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Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal

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ABSTRACT

Although human rights issues have become a global subject with global relevance, States remain primarily responsible in international law for the promotion and protection of human rights. In recognition and acknowledgment of the mandate of States, Nigeria has erected enviable institutional infrastructure and provided a wide range of remedies-judicial and extra-judicial – to redress human rights violations occurring in its territory.
But the provision of remedies is one thing their adequacy and efficacy are another matter entirely. It is regrettably true that judicial remedies in Nigeria are hamstrung by a number of factors. This article examines the judicial remedies available in Nigeria to redress human rights violations and stresses the imperative of judicial remedies generally. The paper also examines the procedure for the activation of judicial remedies and draws attention to the multifarious impediments which have gravely undermined, compromised and frustrated the effectiveness of the remedies. It concludes by providing suggestions which will ensure that the remedies are of real value in redressing human rights violations in Nigeria.

INTRODUCTION

Recognition of human rights and fundamental freedoms is now part of international legal obligations and a fundamental purpose of the United Nations. "Contemporary human rights can be summarized as claims made on society by individuals and groups, which claims have found expression in objective law, either at national or international levels, and serve as a standard for measuring the conditions of human existence, below which no human being should enjoy"[1]. The concept of human rights has gained tremendous appeal and significance in our world of pluralism, diversity and inter-dependence because human rights are inalienable rights. The formation of the United Nations Organisation[2] and the conclusion and adoption of the Universal Declaration of Human Rights[3] have provided a firm foundation for further development and globalization of human rights while remarkable attempts have continually been made by the United Nations in formulating and strengthening human rights standards[4]. At the regional level, there has been evident commitment to guaranteeing and promoting universal respect for, and observance of human rights and freedoms. The Council of Europe,[5] the Organization of American States,[6] the African Union,[7] and lately, the Arab League[8] have all formulated and adopted human rights instruments guaranteeing universal respect for human rights. So important is the need for respect for human rights that virtually all constitutions,

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[1] M.O.U. Gasiokwu, Human Rights: History, Ideology and Law, Jos: Fab Educational Books, 2003 at 4

[2] UNO Charter, 1945.

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

[4] In 1966, the UN adopted the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights. Subsequently, numerous Conventions, Protocols and Resolutions had been passed to guarantee and protect human rights and fundamental freedom.

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

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

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

[8] Arab Charter on Human Rights, adopted by the League of Arab States on 22 May, 2004 and entered into force on 15 March, 2008

across the globe, make provisions for human rights in their preambles or in the substantive provisions. In Nigeria for instance, comprehensive human rights clauses have been enshrined in all the post-independence constitutions[9]. In the 1999 Constitution which is the extant constitution, two chapters,[10] spanning 26 sections are devoted to the subject of human rights.[11]

Notwithstanding the impressive records of codifications of human rights at the global, regional and domestic levels, it cannot be assumed or asserted that human rights violations are a matter of by-gone era. On the contrary, they are still violated with alarming regularity and gravity across the globe. The explanation for this evident contradiction is that there is a wide gap between mere subscription to global human rights standards and state practice. Succinctly expressed, mere declaration of these rights and their actual observance are not synonymous. This is why Justice Haleem[12] was constrained to lament that, "Nation-states have not been able to match their impressive record of codification and prescription with equally vigorous attempts at the application and enforcement of human rights norm…" Rather, they have been contented with mere codification because, generally, governments across the globe find it expedient to vote for what is deemed to be good and what makes good political sense since human rights issues now form part of the equation of international relations.[13]

Since human rights violations cannot be eliminated through mere standard setting, the global human rights system provides for remedies in the event of violations. Indeed, the importance of remedies for human rights violation cannot be over-emphasized. As noted by a distinguished jurist,[14]

> The sacred pledges and sublime commitment to the ideal of fundamental rights contained in the Constitution will have a hallow ring unless the fundamental rights which they bestow upon every citizen are buttressed by an efficient legal remedy.

Echoing the same view, another distinguished jurist noted that "All citizens of our country have a right to have their substantive legal and Constitutional rights recognized and transformed into actual judicial remedies without which their theoretical constitutional fundamental rights would be seriously diminished or else denuded of any real value''.[15]

Accordingly, for the global commitment to human rights to be of real value, the rights must be buttressed by efficient legal remedies to compensate for and redress their violations. Thus, the concept of remedies is closely and inextricably interwoven with that of right. This is the philosophy behind the latin maxim*, ubi jus ibi remedium* meaning, where there is a right, there is a remedy.

These remedies may be judicial or extra-judicial, but the former are more effective, beneficial and preferable, as will be shown presently.

It is for this reason that the Nigerian Constitution provides a wide range of judicial remedies for the benefit of victims of human rights violations. This, in turn is consistent with the international obligation which Nigeria has assumed as a signatory to the major international human rights instruments.[16]

The availability of domestic judicial remedies for human rights violations is significant in two respects. First, human rights violations occur within a state principally in relations between a government and its own citizens.[17] Second, it is essential and axiomatic that states remain primarily responsible in international law for enforcing the protection of human rights within their jurisdictions.

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[9] The independence Constitution, 1960, the republican Constitution of 1963, the presidential Constitution of 1979, the draft Constitution of 1989 and the extant 1990 Constitution all guaranteed human rights.

[10] That is, Chapters II and IV.

[11] It may be noted that while the provisions of chapter IV dealing with civil and political rights are enforceable, those of chapter II dealing with economic, social and cultural rights are not justiceable.

[12] M. Haleem, ''The Domestic Application of International Human Rights Norms" in *Developing Human Rights Jurisprudence, The Domestic Application of International Human Rights Norms,* London; Commonwealth Secretariat, 1988

[13] Bhagwati, Op.Cit.101

[14] Diplock, LJ in *Jaundoo* v *Attorney General of Guyana* (1971) A.C. (P.C) 972.

[15] C. A. Oputa, *Human Rights in the Political and Legal Culture of Nigeria*, Lagos Nigerian Law publications, 1989 at 73.

[16] For instance, see Article 2 African Charter on Human and People's Rights, 1981.

[17] Steiner & Alston, *Op. Cit*. at 709

The adequacy of the judicial remedies provided by the Constitution deserves critical examination since it is one thing to provide for remedies and quite another thing for the remedies to be effective considering the peculiar problems of law enforcement in Nigeria and the under-development of the country. For instance, the invocation of these remedies may be hamstrung by procedural clogs such as ouster clauses and *locus standi*. This paper therefore focuses on the various judicial remedies contained in the 1999 Nigerian Constitution to redress cases of human rights violations. In this regard, an examination of the necessity of judicial remedies is undertaken in part 1. Part 11 examines judicial power, jurisdiction in human rights litigations as well as the procedures for activation of judicial processes. The various remedies available are examined in Part III while Part 1V considers the impediments to judicial remedies. Part V concludes the discourse and provides a road-map for effective judicial remedies in redressing cases of human rights violations in Nigeria.

PART 1
IMPERATIVE OF JUDICIAL REMEDIES

The importance of judicial remedies cannot be over-emphasized. Since the Charter of the United Nations unequivocally encourages pacific settlement of international disputes in order to promote world peace,[18] national governments are necessarily obliged to ensure peace in their respective states. Also, peaceful settlement of disputes, whether international or domestic, by judicial recourse helps parties to clarify their respective positions. This way, they are "led to reduce and transform their sometimes overstated political assertions into factual and legal claims."[19]

A learned author has reasoned that the judicial route moderates tensions and lead to a better and fuller understanding of the opposing claims and in some cases, the resumption of political negotiations ahead of judicial pronouncement.[20]

In addition, judicial remedies are quite attractive and beneficial. By its nature, judicial power includes the power to assume compulsory jurisdiction, render authoritative and binding decisions and enforce compliance, and these give it primacy over extra-judicial remedies. The enforceability of judicial awards makes them more meaningful, assuring and preferable. Moreover, litigants are permitted to claim two or more remedies cutting across prerogative,[21] equitable[22] and common law[23] remedies in one suit at the same time.[24] This in turn facilitates speedy, expeditious and just resolution of complaints of human rights violations.

What is more, judicial remedies are multifarious and multi-dimensional, and it is only the courts which are imbued with the jurisdictional competence to award them. The implication therefore is that victims of human rights violations have a wide range of remedies to choose from and are therefore not circumscribed by the problem of their inadequacy or unsuitability.

While it is irresistible to conclude that judicial remedies are quite potent and adequate to redress human rights violations, it may be argued that informal and inexpensive extra-judicial mechanisms can also be designed to redress human rights violations in Nigeria. This is especially so as general international law seems to recognize not only judicial remedies but also any administrative domestic remedies that may provide redress in the circumstances of the case.[25] Non-judicial approach to human rights violations will find support in the nature of African customary law and

[18] Article 1, United Nations Charter
[19] Address by the Honourable Stephen M. Schwebel, Judge to the General Assembly of the United Nations, President of the International Court of the United Nations, President of the International Court of Justice (Oct. 27,1998) available at http://www.lawschool.cornell.edu/library/4jwww/icjwww/, presscom/SPEECHS' speech president GA 98, htm.
[20] N.J. Udombana, *An African Human Rights Court and An African Union Court: A Needful Duality or Needless Duplication,* Brooklyn Journal of Int. Law vol. 28, 2003 No.3 at 813.
[21] E;g Prohibition , *Certiorari and Mandamus*
[22] E.g Declaratory judgment and Injunction
[23] Damages
[24] See, *Blessing Onomeku v Commissioner of Police, Delta State & 2 Ors* (2007) CHR 173 and Shugaba Darman v Minister of Internal Affairs (1981) 2 NCLR 459
[25] Interhandel (Swiss v U.S), Preliminary Objections, 1959 ICJ REP. 6,27(Mar.21);

long – time dispute settlement practice. As reasoned by Udombana,[26] traditional African dispute settlement places a premium on improving relations between the parties on the basis of equity, good conscience, and fair play, rather than strict legality. The African system is "one of forgiveness, conciliation and open truth, not legal friction or technicality;"[27] and its procedures favour consensus and amicable dispute settlement, frowning at the adversarial and adjudicative procedures common to Western legal systems.[28] While anti-court advocacy may have some merit, it cannot discount or undermine the unique importance and inevitability of judicial intervention and remedies in human rights cases.

The important role of the courts in safeguarding human rights in Nigeria was incisively captured by the Supreme Court in *Olawoyin vs Attorney General, Northern Region*[29] as follows: "The courts have been appointed sentinels to watch over the fundamental rights secured to the people ... and to guard against any infringement of those rights by the state." Indeed, without the courts, there can be no meaningful protection of the various human rights guaranteed at the international, regional and national level.[30] From the foregoing, it becomes evident that in Nigeria, the court is the most important constitutional structure designed to ensure the observance of, and compliance with the human rights norms codified in the various international human rights instruments and the constitution.

PART II
JUDICIAL POWER AND SPECIAL JURISDICTION IN HUMAN RIGHTS CASES

In this segment, it is proposed to define what is meant by judicial power, examine the court empowered to adjudicate on human rights cases and highlight the procedure for the enforcement of human rights.

I. JUDICIAL POWER DEFINED.

The courts in Nigeria, like in every democratic system, are the repository of judicial power,[31] which has been defined as the power "for the determination of the civil rights and obligations of persons in cases of controversies brought before the courts by such regular proceedings as are established or recognized by law and custom."[32] This power extends to all inherent powers and sanctions of a court of law and to all matters between persons in Nigeria and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person[33].

The scope of judicial power is clearly captured by Nwabueze[34] as follows:

i. The power to assume compulsory jurisdiction at the instance of a party and to inquire into the dispute.
ii. The power to determine authoritatively or conclusively the facts of the dispute.
iii. The power to determine authoritatively the law relevant to the dispute.
iv. The competence to arrive at a decision on the application of the relevant law to the facts and therefore finally disposes of the whole dispute.
v. The decision arrived at is binding on the parties to the dispute.
vi. The power to enforce compliance with the decision.

II. SPECIAL JURISDICTION IN HUMAN RIGHTS CASES

[26] Nsongurua J.Ndombana, ''An African Human Rights Court and An African Union Court; A Needful Duality or Needless Duplication",*Brooklyn Journal of International Law* Vol. 28 No3 (2003) 813
[27] A. L. Ciroma, ''Time For Soul Searching,'' Daily Times' (Nigeria) August 23, 1979 at 3.
[28] Udombana, Op. Cit. at 818.
[29] (1962)1 ANLR 324 at 327.
[30] It is instructive to note that there are other national institutions, notable among which is the National Human Rights Commission which have been established to ensure effective protection of human rights.
[31] Section 6, 1999 Constitution of Nigeria. For judicial restatement, see *Bronik Motors Ltd* v *Wemat Bank* (1983)1SCNLR 296 and Attorney General, Cross River State v Archibong (1985)6 NCLR597.
[32] B.O.Nwabueze, *The Presidential Constitution of Nigeria*, London: C. Haurst & Co. (1982) at 294. See also, *Abraham Adesanya v President of the Federation of Nigeria (1981)2 NCLR358*
[33] Section 6(6) 1999 Constitution
[34] B.O Nwabueze, *Judicialism in Commonwealth Africa* London: C. Haurst & Co. 1977 at 1-2

Jurisdiction to hear and determine allegations of human rights violation is conferred on the High Court by Section 46(1) of the 1999 Constitution which is a *verbatim ad literatim* reproduction of the provision of section 42(1) of the 1979 Constitution. The section states that "[a]ny person who alleges that any of the provisions of this chapter[35] has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress." By sub-section 2, a High Court is vested with original jurisdiction to hear and determine any application made to it and to make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing enforcement within that state of any right to which the applicant may be entitled. Consequently, allegation of infraction of any of the guaranteed rights is to be adjudicated in the High Court for redress.

It is now settled law that "High Court" within the meaning and contemplation of the foregoing section refers to both States and Federal High Court. As such, the Federal High Court has concurrent jurisdiction with the State High Court in human rights adjudication.[36] However these courts are not exclusively dedicated to hear only human rights cases. On the contrary, they have jurisdiction to hear cases on various other subjects. Further, the jurisdiction of the High Court and Federal High Court in human rights cases is neither exclusive nor conclusive. By reason of the hierarchical structure of courts in Nigeria, the Court of Appeal, and the Supreme Court have appellate jurisdiction over cases of human rights violations. Thus, an appeal may lie from the decision of a High Court to the Court of Appeal and from there to the Supreme Court which is the apex court in Nigeria[37]. Therefore, while the State and Federal High Court have original jurisdiction to determine disputes concerning allegations of human rights infractions, the Court of Appeal and the Supreme Court are vested with appellate jurisdiction.

The provision of section 46(1) which empowers victims of human rights violations to institute actions for redress covers both actual and threatened violations of any of the rights. This is a salutary departure from the provisions of sections 31 and 32 of the 1960 and 1963 Nigerian Constitutions respectively, by which a person was only competent to institute action for redress when his rights had been actually contravened. Thus, Tobi JSC stated, *ex cathedra*, that "by virtue of the provision, an aggrieved party need not wait for the brutalization of his person or denial of any of his fundamental rights before he seeks redress in a high court…"[38] In *Chief Uzoku & ors v* Igwe *Ezeonu 11 & ors*[39] the Court of Appeal incisively interpreted the ambit of the provisions of section 42 of the 1979 Constitution[40] as follows:

> Section 42(1) has three major limbs. The first limb is that the fundamental right in Chapter 4 has been physically contravened. In other words, the act of contravention is completed and the plaintiff goes to court to seek for redress. The second limb is that the fundamental right is being contravened. Here, the act of contravention may or may not be complete… in the third limb there is likelihood that the respondent will contravene the fundamental right of the plaintiff.

Consequently, the enforcement provision of the 1999 Constitution must be taken as nullifying the decision of the Supreme Court in the old case of *Olawoyin* v *Attorney-General*, *Northern Region*[41] where it was held that a person could not have the necessary standing in court on account of a mere enactment of a law with which he may in future come in conflict.

III ENFORCEMENT PROCEDURE

The 1999 Constitution of Nigeria provides not only access to court but also outlines the procedure for the enforcement of the guaranteed rights. The clarification of the correct procedure for human rights litigations is of great legal and practical relevance. As observed by Diplock L.J *in Jaundoo v Attorney – General of Guayana*[42], ''question of procedure and access to the courts are of great importance in themselves…''

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[35] That is, Chapter IV of the 1999 Constitution

[36] See Alhaji Shehu Abdul Gafar v Government of Kwara State & 2 Ors (2007) CHR1 and Umaru Abba Tukur V Government of Gongola State (1989) 4 NWLR (PT 117) 517

[37] Section 235 Constitution (Nigeria)

[38] N. Tobi, "*Fundamental Rights*: *Enforcement and Procedure Rules and Speedy Trial*" in (1999) Judicial Lectures, Lagos: MIJ, Professional Publishers Ltd, at 77.

[39] (1991)6 NWLR (pt 200)708.

[40] This section is *impari materia* with the provision of section 46 of the 1999 Constitution.

[41] (1961)1 ALL NLR 269

[42] (1971) A.C. 972

The adjudicatory mechanism for securing the enforcement of the fundamental rights is provided for in section 46(1) of the 1999 Constitution which empowers "any person" who alleges actual or imminent contravention of the guaranteed rights to "apply to a High Court for redress." The procedure for the commencement and determination of such cases is contained in the Fundamental Rights (Enforcement Procedure) Rules, 2009 made by the Chief Justice of Nigeria pursuant to the authority conferred on him by section 46(3) of the 1999 Constitution.

The Rules not only contain substantial improvement over the former ones but are designed to ensure easy access to court by victims of human rights violations as well as expeditious determination of cases.[43]

In brief, the procedure instituted in the new Rules for the enforcement of fundamental rights may be noted. By Order II, any person who alleges infringement of any of the fundamental right is required to file an application for the enforcement of the rights, by using any mode of originating process accepted by the court.[44] The application must be supported by a statement setting out the name and description of the applicant, the reliefs sought, the grounds upon which the reliefs are sought, and an affidavit setting out the facts upon which the application is made.[45] To facilitate expeditious hearing and determination, every application is required to be accompanied by a succinct written address in its support.[46] It is further provided that where the respondent intends to oppose the application, he shall file his written address within 5 days of the service on him of such application and may accompany it with a counter affidavit.[47]

By Order II Rule 1, an application must be fixed for hearing within 7 days of being filed. At its hearing, Order XI reiterates the power of the court under section 46 of the Constitution to "make such orders, issue such writs, and give such directions as it may consider just or appropriate for the purpose of enforcing or securing the enforcement of any of the Fundamental rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act".

On the enforcement procedure, a few points may be noted. First, the Fundamental Rights (Enforcement Procedure) Rules do not constitute an exclusive procedure for the enforcement of the rights. Rather, other legally recognized civil procedural modes of commencement of action may be employed.[48] Second, if the breach of fundamental rights takes place across two or more States, any High Court in any of the States is competent to entertain the complaint.[49] However, where a particular High Court has only limited or partial jurisdiction in respect of some of the acts complained of, the proper venue is the High Court that has full jurisdiction over all the aspects of the infringement[50]. Third, the enforcement procedure rules are applicable not only to complaints of infringement against government and its agent but also to those against private persons.[51] Further, for an application for enforcement of fundamental rights to be competent, the action must be in personal as distinct from representative capacity "as each individual's rights differ from one another."[52] Finally, when an application is brought for the enforcement of any of the rights, a condition precedent to the exercise of the court's jurisdiction is that the enforcement should be the main or principal claim and not an accessory or ancillary claim.[53]

PART 111
JUDICIAL REMEDIES IN HUMAN RIGHTS ADJUDICATIONS

[43] .Some of the innovations in the new Rules include the provision of comprehensive preamble which demonstrate its overriding objective, validating any mode of commencement of action and abolition of the requirement for Leave before filing enforcement application.
[44] Leave of court is no longer required as provided under Order 1 Rule 2(2) of the 1979 Rules. See also, Oyakire v Jen (2000) NWLR (Pt20) 699
[45] Order 11 Rule 3.
[46] Order 11 Rule 5.
[47] *Ibid.*
[48] *F.R.N v Ifegwu* (2003) FWLR (Pt 167) 703, *Ladejobi v Attorney General of the Federation* (1982) 3 NCLR 563; Order II Rule 2 Fundamental Rights (Enforcement Procedure) Rules, 2009
[49] *Uzoukwu & ors v Ezeonu* II *Supra*.
[50] *Ibid.*
[51] *Onwo v Oko & ors* (1996) 6 NWLR (pt 456) 584, *Peterside v I.M.B (Nig) Ltd* (1993) 2 NWLR (pt 278) 81 CA
[52] *The Registered Trustees*, *Faith Tabernacle Congregation Church Nigeria v Ikwechegh* (2000) 13 NWLR (pt 683)1
[53] *Bornu Radio Television Corp v Basil Egbunonu (1991)*2 NWLR (pt 171)81.

There are multifarious and multidimensional judicial remedies for victims of human rights violations. Thus, irrespective of the nature of violation, appropriate remedies exist for it. As noted by Oputa, J.S.C:

> The law is an equal dispenser of justice, and leaves none without a remedy for his right. It is thus a basic and elementary principle of common law that whenever there is a wrong, legal wrong or *injuria* that is, there ought to be a remedy to redress that wrong.[54]

Section 42(2) empowers the High Court in the hearing and determination of any application alleging a breach of any of the guaranteed rights to "make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing and securing the enforcement of any rights to which the person (is) entitled." It is note-worthy that no reference is made in the foregoing provision to specific remedies. In spite of this, the courts in practice, have used and continued to use the traditional remedies such as injunction, *habeas corpus*, declaration, *mandamus*, prohibition and *certiorari* in redressing human rights violations.

In *Asemota v Yesufu & Anor,*[55] it was held that the remedy provided for in section 42 of the 1979 Constitution "supplements or is in addition to the existing order for enforcing or securing constitutional redress of enshrined constitutional rights by the writs of *habeas corpus,* and/or order of *certiorari, mandamus* and/or prohibition". Consequently, the demarcation between the ordinary remedies of damages, injunction and declaration and the extraordinary remedies of *certiorari*, prohibition, *mandamus* and *habeas corpus* in this respect has been removed. The practical implication of this is that there can be a combination of both classes of remedies in the same action. For instance, a declaration may be combined with an order of certiorari and mandamus. Each of these remedies will now be examined, briefly.

1. The writ of habeas corpus

The writ of *habeas corpus* literally means "to have body." It is an extraordinary prerogative remedy which is issued upon case shown in cases where the ordinary legal remedies are inapplicable or inappropriate. It is used primarily to challenge the detention of any person either in official custody or in private hands. Its utility is to ensure that a person wrongfully detained is released forthwith.

The nature and utility of *habeas corpus* was pungently stated by Ademola, J. C. A. in *Agbaje v Commissioner of Police,*[56] *as follows*:

> The writ of *habeas corpus* is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention whether in prison or in private custody. The purpose is to inquire into the cause for which a subject has been deprived of his liberty... if there be no legal justification for the detention, the party is ordered to be released.

Thus, where the personal liberty of an individual as guaranteed by S. 35 of the 1999 Constitution is interfered with through confinement, such a person may make an application to court for the writ of *habeas corpus* to issue for the purpose of securing the restoration of his liberty. *Habeas corpus* application is certainly the most effective, beneficial and expeditious remedy in every case of detention.

The application for the writ is started at the High Court by filing a motion supported by an affidavit by or on behalf of the person detained, setting out the nature of his confinement. Upon disclosure of sufficient cause, the judge before whom the application is brought may order that the writ should issue forthwith to produce the applicant. Where a judge declines to make such an order, the applicant is at liberty to bring the application before any other judge with or without fresh evidence and the later judge would be bound to hear and determine the application on its merits notwithstanding

[54] *Aliyu Bello v A-G Oyo State* (1986) 5 NWLR pt. 45 828 at 889-890.
[55] (1982) NCLR 419; see also *Nwigwe v Onuaguluchi* (1985) 6 NCLR 489.
[56] (Unreported) Suit No. CAW/81/69 of 27/8/1969.

the fact that some other judge had earlier refused a similar application.[57] In making application for the release of a person from unlawful custody under the present dispensation, the applicant merely files application for the enforcement of his fundamental right without specifically heading it a writ of *habeas corpus*.

2. Declaratory judgments

A declaratory judgment is an equitable remedy which lies at the discretion of the court. It is available to an individual who can prove that his private right including any of the fundamental human rights has been infringed by a government, its agent, any public authority, or another private person. Where a public right is affected, it is the Attorney-General who is competent to seek redress.

A litigant seeking to move the court for an order of declaration must show that there is a real controversy and not merely a hypothetical problem. A declaration merely states or declares the right or rights of the litigants without any positive order to do or not to do any act. Since declaratory judgments are not self-executory or self-enforceable, they are often sought together with some other positive reliefs such as injunction, damages or *habeas corpus*. The Supreme Court has stated the legal effect of a declaratory judgment quite aptly that it ''merely proclaims the existence of a legal relationship and it does not contain any order which may be enforced against the defendant''.[58]

3. The order of injunction

An injunction is another discretionary and equitable remedy. Unlike a declaration, an injunction is a positive order with a sanction attached to it such as imprisonment, fine or any other sanctions enforceable at the discretion of the court. Basically, there are two classes of injunction, namely, prohibitory and mandatory. A prohibitory injunction is an order which prohibits a person from doing a wrongful act. On the other hand, a mandatory injunction affirmatively directs the doing of an act.

An injunction may be claimed concurrently with other reliefs like declaration and damages, as was the case in *Burma and Hawa v Sarki*[59] *as well as Williams v Majekodunmi.*[60] It is an appropriate order to restrain an individual, any government, its agent, or extra- governmental agency from interfering with the right of movement, personal liberty or freedom of thought, conscience and religion.

4. Damages

Damages are monetary awards made to litigants to assuage them for the loss suffered. Damages may be claimed concurrently with other reliefs such as declaration and injunction. It is be appropriate remedy in cases of infraction of the right to freedom of movement, or unlawful acquisition of property, or an invasion of the right to personal liberty or privacy.

In *Shugaba Darman v Minister of Internal Affairs & Ors,*[61] the applicant who suffered deportation from Nigeria on the order the Minister of Internal Affairs sought among others, damages for assault and unlawful deportation and interference with his freedom of movement. It was held, *inter alia*, that in seeking redress for the infringement of his fundamental right, any person can claim any form of redress, including a declaratory order, injunction and damages. The court, while awarding a sum of N350,000.00 damages to the applicant held further that an infringement of fundamental rights of Nigerian citizens must attract compensatory damages and in some cases ought to invite exemplary damages. Indeed, section 35(6) of the 1999 Constitution expressly provides that "any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person."

It is noteworthy that often times, damages awarded by the courts are too little to be compensatory. The practical implication of this is that victims of human rights violations are discouraged from seeking judicial intervention while violators are encouraged to continue their reckless assault on human rights.

5.* The order of *Certiorari

[57] See generally, Order 4 of the Fundamental Rights (Enforcement Procedure) Rules, 1979; see also *Eshugbayi Eleko v Government of Nigeria* (1928)A.C. (P.C (P.C.) 459; *Re Mohammed Oluyori & Ors.* Suit No. M/169/69 of 17/11/1969.
[58] Per Agbaje, J.S.C. in *Okoye v Santilli* (1990)3 SCNJ 83 at 100.
[59] *Supra*
[60] *Supra*
[61] *Supra*.

Certiorari is a prerogative order which enables a superior tribunal to call upon an inferior tribunal to bring up the record upon which the inferior court or administrative tribunal based its decision of a judicial or quasi-judicial nature. It enables the superior tribunal to review that record with a view to ascertaining the legality of the decision based on it. Thus, where any of the fundamental rights has been violated consequent upon the decision of a body, authority or person, acting in judicial or quasi-judicial capacity, the writ of certiorari will lie. In *Okoye v Lagos State Government,* [62] the Court of Appeal noted that:

> Generally, a body exercising powers which are of a merely advisory, deliberative, investigatory or conciliatory character or which do not have legal effect until confirmed by another body, or involves only the making of a preliminary decision will not normally be held to be acting in a judicial capacity. However, where the determination by such statutory body may be either one that purports to create, vary or extinguish legal rights, or one that purports to declare existing legal rights... certiorari and prohibition will sometimes issue.[63]

It is therefore not a prerequisite for the writ to lie that the body must have legal authority to act judicially; it lies against the decision of a respondent who has the power to make a decision affecting the right or interest of the applicant. In *Queen v The Governor in Council, Western Nigeria,*[64]the applicant, a Chief was deposed and his chieftaincy stool declared vacant without giving him hearing. An application for *certiorari* succeeded. Also, in *Garba* v *University of Maiduguri*[65] the Supreme Court had no hesitation in invoking *Certiorari* to quash the decision of the administrative panel of inquiry which the University had set up on the ground of want of jurisdiction.

6. The order of prohibition

Like *certiorari,* prohibition is a prerogative order. It lies to restrain an inferior tribunal or body of persons which has a legal authority to determine questions affecting the right of a subject from exceeding its jurisdiction.[66]

The order of prohibition is therefore available to an applicant to prevent the performance or continuance of administrative action which must be judicial or quasi-judicial in nature[67]. The conditions for the availability of this order are substantially the same as those required of an applicant for an order of *certiorari.* These are that the tribunal against whom the order is sought must have been performing judicial or quasi-judicial function or at least there is a stage in the proceedings when the statutory body or tribunal performed or should perform such function as for example, holding an inquiry or deciding *lis inter partes*. Perhaps the only difference is that unlike *certiorari*, prohibition will not lie unless something remains to be done by the tribunal on whose proceedings the order is to lie. Consequently, if nothing remains, then the proper application must be for an order of *certiorari* to quash.

Basically, there are two types of orders of prohibition. These are *quosque* prohibition and peremptory prohibition. The difference between the two lies in the fact that once the peremptory prohibition is granted the whole proceedings are immediately brought to a halt whereas if *quosque* prohibition is granted, the proceedings may go ahead on the condition that the offending part of the proceedings is first of all removed. *Quosque* prohibition is hardly used. Thus, where prohibition is simply applied for, it is usually understood to mean peremptory prohibition. One instance in which the order of prohibition would be readily granted is where there has been a breach of the rules of fair hearing.

7. The order of *Mandamus*

Mandamus was a prerogative writ directed to some person, or body to compel the performance of a public duty. It is now replaced by an order of *Mandamus* which is comprised in the procedure known as judicial review. *Mandamus* is

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[62] (1990)3 NWLR. Pt 136 at 115.
[63] Per Akpata, J.C.A. *Ibid.* At 125.
[64] *Ex parte Ishmeal Obatenu Adebo* (1962) WNLR. 93.
[65] (1986)1 NWLR(PT18)550
[66] Per Akpata, J.S.C. in *Okoye v Lagos State Government*. *Supra* at 127.
[67] See, *Gani Fawehinmi* v *Legal Practitioners Disciplinary Committee* (1985)2NWLR(Pt7)300, *Oduwole v Famakinwa*(1990)4NWLR (Pt143)239

an order which compels the performance of a public duty as a first resort where no other remedy is available.[68] The significance of the writ (now order) was articulated by Mansfield, J. in *R. v Baker*[69] as follows, "It was introduced to prevent disorder from a failure of justice, and defect of police. Therefore it ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one..."[70] In *R v Western Urhobo Rating Authority, Ex parte Chief Odje and Or,*[71] it was held that the power to grant an order of *mandamus* is discretionary and will only be granted against whom it is sought if the person is bound to perform the duty which must be of a public nature. It is instructive to emphasize that the order of *mandamus* enforces the legal right of an applicant where there is a right but there is no remedy to enforce it. Once a remedy already exists, the proper order will not be one of *mandamus*. The right to freedom of movement may be enforced through an order of *mandamus*. For instance, if after fulfilling all the conditions for issuing a travelling passport, the public officer in charge fails or refuses to issue it.[72]

From the foregoing, it may be argued that the human rights guaranteed in the current Nigerian Constitution are not mere rhetoric but backed by effective adjudicatory mechanism and remedies for their enforcement. Nevertheless, the question must be asked, how effective are these remedies?

A CRITICAL APPRAISAL

In assessing the effectiveness of judicial remedies in human rights litigations in Nigeria, a cursory investigation of the interpretative approach of the court becomes absolutely imperative. It has long been advocated that the interpretative approach of the court in all human rights cases should be generous and purposive. More than three decades ago, Lord Wilberforce [73] advocated the adoption of "a generous interpretation avoiding what has been called the austerity of tabulated legalism suitable to give individuals the full measure of the fundamental rights and freedoms." This advocacy is a call for exhibition of judicial activism by judges in human rights litigations.

Without discounting the attempts by some judges to embrace this commendable approach as exemplified in a number of cases,[74] often times, inexplicable judicial timidity is demonstrated by judges in human rights litigations in Nigeria. To authenticate and justify this conclusion, a few illustrative cases may be cited. In *shola Abu & 349 ors v COP, Lagos & ors*[75] the applicants who were arrested and detained, ostensibly on mere suspicious instituted this action seeking damages and public apology. Although the trial court unequivocally found in favour of the applicants declaring their arrest and detention unlawful, it refused the remedies sought on the grounds that they were not specifically stated in the accompanied statement as required by the Enforcement Procedure Rules. The court so held even though it acknowledged that the applicants asked for these reliefs in the affidavit. Similarly, in *Raymond S. Dongtoe v Civil Service Commission, Plateau State & ors*,[76] the Supreme Court allowed itself to be unduly hamstrung by technicality when it held that "where a special procedure is prescribed for the enforcement of a particular right or remedy, non compliance with or departure from such procedure is fatal to the enforcement of the remedy.[77] On this reasoning, the merit of the case of the Appellant who challenged the termination of his employment was considered a non-issue. There are a plethora of other cases where judges allowed themselves to be unduly hamstrung by mere technicality.[78] This attitude is, without doubt, injurious to the effectiveness of judicial remedies in human rights litigations.

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[68] T.A.Aguda, *Practice and Procedure of the Supreme Court of Appeal and High Court of Nigeria*, London: Sweet and Maxwell, 1980 at 668

[69] (1762)3 Burr. 1265.

[70] *Ibid.* at 1267.

[71] (1961) All NLR. 796. See also *Banjo & Ors. V Abeokuta Urban District Council* (1965) NMLR. 295.

[72] The case of *Gani Fawehinmi* v *Colonel Alilu Akilu* & *Anor* (1987) 1 NWLR 554 provided a celebrated example of the invocation of the Order in Nigeria. See also, *Architects Registration Council of Nigeria* (in *Re*: *Majora*) v *Prof. M.A Fassasi* (1987) 3NWLR42

[73] Minister of Home Affairs v Fishers (1980) AC 319. See also, Attorney General of the Gambia v Mohammed Jobe (1984)1 AC 689

[74] See, Adigun v A.G. Oyo State (1987)1 NWLR (pt 53) 678. Garuba v University of Maiduguri (1986)1 NWLR (pt 18) 550. Gloria Mowain v Nigerian Army & 3ors (1992)4 NWLR (pt 225) 345. Musa v INEC Shugaba Darman v Minister of Internal Affairs (1981)2 NCLR 459.

[75] (2006) CHR1,

[76] (2002)2 CHR 95,

[77] Ibid at 116

[78] See, for instance, Comrade Christopher Egwuashi v COP (2006) CHR 200; Cletus Madu v J.S. Neboh & ors (2002)2 CHR

It is well settled that the efficacy of any remedy, is dependent not only on its availability but its sufficiency and adequacy.[79] It is expected therefore that courts ought to ensure the adequacy of remedies granted to victims of human rights violations. Regrettably, in practice, this legitimate expectation has remained unrealized. For instance, in many cases where damages are asked for, especially against the government being a notorious human rights predator; the courts, in seemingly deliberate and determined effort not to hurt the government, often award ridiculous sums which are not in any way compensatory. In *Shugaba Darman v Minister of Internal Affairs*,[80] the Applicant, then a serving Senator of the Federal Republic of Nigeria, was unlawfully deported to Chad, ostensibly for political reasons. He challenged his deportation claiming certain declaratory reliefs and damages of N1m. Although the court declared the deportation of the Applicant unconstitutional and deprecated the conduct of the Respondent, it awarded only a paltry sum of N350,000.00! Similarly, in *Blessing Onomeku v Commissioner of Police, Delta State*,[81] the applicant was dehumanized by the police who arrested and detained her. Prior to her detention, she was handcuffed, severely beaten and stripped naked. In her action, she sought for damages of N5,000,000.00 but regrettably notwithstanding the gravity of the indignity she suffered, the court awarded her only a paltry sum of N500,000.00. There are many more cases[82] where the courts failed to award meaning damages to victims of human rights violations.

The above cases are clear indication of the attitude of the courts; which attitude must be deprecated as it does not promote the goal of human rights. It is our view, as rightly noted by the Supreme Court in *Shugaba Darman v Minister of Internal Affairs*[83] that an infringement of fundamental rights of Nigerian citizens ought to attract compensatory damages and in appropriate cases, exemplary damages. It is when this is done that infraction of human rights especially by security agents will not only be discouraged but adequately punished and the goal of human rights furthered.

PART 1V
IMPEDIMENTS TO JUDICIAL REMEDIES

Just as there are a wide variety of judicial remedies to redress human rights violations, there are multifarious impediments apart from the absence of judicial activism highlighted above, which hamstrung their effectiveness. This segment examines the various impediments to the efficacy of these remedies.

A. PROBLEM OF DISOBEDIENCE TO COURT ORDERS

The greatest impediment to judicial remedies in Nigeria is the notorious problem of disobedience to court orders. Undoubtedly, it is one thing for a court to grant a remedy but quite another for the successful litigant to reap the fruits of the judgment. This is because judgments and orders of courts are not self-executing and the judiciary does not have its own means of enforcing its judgments[84]. The implication of this 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.[85] It is the major "predator" from which judicial protection is often sought[86]. This being the case, there is little assurance that any order made against the executive branch will be obeyed. On the contrary, the unfortunate and

67.
[79]. See, Ambatielos Claims (Gr UK) 12 R.I.A.A. 83 (1956) 130
[80] Supra.
[81] (2007) CHR 173
[82] See, E.g Chief Chinedu Eze and Anorv v IGP & ors (2007) CHR 43; Otunba Fasewe v Attorney General of the Federation (2007) CHR 80, Ijeoma Anazodo v All State Trust Bank Plc & 3ors (2007) CHR 117
[83] Supra.
[84]. Under the 1999 Constitution, as amended, it is the responsibility of the executive branch to enforce laws including judicial decisions. See CONSTITUTION, Art. 5 (1999) (Nigeria)

[85]See, MAKAU MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL.....See also, CHIDI ANSALEM 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)
[86]ITSA SAGAY, Newbreed Magazine, August 13, 1989 at 8

regrettable experience has been regular disobedience by the executive of lawful court orders.[87] Often, government chooses the orders to obey. It obeys those it is comfortable with and disobeys those in conflict with its interests, without regards to the individuals whose rights have been violated.

The problem of disobedience to court orders in Nigeria has tasked the intellectual energy of learned authors[88] and provoked legitimate concern and condemnation by the press[89]. So bad was the situation at a time that the umbrella body of legal practitioners in Nigeria, the Nigerian Bar Association, called out its members on a two-day boycott of courts nationwide[90].

B. PROBLEM OF *LOCUS STANDI*

Human rights promotion and protection in Nigeria is too often hamstrung by the doctrine of *locus standi*. *Locus standi* means legal standing or capacity based on sufficient interest in a subject-matter, to institute legal proceedings in order to secure redress.[91] It refers to the right of a party to an action to be heard in litigation before a court of law or tribunal or the legal capacity of instituting, initiating or commencing an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance.[92]

The courts have always insisted that unless a person has *locus standi*, he is a meddlesome interloper and as such, a suit at his instance will be incompetent and un-maintainable.[93] Thus, *locus standi* is inextricably interwoven with the issue of jurisdiction. Where there is want of *locus standi,* the court will have no jurisdiction to entertain the matter.[94] In *Attorney General of Kaduna State vs. Hassan*,[95] Oputa J.S.C. succinctly articulated the *raison deter* for this doctrine as follows; "The legal concept of standing or locus is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest."[96]

Consequently, in human rights litigations the issue of *locus standi* or sufficient interest is not only relevant but paramount. Thus, for a person to sustainably activate the judicial process to redress human rights violation, he must show that he is a person interested, being one whose right has been, is being or is in imminent danger of being violated or invaded. Where a public injury or infraction of a fundamental right affecting an indeterminate number of people is involved, to be competent to sue, a plaintiff must show that he has suffered more or is likely to suffer more than the multitude of individuals who have been collectively wronged. Thus, although there is now a commendable relaxation of the rigid, restrictive and constrictive interpretation of the doctrine of *locus standi*,[97] the doctrine remains a formidable albatross in human rights litigation in Nigeria because a number of cases have been lost on the ground of

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[87] This is exemplified by the case of *Military Governor of Lagos State v Chief Emeka O. Ojukwu (*1986) 1NWLR 621(Nigeria), *Lakanmi & Kikelomo Ola v Attorney General (Western State)* (1971) UNIV. IFE L.REP 201, *Attorney- General of Lagos State v Attorney –General of the Federation* (2004) 18 N.W.L.R. (Pt 904) 1

[88] See, JACOB.ABIODUN DADA, 'Impediment to Human Rights Protection in Nigeria', ANNUAL SURVEY OT INT. & COMPARATIVE LAW, Vol xviii, SPRING,2012 at 67-92 and P. U. UMOH, Human Rights in Nigeria: Impediments to Realization, 2 UNIV. of UYO L.J 41, 46 (1988)

[89]. THISDAY Editorial, 23 March, 2006. In lamenting the incessant disobedience to court orders, the Editorial stated that; " All over the world, the true measure of democratic government is not mere election. It is the supremacy of the law. Sadly the Obasanjo government has shown an unhealthy disdain for the courts. The government has most flagrantly disobeyed court orders and ruling often for political reasons".

[90] For the gravity of the problem, see L.Megwara, The Law and Practice of Human Rights in Nigeria, Lagos: Olive Printing and Publishing House, 2010 at 256 -257.

[91] See *Abraham Adesanya vs. The President of Nigeria* (1981)2 NCLR 358; *Adenuga vs Odemeru* (2003) FWLR (pt 158)1258; *Attorney General of Kaduna State vs Hassan* (1985)2 NWLR (pt 8)483, *Akilu vs. Fawehinmi* (No 2) (1989)2 NWLR (pt 102)122.

[92] See, *Alhaji Adetoro Lawal vs Bello Salami & Anor* (2000) 2 NWLR (Pt752) 687 and *Attorney- General of Akwa Ibom State & Anor vs Essien* (2004) 7 NWLR (Pt872) 288

[93] See, e.g *Odeneye vs. Efunuga* (1990)7 NWLR (pt 164) 168, *Abraham Adesanya vs. The President of Nigeria*, Supra.

[94] *Akinbinu vs Oseni,* (1992)1 NWLR (pt215)97 S.C.

[95] Supra.

[96] Ibid. at 524-525.

[97] This relaxation is exemplified by the decision of the Supreme Court in the celebrated case of *Akilu vs. Fawehinmi* (supra).

absence of sufficient interest[98]. The insistence on *locus standi* discourages litigations by public spirited persons to fight the cause of indigent victims of human rights violations.

C. CONSTITUTIONAL DEROGATIONS.

The various constitutional limitations and qualifications imposed on human rights constitute great impediments to their enjoyment. Section 45(1) of the 1999 Constitution, provides a veritable plank 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.

(b) For the purpose of protecting the rights and freedom of other persons.

By the foregoing provision, the right to private and family life, freedom of thought and religion, freedom of expression and the press, right to peaceful assembly and association and right to freedom of movement may be lawfully 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[99]are too wide, imprecise, and nebulous. 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.[100] This undoubtedly poses a very grave danger to optimal realization of human rights. This danger becomes apparent from the decision of the Supreme Court in *Medical and Dental Practitioners Disciplinary Tribunal vs. Emewulu & Anor*[101] where the court held that all freedoms are limited by state policy or overriding public interest.

D. OUSTER CLAUSES

By ouster clause, the jurisdiction of courts to inquire into the legality or otherwise of any power exercised and award appropriate remedies is curtailed. Under military rule, many decrees ousted the jurisdiction of the courts. Regrettably, the enthronement of democratic governance did not eclipse ouster clauses. Section 6(6) of the 1999 Constitution ousted the jurisdiction of all courts in relation to the provisions of Chapter II of the Constitution which deals with socio-economic and social rights. The non-justiceability of this chapter makes socio-economic and cultural rights a "neglected category of rights in Nigeria"[102]. The grave effect of ouster clauses constrained a learned author to lament that they reduced the "ambit of human rights to vanishing point"[103].

The continued employment of ouster clauses to deny the right of audience in court is a sure foundation for despotism and anarchy.

E. ABSENCE OF TRUE JUDICIAL INDEPENDENCE

One of the remarkable and enduring attributes of the common law is the notion of judicial independence. 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.

According to Oyeyipo,[104]

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 individual

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[98] See e:g *Chief Irene Thomas vs Timothy Olufosoye* (1986)1NWLR (Pt18) 669

[99] Sections 33 to 36

[100] For some of the cases, where the Courts have had to grapple with this problem, see Olawoyyyin vs Attorney General for Northern Nigeria (1962) All NLR; Williams vs. Majekodunmi (1962)1 All NLR 413; Adegbenro vs. Attorney- General of the Federation & ors (1962) WNLR 150.

[101] (2001)3 SCNJ. 106.

[102] . J.A. Dada & M.E Ibanga, "Human Rights Protection in Nigeria: From Rhetoric to Pragmatic Agenda", *African Journal of Law and Criminology* Vol.1 No 2 (2011) 70-81.

[103] Umoh, Op Cit. at 46.

[104] T. A. 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" delivered at the 1999 All Nigerian Judges Conference held at International Conference Centre, Abuja 1-5 November, 1999 at 5.

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 the status…

From the well known attributes of judicial independence, it can be safely concluded that judicial independence is not yet a reality but mere aspiration in Nigeria today. The appointment and removal of judges which are controlled by the executive[105] are not insulated from political and other extraneous considerations. This in turn exposes judicial decisions to political interests and manipulations.[106] Again, although the Constitution seeks to guarantee financial autonomy to the judiciary,[107] the relevant provision has not been implemented in most States of the federation while implementation at the national level is partial.

PART V
AGENDA FOR REFORM

Attention has been drawn in this work to the imperative of judicial remedies and the various impediments which undermine their efficacy. For these remedies to be of real value therefore, ways and means of combating the challenges must be designed and constructed. Consequently, the following proposals are made in order to overcome the identified impediments.

1. Courts must demonstrate unmistakable judicial activitism by adopting generous, and purposive interpretative approach. If the rights are interpreted generously and creatively, avoiding what has been called the austerity of tabulated legalism, then the goals of human rights will be meaningfully realized.[108] It is this approach that can safeguard judicial power from the tyranny of the various restrictions on remedies. In established cases of human rights violation especially by the government or any of its agencies, the courts must be willing to award exemplary damages to redress the violations.
2. Meaningful legal aid must be provided to enable indigent victims of human rights violations seek appropriate judicial remedy. Specifically, it is hereby advocated that the Legal Aid Council[109] should be strengthened by the provision of adequate funds and personnel so that a reasonable percentage of indigent victims of human rights violations can be assisted. The present situation where the Council has offices only in state capitals, manned by about five staff is without doubt grossly inadequate and calls for urgent review.

3. Inexpensive, informal and less cumbersome procedure should be designed and established to facilitate expeditious adjudication of human rights cases. The present situation where filing fee is so high and lengthy rules regulate hearing of cases is not only unhealthy but capable of restricting access to court. On the high cost of filling, it has been suggested that rather than impose heavy costs on litigants for commencement of actions, minimal costs should be charged subject to taxation of the proceeds of successful litigation.[110] Also, the Rules of court must be relaxed and made merely permissive and not mandatory so that the general principle that rules of courts being handmaid of justice must be obeyed[111] should not apply in human rights litigations. Thus an otherwise meritorious case will not be lost or defeated owing to the failure of an applicant to scrupulously follow the rules.

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[105] See, Sections 231, 238, 250, &256 of the 1999 Constitution on the appointments of Federal judges and section 292 on their removal from office.

[106] The reckless and unrepentant manner removal of Justice Isa Ayo Salami, as the President of the Court of Appeal clearly exemplifies the extent of lack of judicial independence.

[107] The 1999 Constitution empowers the National Judicial Council to "collect, control and disburse all moneys, capital and recurrent, for the judiciary." Constitution, Third Schedule, Part 1, Section 21 (e) (1999) (Nigeria)

[108] See, Lord Wiberfore in *Minister of Home Affairs* v *Fisher* (1980) A.C. 319; *Attorney-General of the Gambia* v *Momodu Jobeh* (1984)1 A.C 689.

[109] Established pursuant to the provision of Section 46(4) (b), 1999 Constitution. See, Legal Aid Council Act, (2004) Cap. 37 (Nigeria)

[110] . See, Akinola Aguda, "Law Versus Justice", being the full text of the Second Foundation Day Lecture of the Ondo State University, Ado- Ekiti, delivered on Friday, March 30, 1984 at 19

[111] See, *Oyegun v Nzeribe* (2010) ALLFWLR (Pt516) 425 at 438

4. There must be prompt compliance with judicial awards, that is; remedies. To facilitate payment of monetary award against government and its agencies, it is hereby advocated that a dedicated consolidated fund be created by all tiers of government from which such awards can be satisfied. Further, the present requirement that the consent of the Attorney General must be obtained before execution can be levied[112] against the State must be abolished as it undermines the efficacy of judicial remedies.

5. The constitutional requirement of *locus standi* must be abolished as it needlessly inhibits public spirited individuals and non- governmental organizations from seeking the protection of the rights of the down-trodden in the society. Admissibility of complaints should not be predicated on the fact that the right allegedly violated was that of the applicant in person. On the contrary, public interest litigations must be welcomed especially in view of the fact that majority of Nigerians are illiterate and poor. The implication of the appalling socio-economic condition of many Nigerians is that majority of victims of human rights violations may not be aware of their right to seek redress and can ill afford the cost of litigation. It is therefore desirable to encourage and allow unlimited access to court. In *Senator Abraham Adesanya v President of the Federal Republic of Nigeria*,[113] Fatayi-Williams while delivering the judgment of the court underscored the need to welcome public interest litigation when he held as follows:

I take significant cognizance of the fact that Nigeria is a developing country with a multi-ethnic society and a written Federal Constitution, where rumor-mongering is a pastime of the market places and the construction sites. To deny any member of such society who is aware or believes, or is led to believe that there has been an infraction of any provisions of our Constitution…access to the Court of Law to air his grievance on the flimsy excuse (of lack of sufficient interest) is to provide a recipe for organized disenchantment with the judicial process.[114]

6. Jurisdiction over human rights cases is unduly restrictive. Magistrates should also have jurisdiction to hear cases of human rights violations. Two reasons can be advanced for this recommendation. Magistrate courts are established in virtually all the local government areas of the country unlike High Courts which are mostly concentrated in urban areas. Importantly, qualified legal practitioners preside over cases in Magistrate courts just like High Courts. As such, Magistrates have comparable competence with High Court judges to adjudicate on allegations of human rights infractions.

CONCLUSION

Nigeria, as a member of the United Nations[115] and African Union[116] has ratified major international human rights instruments which seek to protect and promote human rights and fundamental freedoms. Undoubtedly, the effectiveness of rights guaranteed in these instruments and the national constitution of Nigeria depends to a considerable degree on the existence of adequate machinery and remedies for their enforcement.

As discussed in this work, there are many judicial remedies which victims of human rights violation can claim in order to secure the enforcement of their rights. But it is well settled that for any remedy to be of real value, it must satisfy what has been described as the "essentialness"[117] of remedies. Three major criteria have been deduced.[118] These are

[112] P.N. Bhagwatti, "Inaugural Address", *Developing Human Rights Jurisprudence, the Domestic Application of International Human Rights Norms. Judicial Colloquium* in Bangalore 24-26 February, 1988, Commonwealth Secretariat, 1988 at xxi
[113] *Supra*
[114] Supra
[115] Nigeria was admitted as the 100th member of the world body
[116] Indeed Nigeria played a dominant role in the actualization of the dream for an African Charter on human rights. The idea of establishing a regional human rights system in Africa is traceable to the African Conference on the Rule of Law held in Lagos, Nigeria in 1961. For historical overview, see M. B. Dalhatu, Promotion and Protection of Human Rights under the African Charter on Human and Peoples' Rights: Historical Overview Ahmadu Bello University Journal of Private Law, Vol.1 No.2 (2006) (Nigeria) 103-111.
[117] See, Ambatielos Claims (Gr./ UK) 12 R.I.A.A. 83 (1956) 120.
[118] See,Udombana, Op.Cit. at 21, construing the jurisprudence of the African Commision.

that the remedy must be available,[119] effective[120], and sufficient.[121] Crucially, from a programmatic perspective, it cannot be objectively asserted that judicial remedies in human rights litigations in Nigeria satisfy the foregoing criteria because they are hamstrung by a variety of impediments which undermine and compromise their effectiveness. To overcome these challenges, the agenda for reform set out in this paper must be faithfully, vigorously and consistently pursued and implemented. While constitutional and institutional reforms are required to ensure the effectiveness of judicial remedies, the important role of the court must be emphasized. It is hereby advocated that while performing their adjudicatory role, judges must demonstrate evident courage, discipline, commitment, and resilience. As admonished by Bhagwatti[122]

> The judiciary has to be ever alert to repel all attacks, gross or subtle against human rights and they have to guard against the danger of allowing themselves to be persuaded to attenuate or construct human rights out of misconceived concern for state interest or concealed political preference or sometimes ambition or weakness or blandishments or fear of executive reaction. Judicial somnabulence, indifference or timidity can be a source of greater threat to human rights enforcement than the aggression of violators, for the greatest bulwark against state authoritarianism or arbitrariness would then be gone.

Without doubt, it is in recognition of the important role of the judiciary in general and in the implementation of human rights in particular that there is evident growth or proliferation of "the international judiciary." [123] The proliferation is an indication of the gro wing awareness that broad instruments protecting a wide variety of rights may not be sufficient to protect the rights if they are not complemented by effective redress mechanism. Therefore those saddled with adjudicatory power in human rights cases must demonstrate insightful vision, wisdom and sagacity in the discharge of their function by interpreting the rights generously, creatively and courageously. This way, judicial remedies for victims of human rights violations will be of real value and not mere aspiration or rhetoric.

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[119] That is, readily obtainable, accessible, or attainable, reachable, on call, on hand, ready and present. See, WEBSTER'NABRIDGED DICTIONARY OF ENGLISH LANGUAGE, 102 (1989).
[120] That is, adequate to accomplish, a purpose; producing the intended or expected result.or functioning, useful, serviceable, operative, in order, practical, current, actual, real, valid. See, WEBSTER, note 108 at 455.
[121] That is, adequate for the purpose, enough or ample, abundant, satisfactory. WEBSTER, ibid. at 1421..
[122] P.N Bhagwatti, Inaugural Address, Developing Human Rights Jurisprudence, The Domestic Application of International Human Rights Norms, Judicial Colloquium in Bangalore 24-26 February, 1988, Commonwealth Secretariat, 1988 at xxi.
[123].See, Cesare P.R. Romano, ''Entities Should not be Multiplied Unnecessarily'' in The Proliferation of International Judicial Bodies: The Pieces of the Puzzle, 31 N.Y.U.J. INT'L.& POL. 7091(999) (QUOTING William of Ockham). It is also instructive to note that at the global and regional levels, judicial bodies are established to ensure effective implementation of human rights.

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