IJISET - International Journal of Innovative Science, Engineering & Technology, Vol. 6 Issue 9, September 2019
ISSN (Online) 2348 – 7968 | Impact Factor (2019) – 6.248
www.ijiset.com

Progressive Enforcement of International Human Rights Norms in Nigeria: The Question of Access to Justice

***Nzeribe Ejimnkeonye Abangwu, Ph.D**
Department of Private and Commercial Law, School of Law and Security Studies, Babcock University, Ogun State , Nigeria.

***Dr. Adekunbi Imosemi**
Department of Jurisprudence and Public Law, School of Law and Security Studies, Babcock University, Ogun State , Nigeria.

Abstract:
This essay examines the progressive recognition and enforcement of international human rights norms within the domestic legal framework, and concludes that beyond the instruments and mechanisms, the major impediment lies in issues related to access to justice.

Key words: Human Rights, Justices, Enforcement, **Treaties/International Instruments, Rule of Law.**

INTRODUCTION

From an historical perspective, human rights norms developed from the early Greek philosophers' articulation of natural rights within the wider concept of natural law. To the great philosophers and sophists, these norms were inalienable rights of man in society, and primary to civilized existence. These postulations would appear to have influenced early bill of rights and triggered off revolutions, particularly the American and French Revolutions where the concept of inalienable rights of man was precisely declared within domestic legal frameworks. At the beginning human rights declaration and protection was a municipal affair as there was no legal basis for international human rights protection. More importantly, the international community induced by common agreement respected the sovereignty of independent states as one principle to avoid recognizing the right of powerful states to interfere in the internal affairs of smaller states. Events have changed.

However, despite the restriction of those bills of rights to the domestic regime, the developments were significant in the concept of human rights from philosophical appeal to a positive dimension.

Certain historical facts contributed to the latter acceptance of a universalistic approach to human rights protection. One such fact is the activities of despots who utilized the subterfuge of sovereignty to commit atrocities in the domestic regimes. Again, the two great wars impacted the need to avert such occurrence again in the future. The pricked conscience of the world impelled the formulation of the Universal Declaration of Human Rights as the first formal step to internationalize human rights norms. Since that international statement on human rights, the norms have expanded with such impressive rapidity that today apart from entrenchment in municipal Constitutions, there are various international human rights instruments enforceable beyond the domestic rights regime. Much progress has been made in enforcement of the rights despite the setting in Nigeria within the context of varying socio-economic, political, judicial and other factors.

DEFINITION OF HUMAN RIGHTS

According to Ezejiofor:

> Human rights are rights which every civilized society must accept as belonging to every person as a human being. They were declared by the United Nations and are now part of International law.[1]

This definition left the critical term 'rights' undefined, and to that extent hardly helpful.

Henkin on his part defines "human rights" as "those liberties, immunities and benefits which by accepted contemporary values all human beings should be able to claim 'as of right' of the society in which they live.[2]

Henkin's definition went farther than Ezejiofor in explaining the nature of the rights; but like Ezejiofor, the writer is a victim of the overbearing influence of the naturalists.

On a celebrated note, Professor Osita *Eze* provides a more appropriate definition as he opines that "human rights" represent:

> Demands or claims which individuals or groups make on society, some of which are protected by law and have become part of *lex lata* while others remain aspirations to be attained in the future.[3]

Professor Eze's definition is practical and pragmatic. Apart from explaining the nature of the rights, the definition offers the very important practical distinction between the categories of rights–one protected by law and the other, which though acknowledged, remains aspirations to be met in future. This distinction finds expression in the argument of the different schools and provides a vital lead to understanding the human rights concept, the varying provisions, and the practice of international human rights norms in different societies.

A review of the postulation of some schools of law will buttress Professor Eze's practical perspective between the rights protected by law and others that remain aspirations:

For example, human rights to the naturalists are rights fundamental to existence itself and are said to be primordial, natural or God given and as old as man in society and have always been there independently of and before the state.[4] Thus, human rights in this approach of the naturalists are aptly described as a primary condition to a civilized existence that stands above the ordinary laws of the land, antecedent to the political society itself and the concept derives from the concept of inalienable rights[5]. That is to say, that these are rights inherent in human beings; already possessed and enjoyed by the individual, and the bill of rights, constitutions and other instruments created no rights *de novo* but declared and preserved existing rights which they extended against the legislature. This position is amply illustrated in the English Bill of Rights 1689 which amongst others declared as illegal "the pretended power of the Crown to suspend laws" or "dispensing with laws".

It is again beautifully illustrated by the proclamation forming the preamble to the American Constitution 1776 following the revolution, thus:

---

1 Ezejiofor, G. (1999) ''The Development of the Concept of Human Rights: Definition and Philosophical. Foundation'', in Obilade and Nwankwo (Eds.), Text for Human Rights Teaching In Schools, Constitutional Rights Project.

2 Human Rights", in R.Berhardt (Ed); *Encyclopedia of International Law*, 1985, Vol.8, p.268.

3 *Human Rights in Africa, Some Selected Problems*, 1984, Macmillan, p.5.

4 See Akanbi, M., JCA, 'Constitutional Structure and the Position of the Judiciary; Fundamental Rights', 1990,*Judicial Lectures*, p.16.

5 See Ransome Kuti & Ors. v. AG (1985) 2 N.W.L.R (part 6) p.21 at 230, 231, per Eso, JSC.

> We hold these truths as self evident that all men are created equal, that they are endowed by their creator with certain inalienable rights that among these are life, liberty and the pursuit of happiness.[6]

The French declaration of rights of man followed similar pattern very shortly after in 1789 when the revolutionaries declared that men were born free and equal in respect of rights.

However, as against the postulations of the naturalists, the positivists assert that the idea of natural rights however beautifully conceived outside the framework of "law' would be unenforceable. Arguing from a pedestal of arrogance they insist the rights of man no matter how basic natural law conceives of them once they fail the criteria of what it takes to be law in a particular society, remains religious, ethical or political.[7] To these realists, it is for each political entity to decide which of the rights to recognize and protect for its citizens and within its territory. These are reflected in the Constitution and general legal framework.

Equally noteworthy is the socialists' conception of human rights.[8] They agree, though, that the rights come into being only by affirmation in the constitution or other documents and their enjoyment ensured by the legal machinery of the state.

The postulation of the positivists remains the basis of the different standards of human rights entrenchment and enforcement in the municipal or national contexts. What the positivists define as law is what Professor Eze has classified as "demands or claims" protected by law and those that become part of *lex lata*; while all others are in the realm of aspirations, remain "demands or claims" to be attained. This explains the progressive achievement of human rights standards observable in different countries.

As rightly observed by Dr. Tahir:

> the attitude of governments to the regime of rights are determined by a complex set of variables which include economics, ideological polarity, religious and cultural particularism, colonialism, ... This particularistic perception of human rights regimes among governments has been reflected in the polarity between West and East, European versus Asian values, Christian versus Confucian, European versus Islam, western versus Africa values, ... which in turn affected equally the tenor and practice of human rights regimes in individual countries and regional blocs whereby certain species of rights are considered convenient and an irritation.[9]

This particularistic perception of human rights determines what is entrenched or protected by law in any society, and what remains as aspirations to be achieved in future as illustrated by Professor Eze. But the matter does not end there; even when a State has recognized and entrenched a set of human rights as enforceable within its territory, so many factors constitute impediments to actual enjoyment of those rights. This has necessitated further agitation for international human rights law.

---

6 See Sam Erugo, "The Erosion of Fundamental Rights in the Nigerian pre- trial criminal process", 1997, Abia State University Law Journal, p. 20.

7 See Uchegbu, A. (1987), "The Concept of Right to Life under the Nigerian Constitution" in Omotola J.A. (Ed.), *Essays in Honour of Judge T.O Elias*, p.140.

8 See Ezejiofor G., op cit. at p. 6: To this school, human rights are historically conditioned, and vary in accordance with the changes in the social, economic, political and other aspects of society.

9 Mamman Tahir, "Beyond Rhetoric; Challenges for the International and regional human rights regimes in the new millennium" Vol.6, No.1, 1999 ABSU *Law Journal* 43 at 44

International Human Rights

International human rights law is defined as the law that deals with the protection of guaranteed rights and with the promotion of these rights.[10] The crux of international human rights law is to afford legal protection of human rights, far and above municipal law and practice. The development of international human rights law is a recent development compared to the articulations and development within the context of municipalities or nations. The United Nations Charter was the first international instrument to impose obligations upon members towards the realization and protection of human rights, which it made one of the objects of the organization. That was to be quickly concretized by the Universal Declaration of Human Rights (UDHR) in 1948 by the General Assembly of the United Nations.[11] The Declaration listed thirty-one articles meant to serve as models for human rights entrenchment and protection in the world. This was merely a statement of basic principles of inalienable rights setting forth a common standard of achievement for all people and for all nations.[12] The declaration was to later influence other international human rights instruments and national Constitutions.

The Europeans were the first through the European Convention on Human Rights 1950 to adopt and entrench many of the provisions of the Universal Declaration and giving them effective impetus by enforcement through a regional human rights charter. Again, pursuant to the 1948 Declaration, the United Nations Human Rights Commission in 1957 produced two covenants on human rights adopted by the General Assembly on December 18, 1966. Other international though regional human rights instruments that were similarly influenced include the American Convention on human Rights 1969[13] and lately the African Charter on Human and Peoples' Rights, 1981.

The basic impact of the international human rights instruments is the internationalization of human rights norms. Human right is no longer a purely domestic affair. In the era of globalization, the Universal Declaration is seen as a living and evolving common standard of achievement for all peoples and nations of the world. Thus, the world through the United Nations and regional and sub-regional organizations is interested in this common human rights standard all over the world irrespective of municipal provisions. But how is this achieved?

Enforcement

To be concretized recognized and entrenched international human rights norms must be enforced. There are different perspectives to this enforcement: there are issues of availability of human rights instruments, as well as machinery and enabling environment for enforcement. Suffice to state that international human rights norms' recognition and entrenchment would remain mere political slogans and rhetoric unless the norms are enforceable. An examination of these perspectives would reveal progressive enforcement of rights, though with far more aspirations and yet very little for the poor who have no concrete access to the justice of human rights.

(i) Instruments enabling enforcement

The enforceability of human rights norms must be specifically enabled by relevant and binding legal instruments. This could be either domestic or international binding instrument, which the court can enforce.

National Constitutions

---

10 Ladan, M.T., (1999) "International Human Rights Law: Development, Scope and Enforcement/Monitoring"; *Text for Human Rights Teaching In Schools*, op cit. p.61.

11 G. A. Resolution 217A(111).

12 Ezejiofor, G., *Protection of Human rights Under the Law*, 1964, p.86, cited in Ezejiofor, G, *Text for Human Rights Teaching in Schools*, op cit. at p.3.

13 In force in 1978.

At the domestic level, the national Constitutions constitute the reference point delimiting human rights norms recognized and protected by law in respective states. It is acknowledged that the Universal Declaration had influenced many nations into enshrining human rights provisions into their constitutions. In **Ministry of Home Affairs v. Fishers.**[14] Lord Wilberforce rightly observed that fundamental rights provisions found in post colonial constitutions were greatly influenced by the European Convention for the protection of fundamental rights and freedoms and which in turn was influenced by the Universal Declaration of Human Rights, 1948. There is no doubt that the UDHR did impact on many countries to entrench in their Constitutions international human right norms. In the case of Nigeria the history of the first entrenchment of human right norms and the actual content of the rights regime are traceable to these international human right instruments.

In the Botswana case of ***Attorney General of Botswana v. Unity Dow,***[15] the Appeal Court of Botswana held that the international human rights norms are part of the constitutional expression of liberties guaranteed at the national level.[16]

Subject to local limitations the international human rights norms enshrined in national Constitutions are enforceable. Most times the Constitutional rights are said to be fundamental in the sense that they override other laws. However, local factors could affect the actual content of the norms. Examples of local factors that could affect the content and enforcement of the international human rights norms entrenched in the Constitutions include dictatorships or the aberration of military regimes as witnessed in Nigeria up to 1999. In the case of **Lekwot v. Tribunal.**[17] the Nigerian Supreme Court agreed that human rights under a military regime may be aberrations and affirmed beyond argument that Decrees of the military were superior to the Constitution. This remained the position of the Nigerian Courts during the period-hence the last minute resort to the African Charter provisions for the enforcement of international human rights norms in Nigeria. The courts interestingly held the Charter was superior to the Decrees.[18]

Treaties/International Instruments

For specific international human rights instruments to be enforced within the municipal regime such instruments must pass certain domestic legal hurdles, otherwise they can at best be described as persuasive instruments. States usually lay down procedures for the municipal application of treaties. For instance in Nigeria, Section 12 (1) of the Constitution.[19] provides that: "No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly".

In ***Fawehinmi v. Abacha***[20] the Court had considered the application of the above section regarding the African Charter on Human and Peoples' Rights, an international human right treaty relevant in the enforcement of human right norms in Africa. The treaty is enacted into law in accordance with Section 12(1) of the Constitution by the African Charter on Human and Peoples Rights (Enactment) Act.[21] a local Act of the National Assembly. Since that enactment the domestic courts have enforced the treaty provisions.[22]

---

14 (1980) A.C.319, See Akanbi, M., JCA, op cit. p.22.

15 [1998] 1 HRLRA 1; See also the Nigerian case of *Lakanmi & Anor. v. Attorney General (Western State)* (1971) 1 U.I.L.R 20, and *Adeniran & Anor. v. Interland Transport Ltd.(*1991) 9 N.W.L.R (part 214) 155

16 ibid. at 128-129.

17 (1993) 2 N.W.L.R(part 276) 410.

18 See *Fawehinmi v. Abacha* (1996) 9 N.W.L.R (part 475) 710.

19 of the Federal Republic of Nigeria, 1999.

20 Supra.

21 Cap. A9, LFN, 2004 Ed.

22 Examples in ***Fawehinmi v. Abacha*** (supra); ***Agbakoba v. The Director, SSS*** (1994) JHRLP Vol.4, Nos.1,2,3,p.81, ***Chima Ubani v. Director of State Security Service*** (1999) 1 NWLR (part 625) 129.

This position contrasts sharply with other International human rights treaties earlier mentioned which have not been incorporated into Nigerian law. Though ratified, until so incorporated this latter treaties are not enforceable in the Nigerian legal framework.

(ii) Enforcement mechanisms

Having noted the scope of instruments enabling enforcement of human rights norms, it is necessary to examine the limitations on the machinery in place for the enforcement of the much already entrenched. The effective enforcement machinery is the courts.

(a) Domestic Courts

Litigation and use of courts remain the most popular strategy of human rights enforcement.[23] all over the world. It is noted here that in Nigeria it is the domestic courts that have really been active in the enforcement of international human rights law. The Nigerian domestic courts have for long enforced international human rights entrenched in the various constitutions from independence and in view of the fundamental status accorded the rights in the Constitutions; the courts have always held any contrary provision null and void. A very good illustration is the courageous challenge of decrees at the inception of the military in Nigeria in the case of ***Lakanmi v. Attorney General (Western Nigeria***).[24]

To a large extent the courts started well, and were willing; but there has always been a political constraint.

Enforcement under the Constitution is limited to entrenched rights and other domestic laws. For example, under the 1999 Nigerian Constitution, just like previous constitutions, there is compartmentalization between civil and political rights which are entrenched, classified as fundamental rights and declared justiciable, and the economic, social and cultural rights which though recognized are classified as fundamental objectives and directive principle of State policy and declared non-justifiable. This is a fundamental constitutional problem to enforcement. The unfortunate assumption here is that human rights are divisible but recent events show the indivisibility of human rights.

The other aspect of constitutional limitation is the limited constitutional power of the national court to enforce international human rights law in the domestic regime. This is the same question of the relationship between domestic laws and international obligations contained in treaties. The question always is whether the national court should enforce internationally entrenched human rights norms outside the national laws. By virtue of section 12(1) of the 1999 Constitution of the Federal Republic Nigeria (as amended), the Nigerian courts are not empowered to enforce any treaty (including international human rights treaties) except to the extent to which any such treaty has been enacted into law. That appears to be the common position of commonwealth countries as confirmed by the Indian Chief Justice, Mr. *P. N. Bhagwathi*, in his summary of the discussions of eminent commonwealth Judges on the domestic application of international human rights norms in February 1988.[25] Under paragraph 4 of the *Bangalore principles*, it is acceptable that international conventions are not directly enforceable in the national courts unless their provisions have been incorporated by legislations into domestic law.

In ***Fawehinmi v. Abacha***[26] the Court of Appeal in Nigeria agreed that where there is no enactment to give effect to the spirit of a treaty notwithstanding its adoption, recognition and due regard by a sovereign government, it cannot be justiciable in a municipal court.

---

23 Ladan, M.T., (1999), op cit., p.92.
24 Supra.
25 Popularly called the *Bangolore* principles, 1988.
26 Supra, at p.604.

However, where a treaty has been adopted and incorporated by enactment, it makes for direct domestic application of international human rights norms[27] and could override inconsistent local provisions.

(b) International Courts

Unfortunately, the international system lacks coercive human rights enforcement mechanism. Since most violations of human rights of citizens are perpetuated by the State and government agencies, there must be coercive and effective international enforcement mechanism if international human rights law were to really operate beyond national legal system as the instruments suggest. This is the only way to afford redress to those whose human rights are violated by the State and who cannot obtain redress at the national courts for obvious reasons. Thus, the absence of effective international court enforcing human right is a major constraint.

The experiments with ad hoc International Criminal Court represent the world's reaction to extreme cases of human rights violations, and amounting to crime against humanity as well. These are considered as affront to accepted common standard of achievement for all peoples. The extent to which the ad hoc Criminal Court concept has succeeded in curtailing these excesses is doubted in view of the unending cases of such extremism. The case of Robert Mugabe of Zimbabwe is lingering. This not deterred by the earlier cases of Charles Taylor in Liberia, Saddam Hussein in Iraq, the Yugoslavs', etc.

There is presently no international court for the enforcement of international human rights norms *simpliciter*. It would have been interesting to have an international human rights court that can assume jurisdiction over cases of human rights violations against governments and leaders, long before the abuses become gross. Continuous pronouncements of such court could justify cases of intervention such as the North Atlantic Treaty Organization (NATO) in Libya, United States of America/NATO in Iraq, France in *Cote d' Voire*, ECOMOG in Liberia and Sierra Leone, and other similar controversial interventions considered interferences. The present practice of interference is based on subjective assessment by intervening powers of what they consider "gross human rights violations", or on "humanitarian grounds", and usually when the local situation has degenerated into anarchy. There is no argument that such intervention is sometimes based upon pure economic or political interest. It is not difficult to predict that such interventions may pose a threat to global peace in future, if ever another world power should emerge opposed to America.

At the regional level, the European Human Rights Court has been very useful in the development of enforcement of international human rights law.[28] At the sub regional level, there is an ECOWAS Court sitting in Abuja. The impact of this Court is yet to be felt. It is doubted that this Court as presently constituted could really do better than the domestic courts.

It is appreciated that in the absence of international human rights courts there are some international enforcement mechanisms.[29] Of course, the role of these international bodies in promotion of international human rights cannot be overlooked; but the issue remains that their tactics remain political, highly rhetorical and come far short of concretizing for the individual victims or peoples of Africa, the dream of international human rights entrenchment and enforcement.

---

[27] See Sam Erugo, "The Domestic Application of the African Charter: Evolution and Trend", Vol. 6, No. 1, 1999 ABSU Law Journal, p.7.

[28] There is also the European Commission. The African Charter system has no court yet but it has a Commission with three sets of responsibilities-promotional, investigative and advisory. Although the recognition of standing for individuals is a mandatory provision of the Charter, the precise benefit to the individual citizen of the commission is doubted.

[29] Example, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee on the rights of the child, the African Commission on Human and People's Rights, etc.

As it were, except the European court there is no international coercive enforcement machinery. This is not a healthy situation in view of the problems of enforcement of human rights norms in the domestic courts and against dictators. To be potent and effective international human rights law must operate beyond the domestic and national legal systems in order to afford genuine redress to those whose human rights are infringed. That will also serve to provide a standard by which the actions of States could be objectivity gauged. This should not only be in entrenchment as it is presently but also in enforcement.

(iii) Enabling environment

It is one thing to recognize, entrench and provide enforcement mechanisms for international human rights norms, but it is a different thing to provide enabling environment for the enjoyment of those rights. Beyond the constraints identified as limitations of entrenched human rights norms and the enforcement mechanisms, are political and socio-economic factors that constitute definite clogs to concretization of the norms in Nigeria. These factors determine the ambit of the rule of law.

The Rule Of Law

The "rule of law" has been defined simply as a system in which the laws are public knowledge, are clear in meaning and apply equally to everyone.[30] Generally, the rule of law encompasses accountability, transparency, civil liberties, crime and punishment, and separation of powers, etc. But the interpretation of the content of rule of law has been open to abuse and there seems to be different perspectives of the concept in practice. The most popular perspective of global liberal democracy is exemplified by the United States of America, while the normative and descriptive perspective is exemplified by some aberrant governments, including the military dictatorships, as well as African and Asian style democracies. In the latter sense the emphasis is on application of law, whatever the law is and there is no stress on government subordination to the law. This is characterized as rule by law and rule of law in the subjective 'dictatorial' context, ostensibly rule of law that falls short of acceptable international standards.

However, the rule of law enshrines and upholds the political and civil liberties that have gained status as universal human rights, in particular: anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proved guilty; the central institutions of the legal system, including courts, prosecutors, and police, are reasonably fair, competent, and efficient; Judges are impartial and independent, not subject to political influence or manipulation; and perhaps, most important, the government is embedded in a comprehensive legal framework, its officials accept that the law will be applied to their own conduct, and the government seeks to be law-abiding.[31]

Unfortunately, the rule of law itself wrongly assumes equal capacities of individuals which only could guarantee equality before the law and access to its tenets. At both domestic and international discourse little attention has been paid to access to justice in reality as against the myth. The especial case of the poor demonstrates this phenomenon. This is a major challenge to equality and enforcement of any human rights norm at all.

The Question Of Access To Justice For The Poor-The Myth And Assumptions

The prospect of achievement of international human rights norms as standard achievement for all peoples is demonstrated by the international acceptance of the norms. The norms are now found recognized and enshrined as fundamental rights within municipal legal regimes. Globally, progress has been made in enabling instruments, though without much success in enforcement machinery. The impact of these developments in the enhanced protection of rights is not in doubt, but full realization of

[30] Thomas Carothers, "The Rule of Law Revival", Foreign Affairs; Mar/Apr 1998:96.
[31] Ibid.

international human rights norms in concrete terms of standard achievement for all peoples suffer especial impediments determined by individual capacities. A great deal of these could be considered under the mythical access to justice, which itself is supposedly at the root of all human rights.

Access To Justice

By far the greatest impediment to the protection and enforcement of human rights norms in Nigeria is lack of access rights. The question could be put directly, what percentage of the population have access to the fair benefits of governance in general (security, food, shelter and health inclusive), or more specifically to the afore-mentioned local and international mechanisms for the enforcement of perceived human rights violations?

"Justice" as a concept is defined as "the fair and proper administration of laws". But "social justice" is "justice that conforms to a moral principle, such as that all people are equal"; while "positive justice" is "justice as it is conceived, recognized and incompletely expressed by the civil law or some other form of human law.[32] From these definitions, justice, however defined, must include issues of social justice since it embraces fairness and equality. In fact, equality and freedom from discrimination are two of those international human rights norms now codified in national Constitutions, including Nigeria's. The Constitution is designed to achieve justice in the broader sense, including social justice and various functionaries including government, independent institutions, the private sector and indeed civil society takes on a special responsibility for the achievement of justice, and thus access to justice is more, much more than simply access to courts". "Access to justice" itself is not confined to access to the courts or tribunals that adjudicate or mediate disputes. The freedom to a meaningful access to justice is but crucial component of a life in human dignity.[33]

Jody Kollapen.[34] explains that in a constitutional state where people are expected to comply with the Constitution as the supreme law of the land, access to justice implies that:

> People are aware of the rules and the context within which they exist, be able to use the rules when needed in order advance the objectives of the Constitution and ultimately have proper, substantive and meaningful access to the various institutions that interpret the rules and deal with the various contestations that inevitably arise.

Kollapen, however states that economic and social realities continue to undermine such compliance by persons and institutions, and often leading to people taking the law into their own hands. He cited the issue of vigilantism as an example.[35] The Nigerian environment is replete with such situations.

Poverty and Access To Justice

Poverty is an economic and social reality that continues to undermine access to justice in enforcing international human rights norms in Nigeria. But little or no attention has been paid to this factor.

Mizanur Rahman.[36] has espoused two useful definitions of poverty: a subsistence definition and another based on analysis of relative deprivation. Subsistence definition is based on an estimate of the level of income necessary for buying food sufficient to satisfy the average nutritional needs of each adult and child within a family. The cost of this food is seen as the basic cost of subsistence, which when added to

---

32 Black's Law Dictionary (1999), 7th Ed. Brain Garner (Ed), West Group.

33 Rhode, D.L.(2004) Access to Justice, Oxford University Press, 81.

34 See Keynote address on "Access to Justice within the South Africa context", Access to Justice Roundtable Discussion, Johannesburg, 22 July 2003, Human Rights and Governance Programme at the Open Society Foundation for South Africa, p.5:

35 Ibid. At the international forum recent examples include the interference by North Atlantic Treaty Organization (NATO) in Libya, interference in Iraq by USA, and probably the interference by Nigerian led ECOMOG in Liberia and Sierra Leone some years back.

36 "Addressing Poverty and Lawyering for Justice" in African Legal Clinics Roundtable Meeting working Papers, 22-25 November 2007, Cape Town, South Africa,80.

the cost for basic clothing and shelter, produces an income figure below which families can be said to be in poverty. This subsistence approach is the popular rather simplistic conception of poverty. But as has been rightly argued, it is based on the faulty assumption that the basic needs of an individual or family can be determined merely through an assessment of the biological and physiological demands of the human body for food, warmth and shelter.

Relative deprivation", on the other hand, exists when:

> Individuals, families and groups in the population can be said to be in poverty when they lack the resources to obtain the types of diet, participate in the activities and have the living conditions and amenities which are customary, or at least widely encouraged or approved, in the societies to which they belong. Their resources are so seriously below those commanded by the average individual or family that they are in effect, excluded from ordinary patterns, customs and activities.[37]

Thus, deprivation should be measured both materially and socially. This perspective corresponds with the position of Nobel Laureate Amartya Sen[38] who defines poverty as "capability deprivation". In this approach, poverty must be seen as the "deprivation of basic capabilities rather than merely as lowness of incomes".

If the foregoing conception of poverty is correct it becomes obvious that a majority of Nigerians are indeed poor as they are either relatively deprived or deprived of the capability to enjoy basic necessities of life in terms of basic freedoms, health care, shelter, etc. These basic necessities of life implicate basic rights and freedoms currently classified under the fundamental objectives and directive principles of state policy and therefore non-justiciable. To that extent these necessities are demands or claims that remain aspirations to be achieved in future as defined by Professor Eze. But some of these necessities form part of international human rights norms, which Nigerians generally are relatively deprived.

More importantly, "capability deprivation" or "deprivation of basic capabilities" and "lowness of incomes" could all translate to lack of access to other concrete rights and freedoms protected by the Constitution. This argument finds clear expression in the inherent assumption of equality, among others.

Assumption of Equality

Having noted that the rule of law provides for equality before the law, the question is, how this is achieved in the face of "lowliness of income" and "capacity deprivation" already described. A look at the legal provisions related to access shows reckless assumption of equality based purely on the letters of the instruments and not spirit of the law.

Specifically on access to justice, section 36(1) of the Constitution provides in part that:

> In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing… by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality…

This right of access to justice entrenched under section 36 of the Constitution tries to guarantee that every person has access to an independent and impartial court and the opportunity to receive a fair and just trial. It has been severally acknowledged that the "right to sue and defend" is a right conservative of all rights, and lies at the foundation of an orderly government. Providing representation necessary to make those rights meaningful fosters values central to the rule of law and social justice.[39]

---

37 Ibid.
38 ibid, 81.
39 Rhode, D. L., op cit. 9.

The right to legal assistance or representation is acknowledged as a vital component of the right of access. For good reasons, the ordinary citizen may not be able to appreciate the law fully to assist him or her and may have to consult his lawyer-hence the much-touted position of power of the lawyer in society. The right to legal assistance or representation generally underscores the acknowledged benefit of having a legal expert/practitioner assist or represent a person in the determination of his/her civil rights or obligations. Somehow, there are constitutional guarantees that emphasize the importance of these rights. Section 35(2) of the 1999 Constitution, on the right to personal liberty provides that "Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice." Again, Section 36(6) of the 1999 Constitution which guarantees the all-important right to fair hearing provides that "Every person who is charged with a criminal offence shall be entitled to-

(c) Defend himself in person or by legal practitioner of his own choice".

These provisions provide the right to legal representation for all citizens at the specified stages in a criminal process where their civil rights could be in jeopardy.

However, the rights to access generally, to have a legal practitioner represent a person in the process or at all, or to a legal practitioner of one's choice are all limited by certain indeterminate capacities and relative deprivations. The degree of deprivation is determined so much by the individual or group economic and or political situation and circumstances that tend to undermine the assumptions of the law. Although the poor or indigent person is entitled to the guaranteed rights, these are lost to economic realities of deprivations, more or less affronts to justice in reality. The assumption of capability is a deceit of the iconoclastic legal doctrines of equality before the law more manifest in access to justice when considered from the broad perspectives of knowledge, environment and quality. It is a probably another limit of the law as it were.

It must be appreciated that economic and other considerations play a vital role in determining whether there is legal representation or not, and the nature or standard of legal assistance or representation available to persons in the pursuit of legal rights. Of course, for all who can afford to pay for the services of a lawyer, the choice in terms of quality of service still depends largely on ability to pay, among other factors. It is a different scenario where a person lacks capacity to pay for such legal services at all[40]. In this case the constitutional right to legal assistance or representation becomes meaningless.

The implication of the foregoing discussion of rights is obvious. Notable among the basic freedoms guaranteed by the Constitution is the right to freedom from discrimination found under section 42(1) of the Constitution .Although the section failed to exhaust the list of possible grounds of discrimination based on class, it is a veritable tool for argument on equality before the law. It is noteworthy that Article 7 of the Universal Declaration of Human Rights, the precursor and standard international norm on this right provides more concretely that "all are equal before the law and are entitled without any discrimination to equal protection of the law".

Conclusion

An assessment of the progressive recognition and enforcement of international human rights norms in Nigeria has been made. It is obvious that much has been achieved in terms of recognition, entrenchment and enhanced enforcement of international human rights norms; but this enforcement is not available to a majority of the people. The prospects of enhanced concretization of international human rights norms have been assessed. This could be by positive actions that can move the international regime from the

[40] In recognition of this factor, the right to legal aid is beginning to emerge: In Nigeria, it is still limited to few cases; See Legal Aid Act, Cap L1,LFN 2004; Cf. , Art.14.3(d), ICCPR;6th Amendment to US constitution;Art.25(3) and 35(2)(c) South African Constitution.

present rhetoric and propaganda to strengthening the enforcement machinery beyond the national level. The gains of the invasion of the traditional principle of sovereignty justified on humanitarian grounds should be consolidated upon to enforce human rights beyond the artificial national boundaries. The impediments have also been noted with access to justice isolated as the major impediment to attainment of that standard achievement of all peoples. Because a good percentage of the population have been identified as poor in terms of relative deprivation and capability deprivation, only a human rights approach that takes into consideration the poverty level of Nigeria can significantly expand the frontiers of human rights enforcement beyond the present level.