A Review of Fundamental Rights Enforcement Procedure 2009: Fruitful or Fruitless?

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Abstract

The fundamental rights enforcement procedure is a way of challenging human rights violations if and when one's fundamental right has been, is being, or is likely to be infringed upon. Thus, the applicant can approach the court and seek redress or prevent the violation from happening. The rules for this procedure are set out in the Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules 2009), which contain the steps and rules in seeking redress for human rights violations. This research examines whether the Fundamental Rights Enforcement Procedure 2009 is fruitful or fruitless. This paper analysed the FREP Rules and considered to what extent it achieved its objective in order to enhance a robust human rights regime. This paper found out that the Fundamental Rights (Enforcement Procedure) Rules 2009, though has brought tremendous changes in the field of human rights protection, it is still faced with some setbacks like the issue of principal and ancillary claim in the enforcement of fundamental rights and the jurisdiction of the National Industrial Court which is not clear in the rule. The paper recommends that Courts should do away with the dichotomy between principal and ancillary claims, among others.

Keywords: Fundamental Rights, Human Rights, Enforcement, Human Rights Violation

1. Introduction

Human Rights are the basic guarantees that individuals enjoy simply because they are human beings. The rights are enshrined in Chapters

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IV and Chapter II of the Constitution[1] as fundamental Rights and fundamental objectives and directive principles of state policy. Human Rights today have not only become a global concern but remarkable interest aimed at protecting and promoting universal respect for and observance of human rights has eventually been shown at the international, regional and national levels. There have been contending explanations as to their scope and nature, regards being had to the contextual realities of the society in which they are sought to be enjoyed.[2]

The present codification of human rights in the national constitution flows from the Universal Declaration of Human Rights (UDHR) 1948, which provides a firm foundation for the historical development and globalization of human Rights. The UDHR represents a bold attempt by the UN to elaborate on and give concrete and authoritative expression to the imprecise and ambivalent definition of human rights contained in the UN Charter.[3] Since the promulgation and adoption of the UDHR the United Nations has made its commitments to the promotion and protection of human rights around the globe. This justifies the numerous resolutions, declarations and conventions[4] which have been passed in the area of human rights. Human rights have become indispensable that virtually all constitutions the world over, make provisions for them in the preamble or substantive provisions. For example, the French constitution of 1958 refers in its preamble, to the 1789 Declaration of the Rights of Man and of the Citizen. The Nigerian and Indian constitutions incorporated virtually all the rights contained in UDHR[5]. Fundamental Rights are rights derived from natural or fundamental or constitutional law. They are rights which remain in the realm of domestic law, which are recognized, entrenched and guaranteed in the constitution of a country

[1] Constitution of the Federal Republic of Nigeria, 1999

[2] F Schifer, (1988) Forty Years of the Universal Declaration of Human Rights, Bulletin of Human Rights, UN, New York, P.92.

[3] Ibid

[4] Some of the declarations and conventions include, Declaration on the Right of the child International Convention on the Elimination of all forms of Racial Discrimination and the Convention on the Rights of the Child.

[5] Jean-Bernard,(2003) *National Systems for the Protection of Human Rights in Human Rights InternationalProtection, MonitoringEnforcement, Januzs ymon ides(Ed.)* (Aldershot Hants, Ashgate, UNESCO Publishing) 258.

or any other legal instrument such as the African Charter on Human and People's Rights. Fundamental Human Rights are also described as rights which are inalienable and guaranteed to every person.[6]

The Constitution of the Federal Republic of Nigeria and the African Charter on Human and Peoples‟ Right guarantee fundamental human rights. These Fundamental Human Rights are not privileges in the sense that they could be withdrawn at the whims and caprices of the government of the day. They are rights which the executive and legislature are enjoined to respect and the judiciary to protect. However, there are instances where these guaranteed rights are violated either by the law enforcement agents or in quasi-judicial proceedings.[7]

Furthermore, where there are breaches of these rights, the appropriate means to secure the enforcement of the victims‟ fundamental right is paramount. It is against this background that the Fundamental Rights (Enforcement Procedure) Rules was enacted. On 29th May, 1999, a new constitution came into being. Some judicial opinions[8] were of the view that the Fundamental Rights (Enforcement Procedure) Rules 1979 was dead pursuant to section 42(3) which provides who to make rules for the practice and procedure for the High court towards the enforcement of the provision of Chapter IV. For effective enforcement of the rights guaranteed under the 1999 Constitution, the 2009 Fundamental Rights (Enforcement Procedure) Rules was enacted, It was signed In November 11,2009 by the then Chief Justice Idris Legbo Kutigi and came into force with immediate effect replacing the Fundamental Rights (Enforcement Procedure)Rules 1979.[9]

The purpose of the Fundamental Rights (Enforcement Procedure) Rules is to facilitate the enforcement of fundamental rights[10]. The

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[6] *Chief Francis Igwe & Ors v Mr. GoddyEzeAnochu & ors* (2010) 7 NWLR pt 1192 p. 84-85

[7] *Trust Fund v Adebiyi* (1999)13 NWLR,PT.633,P.16.where the applicant sought to enforce his fundamental right to fair hearing ,having been breached in the course of his dismissal.

[8] U Evans (2015),Fundamental Human Rights Enforcement Under the Law, Retrieved on 3rd April, 2026 from www.connectnigeria.com

[9] Ibid

[10] *Minister of Internal Affairs v Shugaba* (1982) 3NCLR P 915.

Rules provide for redress where there is a violation or even apprehension of likely violation of these rights. The fundamental rights are provided in Chapter IV of the 1999 Constitution and Chapter 1 of the African Charter on Human and Peoples‟ Rights. Where the violation has occasioned injury which could be compensated in financial terms, courts are duty bound to make orders of reparation in monetary terms if applied for and proved.

2. Conceptual Clarifications

2.1 Fundamental Rights

Fundamental rights are those rights that are guaranteed under the Constitution as rights that the citizens of a country are entitled to as of right. They are not privileges and are basically distinguishable from privileges by the fact that they are guaranteed under the Constitution. They are not things that can be dashed or gifted. The moment a person is born in a country, he acquires those rights automatically. Privileges do not have the force of law, let alone constitutional guarantee. Rights are enshrined in the constitution and have the effect of conferring democratic legitimacy on a country's political system.[11] In other words, fundamental human rights are those rights that are inalienable and guaranteed to every person irrespective of their birth, religious, social, political or ethnic status. They are a set of legal protections in the context of a legal system, wherein such system is itself based upon this same set of basic, fundamental, or undeniable rights. They are also defined as entitlements that humans have by the fact of being human, and that are neither created nor can be abrogated by any government.[12] The *Black's Law Dictionary* defines human rights as 'the freedoms, immunities, and benefits that, according to modern values (especially at an international level), all human beings should be able to claim as a matter of right in the society in which they live'.[13]

In Nigeria, there are rights generally accepted as inalienable, for which the law has made specific and special provisions. These rights are contained in Chapter IV of the 1999 Nigerian Constitution, which classifies them as *Fundamental Rights* but they are also known as

[11] ON Ogbu , '*Human Rights Law & Practice in Nigeria*; *An Introduction'* (Enugu: Cidjap Publishers 1999) 1-2

[12] Ibid.

[13] AB Garner, *Black's Law Dictionary*, (9th ed. USA: West Publishing Co., 2009) 809.

Fundamental Human Rights.[14] The courts have judicially pronounced upon the uniqueness and special nature of these rights. Thus, it has been affirmed that Fundamental Rights are fundamental because they have been guaranteed by the fundamental law of the country; that is by the Constitution.[15]

In *Odogu v Attorney General of the Federation*,[16] the Supreme Court defined Fundamental Rights as follows:

> Fundamental Rights is a right guaranteed in the Nigerian Constitution and can be found entrenched in a particular chapter therein i.e., chapter IV. It follows therefore that for an applicant to successfully institute an action under the Fundamental Rights (Enforcement Procedure) Rules, the claim must fall within sections 33-44 of the 1999 constitution being the sections under chapter IV of the said 1999 Constitution.

It is quite instructive to note, at this juncture, that the entrenchment of fundamental rights in the Constitution is not unconnected with the principle enunciated by the United Nations in 1948. The Universal Declaration of Human Rights, which was adopted and proclaimed by the United Nations under the General Assembly Resolution 217 A (III) on the 10th of December, 1948 and which is to the effect that "it is essential, if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of law", is the precursor and foundation of all modern human rights instruments globally, Chapter IV of the 1999 Nigerian Constitution included. This Constitution, like all its predecessors since independence, makes such rights inalienable rights enjoyed as of right by citizens of Nigeria.[17]

2.2 Human Rights

The word "right" is derived from the Latin word rectus which means that to which a person has just, valid claim. This right may be classified into legal right, which is the liberty of acting or abstaining from acting on a specific manner, or the power of compelling a

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[14] Order I, Rule 2 of FREPR 2009.
[15] *Uzoukwu v Ezeonu* (1991) 6 NWLR (Pt. 200) 708
[16] (1999) 6 NWLR (Pt. 456) 508, 552
[17] F Schifer (n 2)

specific person to do or abstain from doing a particular thing.[18] The Black‟s Law Dictionary defines right as that which is proper under the law, morality or ethics, something that is due to a person by just claim, legal guarantees or legal principle.[19]

"Human Rights" have been defined by the United Nations. Human rights could generally be defined as those rights which are inherent in our nature and without which we cannot function as human beings". Human rights is a process that has taken years in the history of mankind, it has been a process which has gone through many stages. It is not certain as to how such liberties can be described as "Human rights" in the modern sense.[20]

The concept of human rights is one of the most profound questions that have ever tasked scholars. Discourse on the precise meaning and content of human rights has taxed the ingenuity of eminent scholars as the issue raises, more questions than answers on issues such as the Universality – relatively palaver, as well as the ethical, moral, cultural, philosophical, legal and ideological underpinning of the subject matter.[21]

3. Historical Analysis of FREP 2009

The history of fundamental rights enforcement procedures in Nigeria dates back to the 1963 Constitution, which was suspended following the 1966 military coup. The return to civil democratic rule in 1979 brought about the 1979 Fundamental Rights (Enforcement Procedure) Rules, which were later repealed by the 2009 Rules. That is, the first ever fundamental rights enforcement Rules was made in Nigeria in 1979. It came into effect on January 1, 1980. The FREP Rules, 1979 was meant to foster a quick dispensation of justice when it comes to fundamental human rights and to simplify and aid enforcement

[18] MD Kabir (2010), *A Comparative Analysis of European Convention on Human Rights and AfricanCharter onHuman and Peoples Rights, (Unpublished Phd dissertation),* Faculty of Law, Ahmadu Bello University,Zaria.

[19] *Backs Law Dictionary,* 8th edition p.1347

[20] OL Ige, *Human Right Made Easy* (3rd Edition, Legal Research and Resource Development Centre, Lagos 1999)

[21] AA Na‟am. and FDeng. (Eds), (1990). *Human Rights in Africa-Cross Cultural perspectives,*(The Brooking Institution, Washington)

procedures of victims of infringement.[22] However, the Rules soon became a clog in the wheel of administration of justice due to a number of factors. These include the rigid common law approach Nigerian courts have adopted in their interpretative role with regards to locus standi and other factors which turned the FREP Rules, 1979, into a highly technical and formal procedural instrument.[23]

Another major shortcoming of the 1979 Rules was the requirement for leave of court as a condition precedent for commencement of actions.[24] In interpreting this requirement in the case of *Udene v Ugwu*[25] the court held that it was mandatory. Thus failure to obtain leave was not a mere irregularity. This requirement, according to Abiola Sanni, was "regarded by some as circuitous and unnecessary in the enforcement of fundamental rights, a call which led to its abolition under the subsequent FREP Rules."[26] Forming another challenge was the limitation period foisted on an enforcement action. Under the FREP Rules 1979, an application for leave for the enforcement of fundamental rights must be brought within 12 months of the violation or threat of violation, or such other period as may be prescribed by any enactment, provided that where time has not been prescribed by any other law, the applicant could only make such application for leave out of time upon court's satisfaction of the cause of delay.[27]

In *Oguegbe v Inspector-General of Police*[28] the application for leave to enforce the applicant's fundamental right to personal liberty was refused on grounds that the action was brought 30 months after the alleged infringement. An applicant was required to, in bringing the initial ex parte application for leave, support same with a statement setting out his name, description, the relief sought, the grounds upon which the leave is sought; and a verifying affidavit confirming the facts he relied upon. Where such leave is granted, he would then be

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[22] Ibid.

[23] Ibid.

[24] Order 1 r 2(2) 1979 '[n]o application for an order enforcing or securing enforcement within that state of any such rights shall be made unless leave therefore has been granted in accordance with this rule'

[25] (1992) 2 NWLR (Part 491) 57

[26] Ibid.

[27] Ibid.

[28] (1999) 1 FHCLR 59

required to bring another application on notice with virtually the same set of documents. This amounted to a needless duplicity of processes, technicality and ultimate delay in the dispensation of justice.[29]

Apart from these drawbacks to enforcement caused by the text of the FREP Rules 1979, the common law principles of locus standi and the restrictive interpretation of section 42(3) of 1979 Constitution also contributed to the poor dispensation of justice as it pertains to access to court and capacity to sue.[30] The courts had usually insisted that unless a person has the locus standi, he is a meddlesome interloper and as such, a suit at his instance would be incompetent. This position was further reinforced by the provision of Section 46(1) of the 1999 Constitution (as amended) that only a person who alleges that any of the provision of this chapter (IV) has been, is being, or is likely to be contravened in any state in relation to him may apply to a High Court for redress and same was re-echoed in Order 1 Rule II of the 1979 FREP Rules.[31]

The Courts adopted a restrictive approach in interpreting these provisions, thereby erecting impediments to the growth and development of public interest litigation in Nigeria. In *Senator Adesanya v President of the Federal Republic of Nigeria & Ors.,*[32] the plaintiff challenged the constitutionality of the appointment of the Chairman of the Federal Electoral Commission (FEDECO). The Supreme Court held that the plaintiff lacked the locus standi to bring the action since he had no justifiable interest affected by the action and since he had not shown that he would suffer any injury or damage as a result of the action. The reasoning behind the restrictive approach was that there was need to leave the gate shut against meddlesome interlopers and floodgate of frivolous and vexatious proceedings.[33] Although, due to judicial rascality, there was a commendable relaxation of the restrictive approach at some point, the doctrine of

[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] (2007) 14 NWLR (Part 1054) 275 @ 334
[33] Ibid

locus standi remained for a long time, a 'formidable albatross in human rights litigation in Nigeria.'[34]

The Fundamental Rights (Enforcement Procedure) Rules 2009 ("FREP Rules 2009") was signed into law on November 11, 2009 by the then Chief Justice of Nigeria, Hon. Justice Idris Legbo Kutigi in exercise of powers conferred on him by section 46(3) of the 1999 Constitution. The rules contain the procedure to be followed in the enforcement of fundamental rights in Nigeria. They were made in an attempt to simplify the practice and procedure for the enforcement of fundamental rights in Nigeria and an attempt to solve some of the ills earlier pointed out in the 1979 Rules while at the same time abrogating the old Rules.[35] The purpose of the FREP Rules is made obvious in the pre-amble to the Rules especially as contained in its overriding objectives. For example, Paragraph 3 of the Rules on its overriding objectives requires that the Constitution and the provisions of the African Charter be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by them. In order to achieve this purpose, courts are enjoined to respect all municipal, regional and international bills of rights cited to it or brought to its attention including the African Charter on Human and Peoples' Rights.[36]

Worthy of note as a direct impact on the position of locus standi and public interest litigation in enforcement of rights in Nigeria, is the provisions of Paragraph 3(e) which provides: The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of locus standi.[37] In particular, human rights activists, advocates, or groups as well as any non-governmental organizations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include anyone acting in

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[34] JA Dada, 'Impediments to Human Rights Protection in Nigeria,' (2012) (18) *Annual Survey of International & Comparative Law*

[35] M Stanley-Idum and J Agaba, *Civil Litigation in Nigeria,* (Nelag & Company Limited: Lagos, 2017)

[36] Ibid

[37] Ibid

his own interest, anyone acting on behalf of another person, anyone acting as a member of, or in the interest of a group or class of persons, anyone acting in the public interest, and association acting in the interest of its members or other individuals or groups"[38]

This provision removed the strict principle of locus standi in human rights enforcement by enjoining the courts to avoid dismissing applications on the basis of locus standi. It also expressly enjoins the court to encourage public interest litigation. It finally and more expressly, lists the persons who may institute an action in court, which is a major departure from what used to be obtainable under the 1979 Rules.[39] Therefore, in line with the introduction to paragraph 3 of the preamble, the court now encourages and welcomes public interest litigation in human rights and no human rights case may be dismissed or struck out for want of locus standi. In *Dilly v. Inspector General of Police & Ors.,*[40] the appellant brought an application via an originating summons under the FREP Rules 2009 seeking to enforce the right to life of her son who died in police custody after he was arrested. After hearing the application, the High Court dismissed same on the basis that the Appellant could not enforce the right to life of her deceased son. In answering the question who can apply to enforce a fundamental right, the Court of Appeal, per Nimpar JCA, relied on the overriding objectives of the FREP Rules. The application succeeded with N5 Million awarded to the Appellant as damages. This is one of many cases that reflect the changing position of the courts toward locus standi and public interest litigation in the light of FREP Rules, 2009. This development has been applauded by several writers and has widened the gates of public interest litigation in Nigeria.

4. Theoretical Framework for Enforcement of FREP.

Human rights are one of the significant features of our political reality. It is the moral rights of highest order. Human Rights are evolved out of self-respect. It is inherent to all humans without any discrimination of race, sex, nationality, ethnicity, language, religion and colour etc. It received new shape when human beings began to think themselves. Each and every human beings are entitled to these rights without any

[38] Ibid
[39] Stanley-Idum and Agaba (n 35)
[40] [2016] LPELR-41452[CA]

discrimination.[41] Therefore, it is a prerequisite in this research to examine the major stands in the various approaches to human rights

4.1 Theory of Natural Rights

It states that an individual enters into society with certain basic rights and no government can deny these rights. The natural rights evolved out of the natural law that peoples are the creatures of nature. They exist their lives and organize their society on the basis of rules and principles laid down by nature. When the idea of individualism developed in the 17th century, theory of natural law were modified and focused on the rights of the individuals. It cannot be violated by anyone or by any society because they are natural beings. Therefore we can clearly say that today's human rights are the child of ancient natural rights.

The most notable expression of this doctrine is found in the writings of John Locke. John Locke argued that all individuals were gifted by nature with the inherent rights to life, liberty and property of their own and could not be removed or abolished by state. Two things are evident from his view of natural rights, one is the individual is an autonomous being capable of exercising choice and the second is the legitimacy of government depends not only upon the will of the people, but also upon the government's willingness and ability to protect those individual natural rights. Accordingly, human beings are rational and good by nature and they carried the same rights they had enjoyed in earlier stages of society into political society and important among them are freedom of worship, the right to a voice of their own government and the right of property.

The English philosopher Thomas Hobbes was one of the most prominent founders of the "natural right" theory. And this, despite the great controversy caused by his writings, reached the point of describing him as authoritarian monster.[42] Hobbes presented his ideas on natural right in his famous book Leviathan 1651, in which he set off on a new idea that has been known since that time as the "state of

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[41] D Jack, *Universal Human Right* in *Theory and Practice, (*London, Cornel University Press, London) 12

[42] DJC Carmichael, "Hobbes on Natural Right in Society: The "Leviathan" Account," (1990) (23) (1) *Canadian Journal of Political Science,* 3-21.

nature."[43] Hobbes expresses the essence of the state of nature" by saying that man is a wolf to man, meaning that the state of nature in which man lived in absolute freedom is a permanent state of war between man and his fellow man. The natural right in this case is the right to satisfy and satisfy desires. Hobbes says that the natural right, which the book usually calls "Jus Naturals" means the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything which, in his own judgement and reason, he shall conceive to be the aptest means thereunto.

4.2 Positivist Rights Theory

Positive rights theory posits that individuals are entitled to certain fundamental privileges and benefits that require active provision or intervention by the state or other institutions. Unlike negative rights, which necessitate non-interference, positive rights demand that authorities take action to ensure access and fulfilment.[44] Examples of positive rights include the right to education, healthcare, and social security. These rights compel governments to create systems, programs, and policies that guarantee citizens can exercise these entitlements, emphasizing the role of the state as a provider rather than merely a protector.[45]

The proponents of positivist theory also opine that the human rights are found only and only in the laws enacted by the authorities of a country under the laws.[46] Moreover, they absolutely deny the moral philosophic basis of human rights.[47] The positivists emphasized on compliance with the laws, irrespective of their immoral features and adverse impacts on the people's rights. Nevertheless, the Nuremberg Trials which ensured punishment for committing the "crimes against humanity" significantly realizes the violation of the rights of the

[43] *Ibid.*

[44] <https://lawslearned.com/Understanding Human Rights Theories: Foundations and Perspectives - Laws Learned accessed> 4th of April 2026

[45] Ibid

[46] Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of Legal System* (Oxford: Clarendon Press, 2nd ed., 1970) 118.

[47] Herbert Lionel Hart, *'Positivism and the Separation of Law and Morals'* [1955] 71 Harvard Law Review 593; John Austin, *the Province of Jurisprudence Determined* (Wilfrid E. Rumble, 1985) 790.

human beings. In this regard, as per Hart's view, it can be said that without law such persecution for violation of human rights could not even be possible.[48] This is certainly the scope of conflict between both the natural law theory and the positivist theory. The critics of the positivists express their wonder as to how an iniquitous law, which is not accepted by the people because of its lacking of reliability, become a law of being implemented.[49] They argue that a law should reflect the implication of morality that is surprisingly ignored by the positivist.[50] However, the positivists have its significance when the human rights protection measures are specifically implemented for ensuring the protection of human rights in every circumstances.[51]

4.3 Theory of Social Rights

The theory of Social rights states that rights are the conditions of society. It is the creation of society, law, customs, traditions and yield to what is socially useful or socially desirable. What is socially useful should have for its test the greatest happiness of the greatest number. The real advocators of this theory was Bentham and Mill. They established the principle of greatest happiness of the greatest number and made it for the measure of utility. But utility should be determined by considerations of reason and experience according to them.[52]

Laski accepts utility as the basis of rights. He agreed that the test of right is utility and the utility of a right is its value to all the members of the State. Rights are not independent of society, but inherent in it. One's rights are built upon one's contribution to the well-being of society. Rights are built upon their utility to the individual and the community. Utility is the measuring rod of a particular right. The theory has its appeal in the sense of justice and reason.[53]

5. Practical Impediments towards Realizing the Fruits of FREP

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[48] Nicola-Ann Hardwick, Theoretically Justifying Human Rights: A Critical Analysis (5 August 2012) <http://www.e-ir.info/2012/08/05/theoretically-justifying-human-rights-acritical- analysis/> accessed on 4th of April 2025

[49] C Mark Murphy, *Natural Law in Jurisprudence & Politics* (Cambridge University Press, 2006) 761.

[50] Ibid

[51] Ibid

[52] R Tuck, *Natural Rights Theories* (1982)

[53] Ibid

The impediments to human rights promotion and protection in Nigeria can be classified as constitutional, social, and political, among others. Many constitutional provisions on human rights, rather than energize and galvanize human rights goals, obviously limit and undermine them. For instance, there are numerous derogation clauses which are not only too wide but ill-defined and nebulous. This constitutes a formidable weakness which can gravely undermine human rights promotion. Similarly, the socio-political environment in Nigeria is not sufficiently clement or conducive to meaningful human rights regime. Often, government exhibits regrettable autocratic tendencies and erects a culture of impunity by regular disobedience to court orders. The result is that those who have the material means to seek legal redress are often left with no remedy. For clarity, the various impediments will now be examined under various headings as follows:

5.1 The Nigerian Constitution and Human Rights Treaties

Section 12 of the 1999 Constitution of Nigeria concerns treaties and their implementation. Since international human rights instruments are, essentially, multi-lateral treaties, a careful examination of the provisions of section 12 becomes not only relevant but imperative. The section provides that: (i) No treaty between the Federation and any other country shall have force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. (ii) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

The implication of the provisions of section 12 of the 1999 Constitution is simply that human rights treaties entered into by Nigeria will not become binding until the same have been passed into law by the National Assembly. In *General Sani Abacha v Gain Fawehinmi,*[54] the Supreme Court held that by section 12(1) of the 1979 Constitution (the *ipissima verbis* of section 12(1) of the 1999 Constitution), "an international treaty entered into by the government of Nigeria does not become *ipso facto* binding until enacted into law by the National Assembly and before its enactment, an international treaty has no force of law as to make its provisions actionable in

[54] *Abacha v Fawehinmi,* [2000] 6 NWLR 228 (Nigeria)

Nigerian law courts."[55] Further, the court unanimously held that "unincorporated treaties cannot change any aspect of Nigerian law even though Nigeria is a party to those treaties" but that they may "however indirectly affect the rightful expectation by the citizen that governmental acts affecting them would observe the terms of the unincorporated treaties."[56]

The practical significance of the provisions of section 12 of the 1999 Constitution in the context of human rights promotion and protection, therefore, is that international human rights treaties are not *ipso facto* applicable and enforceable in Nigeria unless they are domesticated as in the case of the African Charter on Human and Peoples' Rights.[57] Accordingly, the effectiveness of ratified human rights treaties is predicated on their being domesticated. This is so because the provision of the constitution is supreme.

5.2 Constitutional Derogations

A formidable impediment to optimal enjoyment, protection, and promotion of human rights in Nigeria is also located in the various constitutional limitations and qualifications imposed on these rights. Section 45(1) of the 1999 Constitution, like its predecessor the 1979 Constitution,[58] provides a veritable foundation upon which any law invalidating fundamental rights may be justified. The section provides, *inter-alia* that: 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.[59]

By the foregoing provision, the right to private and family life, freedom of thought, conscience and religion, freedom of expression

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[55] The reenactment of international treaties into domestic law is what is referred to as the concept of domestication or transformation of treaties

[56] Ibid.

[57] *The African Charter on Human and Peoples' Rights,* OAU Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986. Nigeria signed (1982), ratified (1983), and domesticated the African Charter as Cap 10, LFN, 1990 or Cap A9, LFN, 2004.

[58] Constitution, Art. 41(1) (1979) (Nigeria).

[59] Section 45(1), 1999 Constitution of the Federal Republic of Nigeria

and the press, right to peaceful assembly and association and right to freedom of movement may be circumscribed or limited. Also, other human rights constitutionally guaranteed are not sacrosanct or absolute but are expressly and specifically limited. Admittedly, there may be no absolute right without qualifications, but the constitutional provisions limiting the rights guaranteed[60] are somewhat imprecise, indeed nebulous, and as such, constitute a real drawback in the effort to promote human rights.

For instance, what law is "reasonably justifiable in a democratic society" does not enjoy any definition and neither is it capable of any precise articulation.[61] This undoubtedly poses a very grave danger to optimal realization of human rights. In the case of *DPP v Chike Obi*[62] which was followed in *Queen v. Amalgamated Press*,[63] the Court held that the sedition law, though it evidently gravely circumscribed the constitutionally guaranteed right of freedom of speech, was "reasonably justified in a democratic society." It is also on account of the derogation clauses that the Supreme Court held in *Medical and Dental Practitioners Disciplinary Tribunal v Emewulu & Anor*[64] that all freedoms are limited by state policy or overriding public interest.

5.3 Absence of True Judicial Independence

One of the enduring and indeed imperishable attributes of the common law is the notion of judicial independence.[65] So important is this notion that it has become entrenched not only in the English judicial system, but in most judicial systems across the globe.[66] The term judicial independence, otherwise referred to as the independence of the judiciary, does not lend itself to a generally accepted definition.

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[60] Constitution, Art. 33-36 (1999) (Nigeria)

[61] Many courts have grappled with this problem. *See, e.g., Olawoyin v. Attorney Gen. of N. Region, [*1961] 1 N.L.R 269 (Nigeria); Williams v. Majekodunmi, [1962] 1 N.L.R 413 (Nigeria); *Adegbenro v. Attorney Gen. of the Fed'n & Ors.,* [1962] 1 N.L.R. 431 (Nigeria).

[62] *D.P.P. v. Chike Obi*, [1961] 1 N.L.R. 186 (Nigeria).

[63] *Queen v. Amalgamated Press,* [1961] 1 N.L.R. 199 (Nigeria).

[64] *Medical and Dental Practitioners Disciplinary Tribunal v. Emewulu,* [2001] 3 S.C.N.J. 106.

[65] *Garba v Univ. of Maiduguri,* [1986] 1 NWLR 550 (Nigeria).

[66] Ibid at 570-75,

Consequently, an examination of some attempts which have been made to define it will suffice for the present purpose.

According to Oyeyipo,[67] Judicial independence postulates that no judicial officer should directly or indirectly, however remote be put to pressure by any person whatsoever, be it government, corporate body or an individual to decide any case in a particular way. He should be free to make binding orders which must be respected by the legislature, the executive and the citizens, whatever their status…

From the above premise, it can be safely concluded that judicial independence is not yet a reality but a mere aspiration in Nigeria today. The appointment and removal of judges are not insulated or isolated from politics, ethnicity favouritism, and other primordial considerations. Lamenting on the constraint against judicial independence in Nigeria, Tobi[68] insightfully declared that "there were instances in the past where appointing bodies by sheer acts of favouritism and nepotism overturned the A.J.C. (Advisory Judicial Committee) list and planted their own by way of replacement." Other authors have also categorically noted that "the appointment of judges cannot through the institutional mechanism of NJC (National Judicial Council) be insulated from political consideration and control."[69]

Apart from the problem of appointment and removal, the judiciary is faced with other formidable problems which inevitably compromise its independence and impartiality. The Nigerian Judiciary lacks financial autonomy in the real sense of the word, even though under the present constitutional dispensation, a measure of financial autonomy is sought to be enthroned. Besides, the remuneration of judicial officers is not

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[67] TA Oyeyipo, Commentary on the paper captioned *Whether the Establishment of the National Judicial Council and the Set-Up Will Bring a Lasting Solution to the Perennial Problems Confronting the Judiciaries in this Nation* 5, delivered at the 1999 All Nigerian Judges Conference (NJC) held at International Conference Centre, Abuja, Nigeria November 1-5, 1999.

[68] N Tobi, paper entitled *Whether the Establishment of the National Judicial Council and the Set-Up Will Bring a Lasting Solution to the Perennial Problems Confronting the Judiciaries of this Nation* 19, delivered at the Annual Conference of Judges held at the International Conference Centre, Abuja, Nigeria, between November 1-5, 1999

[69] JA Dada and ME Ekpo, *Issues and Problems in the Establishment of National Judicial Council under the 1999 Constitution*, (2006) *Calabar LJ*, 101-02 (2006).

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

5.4 Problem of Disobedience to Court Orders

Without doubt, accessibility to court by litigants is one thing, while the impartiality of the judge is another. Respect and obedience to the judgment and orders of the court is yet another important consideration. It is a notorious fact that judgments and orders of courts are not self-executing and the judiciary does not have its own body or institution charged with the responsibility of enforcing its judgments.[70] The implication of this fact is that the judiciary inevitably depends on the executive for the enforcement of its judgments. The executive branch, without doubt, is the greatest violator of human rights.[71] It is the major "predator" from which judicial protection is often sought.

This being the case, there is little guarantee that when an order is made against the executive branch, the same will be treated as sacrosanct. On the contrary, the unfortunate and regrettable experience has been regular disobedience of the executive to lawful and subsisting court orders.[72] Often, government chooses the orders to obey. It obeys those it is comfortable with and disobeys those which are in conflict with its interest, ignoring the consequences to the individuals whose rights have been violated. This is true both under military rule as well as democratic dispensation. For instance, the Federal Government

[70] Under the 1999 Constitution, as amended, it is the responsibility of the executive branch to enforce the law, including judicial decisions. *See* CONSTITUTION, Art. 5 (1999) (Nigeria).

[71] Makau mutua, human rights: a political and cultural critique 2 (2002). *See also* Chidi Anselm Odinkalu, *Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa*, 47 J. of Afr. L. 1-37 (2003).

[72] This is amplified by the cases of *Military Governor of Lagos State v Chief Emeka O. Ojukwu,* [1986] 1 NWLR 621 (Nigeria); *Lakanmi & Kikelomo Ola v Attorney General (Western State)*, [1971] UNIV. IFE L. REP. 201.

refused to obey the Supreme Court judgment which declared illegal the withholding of revenue to the Lagos state local government.[73]

6.1 Comparative Perspectives on Enforcement of Fundamental Rights in Other Jurisdictions

Having considered the outlay of human rights protection and enforcement in Nigeria, it becomes necessary to comparatively analyze its application in select countries of the world. To this purpose, the following discussion will look at how human rights are protected and upheld in, UK, Canada, South Africa and Uganda.

6.2 Comparative Perspectives on Enforcement of Fundamental Rights in UK

The Human Rights Act 1998 seeks to give direct effect to the European Convention on Human Rights in domestic law by enabling claimants to bring an action in national courts instead of having to take their case before the European Court of Human Rights, as had previously been the case.[74] The Act makes it unlawful for a public authority to act in a manner contrary to certain rights prescribed by the Convention[75] and allows a UK court to award a remedy in the event of a breach.[76]

A notable pre-Human Rights Act case illustrating the challenges of holding public bodies accountable involved Kelly Davis, a Black builder from Bath, who faced repeated planning refusals by Wansdyke District Council between 1989 and 1991. In 2000, a judge at Bristol

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[73] *AG of Lagos State v AG of Federation* [2004] 20 NSCQR 99 (Nigeria); *AG Abia State v AG Federation,* [2006] 16 NWLR 265, wherein, although the Supreme Court declared it unconstitutional, the federal government paid deductions from the Federation directly to the local government. *AG Federation v AG Abia State & 35 Ors. (No. 2),* [2002] 6 NWLR 542; *AG of Ogun State & Ors v AG of the Federation* [2002] 18 NWLR 232.

[74] M Amos, *Human Rights Law*, (Oxford: Hart, 2006) 8

[75] J Wadham and Others, *The Human Rights Act 1998*, (Blackstone's Guides. Oxford: Oxford University Press, 2001) 3.15.

[76] Ibid para. 3.23.

County Court found that planning officers had acted in a "consistently unhelpful and obstructive fashion," concluding that this was likely because Davis was "the only Black builder in Wansdyke."[77] In principle, the Act has vertical effect in that it operates only vis-à-vis public bodies and not private parties.[78] There are however certain situations in which the Act can be indirectly invoked against a private person.[79]

Section 3 of the Act requires primary and secondary legislation to be given effect in a way which is compatible with the Convention insofar as this is possible.[80] If the legislation cannot be interpreted in a manner which is compatible, this does not affect its validity, continuing operation or enforcement.[81] In such a situation, section 4 of the Act allows a court to make a declaration of incompatibility which has no direct effect on the legislation nor any practical consequences for the case in which it is made; it allows Parliament to take remedial action without being obliged to do so.[82]

UK human rights legislation has been criticised by some for what they perceive as excessive attention to the human rights of offenders at the expense of those of victims; high-profile cases, such as those of Learco Chindamo[83] and the 2006 Afghan hijackers,[84] have attracted controversy, sparking calls for the review of the Human Rights Act 1998 and other legislation. David Cameron in his second ministry announced plans to replace the Human Rights Act with a "British Bill of Rights".[85] On 9 May 2022, more than 50 organisations warned the UK government that tearing up the Human Rights Act

[77] Ibid

[78] Ibid para. 3.05.

[79] Ibid para. 3.72.

[80] Ibid para. 3.11.

[81] Ibid para. 3.14.

[82] Ibid

[83] David Cameron: Scrap the Human Rights Act, on 24 August 2007, *Daily Telegraph available on https://web.archive.org/web/2008041 7012614/ http:/ /www.telegraph.co.uk/news* accessed 3rd of April 2026

[84] Hijacker ruling draws criticism, BBC News, 12 May 2006 available on http://news.bbc.co.uk/2/hi/uk_news/ accessed on 3rd of April 2026

[85] *"Cameron 'will fix human rights mess'". BBC News. 15 June 2015 available on* https://www.bbc.com/news/uk-politics *accessed 3rd of April 2026.*

would have “dire consequences” including removing obligations to properly address violence against women and girls and destabilising peace in Northern Ireland.[86]

6.3 Comparative Perspectives on Enforcement of Fundamental Rights in Canada

Human rights in Canada have come under increasing public attention and legal protection since World War II. Inspired by Canada's involvement in the creation of the Universal Declaration of Human Rights in 1948,[87] the current legal framework for human rights in Canada consists of the *Canadian Charter of Rights and Freedoms*, part of the Constitution of Canada, and statutory human rights laws, passed by the federal Parliament and the provincial legislatures.[88]

The Supreme Court of Canada first recognized an implied bill of rights in 1938 in the decision Reference Re Alberta Statutes.[89] Starting with the *Saskatchewan Bill of Rights* in 1947, the provinces and the federal government passed a series of laws to protect human rights. Statutes originally tended to focus on specific issues, such as racial discrimination in housing or employment, and gradually expanded to comprehensive human rights statutes which took a general approach to discrimination.[90] As well, to ensure consistent enforcement of the human rights laws, governments began to create human rights commissions, charged with investigating human rights complaints and providing clear remedies. By 1977, all ten provinces and the federal government had enacted human rights laws. Since the 1960s, Canada has placed emphasis on equality and inclusiveness for all people.[91] In present-day Canada the idea of a "just society" are constitutionally

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[86] *"Consequences 'dire' if Human Rights Act ditched, more than 50 groups warn". The Guardian. 9 May 2022.* Retrieved 3rd of April 2026.

[87] W Schabas, William (1998). "Canada and the Adoption of Universal Declaration of Human Rights" (PDF). *McGill Law Journal*. 43: 403.

[88] McPhail, Brenda (May 18, 2016). "Canada & The UN: Past And Present". *CCLA*. Retrieved 3rd of April, 2026

[89] E Joseph Magnet, *Constitutional Law of Canada*, 8th ed., Part VI, Chapter 1 Archived October 8, 2007, at the Wayback Machine, Juriliber, Edmonton (2001)

[90] Christopher MacLennan (2004). *Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929–1960. McGill-Queen's Press*

[91] Ibid.

protected.[92] The *Charter* guarantees fundamental freedoms such as; free expression, religion, association and peaceful assembly rights and the right to life, liberty and security of the person.[93] Other rights related to participation in elections, mobility, legal process, equality, language usage and minority-language education are also within the Charter.[94]

Internationally, Canada is a signatory to multiple human rights treaties,[95] and ranks among the highest globally in measurements of civil rights.[96] Notwithstanding there are significant issue of historic racism and discrimination against Indigenous peoples - including the modern day plight of violence faced by Indigenous females, reports of excessive force used by law enforcement and racial profiling targeting visible minority, concern with the treatment of migrants and refugees and the freedom of religion and language expression in Quebec society.[97] Human rights in Canada are given legal protections by the dual mechanisms of the *Canadian Charter of Rights and Freedoms*, which is part of the Constitution of Canada, and statutory human rights codes, both federal and provincial.[98] As part of the Constitution of Canada, the *Charter* applies equally to all governments in Canada: federal, provincial, territorial, and municipal. All governments are bound to comply with the rights and freedoms set out in the *Charter*.[16]

Another constitutional issue that relates to human rights is the federal division of powers between the Parliament of Canada and the provincial Legislatures. Human rights are not assigned exclusively to

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[92] SV LaSelva, (1996). *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements, and Tragedies of Nationhood*. McGill-Queen's University Press. p. 86

[93] <https://www.justice.gc.ca/eng/csj-sjc/the rights and freedoms the Charter protects> accessed 3rd of April 2026

[94] <https://www.justice.gc.ca/eng/International Human Rights Treaties to which Canada is a Party> accessed 3rd of April 2026.

[95] Ibid.

[96] <https://freedomhouse.org/country/Canada: Freedom in the World 2023 Country Report | Freedom House> accessed 3rd of April 2026

[97] <https://www.state.gov/reports/ Canada - United States Department of State> accessed 3rd of April 2026

[98] Nancy Holmes, "Human Rights and the Courts in Canada", Publications Canada, Law and Government Division

either level of government. Instead, each level of government has jurisdiction over human rights issues that arise in their respective areas of constitutional jurisdiction. Federal laws relating to human rights only apply to activities that come within federal legislative jurisdiction, and provincial and territorial laws relating to human rights only apply to matters that come within provincial and territorial legislative jurisdiction.[99]

Human rights claims are typically investigated by a human rights commission of the appropriate jurisdiction, either the Canadian Human Rights Commission, for claims under federal human rights law, or a provincial human rights commission, for claims under provincial human rights law.[100] If a human rights claim goes to adjudication, it may be in front of a specialised human rights tribunal, such as the Canadian Human Rights Tribunal for federal claims, or a provincial human rights tribunal for claims under provincial law. In one province, Saskatchewan, there is no human rights tribunal and claims are adjudicated directly by the superior trial court of the province.[101] A tribunal or court generally has broad remedial powers.[102]

6.4 Comparative Perspectives on Enforcement of Fundamental Rights in South Africa

Human rights in South Africa are protected under the constitution. The 1998 Human Rights report by Myles Nadioo noted that the government generally respected the rights of citizens; however, there were concerns regarding the use of force by law enforcement, legal proceedings, and discrimination.[103] The Human Rights Commission is mandated by the South African Constitution and the Human Rights Commission Act of 1994, to monitor, both pro-actively and by way of complaints brought before it, violations of human rights and seeking redress for such violations. It also has an educational role.[104]

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[99] Ibid

[100] <https://www.canada.ca/en/canadian-heritage/services/human-rights about human rights complaints - Canada.ca > accessed 3rd of April 2026

[101] <https://saskhrc.ca/filing A Complaint - Saskatchewan Human Rights Commission> accessed 3rd of April 2026

[102] Ibid

[103] <https://web.archive.org/ 2009 Human Rights Report: South Africa accessed> 3rd of April 2026

[104] <https://web.archive.org/web/> Human Rights Commission assessed 3rd of April

The South African government has legislated for equal education throughout the country.[105] This legislation includes the White Paper on Education and Training 1995 and the South African Schools Act, Act 84 of 1996.[106] Nevertheless, there have been issues in the implementation of these laws, and according to a 2020 report by Amnesty International, South Africa has one of the most unequal educational systems in the world, with the widest gap between the test scores of the top 20% of schools and the remaining 80%.[107] The South African government tends to focus primarily on the quality of higher education.[108] Additionally, there is not much racial integration in state schools.[109] Though laws allow for integration, many schools remain predominantly one race. Encouragingly, the number of students completing Grade 12 has significantly increased in recent years, going from 3.7 million South Africans aged 15 and over in 1996 to 11.6 million in 2016.[110] South Africa has a liberal constitution that protects all fundamental political freedoms. However, there have been a number of incidents of political repression as well as threats of future repression in violation of this constitution leading some analysts and civil society organisations to conclude that there is or could be a new climate of political repression or a decline in political tolerance.[111]

Political patronage is a significant aspect in South African politics.[112] However, this patronage infringes on the rights of the people, especially those in poverty. 40% of South Africans are dependent on the state to supply necessities.[113] This dependence on the state lessens the autonomy of South Africans in need of this

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[105] Legotlo, Wilfred (2014). *Challenges and Issues Facing the Education System in South Africa*. South Africa: Africa Institute of South Africa. pp. 2, 3, 7.

[106] Ibid

[107] Ibid

[108] Ibid

[109] M Gardiner, *Education in Rural Areas* (Johannesburg, South Africa: Centre for Educational Policy Development 2008) 10–12.

[110] Ibid

[111] Imraan Buccus, 'Political tolerance on the wane in South Africa,' *SA Reconciliation Barometer*, 2011

[112] N Mcebisi, *Patronage Politics Divides Us* (South Africa: Real African Publishers 2014) 113–116

[113] Ibid

assistance. These necessities are supplied in the form of grants, which require governmental documents to obtain. Consequently, bureaucracy plays a major role in an individual's ability to obtain a grant and thus obtain necessities. Politicians gain substituent based on material promises.[114] If the politicians fulfill these promises, often the recipients are only those who supported the politicians. Essentially, voters' dependence on the state precludes their ability to vote based on ideological platforms. This phenomenon does not align with the democratic principles of South Africa.[115]

6.5 Comparative Perspectives on Enforcement of Fundamental Rights in Uganda

Uganda, a country in the heart of East Africa, has a complex and evolving human rights landscape shaped by colonial legacies, post-independence conflicts, and contemporary political dynamics. Following a turbulent history marked by dictatorship and civil war, the Constitution of the republic of Uganda,[116] was hailed as a turning point, ushering in an era of democratic governance and commitment to human rights. The Constitution integrates principles of international human rights law and provides extensive civil, political, economic, and social rights. Yet, the realization of these rights is uneven. Factors such as political repression, limited institutional capacity, systemic corruption, and inadequate public awareness continue to undermine human rights implementation.[117]

Human rights in Uganda have trended for the past decades towards increasing harassment of the opposition, cracking down on NGOs which work on election and term limits, corruption, land rights, environmental issues, women's, children and gay rights. In 2012, the Relief Web sponsored Humanitarian Profile – 2012 said Uganda made considerable developments.[118] Since at least 2013, the annual Freedom in the World report by Freedom House has consistently classified Uganda as "Not Free". There are several areas

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[114] Ibid.

[115] Ibid.

[116] Constitution of the Republic of Uganda, 1995

[117] <https://recordoflaw.in/ Human Rights in Uganda: A Legal and Institutional Analysis - Record Of Law> accessed 3rd of April 2026

[118] <https://reliefweb.int/report/uganda/ Humanitarian Profile - 2012 - Uganda ReliefWeb> accessed 3rd of April 2026

of concern when it comes to human rights in Uganda, and the "Not Free" classification is due to both low political rights and civil liberties rankings.[119]

Ugandan officials ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on July 22, 1985.[120] Countries that chose to ratify CEDAW had one year to submit a formal report to the convention and are required to file one every four years after the first report.[121] The Ugandan government, however, submitted its formal CEDAW report five years after ratification, in 1990.[122] CEDAW mandates that signatories abolish discrimination against women and implement policies that further women's equal rights.[123] Article 21 of the Constitution of Uganda, follows CEDAW policies, securing the right to equality for all people in the political, economic, and social spheres of Uganda.[124] The article further asserts that no person shall experience discrimination because of their sex, race, ethnicity, disability, tribe, religion, socio-economic standing, or political affiliation.[125]

According to the Inter-Parliamentary Union, as of 2017, Uganda had not reported its CEDAW implementation status since 2010.[126] Uganda has also not ratified the optional Convention protocol.[127] This optional protocol enables CEDAW committees to receive and process

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[119] <https://freedomhouse.org/sites/default/files/2020-02/ FIW_2020_REPORT_ BOOKLET_Final.pdf> accessed 3rd of April 2026

[120] <https:// tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx? CountryID=182&Lang=EN> accessed 3rd of April 2026

[121] Okumu Wengi, Jennifer (29 December 2011). *Weeding the millet field : women's law and grassroots justice in Uganda*, (Nairobi, Kenya: LawAfrica) 20

[122] Ibid

[123] <https://www.un.org/ Convention on the Elimination of All Forms of Discrimination against Women> accessed 3rd of April 2026

[124] Mujuzi, Jamil Ddamulira (2019-05-25). "The Right to Equality at the Dissolution of a Marriage in Uganda". *International Journal of Law, Policy and the Family*. 33 (2): 204–227.

[125] Ibid

[126] <https://www.ipu.org/news/news-in-brief/2017-06/Implementing CEDAW in Uganda | Inter-Parliamentary Union> accessed 3rd of April 2026

[127] <https://www.un.org/womenwatch/ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women> accessed 3rd of April 2026

complaints made by signatory constituents about violations of rights guaranteed by CEDAW.[128] That being said, the Varieties of Democracy public survey data regarding women's civil liberties - an aggregation of the data of freedom of domestic movement, from forced labor, of property rights, and access to justice - shows that between the years 1986 and 2019, the Uganda public believed the majority of women in the country receive a medium to high level of these liberties.[129]

7. Prospects of Fruitful Application of FREP

The prospects of fruitful application of the Fundamental Rights (Enforcement Procedure) Rules, 2009 (FREP) in Nigeria are promising, as the rules have been designed to facilitate the enforcement of human rights. However, to overcome the multitudinous challenges stated above, it is imperative that necessary constitutional and institutional reforms be undertaken in addition to the need for government to demonstrate pragmatic political will to promote and protect human rights. It is therefore intended in this part to briefly propose the following reforms which, if faithfully implemented, will ensure better protection and enforcement of Human Right.

7.1 Exclusion of Human Rights Instruments from the Ambit of Section 12 of the Constitution

Human rights instruments should be excluded from the provision of section 12 of the 1999 Constitution requiring the National Assembly to enact treaties to which Nigeria is a party into law before they become binding and enforceable in Nigeria. This means that any international human rights instrument to which Nigeria is a party will automatically become applicable and enforceable in Nigeria without the necessity of the same being enacted into law by the National Assembly. This way, Nigeria will be bound by all human rights instruments it ratifies on the basis of *pacta sunt servanda.*[130]

7.2 Strengthening of the Extra Judicial Bodies

Extra-judicial bodies for human rights enforcement must be strengthened to promote their efficiency and efficacy in human rights

[128] Ibid
[129] Ibid
[130] Ibid

promotion and protection. Judicial enforcement of human rights is characteristically protracted and expensive. This is why over-reliance and dependence on the judiciary must be de-emphasized and discouraged in favour of these extra-judicial bodies which are less cumbersome, less technical and inexpensive.[131] Accordingly, the human rights agencies should enjoy reasonable independence to free them from executive interference. In addition, the agencies especially, the National Human Rights Commission, and the Public Complaints Commission must be strengthened and adequately funded. The constituent instruments of the Commissions should be amended to grant them financial autonomy so that they can discharge their noble statutory mandate. Apart from ensuring the financial autonomy of the Commissions, government should be charged with the responsibility of providing technical and infrastructural support and solidarity for their work and those of other human rights organizations.[132]

7. Dedicated Obedience to Court Orders

The executive branch has the onerous, important, and compelling duty to ensure prompt compliance with the orders of the courts. Human rights should no longer be a matter of rhetoric. Rather, the government must constantly and deliberately seek to advance the cause of human rights through human rights-friendly legislation, policies, and actions. It is fitting and commendable that the Federal Government of Nigeria, in response to the recommendation of the Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in Vienna Australia in 1963,[133] has drawn up a comprehensive National Action Plan for the promotion and protection of Human Rights in Nigeria.[134] In furtherance of the mandate of the Vienna Declaration, the Nigerian National Action Plan has carefully identified

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[131] PN Bhagwati, *Inaugural Address, in* Developing Human Rights Jurisprudence: The Domestic Application Of International Human Rights Norms (1988). Bhagwati's address was given at the Judicial Colloquium in Bangalore, held February 24-26, 1988.

[132] Ibid

[133] U.N. Charter art. 56; World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, preamble, 1, U.N. Doc A/CONF.157/24, (July 12, 1993) [hereinafter Vienna Declaration and Programme of Action].

[134] The National Action Plan (NAP) for the Promotion and Protection of Human Rights in Nigeria was presented at the United Nations at Geneva, Switzerland in July, 2009,

and drawn up an integrated and systematic national strategy to help realize the advancement of human rights in Nigeria. This noble and laudable effort will be meaningless and remain dead letters if the government fails to honestly and committedly pursue the program of action articulated therein. In discharging this commitment, the Government must always ensure that persons of proven integrity with spotless moral character are those appointed to the bench and bodies consecrated for human rights promotion and protection.[135]

8. Summary of Findings

Human rights are the cornerstones upon which all democracies and states with the rule of law are built. All people living in the global village have the ability to exercise their inalienable entitlement to human rights. It consists of a set of standards dictating how individuals and groups should be treated by states and non-state entities based on moral precepts pertaining to what society views as essential to a decent living.[136] The identifiable practical impediments and prospects to human rights enforcement and protection in Nigeria were examined. It is clear from the foregoing that the current Fundamental Rights Enforcement Procedure Rules, 2009 is innovative, bold and encouraging in many respects. The new rules without doubt represent a bold and commendable attempt at taking human rights seriously in our country.

9. Conclusion and Recommendations

The FREP Rules 2009 requires wide-ranging reforms so as to deal with provisions which are inconsistent with constitutional provisions, and also bring the Rules at par with changes that have occurred post-2009. Some aspects of the needed reforms require constitutional amendment for clarity. For example the issue of jurisdiction and locus standi cannot be rested with mere amendment of Rules. The Bill of Rights in the South African Constitution contains similar liberal provisions on scope of applicants for enforcement of fundamental rights as in the FREP Rules 2009[137]. Thus the issue of *locus standi* should be given constitutional importance. In summary, the following reforms are hereby recommended:

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[135] Stanley-Idum and Agaba (n 35)

[136] M Shaw, *International Law* (7thedn, Cambridge University Press 2014) 194.

[137] Section 38 of the South African Constitution (Chapter 2: Bill of Rights)

(a) An amendment of section 46(1) of the Constitution in a manner that reflects the wide scope of applicants expressed in paragraph 3(e) of the FREP Rules 2009 is proposed. This will give support to the desirable legal standing innovation in the extant Rules.

(b) Sections 46(2) and 6(6)(c) of the Constitution require amendment to reflect the expansion of enforceable rights to include those in the African Charter especially those rights that fall under the socio-economic rights which are not enforceable under the Constitution.[138]

(c) The overriding objectives of the FREP Rules contained in the preamble need to be transferred to the substantive body of the Rules to give them their desired legal effect and validity and prevent possible challenge in the future.[139]

(d) Section 46(1) of the Constitution should be amended to clearly spell out the jurisdiction of each court as it pertains to enforcement of fundamental human rights. The Rules can then be also amended to give effect to the constitutional clarification of jurisdiction.

[138] G Awolo, *'Fundamental Human Rights Enforcement Procedure in Nigeria: An overview,'* (2014) (3) *EBSU Journal of International Law & Juridical Review*

[139] Ibid