



HUMAN RIGHTS PROTECTION IN NIGERIA: FROM RHETORIC TO PRAGMATIC
AGENDA

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ABSTRACT

In an apparent endorsement of the global efforts towards the promotion and protection of human rights in Nigeria, Nigeria has subscribed to all the major international human rights instruments and established firm institutional infrastructure for the promotion of human rights. Against the foregoing background, this article examines the reality of human rights promotion and protection in Nigeria. It specifically appraises the extent to which the National Action Plan developed by Nigeria to ensure effective human rights promotion has achieved that purpose. It argues that all the efforts have remained in the realm of mere rhetoric, as the impressive record of codification has not been matched with actual practice. Consequently, it advocates a pragmatic approach towards the promotion and protection of human rights in Nigeria.

Keywords: Human Rights, Social Welfare, Governance, Laws, Nigeria

1. INTRODUCTION

“The language of human rights carries great rhetorical force of uncertain practical significance. At the level of rhetoric, human rights have an image which is both morally compelling and attractively uncompromising. But what is necessary is that the highly general statements of universality, inalienability and indefeasibility should be transformed into more particular formulations, if the rhetoric of human rights is to have major impact on the resolution of social and economic problems in a country” (Bhagwati, 1988).

Following the formation of the United Nations Organisation¹ and the promulgation and adoption of the Universal Declaration of Human Rights² which provided a firm foundation for the historical developments and globalisation of human rights, the global community has not wavered in its commitment to the global promotion and protection of human rights. This explains the subsequent numerous resolutions, declarations³ and conventions which have been

¹ UNO Charter, 1945.

² Adopted and proclaimed by General Assembly resolution 217 A (111) of 10 December, 1948

³ Some of the Declaration are, Declaration on the Elimination of All forms of Intolerance and Discrimination Based on Religion or Belief, adopted 25 Nov. 1981. G.A. Res 36/55, 36 UN GAOR, Supp

passed in the area of human rights. Indeed, modern human rights treaties are no longer multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting states. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the state of their nationality and all other contracting states.⁴

To underscore the importance of human rights, remarkable attempts have also been continually made at the regional levels to promote and secure respect for human rights. The Council of Europe,⁵ the Organisation of American States⁶ and the Organisation of African Unity,⁷ have all formulated and adopted human rights instruments which guarantee rights which are comparable with, (and in some cases, more extensive than), those guaranteed in the Universal Declaration of Human Rights. So important is the respect for human rights that virtually all constitutions, the world over, make provisions for human rights either in the preamble or in the substantive provision.

In apparent endorsement of the global movement towards the promotion and protection of human rights; Nigeria has not only subscribed to major international human rights instruments but contributed quite remarkably, to the process that led to the actualisation of the dream of an African Charter on Human Rights.⁸ In addition, due attention has always been paid to human rights in Nigeria Constitutions, beginning of the post-independence constitution. In the amended 1999 Constitution for instance, two Chapters,⁹ spanning 26 (twenty six) sections are devoted to the human rights subject.¹⁰ In order to bolster human rights promotion and

(No. 5+) UNDOC. A/36/51 at 171 1981; Declaration on the Elimination of violence Against Women adopted 20th Dec, 1993 GA Res 48/104, UNDOC. A/48/29; Declaration on the Right of Child, adopted 20 Nov. 1959, GA Res 1386 (XIV), 14 UN GAOR, Supp. (No. 16) UN Doc. A/4334 at 19(1959) Declaration on the Right to Development, adopted 4 Dec, 1986, GA Res 41/28.

⁴ Notable Conventions which have been passed by the United Nations include, The International Convention on the Prevention of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination., The International Convention Relating to the Status of Refugees, the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; The Convention on the Right of the Child; the Convention Concerning the Abolition of Forced Labour. The Convention on the Political Rights of Women; The Convention on The Nationality Rights of Women; Convention on the prevention and punishment of the Crime of Genocide, etc.

⁵ Established on November, 4, 1950 drafted and adopted the European Convention on Human Rights which came into force on Sept. 3, 1953.

⁶ This regional inter-governmental organisation adopted in 1969, the American Convention on Human Rights which came into force on July, 18, 1978. The Convention is also known as the pact of San Jose, Costa Rica. See OASIS 36, OAS off. Rec OEC/Ser.L/v/11.23 doc 21 rev. 6 (1979).

⁷ The Organisation adopted African Charter on Human and Peoples Rights at Nairobi on 26 June, 1981 which entered into force on 21 October, 1986, in accordance with Article 63 of the Charter.

⁸ Although the Charter came into force in 1987, as far back as 1961, Nigeria hosted a conference in Lagos on the Rule of Law. It was at this conference convened by a non-governmental organisation that African jurists for the first time called for the establishment of an African Commission on Human Rights. Indeed, a Nigerian, in the person of Dr. Nnamdi Azikwe has been credited with the first suggestion for an African Convention on Human Rights and Nigeria also actively participated in other conferences and seminars which furthered the realisation of an African Charters on Human Rights. On the history of the Charter, see, "Kerba Mbaye, "Keynote Address: *An Introduction to the African Charter on Human and Peoples' Rights*", Report of a Conference held in Nairobi from 2nd to 4th December, 1985, convened by the ICJ Geneva, (1986) at 20.

⁹ That is chapters 2 and 4, 1999 Constitution. Although the provisions of chapter 2 dealing with fundamental objective and directive principles of state policy are not justiceable, they are nonetheless without any utilitarian value as they serve as aid to interpretation of the other sections.

¹⁰ These provisions are virtually, a *verbatim et literatim* reproduction of the 1979 Constitution, The 1963 constitution however had no provisions comparable with chapter 2 of the 1979 and 1999 Constitutions; but made provisions for human rights in sections 18 to 33.

protection in Nigeria, Nigeria has also established the National Human Rights Commission.¹¹ Further, Nigeria has established a number of other institutional infrastructures dedicated to the promotion, protection and enforcement of human rights. These are the Public Complaint Commission,¹² the Legal Aid Council¹³ and also, though tangentially, The Nigeria Police Force¹⁴. In further demonstration of Nigeria's commitment to human rights promotion and protection, it set up in 1999, the Human Rights Violations Investigation Commission,¹⁵ headed by a retired Justice of the Supreme Court of Nigeria, Justice Chukwudifu Oputa. The Commission which was fashioned after the Truth and Reconciliation Commission of South Africa were mandated to investigate cases of injustice and abuse of human rights, and recommend measures to redress these injustices and prevent their re-occurrence.

Perhaps, the greatest statement, or more pragmatically expressed, the most concrete expression which Nigeria has shown to promote and protect human rights is to be located in the provision of effective constitutional means and machinery to secure redress in the event of an infraction of, or derogation from any of the guaranteed rights. With all these, it becomes tempting and a hypnotically arresting thesis to say that human rights are adequately protected in Nigeria and that the infraction may only exist in isolated cases. Paradoxically, this is not the case. On the contrary, human rights violation takes place with disturbing frequency, regularity and gravity in Nigeria.

It has long been recognised that subscription to human rights instruments and the establishment of institutions for their enforcement are not sufficient indication of sincere recognition, promotion and protection of human rights. Indeed, mere declaration and actual practice are not synonymous. This is why Justice Haleem¹⁶ was constrained to lament that, "nation-states have not been able to match their impressive record of codification and prescription with equally vigorous attempts at the application and enforcement of human rights norms...."

In the same vein, Nariman, a onetime President of the Indian Bar Association while delivering a lecture at the Indian Bar Association 50th anniversary in 1997 noted that:

The great violators of the most basic human right the right to peace – are sovereign governments obsessed with national security. Although we do have an impressive body of international law, with scores of international covenants and conventions, in the end they do not add up to much.¹⁷

Commenting on the fact that a wide gap exists between mere human rights rhetoric and actual practice, a learned author¹⁸ succinctly posited that, "at one time or the other in our national history, we had observed the tenets of human rights more on paper than in practice, yet the fact remains incontrovertible that these tenets had always been in place within our legal system."

¹¹ National Human Rights Commission Act, N46 LFN, 2004. The Commission was established in 1995 and its governing Council inaugurated on 17th June, 1996.

¹² Established by Public Complaint Commission Act, cap P37 Laws of the Federation of Nigeria, 2004

¹³ Established pursuant to Legal Aid Act, No. 56 of 1976, L9 Laws of The Federation of Nigeria, 2004

¹⁴ Established pursuant to section 214 of the 1999 Constitution (as amended).

¹⁵ See, Statutory Instrument No. 8 as amended by No. 13 of 1999. The Commission was inaugurated on June 14th 1999. For essay on the Constitutionality and power of the Commission, See, P.E. Oshio, "The Constitutionality and Powers of the Human Rights Violations Investigation Commission (Oputa Panel) in (2001/2002) vol. 7 No. 1, UBLJ 116-135.

¹⁶ M. Haleem, "The Domestic Application of International Human Rights Norms", in *Developing Human Rights Jurisprudence, The Domestic Application of International Human Rights Norms* op. cit. at 92.

¹⁷ F.S. Nariman, "International Human Rights Law and Sovereignty of States: *Role and Responsibility of Lawyers*, IBA – Human Rights Institute News vol. 2 No. 2 October, 1997 at 22-24.

¹⁸ M.A. Ajomo, "Human Rights under the Nigerian Constitution", in *Democracy and the Law*, papers presented at the Second Conference of the Body of Attorneys-General in the Federation Held in Abuja 9th -12th September, 1991, ed Bola Ajibola. Lagos, Federal Ministry of Justice, 1991 at 105.

It is for the reason that a distinction exists between mere declaration and actual practice that the world today still experiences worrisome cases of human rights abuses notwithstanding the globality and significance of human rights.

In lamenting human rights abuses in the world today, O'Byrne¹⁹ provided a graphic picture which is considered not only apt but irresistible to re-echo somewhat extensively as follows:

“When the United Nations introduced the Universal Declaration of Human Rights in 1948, it was seen by many as a sign of optimism, of the possibilities of a better world. Yet over 50 years later, observers recognise that we live in an age when human rights abuses are as prevalent as they have ever been; in some instances more prevalent. The world is littered with examples of violation of basic rights: censorship, discrimination, political imprisonment, torture, slavery, the death penalty, disappearances, genocide, poverty, refugees. The rights of women, children, and other groups in society continue to be ignored in atrocious ways. The environmental crisis takes the discourse on rights to a different level”.

Continuing on the globality of human rights abuses, the learned author lamented that, “human rights abuses continue in nation-states across the globe. Western democracies preach the observance of human rights regulations to non-western nations whilst blatantly ignoring them at home”²⁰ Farran²¹ a distinguished author also drew attention to the globality of human rights abuses when he constructively noted about United Kingdom that, “the UK’s frequent appearances before the European court of Human Rights or the Commission is indicative of the problems/challenges confronting the promotion, protection and enforcement of human rights in UK”

That human rights violations exist in advanced technologies and democracies is an inescapable indication that the story in Nigeria could not have been positively different because as rightly noted by Umzurike,²² African Continent, of which Nigeria is a dominant force, “erected an unenviable record on human rights violations going back to slavery, and slave trade, colonialism, apartheid, military and dictatorial regimes.” Accordingly, the picture of human rights promotion and protection in Nigeria despite the adoption of numerous international human rights instruments and the constitutional provisions remain a worrisome which should provoke more than a mere passing interest.

Commenting on the abysmal human rights record of Nigeria, Owasanoye²³ was constrained to lament that, “Nigeria’s human rights record is not encouraging when viewed against the country’s size, potential, its almost limitless opportunities, the impoverished status of the majority and the current state and outlook of the people.” Yet, Nigeria is a signatory to all major international human rights instruments.

¹⁹ D. J. O'Byrne, *Human Rights, An Introduction*, India: Dorling Kindersley Publishing Inco, 2003 at 5.

²⁰ Ibid. at 26.

²¹ S. Farran, *The UK Before The European Court of Human Rights Case law & Commentary*, London: Blackstone Press Limited, 1996 at vii. For some documented cases of human rights violations across the globe, see H.J. Steiner & P. Alston, op. cit. at 3-21.

²² U.O. Umzurike, “The African Charter and National Laws: The Issue of Supremacy,” in *Current Themes in the Domestication of Human Rights Norms*, op. cit.

²³ For the impact of military rule on human rights, see, A. Borokini, “The Impact of Military Rule on Fundamental Human Rights in Nigeria” in *Ado Readings in Law*, (1998) vol.1 ARL at 16 -43. the learned scholar persuasively argued that “military regime is based upon a unified and hierarchical command structure... monolithic, absolute and with an over concentration of power, [with] no democratic temperament. It does not tolerate oppositions [and it is], a negation of the rule of law,” Ibid. at 24.

It is against the foregoing background that this article sets to interrogate first, why there exists a wide gap between codification and actual practice as far as respect for human rights is concerned. It is also proposed to proffer a realistic approach to the problem with a view to ensuring that human rights are truly and meaningfully enjoyed in Nigeria, so that the rights will no longer be “mouth and paper” declaration devoid of practical value.

In discharging the primary role of this paper, a skeletal examination of the state of human rights in Nigeria was undertaken in order to set the pragmatic agenda of the paper.

2. A SURVEY OF HUMAN RIGHTS INFRACTIONS IN NIGERIA

It is undoubtedly true, and every perceptive observer will unhesitatingly agree, that large-scale human rights abuse still exist in Nigeria today notwithstanding the resurrection and enthronement of constitutional democracy in Nigeria in 1999 and the consequent rejection of military rule with its dubious legitimacy.²⁴ A learned author²⁵ has rightly noted that at this stage of Nigeria’s nascent democracy after two decades of military dictatorship, there is the tendency for people to assume that democracy necessarily restores civil liberties and freedom. He however cautioned that such an assumption could be both erroneous and dangerous and concluded that, it is not yet “*Uhuru*”²⁶ Continuing, the learned author reasoned that while it is tempting to assume that democracy and human rights are symbiotic, since it is believed that human rights and democracy are two sides of the same coin, this assumption must be treated with caution.²⁷ In his words, “we must be on our guard. A supposed democratic government could be as bad as military dictatorship when it comes to respect for human rights”.²⁸

Indeed today, as in the inglorious days of military rule, frequent cases of extra-judicial killings,²⁹ unjustifiable torture of detainees by security agents,³⁰ unbridled curtailment of freedom of the press,³¹ and objectionable curtailment of the right to freedom of thought, conscience and religion³² are still witnessed. Also, politically motivated arrests and detention, have continued unabated, just as lengthy pre-trial detention of detainees,³³ are continually, being experienced.

Perhaps, the greatest assault on human rights now is the barbaric, worrisome and horrendous activities of the Boko Haram sect. The mindless killings and attacks on innocent and defenceless citizens by the sect members not only threaten the stability and security of Nigeria but human rights enjoyment. Since the sect commenced its invidious activities in 2009, many have been killed and maimed. Perhaps the most destructive and atrocious attack

²⁴ Ibid.

²⁵ A. O. Mohammed. “The Rebirth of Human Rights in Nigeria: A Myth or Reality” (2002)1 B.J. vol. 1 No. 2 at 104 -118 & 104.

²⁶ This is a Swahili local expression which literarily translated means, freedom. Swahili is a member of Bantu-speaking people living in and near Zanzibar in East Africa. (See *The New Lexicon Webster's Dictionary of the English's Language*, New York, Lexicon Publications, Inc. 1991 at 997.

²⁷ Ibid at 111

²⁸ Ibid.

²⁹ On December, 28, 2006, the Inspector General of Police, Tafa Balogun, announced that police killed 1,694 ‘suspected armed robbers’ during the year.

³⁰ See, Amnesty Report, www.amnestyinternational.com. see e.g Saturday Punch, September, 13, 2008 at pages 2 & 49 which graphically captured the inhuman treatment and depersonalisation to which inmates of the Lagos state owned Lagos State vocational & Rehabilitation centre were subjected.

³¹ As exemplified in the repeated raid of Newspaper houses like the Insider, and confiscation of issues of the magazines and Newspapers. Recently, the office of Leadership Newspaper was sealed and its operatives arrested allegedly for publishing false story about the health of president Umaru Yar’Adua.

³² See e.g Theresa Nwafor Onwo vs Oko (1996) 6 NWLR (pt 456) 584; Agbai vs Samuel Okogbue (1991)9-10 SCNJ. 49.

³³ For instance, in 2002, 350 inmates of Kirikiri Prison filed an action challenging the constitutionality of their detention without trial for a long period of time.

carried out by the sect was the one on the United Nations building in Abuja on 26th August, 2011.³⁴ On that occasion, scores of persons were killed. Only recently, precisely on the 20th January, 2012, the sect carried out yet another audacious, though mindless, coordinated attacks in the city of Kano. The attack recorded the singular highest number of harvests of deaths with over two hundred people dead.³⁵

A cursory look at certain traditional practices in Nigeria also eloquently demonstrates that human rights promotion and protection are grossly inadequate. Women in Nigeria, by reason of their status still suffer discrimination and are subjected to tragically obnoxious practices which do not only constitute infractions of basic human rights and fundamental freedoms but dehumanise and depersonalise them. Examples of these discrimination and barbaric cultural practices can be seen in widowhood practices³⁶ female genital mutilation,³⁷ spousal and non spousal violence, under-aged female children marriage especially in the Moslem dominated part of the country and coercive restriction of the right of movement, and association of women in *pudah*³⁸ and limited property rights enjoyed by women.³⁹ All these practices find bold support and legitimacy in cultural and traditional beliefs of the male dominated society in Nigeria. That these discriminations and cultural practices severely limit the enjoyment of human rights by women is beyond any sustainable argument. The inevitable question is: against the foregoing background, can we still talk of the universality and inalienability of human rights?

Women are not the only victims of discriminations and other obnoxious cultural practices which constitute a significant infraction and circumscription of human rights enjoyment, promotion and protection in Nigeria. Children suffer comparable disadvantage from the twin “dragons of culture and traditions”. Many cultural beliefs and practices⁴⁰ in Nigeria enormously undermine and compromise the rights of children in diverse ways and varying degrees. Examples of some of these retrogressive practices and beliefs include prohibition from eating certain foods resulting in malnutrition, denial of freedom of association and expression, lack of access to education, early marriage, etc.

3. SOCIAL, ECONOMIC AND CULTURAL RIGHTS: A NEGLECTED CATEGORY OF HUMAN RIGHTS

It is important to note that while civil and political rights are often violated with disturbing and condemnable frequency and regularly by government and its institutions, there is a near total denial of economic, social and cultural rights. Nigeria is a country which is blessed

³⁴ See, www.bbc.couknews/world.africa.

³⁵ Nigerian Newspapers were a washed with the news of the attacks which have been described as “brazen insurrection against constituted authorities” by the Arewa Consultative Forum. See for example; *The Nation*, Monday January, 23, 2012 at 1, 4,5.

³⁶ See E.M. Uka, “Widows’ Rights and Widowhood Practices in Nigeria: A critical Review” in *International Journal of Social Science and Public Policy* (IJSSPP) vol. 2. No.2, 1 March, 1999 at 29-39; J.A. Dada, “Widowhood Practice and the law in Nigeria”, (2002-2003) *The Calabar Law Journal*, vol. vi-viii, 184-206.

³⁷ Which is contrary to the letter and spirit of Declaration on the Elimination of Violence Against Women adopted by the UN General Assembly in 1993.

³⁸ *Pudah* is northern Nigerian Islamic term for restriction of women from leaving home without escort or supervision, technically, it is similar to house arrest.

³⁹ For a comprehensive work on the limited rights enjoyed by women, see *Women in Law*, ed. Akintunde O. Obilade, Louisiana & Lagos; Southern University Law Centre Baton Rouge, & Faculty of Law, University of Lagos; 1993.

⁴⁰ See, A. Atseuwa, “Human Rights Protection of Vulnerable and Marginalised Groups”, in *Text For Human Rights Teaching in Schools*, op.cit. at 209, B. Owasanoye, Human Rights and the status of children in Nigeria, Four years to the third millennium: Goals for Role Actors. Op.cit. at 223-251.

with abundant natural resources and is not plagued by the numerous natural disasters like flood, tornado, wildfire and earthquake which have devastated many nations of the world and rendered them prostrate. Unfortunately however, Nigeria is plagued by the heavy burden of corruption, incompetent and insensitive leadership such that the social, economic and cultural rights have largely remained dead letters of no practical value.

The majority of our peoples' lives in sub-human condition, dehumanised and depersonalised by the harsh economic situation in the country. Many are unemployed and those who are employed are under-employed. Many still die of preventable diseases and many more of hunger, and destitution. The social services have remained intolerably epileptic.

Yet, it is a truism that both categories of human rights are not only equally important but indivisible, interdependent and mutually reinforcing. The interdependence and indivisibility of human rights have been established beyond any equivocation. The Vienna Declaration and Programme of Action unmistakably emphasize that all human rights are universal, indivisible, interdependent and interrelated. Commenting on this interrelatedness, Bhagwati⁴¹ incisively notes that since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. Aguda,⁴² a jurist of remarkable distinction has also observed that:

“The practical actualisation of most of the fundamental rights cannot be achieved in a country like ours where millions are living below starvation... in the circumstances of this nature, fundamental rights provisions enshrined in the Constitution are nothing but meaningless jargon to all those of our people living below or just at starvation level...”

Consequently, this neglected though important category of human rights deserve better promotion, protection and enforcement. It is important that the government must be conscious of the fact that social, economic and cultural rights which are essentially utilitarian or egalitarian in character are predicated on the belief that the attainment of a certain level of social and economic living standard is a necessary condition for the enjoyment of the civil and political rights.⁴³ Accordingly, the affirmative governmental action required for their enjoyment must be activated, pursued, promoted and sustained by the government.

At the moment, the enjoyment of these rights is hamstrung by the fact that the constitution makes these rights not justiceable;⁴⁴ so that no litigation can be maintained based on any supposed infraction of these rights. This however should not provide excuses or justification for the neglect of this category of rights because, as we have argued, the civil and political rights cannot be meaningfully enjoyed in the face of the neglect of the social, economic and cultural rights.

If, as unequivocally and abundantly demonstrated above, human rights subject has penetrated the international dialogue, and has become an active ingredient in interstate relations, bursting the hitherto sacred bounds of national sovereignty, the question becomes not only relevant but inevitable; Why do governments love human rights rhetoric more than actual respect for human rights? In other words, why do we still experience remarkable human rights violations? Why do governments adopt human rights treaties but shy away from giving concrete

⁴¹ Bhagwati; *op' cit.* at xxii

⁴² T. A Aguda, *A New Perspective in Law and Justice in Nigeria*, NIPSS Kuru, Jos Distinguished Lecture Series October 25 1985 at 9-23.

⁴³ DCJE Dakas & O.G. Wade, *Dynamics of Social and Economic Rights in Nigeria*, Nigerian Association of Law Teachers 32nd Conference NIALS, Lagos: 10-13 May, 1994 at 33.

⁴⁴ Chapter 11 of the 1999 Constitution as a mended makes the social economic and cultural rights not justiceable.

expressions to them? Contextually speaking, if Nigeria played a significant role in the process leading to the actualisation of an African Charter, and has subscribed to and adopted major international human rights instruments, how do we explain the worrisome human rights violations which still take place in Nigeria today? In the words of Justice Haleem, “why do (Governments) repeat and vote for formulas that produce resolutions and declarations, and establish bodies designed to promote the implementation of the legal norms proclaimed in these instruments’ with no corresponding practical respect for human rights?” An answer to the foregoing interrelated questions was provided by Justice Haleem when he noted that:

[Governments] find it difficult to vote against what is deemed to be good, what a vast majority of people of the World want, and what consequently makes good political sense for Governments to be for, if only to give lip service to. The vast body of international human rights law as is available today is testimony to the fact that Governments know that the appeal, the yearning, and the demand for human rights is universal.

Accordingly, the search for a meaningful and realistic protection and promotion of human rights cannot be located, in dead letters of the constitution, global or regional human rights instruments. Rather, other measures are required. For, as noted by Nwabueze,⁴⁵ a prodigious scholar of international repute, “the hearts of men and women may be reached, not so much by a Bill of Rights prescribing standards of behaviour in the conduct of government as by measures designed to promote respect for human rights among the people, rulers and the ruled alike.”

4. GOVERNMENT AS ROLE ACTOR: TOWARDS GOAL – ORIENTED APPROACH

States remain primarily responsible in international law for ensuring protection of human rights within their jurisdictions. In the words of a learned author,⁴⁶ “international protection requires national measures to implement human rights treaties and to strengthen national institutions linked to the full observance of human rights and the rule of law”. Paradoxically, substantial evidence and justification exist for the belief that “the state is human rights predator which must be contained otherwise; it will devour and imperil human freedoms.”⁴⁷ Indeed, that the state is the primary human rights predator explains why: “human rights in practice assume[s] minimal thresholds of efficacy, legitimacy, institutionalization, and serviceability on the part of the states that assume primary responsibility for their implementation.”⁴⁸

It is against the foregoing background that the search for meaningful protection and enforcement of human rights must begin, and focus on the state. Put differently, in order to translate the noble ideal of human rights into concrete reality, attention must be focused on the government. As in the international level where the current concern of international organs of

⁴⁵ B. O. Nwabueze, “The Value of Human Rights and Their challenges for Africa”, Text of a paper delivered at the NBA Annual Conference, Abuja on 27/8/98 at 15-42.

⁴⁶ A. A. Cancado Trindade, “The Interdependence of all human rights – Obstacles and Challenges to their implementation” Human Rights Anniversary of the Universal Declaration, International Social Science Journal, UNESCO, 1998 at 513-524 at 519.

⁴⁷ M. Mutua, Human Rights, A Political and Cultural Critique, 2002 at 2 cited by C.A. Odinkalu, “Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa” (2003) Journal of African Law, 1-37 at 1.

⁴⁸ Odinkalu, op’ cit. at 7

protection, in relation to continuing violations of human rights is to develop measures; both of prevention⁴⁹ and of follow – up,⁵⁰ comparable measures must be instituted at the domestic level.

5. NATIONAL ACTION PLAN FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

The Nigerian government, through elaborate participatory, consultative and collaborative approach⁵¹ has developed the National Action Plan⁵² for the promotion and protection of human rights. This plan is a response to the recommendation of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna, Austria in 1993.⁵³ The National Action Plan is an integrated and systematic national strategy to help realise the advancement of human rights in Nigeria. At the same time, it is also:

- An audit of the human rights situation in Nigeria; identifying areas in need of promotion and protection, as well as improvement.
- A commitment to concrete measures that can be adopted to build and entrench a culture of human rights for the enjoyment of all and
- A framework for sustained and coordinated ways for the country as a whole to promote and protect human rights in the next three years.⁵⁴

Importantly, the Plan provides a barometer for the Government and the organs of the Civil Society to monitor and assess the observance of human rights and to gauge the commitment of the Government to the promotion and protection of human rights in the country. It is not only relevant but significant to note that although the National Action Plan is a comprehensive programmatic and pragmatic document, the strategies beautifully captured therein have not been meaningfully utilized. For instance, although, the Plan carefully and scrupulously identified the challenges to the full realisation of not only the civil and political rights but also, economic, social and cultural rights; these challenges have remained unabated because the strategies proposed to combat them have not been explored or utilised. An example is considered apt. Eighteen impediments were identified as militating against meaningful enjoyment of the right to personal liberty. These include sub-standard facilities in prison, excessive and sometimes, the lethal use of force, impunity, citizen's lack of knowledge of their rights and practice of holding a charge. To address and redress the problems, twelve's solutions were proffered. Amongst them are the following:

- Developing a National Policy and enactment of laws for a framework to ensure humane and sensitive treatment of arrested, detained and accused children;

⁴⁹ E.g, the projected Additional Protocol to the 1984 UN Convention against Torture, establishing a preventive mechanism of regular visits to places of detention, so as to eradicate promptly and definitely the practice of torture (a mechanism reminiscent of that of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

⁵⁰ E.g, the initiative of the Human Rights Committee of appointing a rapporteur on follow up on its views under the UN Covenant on Civil and Political Rights and its first Optional Protocol.

⁵¹ Many human rights groups, such as human rights NGO's civil society, NBA and other professional bodies, security agencies government ministries and parastatals were involved.

⁵² The NAP was presented by the Attorney-General of the Federation of Nigeria to the United Nations at Geneva, Switzerland in July, 2009.

⁵³ The Vienna Declaration inter alia requested that "Each state consider the desirability of drawing up a national plan identifying steps whereby the state would improve the protection and promotion of human rights"

⁵⁴ See, NAP published by the National Human Rights Commission, Reproduced by I. Akaraiwe, in *Analysis of the Fundamental Rights Enforcement Procedure) Rules 2009*, Ibadan: St. Paul Publishing House, 2010 at 87-235

- Supporting the police, Prisons and other law enforcement agencies on human rights education programmes;
- Legal aid information to the accused;
- Abolition of holding charge in the Nigerian criminal justice system;
- National award for human rights cases handled on pro bono basis, etc.

It is unfortunate as it is regrettable that the above measures, like others contained in the NAP to deal with specific human right, have remained unimplemented. The result is that the NAP has remained no more than another slogan of little practical value. The problem of inhuman treatment of detainees is not only well known but well documented.⁵⁵ Unfortunately, the Criminal Justice Reform has not been of any practical value.

6. THE WAY FORWARD

To catapult human rights from the realm of rhetoric to objective reality, there are a number of steps which must be urgently, committedly and consistently taken by the Government. While it is appreciated that the Government alone cannot exclusively ensure meaningful promotion and enjoyment of human rights and that a wide range of alternatives are desirable, the role of the government is not only important and paramount but incomparable with any other. The role of the judiciary in human rights promotion and protection is fairly well established, namely that the courts must adopt a generous and creative approach in the interpretation of human rights provisions.⁵⁶ Accordingly, it is not intended to examine the role of the courts especially because not all human rights violations go to court. Besides, the executive branch can still undermine the efficacy of the role of the court through disobedience to court orders. Consequently, we must seek extra-judicial measures to ensure adequate human rights protection in Nigeria.

Human Rights education must be encouraged and instituted by the government as a promotional strategy towards effective realization of human rights. Human rights should be taught not only in schools but in informal settings with a view that even the illiterate populace should know what constitutes human rights and what steps can be taken to ensure and assure their enforcement. According to Bhagwati⁵⁷, it is essential to embark upon a complementary programme of education designed to produce new thinking on the part of the people in regard to human rights. We must accelerate social movements using a multiple range of techniques that human rights can be realised. Therefore, adequate and prompt payment of compensation to victims of human rights violation must be made by the government in all cases, especially where the culpability of the government or any of its agencies and officials has been established. Undoubtedly many cases of human rights violations have not attracted deserving compensations. Even where compensation has been awarded by the court, recovery is characteristically marred by bureaucratic bottlenecks. A special fund should be created and dedicated both at the state and national levels, to the payment of compensation to victims of human rights violation.⁵⁸

Human rights NGOs must be encouraged and galvanised by the government to be much more pro-active and engage more in promotional activities rather than politicization of the methods of human rights advocacy. There should be a deliberate outreach to the rural communities where structural inhibitions account for gross human rights violations than

⁵⁵ See, J.A. Dada, *Nigeria: The Challenges of Nationhood*: Calabar, University of Calabar Press, 2008 at 79.

⁵⁶ See, Lord Wilberforce in *Minister of Home Affairs vs Fishers* (1980) A.C. 319.

⁵⁷ Bhagwati, *op' cit.* at xxiv.

⁵⁸ *ibid*

experienced in urban areas. Human rights NGOs have mostly concentrated on denouncing governmental violations without necessarily offering a view of or demonstrating how things can be done differently.⁵⁹

Greater commitment must be shown by the government towards the realization of the Economic, Social and Cultural rights guaranteed in major international human rights instruments to which Nigeria is a signatory especially as these rights are declared non-justiciable by the constitution. Despite the obligation of state parties to the instruments especially, the International Covenant on Economic, Social and Cultural Rights, is usually to take steps to the maximum of their available resources with a view to achieving progressively, the full realization of the rights,⁶⁰ it is a notorious fact that much more can be done by the government than is presently being done.

Strong democratic institutions must be erected to fight corruption and ensure good governance. If the political leaders are held strictly accountable for their actions, then a regime of transparent management of the available economic resources will be built and the economic, social and cultural rights will be better protected. This is particularly important because, as earlier argued; the civil and political rights cannot be meaningfully enjoyed in a state of economic deprivation.

The executive branch has the onerous, important and a compelling duty to ensure prompt compliance with the orders of courts. Human rights should no longer be a mere matter of rhetoric. Rather, the government must constantly and deliberately seek to advance the cause of human rights through human rights friendly legislation, policies and actions. Specifically, the integrated and systematic national strategy drawn up by the National Action Plan to help realise the advancement of human rights in Nigeria must be honest and committedly implemented. In discharging this commitment, the Government must always ensure that, persons of proven integrity with spotless moral character are those appointed to the various human rights bodies established in Nigeria.

Extra-judicial bodies for human rights enforcement must be strengthened to promote their efficiency and efficacy in human rights promotion and protection. Judicial enforcement of human rights is characteristically protracted, and expensive. This is partly why over-reliance and dependence on the judiciary must be de-emphasized and discouraged in favour of the less cumbersome, less technical and inexpensive extra-judicial infrastructure. Accordingly, the human rights agencies should enjoy reasonable independence to free them from executive interference. All human rights agencies, especially, the National Human Rights Commission and Public Complaints Commission should be strengthened and adequately funded. The constituent instruments of the Commissions should be amended to grant them financial autonomy. Apart from ensuring the financial autonomy of the Commissions, the government should be charged with the responsibility of providing technical and infrastructural support and solidarity for their work and these of other human rights organizations.

7. CONCLUSION

The importance, universality and immutability of human rights though globally acknowledged and accepted have not translated into or ensured total, loyal and faithful commitment to their realization across the globe. In Nigeria, as in some other parts of the globe horrendous cases of human rights violation still exist, notwithstanding the adoption of the major international human rights instruments. If, as stated in the Vienna Declaration on Human Rights, in June, 1993 that 'human rights and fundamental freedoms are the birthright of all

⁵⁹ *ibid*

⁶⁰ Article 2(1)

human beings”, then, their protection and promotion should always be the first responsibility of government. After all, Nigeria is a signatory to the Universal Declaration of Human Rights, (1948), pledges itself like other nations of the world to achieve, in cooperation with the United Nations, the promotion of the universal respect for and observance of human rights and fundamental freedoms.

Therefore it should not only be fashionable to accept and adopt international human rights instruments as being applicable in Nigeria, but practical commitment ought and should be demonstrated at all times towards the realization of the noble objectives of these international human rights instruments in Nigeria. It must always be borne in mind that the effectiveness of the legally guaranteed human rights depends to a considerable degree on adequate machinery for their enforcement. The governments must therefore vigorously and committedly pursue programmes and policies which will guarantee meaningful enforcement of these rights in Nigeria. In this way, pragmatism will take the place of rhetoric and the noble ideas of human rights will be realised.