thus Nigeria is active on the foreign policy plain, at the West African region a member of ECOWAS, Africa a member of the African Union and at the world level a member of the United Nations, also a signatory to so many international treaties, peace keeping missions, economic, cultural and development policy in various parts of the world.

It also enjoins the government to respect international treaty; law and obligations imposed for instance the right of the child, CEDAW etc.

3.7 ENVIRONMENTAL OBJECTIVES

Section 20 of the 1999 constitution provides:

The state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.

For instance we have the Federal Environmental protection Agency since the well being of the nations natural resources vegetation and wild life is dependent on the government as such should be concerned with policies of renewal such that they will not go into extinction. If these natural endowments are properly managed then the nation will turn a place of tourism and another source of generating revenue. The water, air and land are to be protected and improved upon by the government.

3.8 DIRECTIVE ON NIGERIAN CULTURES

Section 21 of the 1999 constitution provides:

- a. Protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this chapter; and
- b. Encourage development of technology and scientific studies which enhance cultural values.

This provision is to enhance the preservation of our cultures and to protect our heritage as a people since no nation is an island. It should also be free to interact with other nation thus embracing aspects of their cultures that are good and beneficial.

Science and technology should be encouraged. However cultural practices that are not human and good should be jettisoned see **Mojekwu v. Mojekwu (1997) 7NWLR pt 512, p 283 CA.**

3.9 OBLIGATION OF THE MASS MEDIA

Section 22 of the 1999 constitution provides:

The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people.

This provision clearly stipulates the roles, rights, duty and obligation of the press in Nigeria. The constitutional duty of the press is to be a watch dog of government policies and actions, on behalf of the people. The role of the press is vital to any nation and the role cannot be eroded by any government or its agencies.

Where the government tries to deny the press the constitutional roles ascribed to them it will amount to a breach of their constitutional right and they can sue the government under chapter 4 of the constitution, the press is to carry news and information from the government to the governed and vice versa and are meant to create a sustainable democracy, developed and progressive society and a government that is responsible and accountable see **Adikwu v. House of Representatives (1987) 3 NCLR397**.

The vital roles of the press cannot be over emphasized; this however explains the delay of the National Assembly in passing into law the freedom of information bill which has just been passed into law and this is just to prevent the press from carrying out these roles.

3.10 NATIONAL ETHICS

Section 23 of the 1999 constitution provides:

The National ethics shall be discipline, integrity, dignity of labour, social justice, religious tolerance, self reliance and patriotism.

The following cases **FMG v. Saro Wiwa** and **Governor of Lagos State v. Ojukwu (1986) NWLR (6)**. The above provision on ethics and values forms the corner stone upon which the Nigerian state is built and the basis of our corporate existence as a people. They are necessary and vital to our continuous co-existence most importantly religious tolerance, social justice, discipline and integrity this will enhance potentials as a nation. Although these values have been eroded by the Nigerian State hence the recent spate of decadence in Nigeria and until we appreciate these core values as part of our ethical life then Nigeria cannot experience appreciable development.

3.11 DUTIES OF THE CITIZEN

Section 24 of the 1999 constitution provides:

It shall be the duty of every citizen to:

- a. Abide by this constitution; respect its ideas and its institutions, the national flag, national anthem, the national pledge and legitimate authorities.

- b. Help to enhance the power, prestige and good name of Nigeria, defend Nigeria and render such national services as may be required
- c. Respect the dignity of other citizens and the rights and legitimate interests of others and live in unity and harmony and in the spirit of common brotherhood.
- d. Make positive and useful contribution to the advancement, progress and well being of the community where he resides.
- e. Render assistance to appropriate and lawful agencies in the maintenance of law and order; and
- f. Declare his income honestly to appropriate and lawful agencies and pay his tax promptly.

Who is a citizen? A citizen is a person who has legal right to belong to a particular country (oxford advanced learner's dictionary – 7th editions). Thus a citizen has and can enjoy all the rights and privileges accorded under the Nigerian constitution. Following the constitution, one is either a citizen by birth, naturalization etc.

Just like the constitution provides for rights and privileges for the citizens so also it makes provisions for the duties and obligations of citizens; a citizen owes the duty to respect the country and its symbols such as the name, national anthem, pledge, flag and all legitimate authorities, to defend the country and render compulsory services such as the National Youth Service Corps programme that is mandatory for all graduates in Nigeria. They should also have respect for the rights of others allow for harmonious co-existence, maintain law and order, also to honestly declare their assets, this is most likely to apply more to political office holders and public servants and pay their taxes promptly.

However these rights, privileges and duties guaranteed by the constitution are applicable to all citizens and cannot be denied except in circumstances provided by the constitution.

3.12 **SELF ASSESSMENT EXERCISE**

1. Consider the importance of these objectives to the Nigerian citizens
2. Discuss how practicable and realizable are these objectives
3. Explain the concept of minority rights

4.0 **CONCLUSION**

Attempts were made in the 1995 constitutional draft to elevate the same provisions of chapter 2 on objectives and directive principle of state policy to chapter of the constitution, such rights include free and compulsory education and the right to free medical consultation at government expense,

unfortunately, the coming into existence of the 1999 constitution did not allow as it omitted the said provisions hence leaving them to maintain status quo hence our government only pays lip services to these provisions since they cannot be enforced as it is obtainable in other countries despite the fact that Nigeria is a signatory to International treaty who are in consonance with the 1999 Constitutional provisions.

5.0 SUMMARY

The fundamental objectives and directive principle of state policy are objectives meant for the good and well being of the generality of the people and are basically provided so as to ensure that both the government and the governed are alive to their responsibilities and allow for our continuous co-existence as a nation. These social economic rights are generally regarded and termed the second generation rights.

6.0 TUTOR MARKED ASSIGNMENT

1. Discuss how the fundamental objectives and directive principles of state policy can be effectively implemented by our government.
2. Proffer solutions to how these objectives can be achieved as a nation.

7.0 REFERENCES/FURTHER READING

1. Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria an Introduction.
2. Kayode Eso (2008) Human Rights and Education
3. S.E. Deko (2002) Fundamental Issues in Nigeria Constitutional Law
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UNIT 2: CONFLICT BETWEEN FUNDAMENTAL RIGHTS AND FUNDAMENTAL OBJECTIVES OF STATE POLICY

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 3.1 Disparity between Fundamental Rights and Fundamental Objectives and Directive Principle of State Policy
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

The law certainly provided for the Fundamental objectives and directive principle of state policy which are contained in chapter 2 of the 1999 constitution and likewise Fundamental rights in chapter 4 of the same constitution. The pertinent question then: is there any difference between the two concepts; the answer to the question if in terms of rights, one will answer in the negative as both are rights to be enjoyed by the people. However in term of application then the answer will be in the affirmative, since the former is not justifiable while the latter is justifiable when violated by anyone.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Explain the disparity between fundamental rights and fundamental objectives and directive principles of state policy.
- Discuss the imminent dangers of rights that are not justifiable
- Explain the differences and similarities between chapter 2 and 4 of the constitution.

3.0 MAIN CONTENT

3.1 DISPARITY BETWEEN THE FUNDAMENTAL RIGHTS AND FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY

The fundamental rights entrenched in the constitution are basically concerned with the political and civil rights. The infringement of which can be challenged in any court of law. On the other hand the provisions of the economic, social and cultural rights as contained in chapter II of the 1999 constitution are not Justifiable. See **Arch Bishop Olubunmi Okogie V. The Lagos State (1981) 2NCLR 337 at 350**. Where it was held.

“The fundamental Objectives Identify the Ultimate Objectives of the Nation and the Directive Principles lay down the policies which are expected to be Pursued in the efforts of the Nation to realize the national ideas. While section 13 of the Constitution makes it a duty and responsibility of the Judiciary among other organs of government to conform to and apply the provisions of chapter II, Section 6(6)© of the same constitution makes it clear that no court has Jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy. It is clear therefore that Section 13 has not made chapter II of the Constitution Justifiable”.

Section 6(6)© of the 1999 constitution renders without mixing words that the objectives and directive principles of state policy are not justifiable. Furthermore, section 13 of the constitution provides that all organs of government, authorities, agencies, persons exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of the objectives and directive principles.

The above provisions of both sections appears to be an open contradiction as the formal in clear terms is to the effect that the provisions are non justifiable while the latter imposes its implementation as a responsibility on all organs of government. The implication thus is that actions under this head cannot maintained in courts against the government who do not comply and only judicial interpretations can be made.

Consequent upon the above, where there is a conflict between the two concepts, it is clear from judicial authorities that such conflicts are resolved in favour of Fundamental rights see **Okogie v. A.G Lagos State (1981) 2NCLR 337**, the court of appeal held that section 18 of the constitution could not, nor was it intended in any way to minimize or abrogate the enjoyment of the right of freedom of expression guaranteed by section 36 of the 1979 constitution (now section 39 of the 1999 constitution). See also **Adamu v. A.G Bornu State (1996) 8NWLR 203**.

The Indian case of State of **Mandras v. Champakan A.I.R 1951 s.c 226** was the locus classicus on holding that where there is a disparity, such should be resolved in favour of fundamental rights. The trend in some other countries for

instance Indian, the courts are to interpret statutes by the legislature and acts of the executives to be in conformity with the spirit of the fundamental objectives and **Directives of State Policy**. See **Olga Tellis v. Bombay municipal corp A.I.R 1968 sup ct.**

It can thus be concluded that of what benefit is the right of privacy to a person that cannot afford an accommodation. Item 59 of the exclusive legislative list authorizes the National Assembly to make laws for the establishment and regulation of authorities for the federation or any part thereof to promote and enforce the observance of the fundamental objectives and directive principles of the state policy contained in the constitution, however in recent time no such law has been made.

3.2 THE NON-JUSTICIABILITY OF FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLE OF STATE POLICY

What has generated much controversy about the fundamental objectives is that they cannot be enforced in the law courts. Section 6(6)© of the 1979 constitution of Nigeria made them non-justifiable. This non-justifiability has been justified by some schools of thought on various grounds. Arguing in support of the inclusion of non-justifiable objectives and directive principles in the constitution, Professor B.O. Nwabueze maintained that a constitution operating as law and imposing judicially enforceable restraints upon government should not abandon its other function as a source of legitimacy for those political concepts and governmental powers and relations that are by their very nature non-justifiable. Non should it renounce its roles in the affirmation of fundamental objectives and ideas or directive principles of government which serve to inform and inspire governmental actions along desirable lines.

The constitution drafting committee had also advanced the argument that if the objectives and directive principles were made enforceable it would lead to constant confrontation between the executive and the legislature on the one hand and the judiciary on the other hand. It has similarly been contended that it will be tantamount to asking judges to make political value judgments if they have to decide whether governmental actions and omissions are in line with the objectives and the directives. A somewhat extreme view was canvassed by Abiola Ojo who stated that most of the matters in the objectives and directive section belong to the area of party political manifests and therefore should have place in the constitution let alone being justifiable.

It is respectfully submitted that these views missed the point and cannot be supported. The objectives and directive principles are an attempt to incorporate social and economic rights into the constitution, since human rights is not static and the conception of the substance and scope of the term human rights has been and continues to be subject to change in pace with the evolution of society. Originally attention was mainly focused on civil and political rights. However developments have steadily progressed towards an enlargement of the human rights concepts in which economic, social and cultural rights are also included.

The need to guarantee the provisions of chapter 2 of the constitution is of paramount importance in that chapter 4 cannot be of meaningful effect to the Nigerian people, of what relevance is the right to privacy to a Nigerian who lives under a fly-over or what dignity has such a person.

One cannot but agree with late Chief Obafemi Awolowo that “social objectives constitute the *raison d’être*, the bedrock and indeed the original legitimacy of the state. It is the entrenchment of the objectives that forms the cornerstone to the constitution Nigerians cannot afford to leave anything as fundamental as the social objectives to

what will amount to party political discretion which sometimes can be whimsical and capricious”.

The contention of the constitution drafting committee that the enforcement of the fundamental objectives and directive principles will lead to frequent friction between the executive and the judiciary is a contention that does not hold water. If the courts have powers of review of legislative and executive acts including the power to declare a law passed by the legislature unconstitutional, why is it only its interpretative power in respect of the objectives and the directive principles that will lead to confrontation with other arms of government? The constitution did not expressly state that the directive principles are unenforceable. It is fortunate that the African charter on human and peoples’ rights which has not only been ratified by Nigeria but has formed part of her municipal law contains enforceable provisions on social and economic rights. Recourse can therefore be made to the chapter for the enforcement of these rights.

SELF ASSESSMENT EXERCISE

- Are there detriments or problems posed to the Nigerian government if these objectives are elevated to that of chapter 4 of the 1999 Constitution?
- How justifiable are these rights in Nigeria, discuss?

4.0 CONCLUSION

It is however to be noted that some of the contents of the chapter on fundamental objectives and directive principles are mere statement of the basic principles of a democratic government and therefore could not in any case be elevated to enforceable rights. These provisions are the political, economic and social blue print and inbuilt manifests in the Nigeria constitution to be pursued by the government and the people of Nigeria to ensure an ideal nation. However as important as these objectives are; they are not justifiable, and so cannot confer right of actions, nor remedy in court, except the action is, also founded on another provision of the constitution which confers of action and remedy.

5.0 SUMMARY

We discussed the totality of the constitutional provisions on the fundamental objectives and directive principles of state policy as beautiful as these provisions are; we discovered they are not justifiable that is cannot be enforced by way of a legal remedy hence the Nigerian Government is at liberty to either complement or disregard and as such cannot be forced into implementing them even when they are in consonance with international human rights position in the world over.

It however gives hope that its mere presence in the Nigerian constitution is another giant stride in the right direction as a nation.

6.0 TUTOR – MARKED ASSIGNMENT

1. Explain the position of the law where there are conflicts on chapter and 4 of the 1999 constitutions.
2. Discuss the concept of justifiability and non-justifiability.

7.0 REFERENCES/FURTHER READING

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UNIT 3: JUDICIAL ACTIVISM AND LOCUS STANDI IN NIGERIA

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Judicial activism and locus standi are twin concepts and determining factors in the enforcement of human rights in the world over, while the former means the interpretation of enactments by judges to achieve the desired end, the latter relates to the right of persons whose rights have been violated to sue for the enforcement of such rights. While some scholars have seen the concept of judicial activism as negating the principle of separation of power claiming it amounts to the judges making laws. On the other hand a person cannot initiate a procedure of enforcement without having such right imputed on him by the law.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Define the concepts of judicial activism and locus standi
- Explain the rules of interpretation

3.0 MAIN CONTENT

3.1 JUDICIAL ACTIVISM

It is the duty of the Judiciary to interpret the laws, but the court should not exceed its powers in the process of interpreting the law. It is their duty to carry out the intention of the makers of the construction as expressed in the various enactments.

Judicial Activism in the layman's parlance simply means the Interpretation ability or attitude of Judges of the constitution and other enactments. There are basically two approaches to the Interpretation of the constitution by Judges and they are: the liberal approach and the strict approach. The strict Interpretation implies Interpretation basically on the construction of the law and nothing more that is interpretation based on the words of the law in essence the adoption of the literal or plain meaning of the law. On the other hand the

liberal approach seeks interpretation should tend to achieve the purpose for which the law was made as such seeks the underlying principles and gives effect to same.

However, the following are the rules of interpretation of statutes; they are:

- (a) The literal Rule
- (b) The Golden Rule
- (c) The Mischief Rule

The literal rule is adopted when words of the statutes are clear and unambiguous see **A.G of Ekiti State v. A.G of Ondo State (2001) 17NWLR pt. 743, 706, Fawehinwi v. IGP (2000) 7NWLR pt 507, 481**. The golden rule on the other hand means the constitution prime face be given their ordinary meaning save where it will amount to injustice in essence the golden rule is adopted to meet the demands of justice. While Mischief Rule implies that the cause and necessity if the Act shall be considered and shall thus be construed so as to prevent the mischief the law was so intended to prevent. See **Heydon's case 3 Co. Rep 7A, at p. 7b. Savannah Bank v.Ajilo (1987) 2NWLR (pt. 57) 42. C.A.**

Judicial restraint has its foundation in the positive school of Jurisprudence which favours the separation of law from morals. The basic concern of the positivist with law is morally, ideologically and evaluative neutral. John Austin Major Proponent of legal Positivism asserted that "law and ethics must be rigidly separated as it is not the business of the lawyer to concern himself with the end and purpose of the law. The lawyer must take the law as it is and not as it ought to be".

Following from the foregoing, judicial restraint which is a position of passivism is that law should be applied as ordained by statutes as prescribed by law. Hence the Judicial passivism strengthens the principles of separation the legislative to make laws and the Judiciary to interpret same.

Lord Denning a lead activist in era of judicial activism opined "My root belief is that the proper role of a judge is to do justice between the parties before him. If there is any rule of law which impairs the doing of justice, then it is the province of the judge to do all he legitimately can to avoid that rule or even to change it – so as to do justice in the instance case before him. Kayode Eso another Judicial activist post "without the law there will be no justice and without justice law will be laboring in vain; for law and justice are two lions tethered the same day but whichever is stronger depends on the judge". Lord Denning further gave Credence to the above assertion when he stated 'he will prefer a bad law with a good judge to having a good law with a bad judge. The

realist school of thought sees law as the prophecies of what the court will do and nothing more pretentious.

Judicial activism is a much needed tool in our nascent democracy however this should not be at the expense of the rule of law, some level of activism should be allowed most especially in the interpretation of chapter 2 of the 1999 constitution where there have been clamour for a level of creativity and activism in the interpretation of the law. See **Nafiu Rabi v. the State (1981) 2 NCLR p. 293 at 326.**

The Nigerian Judiciary has been swinging between Judicial passivism and Judicial activism whose basic goal should be the people and justice for all as a society and a people.

3.2 **LOCUS STANDI**

Locus standi simply means the legal capacity to institute proceedings in a court of law which is usually used interchangeably with 'standing to sue'. Section 46(1) of the 1999 Constitution provides as follows;

“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”.

From the foregoing, such a person must be aggrieved and in legal parlance have a standing to sue that is locus standi. The provisions referred to above to chapter 4 of the 1999 constitution which deals with Fundamental Human Rights. The locus classicus in Nigeria on the principles of locus standi is **Adesanya v. The president (1981) S.C 112.**

The principle of locus standi was necessitated as opined by scholars so that litigants will not waste the time of the court as advanced by an eminent legal practitioner, Chief F.R. A Williams, the major reason for this rule is to controversies between parties who have sufficiently vital and real interest in the subject matters of litigation. See also **Bater v. Carr 369 Us 186/204.** In summary the principle of locus standi prevents multiplicity of actions by busy – body and meddle some inter hopers from overcrowding the courts.

Locus standi is an issue which goes to the jurisdiction and could be raised at any stage even at the Supreme Court. See **Oredoyin v. Arowolo (1989) 4 NWLR (pt 114) 172; Adesanya v. the president (Supra). See also Section 6(6)(b)** which bothers on civil rights and obligation between Government authority and any person in Nigeria. See **Thomas v. Olufosoye (1986) 1NWLR (pt 18) 6695 S.C** Section 46(1) is to the purport that only a person whose right is infringed or likely to has sufficient interest under the law to sue that is only such persons have locus standi. See **Olawoyin v. Attorney**

General for Northern Nigeria (1961) All NLR 269 where the applicant had challenged the provisions of the children and young person's law, 1958 which prohibited political activities by children of 15 years age or under, on the ground that these provisions contravened section 7 and 8 of the schedule 6 of the 1954 constitution. His contention was that he wished to give political education to his children but if the above mentioned law was enforced his rights would be infringed. It is to be noted that his children had not been prosecuted under the statute. The high court dismissed his application, holding that no right of his was infringed. His appeal to the Supreme Court was also dismissed on the question of locus standi.

The Supreme Court held that it coming into conflict with a law, or whose normal business or other activities have been directly interfered with by or under the law that has sufficient interest to sustain a claim for the infringement of his rights. See also **Shugaba v. Minister of Internal Affairs (1981) 2 NCLR 459**, **University of Ilorin v. Oluwadare (2003) 3 NWLR (pt. 808) C.A**, **Governor of Ebonyi State v. Isuama (2003) 8 WRN 123**.

Order 1 rule 2(1) 1979 Fundamental Rights (Enforcement Procedure) rules it is only a person whose rights has been, is being or likely to be infringed that has the locus standi; to challenge such infringement and such application is not proper to be made in the name of any person Order than that of the person whose right was breached. See **Asemota v. Yesufu & another (1981) 1 NCLR 420**. Any person in the Constitution and the rules imply both having individuals and also entities like the state, Corporate bodies, companies etc. The Interpretation Act defines "person" as to refer to both types of entities and since the constitution does not proffer a different definition then same is adopted, thus a company can sue for the infringement of its Fundamental rights and in turn may be sued. It should however be emphasized that not all rights that are available to persons such as right to freedom of movement and right to freedom from discrimination are available to citizen only but all other rights are available to "persons" see **Concord press Nigeria Limited v. A.G fed & ors (1994) FH CLR 144**, **Punch Nigeria & Anor v. A.G, fed & ors (199-)1 HRLRA 288**, **Tell Communication Ltd Ors v. State Security Service (SSS)(2000) 2 HRLRA 104**, **New Patriotic Party v. IGP, Accra (1992- 93) G.B.R 586**.

The law permits a minor or an underage whose Fundamental rights been breached to see remedy in court. However such must follow the prescribed procedure. The prescribed is that the name of the infant should be stated clearly in the application any other relevant court processes while that of his next friend should follow, labeling each correctly as infant and next of friend see **Sofolahan & Anor v. Fowler (2002) 14NWLR (pt. 788) 664 Sc**.

Where a plaintiff lacks the locus standi, the court will strike out the action without considering the matter on the merit see **A.G Kaduna v. Hassan (1985) 2NWLR (pt. 8) 453 at 496**. From case laws an application for the enforcement of the fundamental right of – dead person cannot succeed. In essence, the right to life guaranteed under the 1999 constitution ends the moments its owner is killed or murdered because he is no longer alive to enforce the rights see **Ezechukwu v. Maduka (1997) 8NWLR (pt. 518) 635 C.A.**

However relatives of a person whose life has been unlawfully terminated cannot maintain an action under the fundamental rights (enforcement procedure) Rules, such killings can only be challenged under the law of tort or criminal law. **Bello & Ors v. A.G, Oyo State (1986) 5 NWLR (pt. 45) 8285C.**

Fundamental rights application can be instituted against private persons and the procedure is the same as an action against the state or authority for a similar infringement see **Abdulhmaid v. Akar (2006) 13NWLR (pt. 996) 127.**

The provision of section 46(1) is not to hinder or derogate from the provisions of the Constitution but basically to prevent multiplication of matters. But with the emergency of non-governmental human rights organizations whose basic aim is the protection and promotion of human rights the principle should not be adopted to hinder the fulfillment of this purpose see **Ahonaruogho v. Governor of Lagos State Long J of 31/10/90 (suit No. ID/392m/88)** unreported.

In conclusion, in **R v Inland Revenue Commissioners Ex parte National Federation of self. Employed and small Business Ltd (1982) A.C 617** there is now a general tendency to relax the principle of locus standi in essence if the applicant can show strong enough reasons on the merits. Then he can be said to have the standing to sue.

4.0 CONCLUSION

There can be no enforcement without locus standi because the concept imputes the right to sue on any person whose right has been violated either by government officials, corporate bodies or private individuals. On the other hand since chapter two of the Constitution is not justifiable, it can only be when the judiciary adopts judicial activism as it allows that justice be done so as to achieve the purpose for which the enactment were made as seen in the Indian courts in so many cases thus making justifiable the provisions of chapter 2 of the Constitution in other climes.

5.0 **SUMMARY**

For the provisions of chapter 2 of our constitution to be indeed the guiding principles for our Government the judicial activism should be appreciated so as to achieve the desired results as expected by the drafters of the Constitution thus not making the provision mere paper work thus borrowing a leaf from other progressive countries.

6.0 **TUTOR MARKED ASSIGNMENT**

- Explain the term judicial activism.
- No locus standi no enforcement, discuss.

7.0 **REFERENCES/FURTHER READING**

1. Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria an Introduction.
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UNIT 4 OTHER RIGHT ENFORCEMENT AGENCIES IN NIGERIA

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 3.1 African Charter
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

The African charter like every other International Charter is a step further to ensure compliance with the provisions of protection of the rights as provided by the charter. The African Charter provides for rights of individuals, peoples' rights, duties of State party to the Charter, duties of individuals and it further provides for the functions of the Commission and its basic aim is promotion and protection of human rights in Africa and in the world at large.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Explain the duties of state party under the Commission
- The membership of the Commission
- Explain the petitioning procedure

3.0 CONTENT

3.1 THE AFRICAN CHARTER

The African charter is an International approach to human rights in the African Continent just like every other charter aimed at promoting human rights in Africa as a whole with the various African states as its target. The charter further aims at strengthening human rights in Africa.

The 1984 adoption of the UDHR led to the emergence of regional attempts geared to words the promotion and protection of human rights. First was European convention for the protection of Human rights and Fundamental Freedoms in 1953, the Inter-American Convention on Human Rights in 1979,

the African Charter came into effect on 21st October, 1986 also known as “Benjul Charter”.

The African Charter provides for both the first and generation rights. The most controversial innovation of the charter is the inclusion of people’s right which provides for collective and solidarity right of the society to which the individual is linked.

The charter further provides for the right to development and the rationale for this is hinged on the fact most African-states are developing or under developed, hence the citizenry cannot fully appreciate the inclusion of the second generation rights that will facilitate and enhance the realization of the negative rights.

Another landmark innovation is the provision of some individual duties to the family, the society and the state. This is in line with the traditional African Society Characteristic which is based on obligations of kinship and family relationship.

3.2 THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

The Charter Copiously made Provisions Rights of Individuals Article 2-17, while peoples’ Rights Articles 19-24, while Articles 25-29 provide for both duties of states party to the charter and duties of individuals.

The African Commission is an organ of the OAU Created for the purpose of promotion and protection of human and peoples’ rights. The members of the Commission is made up of eleven members chosen based on the highest reputation, they are elected by Heads of State and Government from a list of nominations by the state parties to the charter. Each State party may nominate two candidates who must be national of the same state. The members serve in their personal capacity.

The term of office is for a singular term of six years and can be re-elected. However, at the first election, the term of office of four members shall be two years, while three others shall serve for four years. Members who should so retire before six years are to be determined by lot.

The membership of the Commission should be such as to ensure the representation of African political divisions and legal systems (French, English and Arabic) as well as geographical considerations (West Africa, North Africa, Central and Southern Africa).

The Secretary General of the O.A.U appoints the secretary of the Commission and also provides staff and facilities for the commission Article 41. The Commission elects its chairman and vice chairman for a two – year tenure, and can be re-elected. The Commission formulated its rules of procedure in Dakar, Senegal at its 2nd ordinary session Containing 120 Articles. The seat of the African Commission is Banjul, in Gambia, where activities of the Commission are carried out.

Article 45 of the charter provides basically for the functions of the Commission which includes;

- (1) To promote Human and peoples' Rights and in particular
- (2) Ensure the protection of human and people' rights under conditions laid down by the charter.
- (3) Interpret all the provisions of the present charter at the request of a state party, and institution of the O.A.U or an African Organization recognized by the O.A.U.
- (4) Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

The Commission has basically two methods of petitioning procedure which are; inter State Communications Articles 47-54 and other Communications. Articles 55-59.

3.3 PROBLEMS OF THE C HARTER

- (1) The charter provides for too many rights – claw back
- (2) No provision for suspension of rights or state of emergency and non derogation from certain rights when required such as times of war or tension
- (3) The lines of Communication are cumbersome
- (4) No court of human rights under the commission.
- (5) Lack of publicity and exposure of investigations due to its confidential nature.

7.0 REFERENCES AND FURTHER READIN

- (1) Osita nnanani ogbu (1999) human rights law and practice in Nigeria an introduction.
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UNIT 5 MINORITY RIGHT IN NIGERIA

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 3.1 Minority Right in Nigeria
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References / Further Reading

1.0 INTRODUCTION

In Nigeria today we have over two hundred and fifty tribes and the major ones are the Yorubas in the West, the Igbos in the East and the Hausas in the North however during the colonial era and at the early stage of independence these three major tribes dominated every spheres of our lives, that is politically and otherwise and even have certain individuals they look up to.

2.0 OBJECTIVES

At the end of this unit, you should be able to,

- Explain the concept minority rights.
- Discuss the relevance of minority right.

3.0 MAIN CONTENT

3.1 MINORITY RIGHT IN NIGERIA

Minority right is a concept adopted so as to give everybody a sense of belonging where they belong as a people without intimidation or discrimination of any kind and having equal rights and enjoying the same privileges. Like every other rights such as children's right, women's rights and refugee's group which is in a vulnerable, disadvantaged or marginalized position in the society, is able to achieve equality and is protected from persecution.

Human rights standards that codify minority rights include the international Covenant on Civil and Political Rights (Article 27), the United Nations Declaration on the Rights of Person Belonging to National or Ethnic, Religious and Linguistic Minorities, two Council of Europe treaties (the Framework

Convention for the Protection of National Minorities and the European Chapter for Regional Minority Languages, and the OSCE Copenhagen Document of 1990.

To protect minority rights, many countries have specific laws and /or commissions or ombudsman institutions (for example the Hungarian Parliamentary Commissioner for National and Ethnic Minorities Rights). And same is applicable in Nigeria.

While initially, the United Nations treated indigenous peoples as a sub-category of minorities, there is an expanding body of international law specifically devoted to them, in particular Convention 169 of the International Labour Organization and the UN Declaration on the Rights of indigenous Peoples (adopted 14 September 2007)

In Nigeria the clamour for minority rights is not new due to our political history which had been based on ethnic basis from the colonial era, when independence was ripe, a question that agitated the minds of people was how to preserve the libertarian heritage in the face of ethnic rivalry and ambition to dominate which was the major concern of Nigerian politics. The 1951 Macpherson constitution of Nigeria which introduced representative government in Nigeria provided for one central and three regional governments. And there were three major political parties corresponding to the three regions. The Northern people's congress (NPC) was the dominant party in the North and its main objectives was to protect the interest of the Northerners. Its main supporters were the Hausas, Fulani and Kanuris. In the west, the Action Group (AG) held sway and its main supporters were the Yoruba who are by far the largest tribe in the region. The National Council of Nigeria and Camerouns (NCNC) which was conceived as a broad – based national party later degenerated into party for the Igbos, the dominant tribe in the Eastern region.

There was unhealthy rivalry among those parties in 1953. There were crises at the centre arising from the motion for self- government in 1956 sponsored by A.G. and supported by the NCNC but vehemently opposed by the NPC. This led to demonstration in Lagos during which the leaders of the NPC were booed and jeered at. There was a counter action by supporters of the NPC against the A.G. members when they attempted to campaign in the North. As a result of these and other developments, the colonial secretary invited the political leaders to London for a review of the constitution.

The A.G. allied with the NCNC and proposed an amendment to the constitution which will incorporate a declaration of certain basic human rights. The aim being that such measure would allow them to campaign freely in the

North. But the proposal was turned down at the London conference in 1953 by the colonial secretary.

The conference culminated in the 1954 Lyttleton Constitution which made the Regions autonomous certain minority groups within the Regions apprehensive of being dominated by the major ethnic groups started agitating for their own states.

Another conference was convened in 1957. At the 1957 – Constitutional Conference, the A.G. led a number of minority who demanded their recognition as separate regions for ethnic minority groups the party also raised the issue of the incorporation of a Bill of rights in the Constitution. Both measures were other parties campaign in the North. The colonial Secretary constituted a commission headed by Sir Henry Willink to look into the fears of the minorities and the means of allaying them. The commission rejected the demand for the creation of more regions and, though not convinced of the constitutional guarantee of rights, nevertheless recommended a long list of human rights provisions for inclusion in subsequent fact is that any government determined to abandon the democratic course could always find ways of violating such rights, but still, their inclusion in the constitution, it is hoped would be of great value in preventing a steady deterioration in standards of freedom and the un-obstructive encroachment of government on individual rights. The Commission's recommendations on human rights were accepted, the recommendations consequently formed chapter III of both the independence constitution of 1960 and the Republican constitution of 1963.

The clamour for Minority right has not reduced in any way in Nigeria people seem to understand and agitate more for their rights in recent times and this can account for the spate of crises everywhere in Nigeria today. It needs be said that other minor tribes are now aware of their rights and agitating for them.

4.0 CONCLUSION

It is a known fact that though we have over two hundred and fifty tribes in Nigeria, the polity of the county over time have been dominated by just three major tribes and this has brought to issue the rights of the other minor tribes who tend to have lost their identity under these major tribes.

5.0 SUMMARY

Some of the other tribes we have in Nigeria are the ibibios, ijaws. Isokos, ogojas, kanuris just to mention a few. For the first time in the history of the Nigerian State a South/South Nigerian is becoming president, and this has attracted so much violence since some persons believe it is their birth right.

6.0 TUTOR MARKED ASSIGNMENT

We have basically three tribes in Nigeria; discuss the reality of this statement. Chief Ogogo was insulted by a friend that he is a minority as far as Nigeria is concerned and do not have a say, he was vexed and decided to relocate, can you advise him on the propriety of his decision.

7.0 REFERENCES AND FURTHER READING

- (1) Osita nnanani ogbu (1999) human rights law and practice in nigeria an introduction.
- (2) Kayode eso (2008) Human Rights and Education
- (3) S.E. Deko (2002) Fundamental Issues In Nigerian Constitutional law
- (4) Joseph Ikogho (1999) Nigerian Constitution With Topic Finder
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MODULE 3

FUNDAMENTAL HUMAN RIGHTS IN NIGERIA

UNIT 1 Right to life, Right to dignity of human person, Right to personal liberty

UNIT 2 Right to fair hearing

UNIT 3 Right to private and family life, Right to freedom of thought, conscience and religion, Right to freedom of expression and the press

UNIT 4 Right to peaceful assembly and association, right to freedom of movement, Right to freedom from discrimination

UNIT 5 Right to acquire and own immovable property anywhere in Nigeria, Compulsory acquisition of property, Restriction and derogation from fundamental rights, Enforcement of human rights.

UNIT 1 Right to Life, Right to Dignity of Human Person, Right to Personal Liberty

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Right To Life
 - 3.2 Right to Dignity Of Human Persons
 - 3.3 Right to personal liberty
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

The various Nigerian Constitutions over the years that is the 1963, 1979 and 1999 constitutions made copious provisions for the protection of Fundamental rights of her citizens.

The essence of these rights is so that individuals might attain and achieve the desire objectives for their individual and collective existence hence a degree of freedom is required.

Fundamental rights are inalienable, because once alienated an individual becomes less human. the whole of chapter 4 of the constitution provides for fundamental human rights and in explicit terms for all and sundry and in negative terms such that it is expected for both the government and the governed to ensure it is protected and not in any way violated save for exceptions allowed by law.

2.0 OBJECTIVES

At the end of this unit one should be able to;

- List the content of Chapter 4 of the constitution.
- Describe how these rights affect individuals
- Explain the workings of these rights in Nigeria.

3.0 MAIN CONTENT

RIGHT TO LIFE

RIGHT TO DIGNITY OF HUMAN PERSON

RIGHT TO PERSONAL LIBERTY

3.1 RIGHT TO LIFE

Section 33(1) of the 1999 constitution

S. 33(1) Every person has a right to life, no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

2. A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary.
 - a. For the defence of any person from unlawful violence or for the defence of property.

- b. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- c. For the purpose of suppressing a riot, insurrection or mutiny.

The Nigerian constitution from independence till date has always made provisions for

Fundamental rights hence chapter 4 of the 1999 constitution has succinctly provided for same. Therefore, right to life is a sacrosanct right and not to be deprived unless after the due process of law and in the execution of the sentence of a court of law for a criminal offence for which the person has been found guilty anywhere in Nigeria.

There are no contravention to the right to life, if a person dies as a result of the use of such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary for the;

- i. Defence of any person from unlawful violence; or
- ii. Defence of property
- iii. To effect a lawful arrest or;
- iv. To prevent the escape of a person lawfully detained; or
- v. Purpose of suppressing a riot; or
- vi. Purpose of suppressing insurrection; or
- vii. Purpose of suppressing mutiny

Some of the offences under the Nigerian criminal laws which attract death penalty are;

- 1. Murder
- 2. Treason
- 3. Presiding at a trial by ordeal resulting to death
- 4. Armed robbery

See Bello V.A.G Oyo State (1986) 5 NWLR pt 45, 828 sc.

The above offences are the various instances for which the right to life can be contravened and this raises the question of “death penalty”. The 1999 constitution justifies death penalty for the above-mentioned offences but it should be noted that there is a public outcry against death penalty in the various climes across the globe.

THE RIGHT OF TH UNBORN

The pertinent question here is whether an unborn child has any right whatsoever. The answer to this question cannot be generalized as there are two different schools of thought; the pro-life school and the pro-choice school. Whilst the pro-life postulates that the unborn child has rights to be protected

since life begins at conception and any act causing death amounts to the breach of the right to life of the unborn child. On the other hand, the pro-choice school of thought believe that an unborn child does not have right to life but whose right can be protected only when the unborn is capable of surviving independently of the mother.

Abortion in Nigeria is not lawful except where there is the need to preserve the life of a mother while in other Jurisdiction such as America, the mother is at liberty to make a choice whether to procure abortion or not prior to the seventh month.

In conclusion, whether an unborn child has the right to life or not is dependent on the concerned society, the laws and cultural values hence the different consideration in the various societies. And save for the exceptions as provided by Law no derogation is allowed further to the right to life as such death penalty is still allowed by our Law unlike some other jurisdictions.

3.2 RIGHT TO DIGNITY OF HUMAN PERSON

Section. 34(1). Every individual is entitled to respect for the dignity of his person and accordingly;

- a. No person shall be subjected to torture or to inhuman or degrading treatment
 - b. No person shall be held in slavery or servitude; and
 - c. No person shall be required to perform forced or compulsory labour
2. For the purposes of subsection (1)(c) of this section “forced or compulsory labour does not include;
- a. Any labour required in consequence of the sentence or order of a court
 - b. Any labour required of members of the armed forces of the federation or the Nigerian police force in pursuance of their duties as such,
 - c. In the case of persons who have conscientious objection to service in the armed forces of the federation any labour required instead of such service.
 - d. Any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
 - e. Any labour or service that forms part of;
 - i. Normal communal or other civic obligations for the well being of the community

- ii. Such compulsory national in the armed forces of the federation as may be prescribed by an Act of the National Assembly, or
- iii. Such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the national assembly.

Under the provisions of the constitution a person is entitled to right to dignity of human person. Accordingly no person shall be subjected for instance to;

- i. Any Act of torture
- ii. Any form of inhuman or degrading treatment
- iii. Slavery or Servitude
- iv. Forced or compulsory labour; etc.

It should however be noted that “forced or compulsory labour does not in any way include;

- i. Any labour required in consequence of the sentence or order of a court, for instance, a sentence to a term of imprisonment with hard labour or community and as courts may impose any labour, required of the armed forces.
- ii. Any labour required of the people which is reasonably necessary in the event of any emergency or calamity threatening the life or the well being of a community.
- iii. Any labour or service that forms part of the normal communal or other civil obligations for the well being of the community
- iv. Compulsory national service in the armed forces as may be prescribed by an act of the national assembly, and
- v. Service under the national youth service corps program (NYSC) that is National Youth Service Corps. Cap 84. LFN 2004

All persons are entitled to Right to dignity of human persons and no persons shall be subjected to torture (that is the act of causing somebody severe pain in order to punish them or make them say or do something, it could be physical or mental suffering).

Subjection to torture is common place with persons in police custody or detention by the various armed forces so as to elicit confessional statements. Acts such as beating with whips, the use of dangerous weapons, and shaving of hair etc amount to torture.

3.3 RIGHT TO PERSONAL LIBERTY

S. 35(1). Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law.

- a. In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty.
- b. By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law.
- c. For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.
- d. In the case of a person who has not attained the age eighteen years, for the purpose of his education or welfare.
- e. In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or
- f. For the purpose of preventing the unlawful entry of any person into Nigeria or of affecting the expulsion, extradition or other lawful removal from Nigeria of any person or taking of proceedings relating thereto.

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

1. Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.
2. Any person who is arrested or detained shall be informed in writing within twenty four hours (and in a language that he understands) of the facts and grounds for his arrest and detention.
3. Any person who is arrested and detained in accordance with subsection (1)(c) of this section shall be brought before a court of law within a reasonable time and if he is not tried within a period of ;
 - a. Two months from the date of this arrest or detention in the case of a person who is in custody or is not entitled to bail; or
 - b. Three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions

as are reasonably necessary to ensure that he appears for trial at a later date.

4. In subsection (4) of this section, the expression “a reasonable time” means;
 - a. In the case of an arrest or detention in any place where there is court of competent jurisdiction within a radius of forty kilometers, a period of one day; and
 - b. In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.
5. Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, “the appropriate authority or person” means an authority or person specified by law.
6. Nothing in this section shall be construed
 - a. In relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and
 - b. As invalidating any law by reason only that it authorizes the detention for a period not exceeding three months of a member of the armed forces of the federation or a member of the Nigeria police force in execution of a sentence imposed by an officer of the armed forces of the federation or of the Nigeria police force in respect of an offence punishable by such detention of which he has been found guilty.

The Nigerian constitution provides that every Nigerian citizen is entitled to his/her personal liberty. However, the world liberty can be defined. “as an authority to do something which would otherwise be wrongful or illegal” Osborn’s concise law dictionary, 9th edition.

However, in the constitutional context, personal liberty connotes right to freedom from wrongful or false imprisonment, arrest, or any physical restraint whether in any common prison, or even in the open street without legal justification.

The personal liberty of a person may be contravened only in the exceptions provided in S. 35(1) (a.f) of the 1999 constitution which grounds include;

1. Imprisonment in execution of a sentence of court imposing a term of imprisonment for a criminal offence which the person has been found guilty.

2. Contempt of court or other failure to comply with an obligation imposed by law.
3. A lawful arrest upon reasonable suspicion of having committed a criminal offence or to prevent commission of an offence subject to the right to be released on bail as provided by law.
4. For the purpose of the care or treatment of persons suffering from contagious disease, unsound mind, drug addicts and vagrants or for the protection of society from such persons.

The above instances amount to the various ways in which the liberty of a person can be curtailed as allowed by the constitution. For instance Arrest means to actually touch or confine the body of the person to be arrested, unless there be a submission to virtue of section 35 (2) shall have right to remain silent or avoid answering any question until after meeting with his/her legal representative/practitioner or any person of his choice.

5. For the purpose of the education, or welfare of young persons who have not attained the age of 18 years.
6. For the purpose of preventing unlawful entry into Nigeria, expulsion or extradition.

4.0 CONCLUSION

These rights, that is right to life, right to dignity of human person and right to personal liberty are all rights expressed in the negative terms and affects persons directly and be said to form the basis of the rights as their violations will amount to the violations of some other rights, for instance a person who is unjustly arrested, tortured and kept beyond the constitutional stipulated time will amount to a breach of his right to personal liberty, right to dignity of human persons and fair hearing amongst others.

5.0 SUMMARY

These rights are interrelated and cannot be treated in isolation as the infringement of one will lead to another and it needs be said that these rights cannot be fully enjoyed except the right to these rights by all are respected by all and sundry both the governed and the government.

6.0 TUTOR MARKED ASSIGNMENTB

- Service in the Nigerian army, a death sentence of a court of competent jurisdiction and detention within 24hours pending investigation all amount to derogation of rights, discuss.

7.0 REFERENCES / FURTHER READING

- (1) Osita Nnanani ogbu (1999) human rights law and practice in Nigeria an Introduction.
- (2) Kayode eso (2008) Human Rights and Education
- (3) S.E. Deko (2002) Fundamental Issues In Nigerian Constitutional law
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- (5) Ese Malemi (2006) The Nigerian Constitutional Law
- (6) Bob Osamor (2008) Fundamentals of Criminal Procedure in Nigeria
- (7) Olakanmi & Co (2007) Hand Book on Human Rights.

UNIT 2 RIGHT TO FAIR HEARING

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 3.1 Right to Fair Hearing
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References / Further Reading

1.0 INTRODUCTION

Right to fair hearing is a cardinal right to all other rights, it is likened to a rock upon which all other rights are built and a breach of which is very common in our clime. Fair hearing has basically two principles which are; Audi alteram partem and Nemo judex in causa sua and these principles over time have formed the basis of judicial process.

2.0 OBJECTIVES

At the end of this unit, you should be able to;

1. Explain the principle of fair hearing
2. Discuss the various wings of fair hearing
3. Define the concept of presumption of innocence

3.0 MAIN CONTENT

3.1 RIGHT TO FAIR HEARING

The Right to fair hearing is succinctly provided for in Section 36(1). In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. **See Adigun V.A.G. Oyo State (1987) INWLR pt 53, P.678 Sc.**

2. Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person **Gorba v. university of Maduguri (1986)NWL R 18, P 550 Sc. if such law;**
 - a. Provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person and.
 - b. Contains no provision making the determination of the administering authority final and conclusive
3. The proceedings of a court or the proceeding of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.
4. Wherever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public with a reasonable time by a court or tribunal provided that;
 - a. A court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;
 - b. If in any proceedings before a court a such tribunal, a minister of the government of the federation or a commission of the government of a state satisfies the court or tribunal that it would not be in the public interest for any matter to be publicity disclosed, the court or tribunal shall make arrangement for evidence relating to that matter to be led in private and shall take such other action as may be necessary or expletively to prevent the disclosure of the matter.
5. Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.
6. Every person who is charged with a criminal offence shall be entitled to;
 - a. Be informed promptly in the language that he understands and in detail of the nature of the offence
 - b. Be given adequate time and facilities for the preparation of his defence
 - c. Defend himself in person or by legal practitioners of his own choice
 - d. Examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance

- and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witness called by the prosecutor.
- e. Have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.
 7. When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any person authorized by him on his behalf shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case.
 8. No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence; and penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.
 9. No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for criminal offence having the same ingredients as that offence save upon the order of a superior court.
 10. No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence
 11. No person who is tried for a criminal offence shall be compelled to give evidence at the trial
 12. Subject as otherwise provided by this constitution a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an act of the national assembly or a law of a state, any subsidiary legislation or instrument under the provisions of a law.

Before and during the trial of any person of a crime, there are provisions in the 1999 constitution of the Federal Republic of Nigeria which ensures that the accused person shall have a fair trial. These provisions are entrenched in section 36 of the 1999 constitution. These provisions over ride any provisions in any other enactment, which is not consistent with section 36 of the constitution and this forms the basis of every trial.

Fairness of a trial is a fundamental to the administration of justice. It does not only give integrity to the legal system but it also ensures the confidence of the society in the administration of justice system. We will, therefore examine the provisions of section 36 and its application.

a. FAIR HEARING

Section 36(1) and (4) 1999 Constitution as quoted above. The concept of Fair Hearing is at the very foundation of the legal system and is

usually encapsulated in two latin maxims; audi Alteram partem that is (hear the other party) and Nemo iudex In causa Sua (no one should be a judge in his own case). However, the supreme court in **Effiom V the state (1995) INWLR (pt.373) p. 507 at 575** prescribed the essential elements of fair hearing as follows;

- i. Free access to the court
- ii. The right to be heard
- iii. The impartiality of the adjudicating process
- iv. The principles of nemo iudex in causa sua; and
- v. Whether there is inordinate delay in delivering judgment

1. AUDIALTERAM PARTERM

It is an ancient rule of law that all parties must be heard before decisions are taken one way or the other **R v. chancellor, university of Cambridge (1723) 1 Str 557.**

In the resolution of a dispute or the determination of guilt, the court is duty bound to listen to and consider the evidence of both sides in a case. However, a court of law can convict an accused person who chooses to say nothing in his defence **Section 287 C.P.A** consequently; the law only requires that the accused person be given the opportunity to state his case. If the accused person fails, refuses or neglects to state his case, he cannot claim that his right to fair hearing has been violated see **R.v. University of Cambridge (SUPRA)**. The implication of the aforesaid is that an accused person or party should state his/her own case when required to do so, so that the case of all parties will be weighed and considered on equal strength. the judge is enjoined to take the evidence of all parties without being meddlesome interloper in the matter before the court.

2. NEMO JUDEX IN CAUSA SUA

This is another prerequisite of a fair trial. Justice must not only be done but it must be seen by all to have been manifestly done. Consequently, a Judge or Magistrate who has an interest in a case should not decide the case of an accused person. The judge must not only be free from bias but also from the likelihood of bias. Once a judge has an interest in a case, it is immaterial that he was not influenced by that interest. The important decision is for the Judge or Magistrate to disclose such interest and allow the transfer of the case to another.

Therefore, once the circumstances are such that any right thinking member of the society may say that a Judge is biased, and then the Judge should not hear and determine the case. If the judge presides over a case in which he has an interest, his decision will be nullified on appeal. The fact that he was not actually biased is immaterial see **Garba V. University of Maduguri** (Supra).

On what the proper test of bias in a matter before the court is **Akpata Jsc in**

Yabugbe v. Commissioner of police state that, (1992) 4 NWLR (pt 234) p. 152 at 174 “In considering whether there was any likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be who sits in a judicial capacity..... The court looks at the impression, which would be given to other people. Even, if he was as impartial as he could be, nevertheless, if right minded persons would think that, in the circumstances, there was a real likelihood or bias on his part, then he should not sit. And if he does sit, his decision cannot stand...”

However, in the civil case of **Orugbo V. Una (2002) 16 NWLR (pt 792) P. 175**, the supreme court held; that the constitutional provision of fair hearing has no tribal insinuation or inclination of the composition of the bench alongside the tribes of the parties. In other words an aggrieved person cannot be heard to complain that because he is not of the same tribe with the members of the bench he cannot have a fair hearing. For, if such a contention is upheld, then most, If not all trials will be faulted because the composition of most courts may not agree with the tribes of the parties. In essence the tribe of members of the bench is not a consideration or basis upon which bias can be raised.

The Fair Hearing envisaged by section 36(4) must be commenced and concluded within a reasonable time by a court or tribunal. the question whether a trial is conducted within a reasonable time depends on the circumstances of each particular case see **Okeke V. The state (2003) 15 NWLR (pt. 842) p.25 at 84**.

The Supreme Court has identified four factors and the effect they may have on a trial in other to determine “reasonable time” in relation to a criminal trial, these are;

The length of the delay in trial

- i. The reasons given by the prosecution for the delay
 - ii. The responsibility of the accused for asserting his rights;
- and

- iii. The prejudice to which the accused person may be exposed

In **Obuluonye V the state (1983) 4 NCLR p. 204**. The trial took four years to conclude. There were more than ten accused persons the trial judge went on transfer to another judicial division and was transferred back to find that the case remained where he left it. He then concluded it. On appeal it was held;

- i. That due to effluxion of time the trial Judge could not possibly recollect the evidence given at the trial.
- ii. That the trial Judge lost track of the facts of the case and
- iii. Consequently, the accused persons were not given a fair trial within a reasonable time.

b. Publicity of Trials - section 36(4) of the 1999 constitution. The Fair Hearing as envisaged by this section must be conducted in the public. In fact the publicity of a trial is one of the hall marks of fair hearing. Members of the public are, therefore not prohibited from attending criminal trials even when they are not parties to the proceedings. The court or tribunal must be open and accessible to the members of the public as far as it can conveniently accommodate them from section 203 CPA. This does not include children, since Children are prohibited from attending court proceeding during criminal trials section 206 CPA.

The following circumstances are instances where in the court may exclude members of the public from its proceedings;

- i. In the interest of defence, public safety, public order or public morality
- ii. When a young person is to give evidence in the case of an offence, which is contrary to decency or morality
- iii. When it is considered necessary due to special circumstances to protect the private lives of the parties to the proceedings
- iv. When a Minister of the federation or a commissioner of a state satisfies the court that it will not be in the public interest for any matter to be publicly disclosed, the court may hear the evidence in relation to such matter in private.
- v. The trials of juveniles are not open to the members of the public only their parents or guardians, their counsels, accredited members of the press and court officials may be present during the trial of juveniles.
- vi. When a statute expressly provides that trials shall not be open to members of the public. For instance, Section 13(1) of the

recovery of public property special military tribunal decree 1984 prohibits public trials of alleged offenders.

However, in all cases where a court excludes members of the public from its proceedings, the exclusion order does not authorize the exclusion of bonafide representatives of the media, or messengers, clerks and other persons required in court for purposes connected with their employment where the exclusion order is intended to include any of the above mentioned, it shall be specifically stated and the judge or magistrate shall record the grounds upon which such an order was made section 205 of the CPA.

c. **PRESUMPTION OF INNOCENCE**

Section 36(5) 1999 Constitution is to the effect that in all criminal proceedings, every persons charges of a criminal offence is innocent until such is proved guilty.

It is the duty of the prosecution who alleges by virtue of the above section to prove it beyond reasonable doubt. In **Okoro V. the state (1988) 12 S.C.N.J. 19**. Seven accused persons were charged with murder before the High court. At the end of the prosecution's case one of the accused persons was identified as one of those who unlawfully caused the death of the ground that she had no case to answer. The other accused the ground that she had no case to answer. The other accused persons were asked to defend themselves. At the end of the trial, the first accused person was found guilty while the other accused persons were acquitted. He appealed against his conviction. The Supreme Court held.

- i. That since the prosecution had failed to establish that any of the accused persons unlawfully caused the death of the deceased, there was no case against any of the accused person;
- ii That to ask the first accused person to defend himself was to ask him to prove his innocence enshrined in the constitution. Also in **Uso V. Commissioner of Police (1972) 11 C.P. 37** the supreme court held; that it is the duty of the Prosecution to prove the guilt of the accused person and not that of the judge or any other person. However, the provision to section 36(5) of the constitution accommodates statutory exceptions, which may impose on an accused person the burden of providing particular facts. Such laws are valid and not inconsistent with the presumption of innocence. For instance sections 141(3)(c) of the Evidence Act places the burden of providing insanity or facts

with in knowledge of the accused person on him are instances which the accused person should prove.

d. **ACCUSED PERSON MUST BE INFORMED OF HIS OFFENCE**

Section 36(6)(a) which provides;

This provision is to the effect that every one charged with a criminal offence must be informed in a language that he understands, he must be informed of the nature of the offence promptly hence this information must be given to the accused person at the time of his arrest and not later than when the accused person is arraigned for trial.

The only exception to this rule is where an accused person is informed of the nature of a grave offence for which he was previously tried but was subsequently convicted for a lesser offence where the facts proved by the prosecution cannot sustain the offence charged but establishes the commission of a lesser offence.

This is because the ingredients of the lesser offence are part of the ingredients of the grave offence, for example indecent assault in place of rape **see Maja V. the state (1980) IN C.R. P. 212.**

It is important to note that the constitution demands that the accused person be informed of his crime in the language he understands and in details of the nature of the offence.

e. **ADEQUATE TIME FACILITIES TO PREPARE HIS DEFENCE**

Section 36(6)(b) of the 1999 constitution.

This very section is the precursor for adjournments. Thus an accused person is entitled to adjournment in order to secure the services of a defense counsel or the attendance of witnesses in his defense.

It is worthy of note that an accused person is not entitled to continuous adjournment after repeated adjournment is not a violation of the accused person's right to adequate time to prepare for his defence **see Ortese Yanor V. the state (1965) I ALL N.L.R.P. 193.**

However in the trial of capital offences, the court must grant an adjournment once the accused person's defence counsel is absent in court **Udo v. the state (1988) 3 NWLR (pt 82) P. 316** as this will be in line with the principle of fair hearing.

f. **RIGHT TO A DEFENCE COUNSEL**

Section 36(6)(c) of the 1999 constitution.

This constitutional provision is re-echoed by section 211 of the CPA. In effect, and accused person has two options in his defence, that is to defend himself personally or defend himself through a legal practitioner of his own choice. Therefore, any law which prohibits the appearance of a legal practitioner before any court or tribunal is unconstitutional and consequently, null and void see **Uzodinma V. commissioner of police (1982)(1) N.C.R.D 27.**

But the right to a defence counsel is not unqualified. If the accused person chooses a counsel who is subject to other limitations and such limitations prevent the counsel from defending him, he cannot complain that his right to counsel of his own choice has been denied see **Awolowo and ors V. Minister of Internal Affairs and Ors. (1962) LL.R p. 177.**

Similarly, the Senior advocates of Nigeria (privileges and functions) rules which provides that a senior advocate the Nigeria does not have a right of appearance in the interior courts is not contrary to section 36(6)(c), An accused person who appears in court without a counsel is entitled to be informed by a court of his right to defend himself personally or through a counsel of his choice.

Mandatory legal representation for capital offences. Section 352 CPA and 186 CPC.

Although the constitution is silent on mandatory legal representation for capital offences, it is provided for by the CPA and the CPC. Both laws guarantee that any person who is charged with a capital offence who is not represented by a counsel should have one provided for him by the court.

The assignment of a legal practitioner to conduct the defence of any person who is charged with a capital offence is not a violation of his right to a counsel of his choice see **Josoah V. the state (1985) I.S.C. p406.**

Furthermore, the legal aid Act of 1976 (as amended) supplements these provisions by empowering the legal aid council to assign legal practitioners to indigent persons who are charged with capital offences. Since the right to representation cannot be waived in cases of capital punishment.

g. EXAMINATION OF WITNESSES

Section 36(6)(d) of the 1999 constitution.

This right is exercisable by all accused person on the same conditions as those that apply to the witness called by the prosecution. **See Tulu v. Bauchi Native Authority (1965) N.W.L.R. P343.**

It should be noted that the accused person is also entitle to call witnesses in his defence. Therefore the court shall not refuse an application by an accused person to call a witness. See Idirisu V. the state (1967) 1 ALL N.L.R P32 where in the accused person's application to call a medical doctor who made the report as a witness was refused on the ground that an adjournment will not serve the course of justice.

h. RIGHT OF INTERPRETER

Section 36(6)(e) of the 1999 constitution.

The language of the court in Nigeria is English language see **Ogunye v the state**. Consequently, any person who cannot understand the language of the court is entitled to an interpretation of the proceedings of the court in any language he understands without payment. That is provided by the court free of charge. The interpreter must be competent enough to interpret the language used in the proceedings into the language understood by the accused person.

See **Ajayi v Zaria Native Authority (1964) NNLR p. 61.**

The interpreter must be clear, accurate and comprehensive in the interpretation of the proceedings and the interpreter must interpret everything said by the witness, the complainant and the court. The constitution guarantee the right to an interpreter but it is the duty of the accused person to inform the court that he does not understand the language of the court. This the accused can do personally or through his counsel. **See State v. Gwonto (1983) 3 S.C. p. 67**

The court must however ensure that the interpreter does not have relationship with the parties or any other connection to the case **R.V. OGUCHA (1959) 4 F.S.C.P. 64**. As this tends to affect the whole exercise.

i. KEEP RECORDS OF PROCEEDINGS

Section 36(7) 1999 constitution.

It is provided thus that the court shall keep all records of proceedings and the accused person or any other person authorized by him shall be entitled to obtain copies of such proceedings, judgments e.t.c that is

certified true copies of such as it is required and the only condition to be fulfilled is payment of prescribed fees.

j. NO TRIAL ON RETROACTIVE LEGISLATION

Section 36(8) of the constitution is to the effect that an accused person shall not be convicted of any crime or offence that did not constitute a crime at the time such was committed, neither shall a convicted person be sentenced to a penalty, which is higher than the prescribed penalty in force at the time the offence was committed.

In essence before an accused person can be held guilty of an offence such must be held as an offence under any existing law and convicted with a sentence that is prescribed by law.

k. PROHIBITION OF DOUBLE TRIAL

Section 36(9) of the constitution.

Any accused person who claims the benefits of this provision should raise an objection to his trial before pleading to the charges against him see **Edu. V. Commissioner of police (1952) 14 W.A.C.A. pg 163.** However an accused person is not precluded from raising an objection to his trial on grounds of autre fois acquit or convict after having pleaded to the charges against him.

The previous charges in the case if proved will be withdrawn since it is an issue that goes to the jurisdiction of the court.

In state v Dustin (1967) NNLR p. 82 held that the plea cannot be raise if the court has adjourned for judgment.

The plea can however be raised on appeal for the first time. However before an accused person can raise the plea of autre fois acquit or autre fois convict, this plea must satisfy the following conditions.

- i. The first trial of the accused person must have been on criminal charge.
- ii. The first trial of the accused person must be by a court of competent jurisdiction.
- iii. The first trial of the accused person must have ended with a conviction or an acquittal.
- iv. The offence for which the accused person is now charge must be

- a. The same with the first offence for which he was tried or
- b. An offence for which the accused person could have been convicted of at the first trial, although he was not charged with the offence.

l. PARDON

Section 36(10) of the constitution.

The provision of this section is clear and unequivocal and a similar provision is contained in section 211(1)(b) of the C.P.A. this forms the basis of the plea of pardon to a criminal charge. This plea differs from *autre fois convict* or *autre fois acquit*.

The essence of a plea of pardon is that it is the appropriate authority that pardons the accused person's conviction while a plea of *autre fois convict* or *acquit* is saying the accused person had been tried before by a court of competent jurisdiction and the purpose of this is to avoid double jeopardy.

The appropriate authority to grant a federal pardon is the president while in a state is the governor see **Falae V. Obasanjo (1999) 4 NWLR (pt 599) p.476 at 495.**

An application for pardon by a convicted person can only be properly made to the committee on prerogative of mercy and not to any court of law see **Okeke V. the state (supra)**. Note that pardon can only be granted to persons that have been convicted of an offence.

For those who are being prosecuted, the proper measure will be the withdrawal of prosecution that is *nolle prosequi* by the Attorney General of the Federation or State.

On the other hand amnesty is granted to persons who are alleged to have committed an offence but have not been charged to court for the said offence.

m. RIGHT TO SILENCE

Section 36(11) of the constitution.

In addition to this provision, the evidence act and the CPC declares that an accused person is not a compellable witness but is a competent one. Also both the CPA and CPC provides to the effect that an accused

person who is called upon by the court for his defence has an option of not saying anything at all in his defence if he so wishes section 28 and 236 respectively.

When an accused person exercises his right of silence, the prosecutor cannot comment on such failure to give evidence.

n. THE OFFENCE MUST BE KNOWN TO LAW

Section 36(12) of the constitution.

Due to the duality of a criminal codes in Nigeria, an act or omission may be an offence in one part of the country while it is not on another part see **Aoko v.**

Fagbemi in the instant case adultery is an offence in the north and not so in the south.

In line with the section, accused person must be charged with the section of the law which provides for the offence and prescribed the penalty so due. See **A. G. Federation v Isong (1996) 1 QLRN p. 75**

4.0 CONCLUSION

Right to fair hearing is elaborate which encompasses so many principles of law forming the tenets of justice itself a violation of this right amount to justice denied in all ramifications.

5.0 SUMMARY

Fair hearing is not just a right but a principle of law forming the very foundation of law.

6.0 TUTOR MARKED ASSIGNMENT

1. Discuss the concept of presumption of innocence
2. Explain the basic wings of fair hearing
3. Reasonable time means expiration of trial whenever the judge is through

7.0 REFERENCES/FURTHER READING

1. Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria an Introduction
2. Kayode Eso (2008) Human Rights and Education
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UNIT 3 RIGHT TO PRIVATE AND FAMILY LIFE, RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION, RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Right to private and family life
 - 3.2 Right to freedom of thought, conscience and religion
 - 3.3 Right to freedom of expression and the press
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor marked assignment
- 7.0 References/further reading

1.0 INTRODUCTION

Right to private life and property is to the purport that individuals shall be entitled to privacy without intrusion of any kind from person(s) or group of persons. This right covers their homes, correspondence, telephone conversations, and telegraphic communication. Again the right to freedom of thought, conscience and religion boarders' belief, no person should be forced to join any religion community or affiliation and persons shall not be prevented from any educational institution on the basis of religion and the law prohibits membership of any secret society. Lastly the right to freedom of expression and the press which guarantees everyone to hold their opinions, entitles anyone to own any medium of dissemination of information, also allows for government and individual ownership of mediums of communication.

2.0 OBJECTIVES

At the end of this unit, you should be able to;

- Explain the right to life
- Discuss the limitation to the right to freedom of thought, conscience and religion
- Explain the right to freedom of expression and the press

3.0 MAIN CONTENT

Section 37 provides "the privacy of citizens, their homes correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected".

This provision is to the effect that every person has right to private and family life. Therefore, the privacy of a person's home correspondence, telephone conversations, telegraphic and other forms of communication must not be invaded without lawful justification and according to law.

Where a person or public authority trespasses invades the privacy of the home of an individual, such may sue for trespass. An invasion of private life may amount to defamation or other tort or crime. A person so defamed may sue the defamation law or other relevant tort and recover damages except the defendant has a defence. Action may also be brought in criminal law. On the other hand, public authorities are public property. Thus they are often in the news and details of their private lives are discussed by the press so long as the publication is not defamatory, or it is true or there is some other defence, the press is usually free to make such publications.

3.1 RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Section 38 (1). Every person shall be entitled to freedom of thought, conscience and religion including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship teaching, practice and observance.

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any pace of education maintained wholly by that community or denomination.

(4) Nothing in this section shall entitle an person to form, take part in the activity or be a member of s secret society.

The Nigerian constitution guarantees the right to freedom of thought, conscience and religion. A person is therefore free to believe or change his religion and alone or in community with others, and in private or in public

manifest and propagate his religion or worship, teach and practice his religion. Under the constitution, a person has the right to freedom of thought, conscience and religion. In a multi-religious Country like Nigeria, the need for this freedom cannot be overstressed. The people of Nigeria are multi-religious, but the government machinery, organization, or institution is secular. The 1999 constitution in section.....prohibits government from adopting a state religion. Although, of recent there have been so many religious crises especially in the North, this does not eradicate the fact that Nigeria is a secular Sate and everyone is entitled to enjoy the freedom to a choice of religion.

Human right is about the autonomy of the individual in certain spheres. Consequently, objection to flag salute or national anthem on the ground of religious belief has been sustained in other jurisdictions. See **Emmanuel Bijoo v State of Kerala A.i.r 1987 S. C. pp. 214-220.**

This section also prohibits any person to form, take part in the activity, or be a member of a secret society see **Registered Trustees of AMORC v Awoniyi (1991) 3 NWLR (pt 178) 245.** With this provision it purports that the various cult groups in our various institution of learning violates the law.

3.2 RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS

Section 39 (1). Every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own establish and operate any medium for the dissemination of information, ideas and opinions.

Provided that no person, other than the government of the federation or of a state or any other person or body authorized by the president on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or spate a television or wireless broadcasting station for any purpose whatsoever.

- (3) 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 received in confidence, maintaining the authority and independence of courts or regulating telephony wireless broadcasting television or the exhibition of cinematography films or

- b. imposing restrictions upon persons holding office under the government of the federations or of a state, members of the armed forces of the federation or member of the Nigeria police force or other government security services or agencies established by law.

The Nigerian constitution guarantees freedom of expression to every individual and the press. A person therefore has freedom to hold opinions as he will and to receive and impart ideas and information without interference. A person shall within the provisions of any Act enacted by the National Assembly be free to own, establish and operate any medium for the dissemination of information, ideas and opinions see **Archbishop Okogie v A. G. Lagos State (1981) INCLR 262** the courts held that the word 'media' is not limited to the press, but includes any medium for importing and receiving information and it includes schools and that the right to freedom of expression and the press includes the right to own a private school to receive and impart ideas and information without interference. The right to liberty of expression and the press mans two broad things.

1. Right to freedom from prior censorship or restraint of publication
2. But not freedom from the legal consequences of an unlawful criminal, mischievous or defamatory publication.

The right to freedom of expression and the press as guaranteed in the constitution is prima facie sufficient to protect the press. Comparatively, in the United States press freedom is provided in absolute words to the effect that 'congress shall make no law abridging the freedom of the press. Yet in practice and in reality there are statutory enactments which limit press freedom thus the constitutional provision whilst permitting free speech does not provide immunity for every possible use of language.

In Nigeria, the constitution on the other hand permits restriction of press freedom for instance;

1. For the purpose of preventing the disclosure of information received in confidence, that is classified matters or official secrets.
2. For the purpose of maintaining the authority and independence of the courts that is the law of contempt of court.
3. For the purpose of preventing former or present public office holder under the government of the federation or of a state or local government or members of the armed forces or other security services from indulging classified information or official secret they received in the course of service to the nation.

Furthermore, the provisions of the right to freedom of expression and the press, do not invalidate any law that is reasonably justifiable in a democratic society

in the interest of defence, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of other persons, for instance against defamation and other harmful publications and so forth.

Ordinarily though by ethics of profession a journalist is not to disclose his source of information, however, under the constitution disclosure may be required in the interest of the state, such as, in the interest of defence safely order of the public where a journalist is required to disclose his source of information in the interest of the state he withholds such information at his own risk.

At common law, only four relationships enjoy the privilege of non disclosure of information that has been received in confidence. These classes of persons enjoy privilege and cannot be compelled at law to disclose information against other. These relationships are:

1. Lawyer and client
2. Wife and husband
3. Informant and government
4. Juror and juror

See **New York Times Co v United States 403 us 713 (1971)**

However, the courts are usually suspicious of laws, which impose restraints on freedom of expression, prior to publication, including onerous licensing requirements, or laws requiring permits before public assembly and speeches can be made. Ordinarily courts strictly interpret such laws to see that they must be laws that are reasonably justifiable in a democratic society.

4.0 CONCLUSION

These are rights that affect individual or group of persons directly and should be so enjoyed without any intrusion from others.

5.0 SUMMARY

With the spate of religious crises and the delay encountered in passing the freedom of information bill into law, it becomes evident that these rights are worth protecting. Although there are qualifications to this right of freedom of expression but the expression is honest and true then there is no violation of any kind.

6.0 TUTOR MARKED ASSIGNMENT

- There are qualifications to the right to freedom of expression, discuss

- All expression amount to defamation, explain.
- Nigeria is a secular state, explain.

7.0 REFERENCES/FURTHER READING

1. Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria, an introduction
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**Unit 4 RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION,
RIGHT TO FREEDOM OF MOVEMENT AND RIGHT TO
FREEDOM FROM DISCRIMINATION**

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Right to peaceful assembly and association
 - 3.2 Right to freedom of movement
 - 3.3 Right to freedom from discrimination
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor marked assignment
- 7.0 References/further reading

1.0 INTRODUCTION

Freedom of assembly and association is a vital and important component of the democratic process in any Nation. Association have been a virile medium through which people make known their pleasure and displeasure over issues, these association can be profit or non profit organizations for instance in Eastern Nigeria where we have the various age grade groups in their polity. Freedom of movement entitles everyone to freedom of movement, however there are qualifications to this right and lastly is the freedom from discrimination of any kind, that is why our law frowns at the old long tradition of the Osu caste system in the East and the provisions of CEDAW is meant to protect all forms of discrimination against women

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Explain the various restrictions to the freedom of movement
- Describe how the right to freedom from discrimination operates
- Discuss the right to peaceful assembly and association

3.0 MAIN CONTENT

3.1 RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION

Section 40. Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.

Provided that the provisions of this section shall not derogate from the powers conferred by this constitution on the Independent National Electoral Commission with respect to political parties to which that commission does at accord recognition.

Every person is entitled to peaceful assemble and associate with other persons to pursue, protect and advance lawful interests and objectives. A person may therefore form or belong to any:

- i. Political party
- ii. Trade Union or
- iii. Any other association, be it political, social, religious or economic, in the pursuance of lawful interests
- iv. Town/kin associations
- v. Professional groups

The title to this fundamental right reads 'right to peaceful assembly and association' which means that right is not granted to any person to assemble for unpeaceful or other unlawful purposes. Laws reasonably justifiable in a democratic society may therefore empower:

1. The police to stop or disperse unpeaceful gathering or a potentially explosive gathering
2. A body to register political social and economic associations and bodies. However, laws which aim to interfere with the right to peaceful assembly and association are usually strictly interpreted by court. See **Adewole and ors v Jakande and others (supra)**

However it should be noted that permits need be obtained before public processions and meeting are held in public places and this is meant to ensure the security of lives and properties. It should also be noted that a person is not under any obligation to be forced to be a member of any association whatsoever see **Agbai v Okagbue (1991) 7NWLR 391**. In the same light an employer cannot compel his employees to join or not to join certain associations.\

3.2 RIGHT TO FREEDOM OF MOVEMENT

Section 41. Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit there from.

Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society;

- a. Imposing restrictions on the residence or movement of any person who has committed or its reasonably suspected too have committed a criminal offence in order to prevent him from leaving Nigeria, or
- b. Providing for the removal of any person from Nigeria to any other country to;
 - i. Be tried outside Nigeria for any criminal offence or
 - ii. Undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter (where bilateral agreement exists between two countries, prisoners may be taken to either country to face trial or complete prison terms, for instance under a drug law enforcement such as NDLEA Act. The constitution guarantees to every Nigerian citizen freedom of movement to move freely anywhere and to live in any part of the country he wishes. Based on this constitutional right, no citizen of Nigeria shall be:

- i. Expelled from Nigeria
- ii. Refused entry into Nigeria
- iii. Refused exit from Nigeria, such as by seizing his passport

Under normal circumstances it is unconstitutional and wrongful to prevent a citizen from exercising any of the above rights. He may bring an action for infringement of any of these rights. See **Minister of Internal Affairs v Shugba (1982) 3 NCLR 915**, **Williams v Majekodunmi (1962) 1 All NLR 413**. Also seizure of passport was held to amount to the denial of freedom of movement see **Director of State Security Service v Olisa Agbakoba (1999) 3 NWLR p. 599 314**

However, there are exceptions to the right to freedom of movement. Therefore, a law that is reasonably justifiable in a democratic society may impose restrictions on the residence or movement of

1. A person who has committed a crime, in order to prevent him from escaping or leaving Nigeria
2. A person reasonably suspected to have committed a criminal offence in order to prevent him from escaping or leaving Nigeria
3. In order to remove any person from Nigeria to any other country to be tried outside Nigeria in execution of a sentence of court of law in

respect of a criminal offence of a criminal offence of which he was found guilty.

3.3 RIGHT TO FREEDOM FROM DISCRIMINATION

Section 42 (1) a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person.

- a. Be subjected either expressly by, or in a practical application of, any law in force in Nigeria or any executive or administrative action of the government its disabilities or restrictions to which citizens of Nigeria of other communities ethnic groups places of origin, sex, religious or political opinions are not made subject; or
- b. Be accorded either expressly by or in the practical application of any law in force in Nigeria or any such executive or administrative action any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic, places of origin, sex religions or political opinions.

No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the state or as a member of the armed forces of the federation or a member of the Nigeria police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria. The constitution provides for right to freedom from discrimination, for whatsoever reason, for instance on ground of a person's community, ethnicity place of origin, circumstance of birth, sex, relation, political opinions and so forth.

Therefore a Nigerian citizen shall not be subjected to discrimination, but shall be accorded equal treatment with others irrespective of whether the person to a man or a woman with infant children see **Brown v Board of Education 347 us 483 (1954)**, **Mojekwu v Mojekwu (1999) 7 NWLR pt 512, p 283 C.A**

However law is to invalid if it imposes restrictions with respect to appointment of any person to any office under to state such as a minimum age simulation or to membership of the Armed Forces and other government security service established by law or for election to any public office and so forth.

Furthermore, government may also implement special programmes and measures to assist specific categories of people who are under particular disabilities, disadvantages or less opportune communities to enable them catch up, or properly participate in the development of a modern and united country. In similar vein, laws which confer maternity benefits on women are not discriminatory and so forth. Considering the above right it can categorically be asserted that no one can be regarded in Nigeria as a bastard as section 42 (2) provides no discrimination against anyone by reason of his birth thus children born outside wedlock are thus allowed to enjoy equal rights and privileges by

4.0 CONCLUSION

The right to peaceful assembly and association, right to freedom of movement and freedom from discrimination are rights that border on individual persons as it relates to group associations. These rights are not without qualifications although also guaranteed by the African Charter, as such it imposes on the state the duty to abstain from any form of interference as the various association have their internal mechanism of control. The right to freedom of movement at the international plane allows state to control entry into their territory and the right to freedom from discrimination posits generally that no one should be discriminated against on the basis of ethnic group, sex, religion, place of origin or political opinions or be subjected to any deprivation by reason of his birth.

5.0 SUMMARY

While it is argued in some quarters that the right to freedom from discrimination is open only to Nigerian Citizens in Uzoukwu's case, the African charter thus guarantee the rights to every individual, it is however submitted that not all the rights enjoyed by Nigerian citizens can be enjoyed by aliens. There are various associations to which citizens can belong some of which are political such as Peoples Democratic Party, Action Congress of Nigeria etc; other professional groups and associations such as Nigerian Bar Association, Nigerian Medical Association etc, and these associations are not limited.

6.0 TUTOR MARKED ASSIGNMENT

1. Sade a girl of 17 years while in 200 level Cross Rivers State University was impregnated by Chukwu who was also an undergraduate at the same Institution denied the paternity of the child at birth, discuss the legal implication of this scenario on Sade's child.
2. A state of emergency when declared is a violation of the right to freedom of movement, discuss.

3. Define the terms association and assembly, then list ten associations that you know

7.0 REFERENCES/FURTHER READING

1. Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria an introduction
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UNIT 5 RIGHT TO ACQUIRE AND OWN IMMOVABLE PROPERTY ANYWHERE IN NIGERIA, COMPULSORY ACQUISITION OF PROPERTY, RESTRICTION ON AND DEROGATION FROM FUNDAMENTAL

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Right to acquire property
 - 3.2 Compulsory acquisition of property
 - 3.3 Restriction and derogation from fundamental rights
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor marked assignment
- 7.0 References/further assignment

1.0 INTRODUCTION

Right to acquire and own immovable property anywhere in Nigeria is to the effect that every citizen shall have the right to own property in Nigeria. See **Ojukwu v Lagos State Government**, while compulsory acquisition purports that save for certain circumstances there shall be no compulsory acquisition of moveable or immovable property and lastly is the provisions on restrictions on and derogation from fundamental rights which invariably are limitations to these rights.

2.0 OBJECTIVES

At the end of this unit, you should be able to;

- Discuss in details the various limitations to fundamentals rights
- Explain the concept of compulsory acquisition of property
- State in details the right of an individual to own immovable property

3.0 CONTENT

3.1 RIGHT TO ACQUIRE AND OWN IMMOVABLE PROPERTY ANYWHERE IN NIGERIA

Section 43 – Subject to the provisions of this constitution every citizen of Nigeria still have the right to acquire and own immovable property anywhere in Nigeria see **Lakanmi v A. G. Western State (1971) U. I. L. R. 201**

An immovable property is one that cannot be moved such as houses and other fixed properties. Transfer can only be by right of sale or gift that is of one's proprietary in such properties.

Every citizen of Nigeria has right to acquire and own property and anywhere in Nigeria whether movable or immovable. This provision tends to protect the immovable property of citizens especially after the hiccups experienced after the Biafra war where easterners fled leaving their properties behind so as to prevent confiscation.

3.2 COMPULSORY ACQUISITION OF PROPERTY

Section 44 – (i) No movable property or any interest in an immovable property shall be taken possession of compulsory and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that among other things.

- a. Requires the prompt payment of compensation therefore; and
- b. Gives to any person claiming such compensation, a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.
- c. Nothing in sub section (1) of this section shall be construed as affecting any general law
 - i. For the imposition or enforcement of any tax, rate or duty
 - ii. For the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction of an offence.
 - iii. Relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts.
 - iv. Relating to the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporate bodies in the course of being wound-up
 - v. Relating to the execution of judgments or orders of court
 - vi. Providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals.
 - vii. Relating to enemy property
 - viii. Relating to trusts and trustees
 - ix. Relating to limitations of actions
 - x. Relating to property vested in bodies corporate directly established by any law in force in Nigeria

- xi. Relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry
 - xii. Providing for the carrying out of work on land for the purpose of soil-conservation; or
 - xiii. Subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.
- (3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the exclusive economic zone of Nigeria shall vest in the government of the federation and shall be managed in such manner as may be prescribed by the National Assembly.

The Nigerian constitution provides that government shall not compulsorily acquire the movable or immovable property of any person for public purposes or public use in any part of Nigeria, except in the manner and for the purposes prescribed by a law. Therefore, confiscating property from one private individual and granting it to another individual is not acquisition for public purposes under the provisions of the Nigerian constitution. However, any law that empowers the state to acquire private property for public purposes must also provide for;

1. The prompt payment of adequate compensation therefore; and
2. Give to any person claiming such compensation, right of access to a court of law or tribunal or body having jurisdiction over such matter in that part of Nigeria for the determination of his interest in the property and the amount of compensation. The instances and exceptions where interest in or right to property may be temporarily interfered with or lost under general law are listed in sub section 2 of this section. Some of the instances are as follows; for the imposition of penalty, relating to execution of judgments”, relating to enemy property and subject to prompt payment of compensation in essence any acquisition which does not fall within the ambit of this provision is unconstitutional.

Finally, the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon territorial water is and the exclusive zone of Nigeria shall

vest in the government of the federation, which shall be managed in the manner prescribed by the National Assembly.

The Land Use Act of 1978 has also made copious provisions concerning land and other related issues. Thus vesting right of ownership of all land in the government and individuals can only have a right of occupancy. On the other hand the African Chartered allows acquisition of private property on the basis of public need and interest.

Generally see the following cases; **Penok Ltd v Hotel Presidential (1982) 12 SC 1, A.C.B V Okonkwo (1974) ECLSR, Adewole and ors v Alhaji Jakande and others (1981) NCLR 262 and Onyiuke v Esiala (1974) ECLSR**

3.3 RESTRICTION AND DEROGATION FROM FUNDAMENTAL RIGHTS

Section 45 (1) Nothing in sections 37, 38, 39, 40, and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society;

- (a) In the interest of defence, public safety, public order, public morality or public health; or
 - (b) For the purpose of protecting the rights and freedom of other persons
2. An act of National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this constitution; but no such measures shall be taken in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during the period of emergency.

Provided that nothing in this section shall authorize any derogation from the provisions of section 33 of this constitution, except in respect of death resulting from acts of war or authorize any derogation from the provisions of section 36(8) of this constitution.

3. in this section, a 'period of emergency' means any period during which there is in force a proclamation of a state of emergency declared by the president in exercise of the powers conferred on him under section 305 of this constitution.

Through the constitution guarantees fundamental rights on one hand, it hereby provides for restrictions on fundamental rights and grounds on which it can take away, derogate, or limit the exercise of fundamental rights in the interests of the state by laws which are reasonably justifiable in a democratic society on the grounds of defence, public safety, public order, public morality, public health; or for the purpose of protecting the rights and freedom of other persons. **See Mrs. Yetunde Ogungbesau & ors v Honourable Minister of Health and Social Service (1995) FHCLR 168 AT 190.** The foregoing is to the effect that these rights are not in any way absolute as there are limitations so as to safeguard the rights of others and prevent any form of lawlessness and anarchy.

This section of the constitution provides for restriction and derogation, the question that rightly comes to mind is, are the two concepts the same? Restriction has been seen in the light of limitations and limitations are qualifications or exceptions to those rights and they operate at all time while derogation on the other hand is an occasion when a rule or law is allowed to be ignored that is a suspension of rights. Section 45 of the constitution of the federation is the general restriction and derogation section and it applies to virtually all the rights though some specific sections contain their limitations.

Jurists such as Professor Ben Nwabueze have posited that the provisions on the restrictions and derogation are elastic thus accommodating encroachment on the rights. Again this provision tends to impute on the person on the person whose rights have been infringed upon to show that it was not within the ambit of the term 'reasonably justifiable' **see DPP v Chike Obi (1961) All NLR 186 AND Queen v Amalgamated Press (1961) All NLR 199.** The term reasonably justifiable has a wide connotation and tends to be vague.

It should however be noted that by the proviso to this section the only derogation to section 33 of the constitution that right to life is death resulting from acts of war.

CASES OF DEROGATION OF FUNDAMENTAL RIGHTS

Since after independence there have been cases of derogation of rights by successive Nigerian government dashing the dreams and aspirations of the people that fundamental rights will improve after independence. There were cases of intimidation and repression in all quarters especially during the military era. The judiciary in their conservative consideration adapted a very narrow interpretation of the fundamental rights entrenched in the

constitution. See **William v Majekodunmi (supra) and Adegbenro v AG Fedration (1962) WNLR 150**

It should be noted that derogation is different from the term limitation, while the former means a temporary suspension of rights, on the other hand limitations are qualifications to the guaranteed rights.

4.0 CONCLUSION

The right to acquire immovable property is open to all without any qualification with regards to status, tribe or sex. The section on restriction and derogation tends to be too encompassing as such permitting a wide range of interpretation to the term reasonably justifiable. Compulsory acquisition of any kind or nature has to be within the gamut of the law otherwise will amount to a breach of the ownership.

5.0 SUMMARY

It is thus glaring from the foregoing that these rights are not in any way absolute hence the qualifications to the rights as entrenched in the constitution of Nigeria. These limitations and derogations are not peculiar to Nigeria alone; they are contained in the African Chartered as well as constitution of other Nations although with slight variation. One of the common forms of derogation in Nigeria in recent times is the declaration of a state of emergencies in various trouble spots by the Nigerian government.

6.0 TUTOR MARKED ASSIGNMENT

- Is there any viable rationale for the restrictions and derogation contained in the constitution?
- Mr. Eze a business man in Alaba International Market bought five acres of land from landowners in a town in Ogun State and during the documentation of his land, he was reliably informed at the land registry that the land in question falls under the government acquisition area. He declared that cannot be as he has already paid for the land. Does he have any right to protest, discuss.
- Anybody can own immovable property in Nigeria, explain.
-

7.0 REFERENCES/FURTHER READING

- (1) Osita Nnanana Ogbu (1999) Human Rights Law and Practice in Nigeria, an introduction
- (2) Kayode Eso (2008) Human Rights and Education

- (3) S. E. Deko (2002) Fundamental Issues in Nigeria Constitutional Law
- (4) Joseph Ikogho (1999) Nigerian Constitution with topic finder
- (5) Ese Malemi (2006) The Nigerian Constitutional Law
- (6) Bob Osamor (2008) Fundamentals of Criminal Procedure in Nigeria
- (7) Olakanmi & Co (2007) Hand Book on Human Rights

MODULE 4

ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA

CONTENT

- UNIT 1: PROCEDURE FOR THE ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA**
- UNIT 2: THE ROLES OF THE JUDICIARY, LAWYERS AND THE POLICE IN THE ENFORCEMENT OF RIGHTS IN NIGERIA**
- UNIT 3: LEGAL AID IN NIGERIA**
- UNIT 4: ISSUES RAISED IN PROMOTING HUMAN RIGHTS IN CONTEMPORARY SOCIETY**
- UNIT 5: OUSTER OF COURT JURISDICTION**
- UNIT 1 PROCEDURE FOR THE ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA**

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main content
 - 3.1 Enforcement of human rights
 - 3.2 Courts with jurisdiction and venue
 - 3.3 Procedure for enforcement of fundamental rights
 - 3.4 Reliefs under the enforcement proceedings by courts
 - 3.5 When can a person apply to enforce his fundamental right?
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor marked assignment
- 7.0 References/further reading

1.0 INTRODUCTION

Without enforcement the aforesaid discussed rights will be a mere paper tiger and there will be no need to entrench them in the constitution. Enforcement of these rights gives life to them and section 46 of the 1999 constitution had succinctly provided for same. The procedure and manner of enforcement have also been provided.

2.0 OBJECTIVES

At the end of this unit, you should be able to;

- Explain the procedure for the enforcement of right in Nigeria
- Discuss the court with jurisdiction in enforcement of rights in Nigeria
- Explain the term application for leave

3.0 CONTENT

3.1 ENFORCEMENT OF HUMAN RIGHTS

Section 46 of the 1999 constitution provides as follows;

- (1) Anymore who alleges that any of this chapter has been or likely to be contravened in any state relation to him may apply to a High Court in that state for redress.
- (2) Subject to the provisions of this constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcing or securing the enforcement within that state of any right to which the person who makes the application may be entitled under this chapter.
- (3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section
- (4) The National Assembly –
 - a. May confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section; and
 - b. Shall make provisions –
 1. For the rendering of financial assistance to any indigent citizen of Nigeria where his right under this chapter has been infringed or

- with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and
2. For ensuring that all allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

The consistent feature of chapter IV of the constitution in the Nigerian constitution need be appreciated by all and sundry. However the constitutional provision of the law without creating the procedural steps to be adopted in enforcing the violation of such rights. Section 46 of the constitution is clearly worded giving right to everyone or anyone whose right has/is being violated to seek redress in the court of law.

The law although created where the redress can be sought, the means and procedures of seeking such redress that is how is not provided for by the constitution.

The Fundamental Rights Enforcement Procedure Rules 1979, which provided for the procedural steps required for the enforcement of any fundamental human rights infringement was made in 1979 by the Honourable Justice Atanda Fatai Williams, the then Chief Justice of Nigeria in pursuant of the power conferred on him by section 42 (3) of the 1979 constitution now section 46(3) of the 1999 constitution.

Following from the above constitutional provisions, the Chief Justices have made rules for the enforcement of fundamental rights enforcement and are known as Fundamental Rights (Enforcement Procedure) Rules which guides all fundamental human rights procedures in Nigeria.

3.2 COURTS WITH JURISDICTION AND ENUE

What is jurisdiction? Jurisdiction is the exercise of judicial power on specific territorial areas as clearly stated in the enactment creating the various courts that is simply powers vested in the courts by law.

Both the 1979 and 1999 constitution rested jurisdiction in matters of enforcement of fundamental rights in the High Courts. However by virtue of the Fundamental Rights (Enforcement Procedure) Rules, High Courts include Federal High Court and State High Court. Order 1 of the Rules provides; “Court means the Federal High Court or the High Court of a State”.

Another paramount question is which court is vested with jurisdiction in fundamental human rights proceedings. By virtue of section 46 of the 1999 constitution jurisdiction is vested in the High Court of the State where such

right was violated. Also only the High Courts of the state where such right was violated. Also only the High Courts have original jurisdiction to entertain cases of infringement of fundamental rights.

See the following authorities which discuss the discuss of the Federal High Court and State High Courts in enforcement of fundamental rights cases. **BRONIK MOTORS V WEMA BANK (1983) SCNLR 296, NATIONAL ASSEMBLY V MOMOH (1983) 4 NCLR 269, FEDERAL MINISTER OF INTERNAL AFFAIRS V SHUGABA (SUPRA), TUKUR V GOVERNMENT OF GONGOLA STATE (1984) 4 NWLR (PT 117) 517**

The rules cover all cases of infringement of fundamental human rights as covered or provided for by the constitution where it is infringed upon or likely to be infringed. Application is initiated by way of first seeking for the leave of court and when the leave is granted then the substantive motion or summons supported by a verifying affidavit used in the motion for leave and the statement in support of application for leave. An affidavit of urgency can be included where necessary (this practice has developed over time as a rule of practice and not law).

The application for the enforcement of fundamental human rights must be made within twelve months from the date of the incidence or event complained of or of such period as provided by the law or on the alternative the delay is explained to the satisfaction of the court where the application is made. It should be noted that where the act complained of his continuous, an action can be brought outside the limitation period at anytime during the continuance of the said act.

The above provision however has created practical problems of jurisdiction for legal practitioners as the Court vested with jurisdiction is not determined at will by practitioners but by the facts of each case.

Section 251 of the 1999 constitution clearly provides for matters upon which the Federal High Court is vested with jurisdiction. In essence while the jurisdictions of state high courts are general that of the Federal High Court is specific and limited to the provisions of section 251 of the 1999 constitution. See the case of **Ubi Iyong Inah & ors v Marcus Ukoi (2002) a NWLR 9PT 773) 563.**

However, in **Grace Jack v University of Agriculture, Makurdi (2004) 5 NWLR (PT 865) 208, Their Lordships held by Katsina – Alu Jsc.** “both the Federal High Court and the High Court of State have concurrent Jurisdiction in matters of the enforcement of a person’s fundamental rights. An application may therefore be made either to the judicial division of the Federal High Court

in the state or the High Court of the state in which a breach of fundamental right occurred, is occurring or about to occur”

The question seeking for answer now from the above judgment of the Supreme Court is that the concurrent jurisdiction is it over persons or matter, it has been submitted by scholars that the above judgment is over sweeping. It should however be noted that earlier decisions in the following cases; **Bronik Motors v Wema Bank (1983) 4 NCLR 269, Aka – Bashorun & another v Wing Commander Mohammed & another (1991) INWLR (pt 168)** at 523 are to the effect that where an issue/case is to be enforced against the Federal Government such should be enforced at the Federal High Court within the jurisdiction **Tukur v Government of Gongola State (1989) 4 NWLR (pt 117) 517**. The above position thus contravenes section 46(2) and so incoherent with the provision of the constitution, it is the belief that the Supreme Court will one day revisit the decision. It is equally important to note that only the High Courts have original jurisdiction to entertain actions for the enforcement of fundamental rights in contradistinction with the appellate courts.

In conclusion, although there are conflicting decisions by the Apex Court, we submit that section 251 of the 1999 constitution provides:

“Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil cases and matters”.

And as such both the Federal High Court and State High Courts have jurisdiction but the choice of court should be guided by the provisions of section 251 of the 1999 constitution. The procedure for bringing this application is set out in the Fundamental Rights (Enforcement Procedure) Rules. To initiate this proceeding, the right for the enforcement of which an application can be made under these rules must be one provided for in Chapter IV of the constitution that is from section 33 – 46 of the 1999 constitution. Any claim that does not fall under this section cannot succeed under the enforcement proceeding. In essence for a high court to be seized of the matter it must come under Chapter IV and not when the alleged breach of such rights is incidental to the real claim of the application. **See Tukur v Taraba State (1997) 6 SCNJ 81.**

VENUE

It is trite law that enforcement of fundamental rights application can only be filed in the High Court of a state or Federal High Court within or covering the state where the alleged violation occurred. **See Tukur v Government of**

Gongola State (1989) 4NWLR (pt 177) 517. However where a breach occurs partly in one state and partly in another, either of the two states have jurisdiction over the matter, see the following cases;

Dangote v Civil Service Commission & Ors (2001) 6 NSCQR 328 at 346, Olaniyi v Aroyehun (1991) 5 NWLR (pt 194) 652, Eggbuonu v Bornu Radio Television Corporation (1997) 12 NWLR (pt 531) 29

In the light of the above, where a matter instituted under the fundamental rights enforcement procedure containing both issues of non-fundamental claims as the basic claim and fundamental rights claim as ancillary claims, the courts shall not be vested with jurisdiction even in relation to the fundamental rights claims see **University of Ilorin v Oluwadare (2006) 14 NWLR (pt 1000) 751 at 768.** On the other hand where the basic matter borders on fundamental rights and ancillary claims are non-fundamental rights such can be taken under an application of fundamental rights see **Abdulhamed v Akar (2006) 13 NWLR (pt 996) 127 at 146.**

3.3 PROCEDURE FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS

Application for the enforcement of Fundamental Rights (Enforcement Procedure) Rules basically can be categorized into three of which each is guided by time.

- (1) application for leave
- (2) the substantive application
- (3) hearing and determination of the application based on affidavit evidence and argument thereon

the aforementioned position is not only provided for by specific provisions of the Fundamental Rights (Enforcement Procedure) Rules, 1979, it has also enjoyed judicial flavor in **Grace Jack v University of Agriculture, Makurdi (2004) 5 NWLR (pt 865) 208.**

APPLICATION FOR LEAVE

Any person alleging a breach of his fundamental rights is at liberty to enforce the violated rights and unless leave to apply for the enforcement of the fundamental rights is sought and granted by the court, the person cannot so enforce. The leave is vide Motion Exparte and the motion should contain, the following:

1. a statement setting out the name and description of the applicant
2. the relief(s) sought
3. the grounds on which it is sought; and
4. an affidavit verifying the facts relied on

the reason for the application for leave as a precondition for enforcement was stated by Uwais, Jsc (as he then was in **Fawehinmi v Akilu (1987) 4 NWLR**

(pt 67) 797), as to determine preliminary matters such as whether a prima facie ground exists on which it can be held that the applicant's rights have been violated and needed to be enforced.

It is worthy to note, that where a judge grants the leave, such order may direct that the grant operate as a stay of all actions or matters relating with the complaining until the determination of the application or the judge can order otherwise. See **Lekwot v Judicial Tribunal on Civil and Communal Disturbances in Kaduna State (1993) 2 NWLR (pt 276) 410**. The grant of leave is not an automatic order to stay.

The application for leave must be filed not later than the day preceding the date of hearing and enough copies of the statement and affidavit for service on the other party or parties as the court may order must be filed in court see O1R 2(4) (FREPR). The application for leave must be made within 12 months from the date of the happening of the event, matter or act complained of or such other period of time as may be prescribed by any law, or except where a period is so prescribed, the delay is explained to the satisfaction of the court or judge to whom such applications made otherwise the application shall not be granted.

There are instances where in the court refused application brought after the expiration of the 12 months period allowed and was held incompetent see **Ugugbe v Tap (1999) 1FHCLR 59, Egbe v Adefarasin (1995) INWLR (pt 3) 549**. On the other hand if reasons are adduced and they are cogent and satisfactory the courts are empowered to extend the time within which to apply see **Tafida v Abubakar (1992) 2 NWLR (pt 230) 511 at 512**.

In addition, where the violation of such right is continuous, such application may be brought anytime during the pendency of such continued act of violation not mindful of the fact that the application is more than the 12 months period allowed by law see **Nwaeze v Cop (2001) CHR 449 at 455**.

In conclusion, where the application for leave is refused, instead of appealing, it would be advised that fresh applications be made see **Esugbji Eleko v Office Administering the Government of Nigeria (1928) AC 459**. The whole essence of the above is because of the limitation period provided for by the enactment.

THE SUBSTANTIVE APPLICATION

Upon the leave being granted, the applicant shall apply by way of notice of motion (form 1) or by origination of summons (form 2) in the appendix of the rules to the appropriate court. There must be at least 8 clear days between the service of the motion or summons and the day fixed for hearing unless

otherwise directed by the court. Failure of which maynot be fatal see **Uzoukwu v Ezeonu (1991) 6 NWLR (pt 200) 18 at 759 – 760.**

From the rules, it posits that the choice of which of the forms to use is that of the applicant, but we submit that the choice of process is dependent on the facts so relied upon in the application. **See Minister of Internal Affairs v Shugaba (1982) 3 NCLR 815 at 965.** In essence if the facts are contentious in nature or has the likelihood to be, the application should be by motion on notice and if they are not contentious by originating summons in form 2 see **Doherty v Doherty (1968) NMLR 241.**

By the provision of the rules, an originating summons in form 2 is expedient to be signed by the judge and not by counsel or applicant see **Saude v Abdulahi (1989) 4 NWLR (pt 116) 387 at 494 and 495, Fanta Oil Ltd v A. G. Federation (2003) 51 WRN at 8.**

By the rules, entering a motion for hearing vide order 2 implies filing the motion for hearing. See **Inah v. Uko (2022) NWLR (pt 773)563 at 5599, A.G (Fed) v. G.O.V. Ajayi (2000) 12NWLR (pt 682)5669.** The motion on notice or originating summons must be filed after leave has been obtained must be entered for hearing within 14 days of granting leave. It should be noted that 14 days may not be sufficient to determine an application in essence from Judicial authorities means filling see **Ogquche v. Mba(1994) 4NWLR (pt 330) 75 at 85.** It is important to note that all parties must be served and affidavit of service must be filed before hearing.

HEARING AND DETERMINATION OF SUBSTANTIVE APPLICATION

All parties to the application must supply to any other party copies of the affidavit which he proposes to use at the trial after which the application vide motion on notice or originating summons is heard. Again there should be consistency of forms by the parties.

Amendment is not foreclosed in the enforcement procedure, hence, it is possible to amend the statement in order to deal with new facts arising out of the affidavit of any other party and the applicant may be allowed to use further affidavit for the pur[pose, but this is done with the leave of the court.

3.4 RELIEFS UNDER THE ENFORCEMENT PROCEEDINGS BY COURTS

The courts have the power to make orders, issue writs and give directives as required and consider appropriate for th purpose within the applicant's

application, while in the absence of a specific prayer, the court may suo-moto grant any of the ancillary reliefs at the Exparte stage.

The main claim under the enforcement proceedings is damages while others are ancillary and they are;

1. damages
2. Bail/Release
3. Production
4. Access to modification

Others include;

5. Prerogative writs and orders like habeas corpus, mandamus, prohibitions, certiorari etc
6. Injunctions and declarations.

It should be noted that it is contemptuous to disobey any order or directive of the court under the fundamental rights (Enforcement Procedures) Rules

3.5 WHEN CAN A PERSON APPLY TO ENFORCE HIS FUNDAMENTAL RIGHTS

This question was answered by Niki Tobi, JCA in *Uzoukwu v Ezeonu* (1991) 6 NWLR (PT 200) 708. According to his Lordship, section 42(1) of the 1979 constitution (now 1999 constitution section 46) has three limbs. The first limb is that the fundamental right in chapter iv has been physically contravened. In other words, the act of contradiction is completed and the plaintiff goes to court to seek redress. The second limb is that the fundamental right is being contravened there; the act of contravention may or may not be completed. But in the case of the latter, there is sufficient overt act on the part of the respondent that the process of contravention is physically on the hands of the respondent and that the act of contravention is in existence substantially.

In the third limb, there is likelihood that the respondent will contravene the fundamental right or rights of the plaintiff. While the first and second limbs ripen together in certain situations, the third limb of the subsection is entirely different. The third gives him the power to move to the court to seek redress immediately he senses some move on the part of the respondent to contravene his fundamental rights. But before a plaintiff invokes the third limb, he must be sure that there are enough acts on the part of the respondent aimed essentially and unequivocally towards the contravention of his rights.

A more speculative conduct on the part of the respondent without more, cannot ground an action under the third limb see ***Ezeadukwa v Maduka* (1992) 8 NWLR (PT 233) 99.**

4.0 CONCLUSION

The above said rights are germane to our continuous existence as individuals and a nation as a whole hence the need to protect the rights so as to avoid a state of anarchy as it is experienced in some African Countries in recent times. These rights bring about equality, justice and good government, whose end will allow for even development for the totality of the people.

The procedure for the enforcement of these rights are clearly spelt out in the rules and all that is required when infringed is to seek for the leave of the court and bring an application against the person or tier of government that has caused such infringement.

5.0 SUMMARY

In totality any government either under the first generation of rights or second generation that is not interested in protecting these rights will be retarding the growth and development of his nation as a whole and will definitely attract the wrath of International Organization.

6.0 TUTOR MARKED ASSIGNMENT

1. Explain the procedure adopted when your rights are infringed
2. When can a violation of rights be said to be ripe for enforcement?
3. Chief Olowolagba is a prominent businessman and because of his affluence and position he asked the police to arrest his gateman when he found him sleeping on duty for a week, before which he asked his bodyguard to deal with him. The gateman wants to enforce his right advise him on the reliefs to claim.

7.0 REFERENCES/FURTHER READING

- (1) Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria, andn introduction
- (2) Kayode Eso (2008) Human Rights and Education
- (3) S. E. Deko (2002) Fundamental Issues in Nigerian Constitutional Law
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- (6) Bob Osamor (2008) Fundamentals of Criminal Procedure in Nigeria
- (7) Olakanmi & Co (2007) Hand Book on Human Rights

UNIT 5 OUSTER OF COURT JURISDICTION

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Courts in Nigeria
 - 3.2 Ouster of Courts Jurisdiction
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Ouster of court jurisdiction can literally be said to mean an aberration of the court system and this is done so as to prevent the court from hearing any matter contained in the ouster clauses. Hence we shall have a cursory look at courts in Nigeria.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Explain the court system in Nigeria.
- Define the term ouster clauses.
- Discuss the rationale for ouster clauses.

3.0 MAIN CONTENT

3.1 COURTS IN NIGERIA

The courts in Nigeria include the Supreme Court, Court of appeal, Federal High Courts, State High Courts amongst others referred to as superior courts of records while we have the magistrate courts and area courts referred to as inferior courts. Some of the above listed courts will be discussed below:

1. Supreme Court

The Supreme Court of Nigeria is the highest court in Nigeria and provided for in Sections 230-236 of the 1999 Constitution. It consists of the Chief Justice of Nigeria and such number of justices of the Supreme Court not exceeding twenty –one as may be prescribed by the National Assembly.

The Supreme Court has original jurisdiction over matter in the following instances:

- a. In any dispute between the federal government and a state or between states where it involves question of fact or of law on which the existence or extent of a legal right depends. And as conferred by the National Assembly.
- b. Over appeals from the Court of appeal.

Appeals from the court of appeal can be as of right in the following instances:

- a. Where the ground of appeal involves questions of law alone, decisions in any or criminal proceedings before the Court of Appeal;
- b. Decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;
- c. Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;
- d. Decisions in any criminal proceedings in which any person has been sentenced to death by the Court or in which the Court of Appeal has affirmed a sentence of death imposed by any other court;
- e. Decisions on any question-
 - i. whether any person has been validly elected to the office of President or Vice –President under this Constitution,
 - ii. Whether the term of office of President or Vice –President has ceased,
 - iii. Whether the office of President or Vice President has become vacant; and
- f. Such other cases as may be prescribed by an Act of the National Assembly.

Also appeals can be by leave of court. The Supreme Court shall be duly constituted if it consists of not less than five Justices for the purposes of exercising any jurisdiction conferred on it by the constitution and seven justices on matters brought under section 232(2)(b) or (c) or to exercise its

original jurisdiction. By Section 235 of the constitution the Supreme Court has finality of determination and no appeal shall lie to any other court.

2. THE COURT OF APPEAL

The court of appeal shall consist of;
a president Such number of justices shall be learned in Islamic personal law and not less than three shall be learned in customary law as may be prescribed by an act of the National Assembly.

The appointment of a person to the office of the President of the court of appeal shall be made by the president on the recommendation of the National Judicial Council subject to the confirmation of the court of appeal shall be made by the president on the recommendation of the national Judicial Council.

The court of appeal has original jurisdiction to the exclusion of all other courts over matters such as:

- a. Any person has been validly elected to the office of the president or vice president under the constitution; or
- b. The term of office of the president or vice president has ceased; or \
- c. The office of the president or vice president has become vacant.

And shall be validly constituted in this case if it consists of at least three justices. The court of appeal hears appeals from all other courts save for the Supreme Court and the inferior courts.

3. THE FEDERAL HIGH COURT

Is provided for in sections 249-257 of the 1999 Constitution. The court consists of a Chief Judge of the Federal High Court and such number of judges as may be prescribed by the National Assembly. The appointment of a person to the office of the chief judge of the federal high court shall be by the president on the recommendation of the Judicial Council subject to the confirmation of the senate while the appointment of a judge of the Federal High Court shall be made by the president on the recommendations of the National Judicial Council.

The jurisdiction of the Federal high courts has been an issue of controversy in times past in relations to the high court of a State. However, section 251 contains issues over which the Federal high court has jurisdiction and they include: matters of CAMA, taxation of companies, copy right, patent, trademarks, banking matters, bankruptcy and insolvency, aviation and safety of aircraft, arms, ammunition and explosives, drugs and poisons etc. Lastly is the state high court which used to enjoy a wide jurisdiction but now only has jurisdiction over matters not within the purview of section 51

of the 1999 constitution. The appointment of the Chief Judge of a state high court shall be made by the Governor of the State on the recommendation of the National Judicial Council subject to the confirmation by the House of Assembly.

In conclusion, it should be noted that magistrate courts in the South and Area courts in the North though not provided for by the constitution are creations of the State laws.

3.3 OUSTER OF COURT JURISDICTION

Ouster of court Jurisdiction is usually carried out through inserting ouster clauses in the various enactments. This is prominent during military regimes as it negates democratic principles as such is rare during civilian or democratic government.

Ouster clauses were common feature of Decrees of Buhari/Idiagbon regime, Ibrahim Babangida and the Abacha regimes. The Ouster clauses not only limited the operation of Fundamental Rights provisions contained in the constitutions but also barred judicial review of Decree No 2 of 1984 provides:

Nigeria, 1979 is hereby suspended for the purpose of this Decree and any question whether any provision thereof has been or is being or would be contravened by anything done or proposed to be done in pursuance of this Decree shall not be inquired into any court of law.

Section 4(1) of the same Decree also provides:

No suit or other legal proceedings shall lie against any person for anything done or intended to be done in pursuance of this Decree.

Decree No. 13 of 1984- The Federal Military Government (Supremacy and enforcement of Powers) Decree- contains an omnibus ouster clause, to wit, "No civil proceeding shall lie or be instituted in any court for or on account of any matter or thing done or purported to be done under or pursuant to any Decree or Edict and if any such proceedings are instituted before, on or after the commencement of this Decree the proceedings shall abate, be discharged and made void".

According to Professor B.O. Nwabueze, the aim of such provisions is 'to ensure that by the comprehensiveness of the exclusionary provisions, the executive or administrative acts of the Military Government under these decrees were impenetrably shielded from judicial review , and that all possible loopholes for the court's intervention were effectively plugged.'

Invariably, the military leaders turned themselves into law makers thus making laws without following the due process of law. Trials were conducted by

Military Tribunals and retroactive legislation in criminal matters. In addition, virtually all the rights contained in the constitution were violated by successive Nigerian Government. The intendment is to ouster the jurisdiction of the courts such that their acts cannot be challenged in any way.

The clauses cannot be found in a democratic government because there are laid down procedure for enacting laws and such must be followed for laws made to be valid in the true sense of it.

4.0 CONCLUSION

By the provisions of section 6 of 1999 constitution, it is the court that is saddled with judicial powers any other judicial act by any other institution or group is an aberration of this provision and is unconstitutional and such cannot be accommodated in a democratic state because it negates the principles of separation of powers upon which a democratic state is founded..

5.0 SUMMARY

Ouster clauses are common features of a military government and its aim is to reduce the powers of the court by limiting matters upon which they have jurisdiction and by so doing, the court cannot interfere in such matters since they have no power to hear same.

6.0 TUTOR MARKED ASSIGNMENT

1. Recently the Federal government issued that the Lagos State Government due to insubordination to the Federal Government should not be paid its allocation, the State Government is aggrieved and wants to challenge this action, advise it on which court has jurisdiction.
2. Discuss: Are ouster clauses operational in a civilian government?

7.0 REFERENCES/FURTHER READING

1. Osita Nnanami Ogbu (1999) Human Rights Law and Practice in Nigeria: an introduction.
2. Kayodde Eso (2008) Rights and Education
3. S.E. Deko (2002) Fundamental Issues in Nigerian Constitutional Law
4. Joseph Ikogho (1999) Nigerian Constitution with Topic Finder
5. Ese Malemi (2006) The Nigerian Constitutional Law

6. Bob Osamor (2008) Fundamentals of Criminal Procedure in Nigeria
7. Olakanmi & Co (2007) Hand Book on Human Rights.

UNIT 2 THE ROLE OF THE JUDICIARY, LAWYERS AND THE POLICE

CONTENT

- 1.0. Introduction
- 2.0. Objectives
- 3.0. Main Content
 - 3.1 The Role of the Judiciary
 - 3.2 The Role of the Lawyers
 - 3.3 The Role Of the Police
- 4.0. Conclusion
- 5.0. Summary
- 6.0. TUTOR MARKED ASSIGNMENT
- 7.0. REFERENCES/ FURTHER READING

1.0 INTRODUCTION

Justice is generally a three way thing that is to the Complainant/ victim, the accused person who infringes and to the society at large hence in the protection of rights to allow for a virile society then the roles of the judiciary, lawyers and police becomes important in this regard for the security of all and sundry and for everyone to have a sense of belonging and for our corporate good as a Nation.

2.0 THE JUDICIARY

The Judiciary is the third arm of government and is constitution and generally laws as such determining the powers conferred on the Constitutional and generally government, the extent, limits and scope as provided for by the Constitutional compliance by the other arms of the government which is the bases of the rule of law. For instance vide the power of judicial review see the State v NTN Pty Ltd and NBN Ltd (1998) CLB 43.

Judicial powers are embedded in the Judiciary and it means the power to decide controversies between persons, the government and the governed.

Judicial power is vested in the courts by virtue of section 6 of the 1999 constitution; “the judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the federation”.

1. The Supreme court of Nigeria
2. The Court of Appeal

3. The Federal High court
4. The High court of the federal capital territory, Abuja
5. A High court of a State
6. The Sharia court of appeal of the federal capital territory, Abuja
7. A Sharia court of Appeal of a State
8. The customary court of Appeal of the Federal capital territory, Abuja and such other courts as may be authorized by law to exercise Jurisdiction on matters with respect to which the National Assembly may make laws;

It should be noted we that the Magistrate Courts in the South and the area courts in the North which are lower courts not mentioned as superior courts of record vide sub-section 5(a) to (1).

Also have upper Area courts and customary courts.(all of which inferior courts).

HIERARCHY OF COURTS

THE SUPREME COUR OF NIGERIA

COURT OF APPAEAL

Federal High Customary court	Sharia court of Appeal	State&Fct	Federal High
Court of Appeal	High Court	court	
Upper Area court	Magistrate	Customary court	
Area courts	courts		

In the enforcement of human rights, the judiciary cannot in anyway be silenced because of the important role they play and they are expected to be independent and impartial in executing such duties. These duties borders on making binding decisions which can ensure protection of human rights on all spheres. See **Lakanmi v. A.G (west) (1971)U.I.L.R.201**.The principle of the independence of the Judiciary is pivotal to a Virile human rights protection procedure both for the government and the governed. Independence of the

judiciary means freedom from interference from any quarters. Interference here can take any form of influence or intimidation.

In 1985, the United Nations Congress on the Prevention of Crime and Treatment of Offenders in Milan adopted the basic principles on the Independence of the Judiciary which was later adopted by the General Assembly, they are:

1. It is the duty of the government to respect the Independence of the judiciary.
2. It is the duty of the judiciary to decide matters impartially.
3. Judges must not be subject to or accept
 - (a) Restrictions
 - (b) Improper influences
 - (c) Inducements
 - (d) Pressures
 - (e) Threats or interference of any kind with the judiciary function
4. Judges have the exclusive authority to decide all issues that come before them.
5. Judges should be properly trained and selected without any discrimination.
6. The appointment of judges should be guaranteed up to fixed retirement age, or the end of their term of office.
7. Judges may only be removed for incapacity or behavior that makes them unfit to discharge their duty.

It is also worthy to note the attitude of judges towards interpreting the constitution; that is the activism and passivism attitude, while the former is the Liberia approach, the latter is the strict approach to the interpretation of enforcements and these two approaches have their merits and demerits as will be seen later in this discourse.

The independence of the judiciary in Nigeria over time has been affected by the following factors;

1. Mode of Appointment of judges.
2. Corruption
3. Tenure of office
4. Control of funds and staff by the judiciary.
5. Politicization and polarization of the Enforcement.
6. Clog in judicial process.
7. Lack of control over the machinery for Enforcement.
8. Retirement benefit and pension Rights.

9. Mediocrity over meritocracy.
10. Retirement and working conditions.
11. Interference.

However some of the problems affecting enforcement of human rights in Nigeria are as follows; corruption, late sitting by judges ,non compliance with rules of courts ,adjournment etc are some of the impediments caused by judges o the enforcement of human right of Nigeria.

In conclusion, the above factors have in one way or the other hampered the role of an independent and impartial judiciary expected and in the long run has greatly affected the enforcement of rights in Nigeria. Some of the merits of activism by judges is that it makes them a watchdog over the excess of the executive and allows the common man on the street to be protected, while on the other hand it negates the principle of separation of power. Passivism on the other hand protects the principle of separation of power.

It is however saddening that today some of our judges and justices who took the oath of office will turn around to do acts that are contrary to some, a good example is the recent crises between the Chief Justice Nigeria and the President of the Court of Appeal of Nigeria. Although the judiciary has the only mission of correcting injustice in a polity, a yet for numerous subjective reasons this mission has been left unattended to.

3.2 THE ROLE OF LAWYERS

Lawyers generally are regarded as officers in the temple of justice as such the role expected of them in the protection and promotion of human rights in a democratic society cannot be over emphasized thus in 1989 the Declaration of Delhi the International Commission of jurists further observed that; “the lawyer by virtue of his technical knowledge has a special responsibility to translate into effective action the legitimate aspirations of the individuals who make up society and upon whose fundamental rights and dignity a society under the Rule of law is here assumed to be based”.

Again lawyers are social engineers hence they should actively be involved in law and social reforms by educating and reviewing proposed legislations. See **Williams v Akintunde (1995)3NWLR (pt381) p.101**.it can be categorically asserted that the duty of a lawyer is not only to his clients but to the society at large hence protection and promotion of human rights is within the ambit of their duties. In this regard, we require courageous lawyers with the highest ethical standards in accordance with the rules of professional conduct and the legal practitioners disciplinary Act.

In the spirit of change, Lawyers as agent of change should make concerted and spirited efforts to ensure changes in all ramifications. Lawyers are expected to honest, sincere, posses integrity, be disciplined and truthful in their dealings with the society by challenging every forms of oppression either by the governing through their legislations or the governed through their various activities.

Some of the impediments to the roles of a lawyer is our clime are as follows;

9. Poverty
10. Abuse of contempt power by judges
11. Corruption
12. Absence of the rule of law
13. Threats from government
14. Disobedience to court orders

In time past, the acts of some Lawyers are deserving of condemnation due to their various nefarious acts devoid of the honour and integrity of the legal profession especially during military regimes while on the other hand the actions of a few others are worthy of commendation for being able to stand and challenge all forms of opposition, some of whom are; Chukwudifu Oputa (retired Justice of the Supreme Court), Chief Gani Fawehinmi, Femi Falana, Olisa Agbakoba and Clement Nwanko amongst others these are all lawyers who knew their onions and had achieved landmark significance in;

15. Exposure of human rights violations
16. Human rights education
17. Establishment and accessibility of legal procedure for the protection of human rights
18. Free legal services
19. Fighting for reform of draconian Laws
20. Humanitarian assistance to victims of human rights

The Nigeria Bar Association (NBA) which is the Association of legal practitioners, is a non-profit organization of legal practitioners, it has its executive body elected by its members saddled with the responsibility of running the affairs of the Association and this without external interference. The effectiveness of the NBA in the time past has been hindered by the various Military regimes, the National Conference of the NBA at Port Harcourt in August 1992 ended in a stalemate the reason being the interference of the government of the day. However, the NBA under the leadership of Mr. Joseph Daudu (SAN) tends to be towing the right part with minimal government Interference.

In conclusion, for Lawyers to play its effective role it must be independent without reliance or interference from any quarter and without intimidation from the judiciary. Since the basic function of the lawyer is to provide legal services to their clients, but beyond this is to protect the right of all and sundry and speaking against every form of injustice without minding whose ox is gored.

3.3 THE ROLE OF THE NIGERIAN POLICE

Section 214(1) “There shall be a police force for Nigeria, which shall be known as the Nigeria police force, and subject to the provisions of this Sections no other police force shall be established for the Federal or any part thereof” Section 4 of the police Act (1943) (as printed in 1967) the police are saddled with the responsibility of preventing and detecting crimes, the apprehension of offenders, the preservation of law and order, the protection of property and the enforcement of all laws and regulations with which they are directly charged.

The police also execute functions such as regulating traffic on the high way, provide assistance during disasters and act as escorts in various spheres, undertake prosecution of cases in courts.

The police have its own internal organization which is responsible for the running of the police force. The police Act provide the police wide powers in the performance of their duty which include; arrest, search, seizure, detention and the power to use force in certain circumstances. In the exercise of these duties, people (citizens) and their properties come in contact with the police as such there is high likelihood of violation by the police that is abuse of such power is inevitable, mostly violated is the right to personal liberty.

The following factors in one way or the other have effects on the activities of the police; education and training, facilities available to them, poverty, corruption, the knowledge of his powers and duties etc. the Nigerian police force is a strong factor in the enforcement of human rights because they are the officers constitutionally recognized to give effects to some of the decisions given by the judiciary or the Constitution and as such, requires continuous education through seminars and symposia to continually make a change.

The basic problems confronting the Nigerian police Force are;

- Corruption
- Under payment
- Politicization
- Lack of facilities etc.

However corruption is the bane of the progress in the police force which has eaten deep into the force and unless cogent and timely actions are taken our society is in danger.

4.0. CONCLUSION

The judiciary, lawyers and the police can work together so as to achieve the intendment of the constitution and the aspiration of the Nigerian people.

Although there has been cry from the police that lawyers do not have regard for them, it is submitted for us to have a society devoid of oppression, intimidation and molestation the judiciary must be given the independence to decide, the lawyers must be courageous to speak and the police must be up to the task. In essence, the role of judges, lawyers and the police in the enforcement of human rights is of great importance and significance to the sustenance of the rule of law and our nascent democracy which will in turn have a great deal of impact on our development. These components must be viewed as part of the foundation upon which law and order is built.

5.0 SUMMARY

The above trio are officers of justice and their harmonious relationship will definitely have a positive impact on the enforcement of human rights in Nigeria thus bringing out the achievement of the principles upon which the state is founded.

6.0. TUTOR MARKED ASSIGNMENT

- Discuss the concept of independence of the judiciary
- An effective police is required for the enforcement of human rights
- List some of the problems faced by the judiciary, lawyers and the police in Nigeria.

7.0 REFERNCER/ FURTHER READING

1. Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria in Nigeria an Introduction.
2. Kayode Eso (2008) Human Rights and Education
3. S. E Deko (2002) Fundamental Issues in Nigerian Constitutional Law
4. Joseph Ikogho (1999) Nigerian Institution with Topic Finder
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6. Bob Osamor (2008) Fundamentals of Criminal Procedure in Nigeria

7. Olakanmi &Co (2007) Hand Book on Human Rights

UNIT 3 LEGAL AID IN NIGERIA

CONTENT

- 1.0. Introduction
- 2.0. Objectives
- 3.0. Main Content
- 3.1 Legal Aid in Nigeria
- 4.0. Conclusion
- 5.0. Summary
- 6.0. Tutor Marked Assignment
- 7.0. References/ Further Reading

1.0 INTRODUCTION

Legal Aid in Nigeria was initially only available to indigent members of the society who have been accused of capital offences. Although the scheme is broadened, it was a practice where lawyers were assigned by the court to the indigent defendant from a list of participating counsels who received a token for the services rendered. Literally, legal Aid means professional legal assistance to persons who cannot afford same.

This practice is not new to our court system save for the fact that in recent times it has come to enjoy general acceptance. And a similar form of assistance is the condition prescribed that before ascending the peak of the legal profession that is become a SAN such as a person must have conducted certain cases of pro bono basis, this practice have thus been able to create sufficient avenues for meeting the needs of the indigent. And no longer available to criminal matters only.

2.0 OBJECTIVES

At the end of this unit, you should be able to;

- Explain the concept of legal aid
- Discuss the rationale aid.

3.0 MAIN CONTENT

1.1 LEGAL AID IN NIGERIA

Section 46 of the constitution provides that any person who alleges that his fundamental rights as guaranteed in the constitution has been, is being, or likely to be contravened in any part of Nigeria, may apply to a high court for a redress, that is;

1. The Federal high court, or
2. High court of a state.

Government should act according to law; that is civil laws that are reasonably justifiable in a democratic society. Government is to act within the limits of its legal powers see **Tony Momoh V. (supra)**.

At the initial state before the 1979 legal aid broader scheme, legal assistance from the public domain was strictly made available to indigent persons accused of capital offenses see Section 186 Criminal Procedure Code, Section 352 Criminal Procedure Act. This is practice where counsels are assigned by the court to indigent defendants from a list of participating lawyers who collected a token for their services known as the “state brief”.

In 1976 legal Aid act improved on the above practice providing legal assistance to persons earning less than the National Minimum Wage (Currently ₦1, 500.00 per annum) in respect of certain offences such as murder, manslaughter, malicious wounding or the infliction of grievous bodily harm and assault occasioning actual bodily harm.

In recent times, progressive developments have been made by the Legal Aid. And many lawyers are willing to waive their fees for needy clients which are in accordance with the provisions of Legal Practitioners Act.

The Nigerian Constitution also makes provision for the offering of financial assistance or legal aid to those who qualify for such aid under the legal aid act. For instance in Lagos state and some other states we have the Office of the public defenders saddled with the responsibility of coming to the aid of less privileged by offering free professional legal assistance.

In recent times by virtue of the Legal Aid (Amendment) decree No 10 of 1986 civil claims in certain regards such as accident were added to the scheme. Although, the inclusion of human rights was considered not to be within the scope of the council, however in recent times this has been accommodated not only by the council but by various humanitarian organizations.

4.0 CONCLUSION

Since the rights contained in chapter 4 of the constitution is made available to all definitely when violated, it is not everyone that will be able to go to the

court to get redress hence there is the need for the government to make cogent and concise efforts in protecting the rights of all so that justice will not be only for the rich and affluent.

5.0 SUMMARY

Legal Aid is a concept that is given general acceptance because it seeks to aid attaining our aspiration as a Nation.

6.0 TUTOR ASKED ASSIGNMENT

On the 26th of January 2006, Emeka was arrested under the trade fair bridge for armed robbery and had been in custody ever since then without trial because he could not afford getting the services of a legal practitioner, advice Emeka on a way out.

Is the Legal Aid service available only to the indigent? Discuss

7.0 REFERENCES/ FURTHER READING

1. Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria in Nigeria an Introduction.
2. Kayode Eso (2008) Human Rights and Education
3. S. E Deko (2002) Fundamental Issues in Nigerian Constitutional Law
4. Joseph Ikogho (1999) Nigerian Institution with Topic Finder
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6. Bob Osamor (2008) Fundamentals of Criminal Procedure in Nigeria
7. Olakanmi &Co (2007) Hand Book on Human Rights.

UNIT 4 ISSUES RAISED IN PROMOTING HUMAN RIGHTS IN CONTEMPORARY SOCIETY

CONTENT

- 1.0 Introduction
- 2.0 Objective
- 3.0 Main content
 - 3.1 Death penalty
- 4.0 Animal right
- 5.0 Abortion And Right Of The Unborn Child
- 6.0 Conclusion
- 7.0 Summary
- 8.0 Tutor marked assignment
- 9.0 Reference /further reading

1.0 INTRODUCTION

There are various contemporary issues boarding on promoting human right such as the death penalty, right of an unborn child and minority right etc. this discourse is to enable us understand these issues and how they fare in our clime in relation to what obtain in other jurisdictions.

2.0 OBJECTIVES

At the end of this unit, you should be able to;

1. Appreciate the clamour for the abolition of death penalty in the world over
2. Explain the right of an unborn child
3. Discuss the illegality of abortion in Nigeria

3.0 MIAN CONTENT

4.0 DEATH PENALTY

WHAT IS DEATH PANALTY? : Death penalty is the prescribe Punishment for person convicted for capital offences such as murder, armed robbery and other related offences where it is specifically stipulated.

The first established death penalty was far back as the 18th century B.C in the code of king Hammurabi of Babylon, who specified death penalty for 25 different crimes. Death penalty was part of the following codes, Hittite code, Draconian code of Athens (Specified death penalty for all crimes) and Roman

law of the Twelve Tablets. Forms of death penalty were crucifixion, drowning, beating to death, burning alive and impalement, hanging, beheading, burning at the state etc.

It must be said that Britain influence American's use of the death penalty far above any other country. The first recorded execution in the new colonies was that of Captain George Kendall in the James town colony of Virginia in 1608, who was executed for being a spy for Spain. Laws in relations to death penalty vary from one colony to the other.

In the world over , the wind of abolition of the death penalty is all over and most developed countries are already moving in the direction of abolition but Nigeria is yet to be a part going by the provision of section 33(1) of the 1999 constitution which autrorizes killing in execution of a sentence of a court, as such death penalty is constitutional in Nigeria.

Going by the Amnesty International report dated 30th June 1995 countries were categorized into Abolitionist and Retentionist Countries, which showed that 55 countries have abolish death penalty for all crimes, while 15 for all except crimes such as wartime crimes, 27 countries cab be regarded as abolitionist defacto; they retain the death penalty in law but have not carried out carried out executions for the past 10 years or more. It can actually be said that the rate of execution had greatly reduced in recent times. Some countries that have abolished death penalty either partially or totally are; Nambia , Mozambique, Gambia, Guinea – Bissau, Paraguay, Cambodia, Nepal, Slovenia, Hungary, Croatia, Romania, the Czech/Slovak republics, Greece, ItLY, Switzerland and New Zealand.

International human rights treaties prohibit death penalty against persons under the age of 18 years at the time of the crime being sentenced to death. For the International Covenant on Civil and Political Rights, the American Convention on Human Right and the UN Convention on the Rights of the child all provided to this effect. There are either express exclusion for persons under 18 years or excluded by implication or inference from provisions of death penalty.

In recent times, countries are now committing themselves to treaties abolishing death penalty; examples of such are the second optional protocol to the international Government on Civil and Political Rights, the sixth protocol to the American Convention on Human Rights to abolish death penalty.

However, death penalty is the prescribe punishment for persons convicted of capital offences such as murder, culpable homicide punishable with death, treason and armed robbery are punishable with the death sentence, See **Kalu**

v. the State (1990) 11-12 S.C 14 at p. 49; where it was held that the death penalty is lawful in Nigeria and cannot be regarded as a degrading or an inhuman treatment .

Section 367 of the Criminal procedure Act and 273 of the criminal procedure code specify that death sentence shall be by hanging, in respect of armed robbery convicts, the death sentence shall be by firing squad see section 1(2) (a), (b) of the robbery and fire Arms (special provision

(2) Young Persons section 308(3) CPA 270 & 272 CPA Act 1984. Death penalty is mandatory, therefore the court does not have the discretion to impose any other penalty upon conviction, and again allocates is of no effect once a person is convicted of an offence punishable with death.

A Judge when pronouncing a death sentence is robed in red gown and black cap signifying the seriousness and gravity of the penalty, rather than a provision of law. Section 367(2) CPA provides for the mode of pronouncement;

“The sentence of the court upon you is that you be hanging by the neck until you be dead and may the lord have mercy on your soul”.

However, failure by a judge to adopt the specified method will be deemed as errors see **Gano v. The State (1969) NMLR 316. Olowofoyeku v. The State (1984) 5 S.C 192.**

The Nigerian laws provide the following exceptions to death penalty;

1. Pregnant women section 368(2) CPA 270 & 300 CPC.

It should however be noted that the Nigerian Constitution provides for prerogative of mercy which occurs where a court pronounces a death sentence on a convict, the court as soon as practicable send to the Minister or Commissioner designated to advise the President or Governor on the exercise of the prerogative of mercy;

2. A certified copy of the record of proceedings at the trials
3. A copy of a certificate to the effect that sentence of death has been pronounced upon the person named in the certificate and
4. A report in writing signed by him containing recommendations and observations (with respect to the convicted person and his trial) that he thinks fit to make. Section 371 CPA & 294 (1) CPC
5. However, where a person has been sentenced to death and has not appealed within the prescribed by law or has not successfully appealed against the conviction or having filed a notice of appeal has failed to prosecute such appeal the minister or commissioner shall

consider the report in that regard. After which the considered report is forwarded to the body saddled with the responsibility for exercising the prerogative of mercy. Based on the report, the Attorney-General may recommend to the President or Governor that;

- (i) The convicted person be pardoned
- (ii) The sentence be commuted to life imprisonment;’ or
- (iii) The sentence is commuted to any specific period.

Otherwise, the Attorney- General may recommended that the sentence be carried out section 371 (e); CPA & 295; CPC

The Federal Advisory council on the prerogative of mercy is the council of State Section 175(2) 1999 Constitution, while the States are empowered to do the same section 212(2) 1999 Constitution, while the States are empowered to do the same section 212(2) 1999 Constitution. See **Okeke v. State (2003) 15 NWLR (pt 842)25.**

In conclusion, a death sentence shall not be executed unless and until the President, the Governor, the Specified appropriate authority, has confirmed it.

5.0 ANIMAL RIGHTS

Animal rights by advocates are rights accruing to animals being members of the moral community. The early proponents of this right are Jeremy Betham (1748-1832), Henry Salt (1851-1939) while the modern proponents are Peter Singer, Tom Regan and Gary Francione.

Animal right s also known as animal liberation is the idea that the most basic interests of non- human animals should be afforded the same consideration as the similar interests of human beings. Scholars have approached the animal rights from various perspectives such as: Protectionist, Utilitarian and abolitionist.

Peter Singer focuses on suffering and the consequences of animals, while Gary Francione argues that animals need only; the right not to be property. The various Scholars though hold divergent views have held with a consensus that animals should be viewed as non- human persons and members of the moral community, and should not be used as food, clothing research subjects or entertainment.

The idea of ascribing rights to animals has been given credence by legal scholars such as Alan Dershowitz and \laurence Tribe of Havard law school.

This usually forms part of the curriculum in philosophy and applied ethics courses but now taught in about 125 law schools in United States and Canada. In opposition critics have advanced the argument that animals cannot enter into social contracts as such cannot be said to possess rights, which was advanced by Roger Scruton claiming only humans have duties, therefore only humans have rights.

However, some of the controversies surrounding animal rights revolve around the inhuman ways in which humans in many parts of the world deal with animals, such as harmful agricultural practices, the over-consumption of meat, the use of animals for experiments and the confinement and the general abuse of animals for entertainment.

The 1978 Universal Declaration of Animal Rights was adopted by UNESCO affirmed the philosophical position that animals should be regarded as members of the same moral community. This declaration helped to reflect the moral and legal standing of animals in terms of their welfare, their interests, status as property, in addition to the responsibilities human beings should have toward all animals.

In the Nigerian context it needs to be said that animal rights is strange to our climate and as such where we have the laws in relation to animals it is of no effect because regard is not given to them even where they exist. Hence it is even far from our educational curriculum.

6.0 RIGHT OF AN UNBORN CHILD AND ABORTION

There have been divergent views on the argument of the rights of the unborn. However the pertinent question then is who is entitled to right to life? Section 307 of the Criminal Code of Southern Nigeria states that a person is considered a human being when it has proceeded in a living state from the mother's womb whether the umbilical cord has been severed or not. Neither this provision, the African Charter nor the 1999 Constitution has been helpful in this regard;

Abortion on the other hand is a matter that evokes on all sides very strong feelings, judgments and very heated recriminations. Basically there are two schools of thought in relation to this matter, the Pro-life and the Pro-choice school.

In Nigeria Criminal Law, abortion is unlawful save in special circumstances basically for the purpose of preserving the life of the mother. **See R v. Edgal (1938) 4 WACA 133.** The Constitution and the African Charter is more in its provision on African moral tradition and unlike in the Western world abortion

is still not lawful in Nigeria, as such to a large extent an unborn child can be said to be entitled to life.

A Similarly bad argument says that abortion should be legal because women will get maimed or killed getting illegal abortions, this argument cannot be justified by any standard. That could just as easily be an argument for legalizing armed robbery or any other crime, since armed robbers and other criminals can get shot or killed in doing what they do. If something is genuinely wrong, then the fact that someone engaging in that wrong action might be hurt or killed is irrelevant. And if the argument is that abortion is too trivial a thing for women to die because of, that begs the question, since it is precisely the issue whether abortion is murder or not; and if it is, then it is not any kind of trivial matter.

The basis of the “pro-life” position, in turn, is that human life starts with conception. The view is that there is no natural point of division in the life of a person between the fertilization of the egg and the point of the “viability” of a develops quickly, and by the time artificial abortions are likely to be performed, heart, brain, circulation, and other recognizable organs and organic functions already exist.

A more reasonable basis for “pro-life” argument centers on the issue of responsibility. “Pro-life” advocates actually deny that they represent an “anti-choice” view of abortion or that they wish to prevent a woman from having control over her body. Their view is that the choice and the control come at the moment of sex, not at the moment of conception. The choice is that of the woman who knows the implication of having sex to either do so or not.

The “pro-life” argument then is that the act of choosing to have sex is the act of choosing to accept responsibility for the possible consequences, i.e. conception. To them it is no longer a question of a woman’s control over her own body when it involves killing someone else, even if that is “merely” an embryo or fetus. If this sentiment is found together with a belief that abortion is acceptable in cases of rape and incest, then the view can only be consistent if the “unborn child” does **not** have an absolute “right to life”. Abortion would be acceptable if the mother did **not** have a choice in the conception. But the “unborn child” has enough of a “right to life” that a woman must reckon on her responsibility for it in her own free actions.

In general, the “pro-choice” argument for abortion that is hostile to putting any obstacles in the way of abortion on demand is that a woman has a right to control over her body at any time and that she has just a much right to choose an abortion as to choose sex.

The “pro-life” argument that human life begins at conception is not acceptable to all considering case of rape victims who become pregnant against their wishes and cases where the life of the mother to be is endangered, the question is will be life of the unborn child still posses the right to life.

On the other hand, even if we accept that the fertilized egg may be a person; this still leaves untouched what I consider to be the principal argument for “choice,” which is the argument of **Roe v. Wade** itself: which posits the argument of privacy of individual persons. It needs be said that unborn children are not properties upon which anyone can exert proprietary right.

A final argument about abortion, such as Communitarians might contribute, could be that it is “society” that must ultimately make a judgment about the constructive or destructive effects of allowing abortion on demand. Such an argument might become more acute once we realize that the typical feminist connection between abortion and poverty is wrong: Their view is that large families create poverty and that an increase in wealth, freedom, and self-fulfillment can only come with the employment of every possible means of birth control, including abortion. Historically this is clearly wrong.

The above argument with their merits and demerit though strongly posited by their proponents does not hold in Nigeria save for the pro life since abortion remains illegal though done on daily basis yet illegal and the only rationale one will assume to be excused is when the safety and life of the woman is at risk.

7.0 CONCLUSION

The issues raised above are not peculiar to Nigeria, although some other countries of the world are making timely legislations to meet these exigencies in our own case is either the laws are obsolete or non in that regards. Again for instance the issue of abortion in Nigeria still remains illegal yet perpetuated on a daily basis without any challenge.

8.0 SUMMARY

These issues require timely and up to date legislation. Death penalty animal right, abortion and right of an unborn child are issues that are generating controversies even among jurists because you have argument for and against and this thus necessitated the reason for sensitization and education of the general public so as to achieve the intendment of the law.

9.0 TUTOR MARKED ASSIGNMENT

- Discuss the relevance of the abolition of death penalty in Nigeria.
- There are two distinct arguments on abortion discuss the line of differences between them.

10.0 REFERENCES / FURTHER READING

1. Osita Nnanani Ogbu (1999) Human Rights Law and Practice in Nigeria in Nigeria an Introduction.
2. Kayode Eso (2008) Human Rights and Education
3. S. E Deko (2002) Fundamental Issues in Nigerian Constitutional Law
4. Joseph Ikogho (1999) Nigerian Institution with Topic Finder
5. Ese Malemi (2006) The Nigerian Constitutional Law
6. Bob Osamor (2008) Fundamentals of Criminal Procedure in Nigeria
7. Olakanmi &Co (2007) Hand Book on Human Rights.

UNIT 5 OUSTER OF COURT JURISDICTION

CONTENT

- 4.0 Introduction
- 5.0 Objectives
- 6.0 Main Content
- 3.1 Courts in Nigeria
- 3.2 Ouster of Courts Jurisdiction
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References / Further Reading

1.0 INTRODUCTION

Ouster of court jurisdiction can literally be said to mean an aberration of the court system and this is done so as to prevent the court from hearing any matter contained in the ouster clauses. Hence we shall have a cursory look at courts in Nigeria.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Explain the court system in Nigeria.
- Define the term ouster clauses.
- Discuss the rationale for ouster clauses.

3.0 MAIN CONTENT

3.1 COURTS IN NIGERIA

The courts in Nigeria include the Supreme Court, Court of appeal, Federal High Courts, State High Courts amongst others referred to as superior courts of records while we have the magistrate courts and area courts referred to as inferior courts. Some of the above listed courts will be discussed below:

4. Supreme Court

The Supreme Court of Nigeria is the highest court in Nigeria and provided for in Sections 230-236 of the 1999 Constitution. It consists of the Chief Justice of Nigeria and such number of justices of the Supreme Court not exceeding twenty –one as may be prescribed by the National Assembly.

The Supreme Court has original jurisdiction over matter in the following instances:

- c. In any dispute between the federal government and a state or between states where it involves question of fact or of law on which the existence or extent of a legal right depends. And as conferred by the National Assembly.
- d. Over appeals from the Court of appeal.

Appeals from the court of appeal can be as of right in the following instances:

- g. Where the ground of appeal involves questions of law alone, decisions in any or criminal proceedings before the Court of Appeal;
- h. Decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;
- i. Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;
- j. Decisions in any criminal proceedings in which any person has been sentenced to death by the Court or in which the Court of Appeal has affirmed a sentence of death imposed by any other court;
- k. Decisions on any question-
 - i. whether any person has been validly elected to the office of President or Vice –President under this Constitution,
 - ii Whether the term of office of President of Vice –President has ceased,
 - iii Whether the office of President or Vice President has become vacant;

and

- l. Such other cases as may be prescribed by an Act of the National Assembly.

Also appeals can be by leave of court. The Supreme Court shall be duly constituted if it consists of not less than five Justices for the purposes of exercising any jurisdiction conferred on it by the constitution and seven justices on matters brought under section 232(2)(b) or (c) or to exercise its original jurisdiction. By Section 235 of the constitution the Supreme Court has finality of determination and no appeal shall lie to any other court.

5. THE COURT OF APPEAL

The court of appeal shall consist of; a president
Such number of justices shall be learned in Islamic personal law and not less than three shall be learned in customary law as may be prescribed by an act of the National Assembly.

The appointment of a person to the office of the President of the court of appeal shall be made by the president on the recommendation of the National Judicial Council subject to the confirmation of the court of appeal shall be made by the president on the recommendation of the national Judicial Council.

The court of appeal has original jurisdiction to the exclusion of all other courts over matters such as:

- d. Any person has been validly elected to the office of the president or vice president under the constitution; or
- e. The term of office of the president or vice president has ceased; or \
- f. The office of the president or vice president has become vacant.

And shall be validly constituted in this case if it consists of at least three justices. The court of appeal hears appeals from all other courts save for the Supreme Court and the inferior courts.

6. THE FEDERAL HIGH COURT

Is provided for in sections 249-257 of the 1999 Constitution. The court consists of a Chief Judge of the Federal High Court and such number of judges as may be prescribed by the National Assembly. The appointment of a person to the office of the chief judge of the federal high court shall be by the president on the recommendation of the Judicial Council subject to the confirmation of the senate while the appointment of a judge of the Federal High Court shall be made by the president on the recommendations of the National Judicial Council.

The jurisdiction of the Federal high courts has been an issue of controversy in times past in relations to the high court of a State. However, section 251 contains issues over which the Federal high court has jurisdiction and they include: matters of CAMA, taxation of companies, copy right, patent, trademarks, banking matters, bankruptcy and insolvency, aviation and safety of aircraft, arms, ammunition and explosives, drugs and poisons etc. Lastly is the state high court which used to enjoy a wide jurisdiction but now only has jurisdiction over matters not within the purview of section 51 of the 1999 constitution. The appointment of the Chief Judge of a state high court shall be made by the Governor of the State on the recommendation of the National Judicial Council subject to the confirmation by the House of Assembly.

In conclusion, it should be noted that magistrate courts in the South and Area courts in the North though not provided for by the constitution are creations of the State laws.

3.3 OUSTER OF COURT JURISDICTION

Ouster of court Jurisdiction is usually carried out through inserting ouster clauses in the various enactments. This is prominent during military regimes as it negates democratic principles as such is rare during civilian or democratic government.

Ouster clauses were common feature of Decrees of Buhari/ Idiagbon regime, Ibrahim Babangida and the Abacha regimes. The Ouster clauses not only limited the operation of Fundamental Rights provisions contained in the constitutions but also barred judicial review of Decree No 2 of 1984 provides:

Nigeria, 1979 is hereby suspended for the purpose of this Decree and any question whether any provision thereof has been or is being or would be contravened by anything done or proposed to be done in pursuance of this Decree shall not be inquired into any court of law.

Section 4(1) of the same Decree also provides:

No suit or other legal proceedings shall lie against any person for anything done or intended to be done in pursuance of this Decree.

Decree No. 13 of 1984- The Federal Military Government (Supremacy and enforcement of Powers) Decree- contains an omnibus ouster clause, to wit, “No civil proceeding shall lie or be instituted in any court for or on account of any matter or thing done or purported to be done under or pursuant to any Decree or Edict and if any such proceedings are instituted before, on or after the commencement of this Decree the proceedings shall abate, be discharged and made void”.

According to Professor B.O.Nwabueze, the aim of such provisions is ‘to ensure that by the comprehensiveness of the exclusionary provisions, the executive or administrative acts of the Military Government under these decrees were impenetrably shielded from judicial review , and that all possible loopholes for the court’s intervention were effectively plugged.’

Invariably, the military leaders turned themselves into law makers thus making laws without following the due process of law. Trials were conducted by Military Tribunals and retroactive legislation in criminal matters. In addition, virtually all the rights contained in the constitution were violated by successive Nigerian Government. The intendment is to ouster the jurisdiction of the courts such that their acts cannot be challenged in any way.

The clauses cannot be found in a democratic government because there are laid down procedure for enacting laws and such must be followed for laws made to be valid in the true sense of it.

7.0 CONCLUSION

By the provisions of section 6 of 1999 constitution, it is the court that is saddled with judicial powers any other judicial act by any other institution or group is an aberration of this provision and is unconstitutional and such cannot

be accommodated in a democratic state because it negates the principles of separation of powers upon which a democratic state is founded..

8.0 SUMMARY

Ouster clauses are common features of a military government and its aim is to reduce the powers of the court by limiting matters upon which they have jurisdiction and by so doing, the court cannot interfere in such matters since they have no power to hear same.

9.0 TUTOR MARKED ASSIGNMENT

Recently the Federal government issued that the Lagos State Government due to insubordination to the Federal Government should not be paid its allocation, the State Government is aggrieved and wants to challenge this action, advice it on which court has jurisdiction.

Discuss: Are ouster clauses operational in a civilian government?

10.0 REFERENCES/FURTHER READING

8. Osita Nnanami Ogbu (1999) Human Rights Law and Practice in Nigeria: an introduction.
9. Kayodde Eso (2008) Rights and Education
10. S.E. Deko (2002) Fundamental Issues in Nigerian Constitutional Law
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