

**PROTECTION FOR HUMAN RIGHTS DEFENDERS:
THE NIGERIAN EXPERIENCE**

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
CD	Campaign for Democracy
CEHRD	Center for Environment, Human Rights and Development
CDHR	Committee for the Defense of Human Rights
CLO	Civil Liberties Organisation
DHRD	Declaration on Human Rights Defenders
FREPR	Fundamental rights Enforcement Procedure Rules
HRD	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, social and Cultural Rights
NGOs	Non-Governmental Organisations
NHRI	National Human Rights Institutions
POA	Public Order Act
UDHR	Universal Declaration of Human rights
UN	The United Nations

METHODOLOGY

In conducting this research, we employed a socio-legal approach. This decision is necessitated by the general objective of this paper which is to determine among others, the law in practice. That is, how the Nigerian normative framework impacts the activities and protection of human rights defenders (HRDs) in the country. This paper seeks to understand the objectives of the law concerning human rights defense and the protection of HRDs, whether the said objective is achieved, and if not achieved, the reasons for the failure.

In view of the above and the research questions which this paper seeks to answer, we adopted a qualitative research methodology. Of the different kinds of qualitative research, we engaged 2 (two).

First, we designed and conducted unstructured, in-depth interviews with a number of HRDs in Nigeria. The interviews paved way for in-depth responses from which we gained insight into the experiences, knowledge, perception and opinion of HRDs in Nigeria regarding the law, political landscape, governance and other factors affecting their work and protection. The interview also revealed areas of disagreement among HRDs in Nigeria- while some agree that the bill of rights under Chapter IV of the Nigerian Constitution 1999 (As Amended) offers adequate protection to rights defenders, others do not.

Second, we also used documents from which we collected both primary and secondary data. We accessed various data bases and libraries such as JStor, Heinonline, Westlaw, Falana & Falana Chambers and others. We understood from the documents consulted, the weight of existing literature in this field. We also reviewed and noted the arguments and perspectives of earlier authors. Official publications and reports of organisations such as Amnesty International, Civil Liberties Organisation (CLO), Freedom House, Committee for the Defense

of Human Rights (CDHR) and Others, on the situation of human rights and HRDs in Nigeria were of immense help.

B. ABSTRACT

Human rights defenders under the military in Nigeria operated in a space without legislative protection. The military junta was renowned for absolutism, arbitrariness, incessant and unjustified arrest, detention, torture, killings and brazen repression of dissenting voices through restrictive laws, suspension of the constitution and unbridled police. In spite of a transition to civilian rule, rights defenders still struggle for freedom and protection to function, albeit at a lesser degree. Their precarious condition is not as a result of an absence of a bill of rights or institutional mechanisms which by their nature assure the protection of fundamental rights, the right to defend and rights defenders. This paper argues that a regime that creates and upholds a culture of impunity with no regard for the rule of law is incapable of guaranteeing the protection of anyone, not even rights defenders. There can be no life, no dignity, if citizens cannot assert, demand enforcement and enjoy their human rights. Whatever the laws and however well crafted, failure of the ruling class to submit to laws and obey judicial pronouncements, undermines protection of rights defenders.

C. INTRODUCTION

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness.... [W]hensoever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government.”¹

¹See American Declaration of Independence (1776)

The end of World War II marked a dramatic shift in the world's perception of and commitment to Human Rights. Man's inhumanity against his fellow man which characterized the war primarily evident in the atrocities committed by Nazi Germany (among others) prompted a consensus on the sanctity of human rights (at the international level) and the need to vigorously protect same. The toll from the Second World War, including both military and civilian casualties, is estimated at between 50 and 70 million dead. More than six million of these casualties were European Jews murdered in death camps run by the Nazis in an effort to annihilate Europe's Jewish population. Other victims of Nazi atrocities included the Roma (Gypsies), civilians in occupied Poland (an estimated 1.9 million civilian Poles were killed), Soviet prisoners of war, political opponents of Nazism, persons with mental and physical disabilities and others.²

Human rights are rights, privileges and claims which accrue to us by reason of our humanity. They are inherent, inalienable, unforfeitable and at the core of human personality. Therefore, any action which tends to deprive us of and/or derogate from those rights touch on our very essence.

They are primordial in nature and universal in character, because they are pre-supposed attributes of human completeness; being inherent in the nature of man from cradle, without which his existence as mankind is rendered useless, dysfunctional and incomplete.³ Adherence to human rights norms has become the pre-condition for admission into the global village of mankind.⁴

²Part II, Rule of Law in History...

³Cranston, M. "Human Rights: Real and Supposed" Butterworths & Co, London, 1987, p.8

⁴ Valentine B. Ashi, "Fundamental Constitutional Doctrines and Concepts" Legalpoint Professional Publishers Limited, Lagos- Nigeria, 2010, p. 107

This human rights crusade spread from the international milieu to national circles. In Nigeria, the inalienable and natural status of human rights has received statutory and judicial recognition.⁵

At present, the question of human rights is no longer about their inherent or universal nature, which appears to have been settled beyond dispute, but rather about their defense— a fortiori, protection for human rights defenders. The fight for defense of human rights has become as important as the rights themselves. The discussion today places a demand on the state and citizens alike to respect human rights and the right of everyone to strive for their promotion. History is replete with reports of countries as well as individuals and groups that have strained every effort in pursuit of the promotion of human rights to give substance to human existence.⁶ This lends credence to the fact that human rights activism is not a new concept. It has in contemporary times, become more popular and widely undertaken. The right to defend has continually been suppressed through victimisation of rights defenders and violation of their human rights across the globe- the conviction of 43 NGOs workers by the Cairo Criminal Court in June, 2013; the conviction of Nabeel Rajab, leader of Bahrain’s human rights movement in August 2012 and detention of Jila Baniyaghoob in Iran’s Evin prison.⁷ In the past seven years,

⁵ “They (human rights) are not just mere rights. They are fundamental. They belong to the citizen. They have always existed even before orderliness prescribed rules for the manner they are to be sought... It is a primary condition to a civilized existence and what has been done by our constitution since independence... to the 1999 constitution is to have these rights enshrined in the constitution so that the rights could be immutable... to the extent of the immutability of the Constitution itself” See Kayode Eso JSC in Saude V Abdullahi (1989) 4 NWLR (Pt. 116) 387. See also, Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) Cap C23 Laws of the Federation of Nigeria, 2004.

⁶Kayode Eso, “Thoughts on Human Rights and Education” St. Paul’s Publishing House, Ibadan 2008. P. 260-263. The Magna Carter of 1215 birthed by the efforts and commitment of feudal barons in England, who fought against the King for a fair legal system and to end oppression of the king’s subjects; America’s Declaration of Independence 1776, a corollary of its revolution against the oppressive-anti –human rights policies and unjust governance style of her British colonial master; nationalist movements and activism by Nigeria’s elite who through the power of pen revolted against colonial rule in Nigeria

⁷ www.freedomhouse.org/article/us-and-european-leaders-condemn-egyptian-ngo-trial-verdict (last visited-4th June, 2013). The conviction of the Egyptian and foreign NGO workers on the 4th of June, 2013 has elicited responses from various quarters. The U.S Senator, Patrick Leahy (D-VT) in his reaction said “The unjust conviction of Egyptian and American citizens by the Egyptian government, for nothing more than working to defend the fundamental rights of all Egyptians is appalling and offensive to people of goodwill in Egypt and across the globe.” In the same vein, the German Foreign Minister, Westerwelle Guido noted that “The actions

freedom in the world has experienced more decline than gains. There is a stepped up campaign of persecution by dictators and authoritarian regimes specifically targeting civil society organisations and independent media.⁸ Countries like China, Russia and Iran deploy a variety of techniques to maintain a tight grip on the media, detaining some press critics, closing down or otherwise censoring media outlets and blogs, and bringing libel or defamation suits against journalists.⁹ In Ethiopia, human rights defenders risk heavy fines and terms of imprisonment for carrying out their work. The Charities and Societies Proclamation No. 621/2009 places excessive restrictions on the work of human rights organisations. It prohibits rights organisations from receiving more than ten percent of their funding from foreign sources.¹⁰

Nigeria's independence gained in 1960 was a product of nationalist movement engendered by the quest for freedom from oppression, subordination and discrimination meted out against Nigerians by Britain.¹¹ Respect for human rights was not a focal feature of the colonial administration in Nigeria.¹² However, activism in Nigeria did not end with the realisation of independence but has been improved upon, reshaped and diversified in the new Nigeria. Incessant harassment and violation of the rights of defenders, characteristic of the colonial era, crept into the Nigeria governed by Nigerians. In response to these violations of rights, citizens¹³ in their individual capacity and in groups have relentlessly challenged the state demanding respect for human rights and dignity. Defenders of human rights in Nigeria have faced opposition even in the present democratic dispensation: in January, 2011, Patrick Naagbanton¹⁴, Coordinator of a human rights group (Center for Environment, Human Rights

taken by the Egyptian Judiciary are worrisome. They weaken civil society, an important pillar of democracy in a newly democratic Egypt.”

⁸ www.freedomhouse.org/report/freedom-world/freedom-world-2013 (last accessed- June 6, 2013)

⁹ <http://www.freedomhouse.org/report/freedom-press/freedom-press-2013> (last accessed-June 6, 2013)

¹⁰ <http://www.achpr.org/sessions/50th/ngo-statements/8/> (last accessed- June 6, 2013)

¹¹ Kayode Eso, supra note 6 at 277

¹² Ibid. at 274

¹³ Femi Falana, Late Gani Fawehinmi, Beko Ransome-Kuti, Olisa Agbakoba, Civil Liberties Organisation, Campaign for Democracy, Constitutional Rights Project, and a host of others. See Kayode Eso, supra note 6, p.

¹⁴ See Amnesty International Report (2012) p. 259

and Development- CEHRD) received multiple threats on account of his human rights work; in October, 2011, Osmond Ugwu (Chairman, Civil Liberties Organisation, Enugu branch) with Raphael Elobuike¹⁵ was arrested and detained; Chidi Nwosu (President, Human Rights, Justice and Peace Foundation)¹⁶ on December 29, 2010 was shot dead in his house in Abia State; Ibuchukwu Ezike¹⁷ on August, 12, 2009 was arrested and detained for days by security operatives. Same was the fate of rights defenders under the military.¹⁸ This challenge is sometimes demonstrated through laws¹⁹ and institutions which stifle the right to defend and other times, through physical and violent resistance of defenders. In view of the challenges and risks associated with human rights defense, the question is, what guarantee of protection do defenders enjoy in Nigeria? Extant efforts at the national and international levels through legal and institutional frameworks to protect rights defenders in Nigeria has not yielded the desired

¹⁵ Interview with Ibuchukwu, Ohabuenyi Ezike, (Executive Director, CLO), Lagos, Nigeria- June 10, 2013. See also Amnesty ibid- Osmond Ugwu, (Chairman CLO), Enugu State and Raphael Elobuike are human rights, labour rights and pro- democracy defenders. They were arrested (in October, 2012 and released in 2013) for demanding implementation of the minimum wage for workers in Enugu State.

¹⁶ Ibid. See also Amnesty International Report (2011) p. 248. Chidi Nwosu was the President of Human Rights, Justice and Peace Foundation. He was known for his work against corruption and human rights abuses.

¹⁷ Ibid. Ibuchukwu was arrested and detained for days in 2009, when security operatives invaded the Civil Liberties Organization's office in Lagos and carted away the organization's property on a false allegation of corruption and embezzlement of fund by some of the staff of the organization. The organization obtained a court judgment on June 2, 2010 ordering the police to pay compensation to the organization, to the tune of N25m. The Police was also ordered to return the organization's property which they took away. At the time of the interview (June 10, 2013), the Police had not heeded the court order.

¹⁸ In May, 1992, Gani Fawehinmi (Human Rights and pro-democracy lawyer), Baba Omojola, Beko Ransome-Kuti (President, Committee for the Defense of Human Rights), Femi Falana (President, National Association of Democratic Lawyers) and Olusegun Mayegun (President, National Association of Nigerian Students) were arrested and rendered incommunicado in defiance of a Lagos High Court order. They were finally arraigned before a Magistrate Court charged with conspiracy to commit treasonable felony. Also, Sylvester Odion-Akhaine (General Secretary of Campaign for Democracy), Dr. Olatunji Abayomi (Chairman, Human Rights Africa), Abdul Oroh (Executive Director, CLO) and Chima Ubani (General Secretary, Democratic Alternative were arrested in August, 1995 and released in June, 1996. Furthermore, Chris Anyanwu and Kunle Ajibade were convicted for publishing information about lack of evidence of a coup plot for which some Nigerians were convicted. See Amnesty International Report on Nigeria 1993 - 1996

¹⁹ State Security (Detention of Persons) Decree No. 2 of 1984 which allowed state security agents to arrest and detain without charges, individuals suspected to be a threat to state security and economic wellbeing. It prohibits any law suit against anybody or anything done in pursuance of the Decree and further ousted the jurisdiction of the court to hear any matter in relation to the Decree; Public Order Act of 1979 which requires persons to obtain permission from the police before holding any rallies and meetings; State Security (Detention of Persons Amendment) Decree No. 2 of 1994 which barred the courts from ordering the state to produce detainees in court; Association of Individuals (Dissolution and Proscription) Decree No. 21 of 1992; Newspaper Registration Decree No. 43 of 1993 and Offensive Publications Decree No. 35 1995; for a detailed list of such Decrees, see Committee for the Defence of Human rights' Annual Report on the Human Rights Situation in Nigeria, 1999.

result, more exertions are still required in this direction. Beyond laws, there ought to exist the “political will” to protect by the state. A regime that creates and upholds a culture of impunity with no regard for the rule of law is incapable of guaranteeing the protection of anyone, not even rights defenders. There can be no meaningful existence or dignity of the person if citizens cannot assert or demand the enforcement and enjoyment of their human rights. Whatever the laws and however well crafted they may be, failure of the ruling class to submit to laws and obey judicial pronouncements, undermines protection of rights defenders.

This research work seeks to evaluate and determine the adequacy of the normative framework, effectiveness and accessibility of the institutional mechanisms in place for the protection of defenders in Nigeria; to answer the questions: whether the right to defend human rights is a creation of law and whether human rights defenders have a role to play in fostering their protection; and also the role and effectiveness of the efforts of the international community in the protection of human rights defenders in Nigeria.

D. BACKGROUND OF CASE STUDY

Nigeria gained freedom from British colonial rule in 1960. The year 1999 marked Nigeria’s transition to civilian rule. From 1960 to 1999, the military ruled for a period of twenty eight years. Prior to the amalgamation of 1914, what is referred to as Nigeria today was home to peoples with different traditions, cultural, economic and social development- fishing kingdom of the Niger Delta area, Yoruba Kingdom in the west, the Igbo communities in the east, Hausa-Fulani in the north and the Tiv and other minority peoples around the confluence of the Niger and Benue Rivers.²⁰ Nigeria under Britain was not free from human rights violation- apartheid was established creating a discriminatory divide between the whites and blacks (Nigerians.)²¹

²⁰ Sowaribi Tolofari, “Exploration and Instability in Nigeria.” Wordsmithes Printing and Packaging Ltd. Lagos. P. 2

²¹ Hospitals, clubs, post office and church were divided along colour and race. See Kayode Eso, supra note 6 at 276

In response to the obvious human rights issues, the country's elite²² who returned from overseas began and encouraged agitation against their British masters, asserting the rights of the Nigerian people to freedom from discrimination.

Concerned with the sustenance of its grip on Nigeria, the colonialists enacted laws targeted at the rights defenders to repress them.²³ There was no guaranteed protection for the defenders of human rights under the Nigerian colonial rule as human rights did not form part of the civilising mission of the colonial master whose rule was characterised by absolutism and arbitrariness.²⁴ The hostility characteristic of the colonial era, featured throughout military rule in Nigeria. As aptly put by Kayode Eso²⁵ "It is no longer debatable that military rule and human rights are strange bed fellows. Indeed, the experience of Nigeria has shown that military rule and human rights are antithetical."

The emergence of democracy in 1999, in principle presented rights defenders with a conducive environment to operate in, as a result of the absence of restrictive laws and the dictatorial nature of the military regime.²⁶ In spite of the human rights laws, rights defenders are still under attack owing to the institutionalised culture of impunity in the country- impunity is the law.²⁷ Rights defenders under democratic dispensation in Nigeria still operate in a dangerous and life threatening environment.²⁸ There is no difference between the attitude of the government towards rights defenders under the military and the democratic rule.²⁹

²²Nnamdi Azikiwe, Obafemi Awolowo, Herbert Macaulay, Hezekiah Oladipo Davis and a host of others. See *ibid* at 277

²³ Deposed Chiefs Removal Ordinance, No. 9 of 1925; Commission of Enquiry Ordinance No. 1 of 1940; Criminal Code Sedition, Undesirable Publications and unlawful Possession (Amendment) Ordinance No. 26 of 1942.

²⁴Kayode Eso, *supra* note 6 at 275

²⁵ *Ibid.* at 293

²⁶ Interview with Femi Falana, (A lawyer and front-line rights defender in Nigeria) on June 24, 2013, Lagos, Nigeria

²⁷ *Ibid.* Also, interview with Olisa Agbakoba (President, Human Rights Law Services- HURILAWS) on June 26, 2013, Lagos, Nigeria

²⁸ Phone Interview with Emeka Umeagbalasi (Chairman of the Board, International Society for Civil Liberties and The Rule of Law)- July 2, 2013

²⁹ Interview, *supra* note 15

The socio-political environment in Nigeria is not sufficiently clement or conducive to a meaningful human rights regime. Often, government exhibits regrettable autocratic tendencies and erects a culture of impunity by regular disobedience to court orders. The result is that those who have the material means to seek legal redress are often left with no remedy.³⁰

I. WHAT IS HUMAN RIGHTS DEFENSE?

Before the adoption of the Universal Declaration on Human Rights Defenders, activities aimed at promoting human rights were referred to as human rights activism.³¹ Therefore, in order to define human rights defense, there is need for us to understand the meaning of activism. Below are some of the definitions of activism:

“The doctrine or practice of vigorous action or involvement as a means of achieving political or other goals, sometimes by demonstration, protests et cetera”³²

“Activism consists of efforts to promote, impede, or direct social, political, economic or environmental change”³³

From the definitions above, it is deducible that activism involves taking purposeful action (s). Human rights activism may thus be defined as a systematic, organized, deliberate and sometimes spontaneous action (s) undertaken to promote, protect and prevent the violation of human rights and to ensure redress in event of violation.

³⁰ Jacob Abiodun Dada, “Impediments to Human Rights Protection in Nigeria” 18 Ann. Surv. Int’l & Comp. L. 67, 2012. P.70

³¹United Nations, “Human Rights Defenders: Defending the Right to Defend Human Rights.” Factsheet No. 29, p.2

³² Dictionary.com, <http://dictionary.reference.com/browse/activism>. (Last accessed on December 12, 2012.)

³³ <http://en Wikipedia.org/wiki/Activism>. (Last accessed on December 12, 2012.)

The aim of human rights defense is to ensure that rights holders' access and enjoy their rights. One may wonder why intellectual as well as physical effort is exerted in a bid to promote respect for human rights. Defense of human rights is a response to reluctance on the part of duty bearers (both the state and private citizens) to fulfil their responsibility to respect, protect and fulfil human rights, as the case may be. In view of this, rights holders or their representatives are prompted to engage in activities (legal actions, demonstrations, advocacy and others) targeted at those whose responsibility it is to promote and protect human rights.

II. WHO IS A HUMAN RIGHTS DEFENDER?

Laurie Wiseberg³⁴ defined a human rights defender as an individual who has made a major commitment to, and openly taken up the defense and promotion of the human rights of others. This attempt at the definition of a defender captures the substance of what defenders do but is rather restrictive in that it limits a defender to individuals. There are human rights organisations across the globe,³⁵ some with national mandate and others whose geographical sphere of operation is extended beyond national boundaries.

Nevertheless, a rights defender may be defined as any natural person (working individually or with others) or a person in law (working alone or in concert with others) who acts individually or with others to promote rights. Human rights defense can be undertaken professionally in which case it is systematic and institutionalized. This deliberate and systematic approach is mostly employed by NGOs and other human rights groups. That is not to say that there may not be individuals whose career is human rights defense.

³⁴ "Protecting Human Rights Activists and NGOs: What More Can Be Done? 13 Human Rights Quarterly (1991), 526

³⁵ Amnesty International, Freedom House, Human Rights Watch, Civil Liberties Organisation, Constitutional Rights Project, and Committee for the Defense of Human Rights and Others.

Rights defenders employ advocacy tools, rights awareness creation, representation of victims in court, investigation, monitoring and reporting. They criticize anti-human rights actions and repressive policies of the state. Their motivation is the establishment of governments that respect, in law and practice, human rights and fundamental freedoms.³⁶ Their work covers summary executions, torture, arbitrary arrest and detention, female genital mutilation, discrimination, employment issues, forced evictions, access to health care and toxic waste and its impact on the environment. Defenders are also active in support of human rights as diverse as the rights to life, to food and water, to the highest attainable standard of health, to adequate housing, to a name and a nationality, to education, to freedom of movement and to non-discrimination; they also work to ensure respect for women's and children's rights.³⁷ Today, their role is more crucial than ever; their action in improving human rights contributes in a most significant way to enhancing security and stability whilst their fight for more democracy contributes to the promotion of the rule of law.³⁸

It is beyond dispute that human rights defenders put their lives on the line to protect the rights of others. They criticize and condemn the state; publicize state's anti-human rights activities; file suits against the state and its agents; press for enactment of laws and repeal of extant obnoxious laws. For all of these, they pay a high price of death, disappearances, threat to their families, invasion of their homes, intimidation, arrests/ detention and politically motivated charges.

Furthermore, the current war against terrorism has intensified repression of human rights defenders, exacerbating the already inimical environment in which defenders operate. States in

³⁶Emmanouil Athanasiou, "The Human Rights Defenders at the Crossroads of the New Century: Fighting for Freedom and Security in the OSCE Area". 16 Helsinki Monitor (2005) p. 18

³⁷ UN, supra note 31, p. 2-5

³⁸Op. cit, at.14

the guise of the said war and protection of national security and sovereignty stifle the activities of human rights defenders.³⁹ Today, defenders face greater risks and challenges calling for deliberate measures for their protection.

The absence of protection for human rights defenders engenders chaos and insecurity. Moreover, when a rights defender is attacked, the whole community in which he or she lives and works becomes more vulnerable to human-rights abuses. Consequently, protecting rights defenders not only serves to protect these individuals and their rights, but also strengthens the whole human rights movement, from the local to the international level.⁴⁰ The brutality and inhumanity suffered by human rights defenders is a negation of the rule of law; it is antithetical to their right to defend, and is inconsistent with states' obligations.

I.III. IS THE RIGHT TO DEFEND A CREATION OF LAW?

This section seeks to answer the overriding question whether individuals and groups derive their right to defend human rights from the law and also clarify the relationship between rights defenders and those whose rights they defend, particularly as it relates to the extent of the former's action.

The UN General Assembly on the eve of the 50th anniversary of the UDHR adopted a Declaration which by its Article 1 confers on everyone the right to strive for the promotion and protection of human rights.⁴¹ That was the first attempt at legislating on protection for human rights defenders and the right to promote and protect human rights. For a better

³⁹Ibid. at 32

⁴⁰ Hassan Shire Sheikh, James Torh and Peter Penz, "Human-Rights Defenders in need of Defense: A field report on the protection and effectiveness of human-rights defenders in West and East Africa and the Horn" p.7

⁴¹Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" (Universal Declaration on Human Rights Defenders- to be referred to as DHRDs) 1998.

appreciation of the said effort by the UN, it will be helpful to reproduce some of the provisions here.

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 9 (5)

The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

The DHRD is clear and specific in its provisions. Arguably, this is an expression of commitment by member states of the United Nations to support human right defenders in their work. It incorporates fundamental human rights norms such as freedom of expression, freedom of association and peaceful assembly, freedom from torture, inhuman and degrading treatment enshrined in the existing international and national human rights instruments.⁴² It further provides for:

- The right of every right holder to assert their right and demand enforcement thereof.

⁴² Universal Declaration of Human Rights 1948 (to be referred to as UDHR); International Convention on Civil and Political Rights 1966 (to be referred to as ICCPR); International Convention on Economic, Social and Cultural Rights 1966 (ICESCR). Nigerian Constitution, *supra* note 5; African Charter on Human and Peoples' Rights 1981 (to be referred to as ACHPR) and a host of others.

- The responsibility of the state to protect right holders in pursuit of promotion and enforcement of human rights even when against the state.

The declaration gives the impression of having created a right. On the contrary, it is a reaffirmation of the fundamental rights of rights holders (of which defenders are part) to demand enforcement of their rights. It is not a novel creation of right. This is because the right to defend and fight for human rights is a natural consequence of the inherence of those rights in man. For instance, one does not need a piece of legislation to confer a right on one to protect and prevent someone else from taking what is theirs. The right to protect my beautiful dress comes with my ownership of same. However, legislating human rights, makes their enforcement possible. The declaration therefore, through codification of the right to defend ensures its predictability and immutability. More so, a right presupposes a corresponding duty. Duty bearers are therefore under obligation to ensure that rights holders enjoy their rights without inhibitions. But where duty bearers fail to discharge their responsibility, right holders expectedly demand positive action from them. HRDs only engage in human rights work in the exercise of their fundamental rights. The right to defend is therefore not a creation of law.

Furthermore, some rights-holders lack the standing, financial strength, awareness and intellectual capacity to bring their grievances forward. Children for example, do not have the “right” to sue. There is a service available to them: they may sue through their “next friend” (usually a parent). But what if that person refuses to assist, or is the alleged duty bearer? Ordinarily, *locus standi* permits the person who is, or is likely to be personally affected by alleged violation of right to sue in respect thereof. However, this doctrine engenders restriction with regard to the defence of the right of a third party. Therefore, it has given rise to the policy behind public interest litigations which lies at the heart of the effort toward expanding the scope of the doctrine of *locus standi* in the human rights field.

Public interest litigation is defined as an action instituted by an individual or social group for the enforcement of the constitutional or legal rights of the general public or of an identifiable class of persons, within the domain of public law⁴³ *Hussainara Khatoon and Ors. V. Home Secretary, State of Bihar*, one of the first cases in India on public interest litigation, arose out of two newspaper publications highlighting the plight of pre-trial prisoners languishing in jail in the state of Bihar for no reason other than their inability to furnish the money demanded for release on bail. This led a lawyer to petition for habeas corpus. The court ordered the release of over 40,000 pre-trial prisoners on personal bonds and in some cases, no bond at all.⁴⁴

In the Nigerian case of *Fawehinmi V. Halilu Akilu*⁴⁵ the Supreme Court, holding that the appellant had *locus standi* made the following observation:

“My humble view, and this court should accept it as such, is that the present decision of my learned brother, Obaseki JSC, in this appeal has gone beyond the Abraham Adesanya’s case... In view of my learned brother Obaseki, which I fully share with respect, that (it is the universal concept that all human beings are brothers and assets to one another). He applies this to ground *locus standi*! That we are all brothers is more so in this country where the socio-cultural concept of family and extended family transcend all barriers. Is it not right then for the court to take note of the concept of the loose use of the word brother in this country?”⁴⁶

⁴³AIR. (1979), SC. 1360. Cited in Venkat Iyer, “Democracy, Human Rights and The Rule of Law: Essays in honour of Nani Palkhivala” Butterworths India, New Delhi, 2000. P. 131

⁴⁴ Ibid. at 150

⁴⁵ (1987) 4 NWLR (Pt. 67) 797 at 847 wherein a legal practitioner, friend and legal adviser of the deceased who was killed by a parcel bomb filed an application in the High Court for leave to apply for an order of mandamus to compel the DPP to decide whether or not he will prosecute the accused persons.

⁴⁶ Ibid. Per Kayode Eso

The above attitude has gained legislative imprimatur in the Fundamental Rights (Enforcement Procedure) Rules, 2009⁴⁷ made pursuant to the constitution of the Federal Republic of Nigeria, 1999, which provides thus:

“The court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates or groups as well as any non-governmental organisations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:

- (i) Anyone acting in his own interest;
- (ii) Anyone acting on behalf of another person;
- (iii) Anyone acting as a member of, or in the interest of a group or class of persons;
- (iv) Anyone acting in the public interest, and
- (v) Association acting in the interest of its members or other individuals or groups.”

On the strength of FREPR, there is no restriction on right defenders to strive for the promotion and protection of the fundamental rights of others.

II. THE RULE OF LAW AND HUMAN RIGHTS DEFENSE

Here the paper focuses on the relationship between the rule of law and human rights defense, if any. Is the rule of law the panacea for respect for human rights and protection for defenders? Is there more to protection of defenders than the rule of law? Having touched human rights

⁴⁷ See Preamble 3 (e)

defense in the preceding section, a definitional background of the rule of law will herald discussion for this section.

The concept of rule of law is susceptible to varied interpretations and usages. Different legal traditions and cultural convictions have divergent views of what rule of law is.⁴⁸ The definitional challenge of rule of law potentially breeds conflict and lack of cohesion of purpose as different people employ it to serve various concerns be they pro-human rights or otherwise. Rule of law however, does not enjoy a monopoly on susceptibility to multiple meanings. Law and a host of other concepts are also open to multiplicity of definitions. On law, there is the realist school of thought just as there are the natural and positivist schools. Yet, law is not without a definition neither is it stripped of substance. Rule of law in the midst of the multiple lenses by which it is viewed, has features that make it recognisable. It is described and defined thus:

“A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”⁴⁹

⁴⁸Berta Esperanza Hernandez-Truyol, “Panel V. Human Rights Commitments in the Americas: From the Global to the Local” 16 Florida Journal of International Law (2004) p. 168

⁴⁹See Report of the UN Secretary-General: The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies” (2004)

The contemporary conception of the rule of law owes its root to the work of the English Professor of law, A. V Dicey,⁵⁰ who espoused the concept thus:

“We mean, in the first place, that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the land.... We mean in the second place,. . . not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals”

Obviously, from the work of Dicey and the definition by the United Nations, certain characteristics of the rule of law (which have been severally highlighted by existing literature⁵¹) are notable- supremacy of the law; equality of everyone (including the state) before the law; absence of arbitrariness; power of the court to determine issues based on the law; general applicability of the law; predictability of the law; participation of citizens in decision making. Rule of law implies that the conduct of citizens and the state alike should be shaped by the law. It prevents arbitrary and capricious behaviour particularly on the part of those to whom power is entrusted; it requires that state actions are consistent with legal provisions- legal rules predominate over personal discretion and influence in the exercise of power. Equality before the law and the predictability of law demand that there is no room for favouritism and double standard- there is fair and equal enjoyment of the law as well as punishment in event of contravention of the law- the state should obey the laws and be equally subjected to court orders

⁵⁰ “Introduction to the Study of the Law of the Constitution” 179, 185 (5th ed., 1897), quoted in Berta Esperanza Hernandez-Truyol, *supra* note 48 at 169.

⁵¹ Tom Bingham, ‘The Rule of Law’ Penguin Books (2011), p. 8; Berta Esperanza Hernandez-Truyol, *supra* note 48; Valentine B. Ashi, *supra* note 4,

and pronouncements. Rule of law ensures that citizens are not mere spectators but active participants in the governance and affairs of their countries.⁵²

Justice Robert Jackson before the International Military Tribunal⁵³ favoured the rule of law when he advocated that the law (when set out to punish offenders) should not be applied against the lowly alone.

The Supreme Court of Nigeria had this to say:

“The Nigerian Constitution is founded on the rule of law the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the framework of recognised rules and principles which restrict discretionary power”⁵⁴

The rule of law presupposes:

- That the state is subject to law;
- That the judiciary is a necessary agency of the rule of law;
- That government should respect the legal rights of individual citizens.⁵⁵

Having established the basic tenets of the rule of law, what is its role in the protection of human rights defenders in Nigeria? In the first section of this paper, we showed that the right to strive for the promotion and protection of human rights is not a creation of law- it is a fundamental right imbedded in those rights. The right to life; right to freedom from torture, degrading or inhuman treatment; right to personal liberty; freedom of expression; freedom of information;

⁵²Valentine B. Ashi, *supra* note 4, at 43-47

⁵³Justice Robert Jackson, Chief Counsel for the United States, in his opening statement before the International Military Tribunal in Nuremberg, Germany, Nov. 21, 1945, posited that “The common sense of mankind demands that law shall not stop with the punishment of the petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched” See Part II Rule of Law in History

⁵⁴ Per Kayode Eso (Justice Supreme Court), *Governor of Lagos State V Emeka Odumegwu Ojukwu* (1986) 1 NWRL, 499, 325 cited in Valentine B. Ashi, *supra* note 4, at 40

⁵⁵ See *Military Governor of Lagos State & Ors V Chief Emeka Odumegwu Ojukwu & Anor* (1986) All NLR, 233

right to freedom of association and peaceful assembly; right to participate in the government of one's country are essential to the work of rights defenders.

These fundamental rights are enshrined in the Nigerian constitution⁵⁶ to accord them immutability⁵⁷ thereby strengthening defenders' enjoyment of same. Any restrictions on the right of defenders to express themselves, seek and disseminate information, assemble and associate with others and to enjoy the peace and privacy of their homes is anti- human rights. Rule of law lays a responsibility on the state to facilitate citizen's (HRDs) enjoyment of their legal rights.⁵⁸ This means that the state should not be an obstacle to defenders in expressing their views on human rights situations in the country; the state should not disrupt peaceful gatherings of defenders designed to effect a shift in governance and conduct of the state; the state is legally prohibited from arrest and detention of defenders without a just cause; the state contravenes the law when it harasses, intimidates and/or kills the rights defender who is simply exercising their human rights.

The foundation of human rights defenders' operation in Nigeria is predicated on their inalienable right to defend and the tools legally provided by the constitution. However, the degree of success to be achieved by defenders is determinable by the observance of the rule of law. The potency of the rule of law lies not in what is said or written but what is practiced. The rule of law has the potential to ensure the protection of rights defenders, and when upheld, does protect them.

Furthermore, a fundamental concern here is how the rule of law protects rights defenders when extant laws are anti-human rights. When states enact such laws and uphold them, will it still amount to observance of the rule of law? Professor Raz, once espoused that "A non- democratic legal system, based on the denial of human rights , on extensive poverty, on racial segregation,

⁵⁶ Sections 33, 34, 35, 39 & 40 of the Constitution, supra note 5

⁵⁷See Kayode Eso, supra note 5

⁵⁸See Supreme Court of Nigeria, in Military Governor of Lagos State, supra note 53

sexual inequalities and religious persecution may, in principle, conform to the requirements of the rule of law better than any of the legal systems of the more enlightened western democracies... It will be an immeasurably worse legal system, but it will excel in one respect: in its conformity to the rule of law... The law may ...institute slavery without violating the rule of law.”⁵⁹

This paper argues that states cannot in the guise of rule of law enact or implement oppressive and anti- human rights laws. Rule of law does not imply anti-human rights law within its meaning and scope. The essence of the law is to serve the good of the society and guarantee citizens’ enjoyment of their fundamental rights. It is against the spirit of the rule of law for political regimes to, in the pretence of adherence to the law, perpetuate evil against the people. It jeopardises the protection which the rule of law offers rights defenders.

More so, Tom Bingham, argued that while the logic of Professor Raz’s view is obvious, it defeats a “thick” definition of the rule of law which embraces the protection of human rights within its scope. According to him, “A state which savagely represses or persecutes sections of its people cannot in my view be regarded as observing the rule of law... So to hold would, I think, be to strip the existing constitutional principle of the rule of law affirmed by ... and widely recognised in the laws of other countries around the world, of much of its virtue.”⁶⁰

III. MECHANISMS FOR PROTECTION

III.I NORMATIVE FRAMEWORK

In Nigeria, there is no specific legislation dedicated to human rights defenders or expressly providing for the right to defend and the state’s responsibility to protect defenders in the course

⁵⁹J. Raz, “The Rule of Law and Its Virtue”, in Raz, *The Authority of Law: Essays on Law and Morality* (Oxford University Press, 1979), pp. 211, 221, quoted in Tom Bingham, *supra* note 51 at 66

⁶⁰Tom Bingham, *supra* note 51 at 67

of their human rights work. Rights defenders rely on the 1999 Nigerian Constitution, ACHPR and the relevant international human rights instruments.⁶¹

Human rights are guaranteed in Chapter Four (4) of the 1999 Constitution. The constitution among others, provides for the right to life,⁶² respect for the dignity of human person⁶³ - which prohibits torture, inhuman and degrading treatment, right to personal liberty⁶⁴ which protects citizens from arbitrary arrest and detention, right to fair trial by a court or tribunal constituted in a manner that ensures its independence and impartiality,⁶⁵ right to freedom of expression and opinion,⁶⁶ and the freedom of peaceful assembly and association.⁶⁷

Moreover, in a bid supposedly to strengthen its human rights commitment, Nigeria has ratified other instruments⁶⁸ relevant to the activities and protection of rights defenders. In the absence of a law modelled after the DHRD, can it reasonably be argued that there is no law guaranteeing protection for the rights defenders in Nigeria?

This paper argues that the above provisions are not only avowing of human rights and fundamental freedoms but are also a guarantee of protection for rights defenders. The rights to freedom of expression and opinion; peaceful assembly and association are indispensable tools used by rights defenders. The rights to life; liberty and security of person and freedom from torture are a foundation of safety for defenders. Human rights defenders are shielded by these provisions which simultaneously found their activities. The law that provides for freedom of

⁶¹ Interview, supra note 15

⁶² See S. 33 of the Constitution, supra note 5

⁶³ Ibid. S. 34

⁶⁴ Ibid. S. 35

⁶⁵ Ibid. S. 36

⁶⁶ Ibid. S. 39

⁶⁷ Ibid. S. 40

⁶⁸ Articles 3, 5, 9, 10 & 11, 19 and 20 of the UDHR; Articles 6, 7, 9, 19, 21 & 22 of the ICCPR; Articles 4, 5, 6, 7, 9, 10 & 11 of ACHPR provide for the fundamental right to life; freedom from torture, inhuman and degrading treatment; right to personal liberty- prohibiting arbitrary arrest and detention; right to fair trial within reasonable time and before a competent, independent and impartial judiciary; freedom of expression and information; freedom of association and peaceful assembly

expression automatically prohibits any act or conduct which seeks to prevent individuals from exercising such a right.

The drafters of the laws are not blind to the possibilities of the violation of the right to defend. Consequently, provision is made for a fair and just determination of allegations of violations of the rights of defenders. Unless there is a legislation or policy antithetical to the laws cited, protection for defenders is embedded in them. Where there are such contravening laws, their inconsistency with the Constitution (supreme law of the land) renders them void.⁶⁹

For instance, under the military in Nigeria, protection for rights defenders was sometimes either abridged or non-existent.⁷⁰ Rights defenders operated in a hostile and difficult environment with high risks.⁷¹ The Military suspended or modified the constitution and promulgated decrees on the strength of which they repressed activism, criticism and opposition in any form.⁷²

Ideally, a democratic dispensation offers rights defenders a congenial atmosphere to work. Restrictive laws that are common under military regimes are at odds with democracy. Whether the civilian rule in Nigeria is free of such draconian laws and defenders are protected and free to operate, this section sets out to determine.

In 1999, Nigerians celebrated the emergence of democratic dispensation to their great relief from grave violations of human rights and oppression of rights defenders. In spite of the constitutional provisions on human rights (which this paper argues can offer adequate protection to rights defenders if upheld by the government) and Nigeria's proliferated ratification of international instruments, rights defenders still face attacks and intimidation.⁷³

⁶⁹See Sec. 1 (3) of the Constitution, supra note 5

⁷⁰Femi Falana, "Fundamental Rights Enforcement in Nigeria" (2nd ed.) 2010, Legaltex Publishing Co. Ltd. Lagos

⁷¹Interview, supra note 26

⁷²Committee for the Defense of Human Rights, Supra note 19

⁷³Interview, supra note 15- on June 10, 2013, Comrade Declan Ihekire (The Executive Director of Concerned Human Rights Nigeria) scheduled a press conference, but was interrupted as the Police invaded his home in the morning of the same day. See also Civil Liberties Organisation Publication, "Clear and Present Danger-The State of Human Rights and Governance" 2004 p. 141-142 - Citizens Forum (a coalition of human rights and Pro-democracy organisations) organised a rally on May 15, 2004 to register its disapproval of human rights violations and erosion of electoral integrity under President Obasanjo's government. The rally was dispersed by

The police still invoke the POA to oppress rights defenders and infringe on their fundamental freedom (to associate and assemble peacefully) provided by the constitution. Some key sections of the Act provide as follows:

S.1 (1), for the purpose of the proper and peaceful conduct of the public assemblies, meetings and processions and subject to section 11 of this Act, the Governor of each state is hereby empowered to direct the conduct of all assemblies, meetings and processions on the public roads or places of public resort in the state and prescribe the route by which and the times at which any procession may pass.

(2) Any person who is desirous of convening or collecting any assembly or meeting or of forming any procession in any public road or place of public resort shall, unless such assembly, meeting or procession is permitted by a general licence granted under subsection (3) of this section, first make application for a licence to the Governor not less than 48 hours thereto, and if such Governor is satisfied that the assembly, meeting or procession is not likely to cause a breach of the peace, he shall direct any superior police officer to issue a licence, not less than 24 hours thereto, specifying the name of the licence and defining the conditions on which the assembly, meeting or procession is permitted to take place; and if he is not so satisfied, he shall convey his refusal in like manner to the applicant within the time hereinbefore stipulated.

S. 2. Any police officer of the rank of inspector or above may stop any assembly, meeting or procession for which no licence has been issued or which violates any conditions of the licence issued under section 1 of this Act, and may order any such assembly, meeting or procession which has been prohibited or which violates any such conditions as aforesaid to disperse immediately.

the police (citing POA 1979) firing teargas at the people. Two of the organisers of the rally, late Gani Fawehinmi and Dr. Beko Ransome-Kuti collapsed under police attack and Joe Okei-Odumakin was hit in the chest with a gun butt. Prof. Wole Soyinka, late Gani Fawehinmi and Ayo Obe were arrested with others.

S.3. Any assembly, meeting or procession which-

(a) takes place without a licence issued under section 1 of this Act; or

(b) violates any condition of any licence granted under section 1 as aforementioned; or

(c) neglect to obey any order given under section 2 of this Act,

Shall be deemed to be an unlawful assembly, and all persons taking part in such assembly, meeting or procession, and in the case of assembly, meeting or procession for which no licence has been issued, all persons taking part in the convening, collecting or directing of the assembly, meeting or procession, shall be guilty of an offence and liable on conviction to a fine of N1, 000 or imprisonment for 6 months or to be both such fine and imprisonment.

S. 4. (1) Notwithstanding any licence granted under section 1 of this Act, if a superior police officer, having regard to the time or place at which and the circumstances in which any public assembly, meeting or procession is taking place or is intended to take place (and in the case of a public procession to the route taken or proposed to be taken by the procession), has reasonable ground for apprehending that the assembly or meeting or procession may occasion serious disorder, he may give directions imposing upon persons organising or taking part in the assembly or meeting or procession such conditions as appear to him necessary for the preservation of public order including, in the case of a public procession, conditions prescribing the route to be taken by the procession or conditions prohibiting the procession from entering any public place specified in the directions.

By S. 1 (4), the Governor is authorised to delegate his power to grant permit to the commissioner of police or any superior police officer. The decision of the commissioner of

police is appealable to the governor while that of the superior police officer is appealable to the commissioner of police.⁷⁴

Clearly, the tone of the above provisions of the POA reveals that citizens are not required to notify the police as a means of security check to ensure the safety of protesters. Rather, the Act makes the exercise of fundamental rights conditional on police' grant of permission to do so. Undoubtedly, the Act is a negation of the protection which the constitution affords rights defenders reducing fundamental rights to a mere privilege.

Despite the illegality of the POA, HRDs and pro-democracy activists do not easily obtain the said permission. According to Gbenga Gbenga, Counsellor, Women Arise for Change Initiative,⁷⁵ "The police are not accustomed to issuing the permit which by the Act is a condition precedent for such rallies; they do not reply to such applications. The grant or denial of the said permit is a question of whether or not the police disrupt the rally. When the permit is denied, rights defenders are reluctant to appeal because the denials are politically motivated." Chris Olakpe, the Police PRO had this to say:

"The Force ... is very conscious of the fundamental rights of the citizens as provided in the constitution, in the context of democracy, except that these rights are enveloped by the provisions of the Police Order Act, that a permit must be obtained from the commissioner of police before any such rally become legal"⁷⁶

The above statement shows the interpretation of the fundamental human rights by the Nigerian Police.

⁷⁴ S. 1 (5)

⁷⁵Interview, July 25, 2013, Lagos, Nigeria- In April, 2012, Shelter Watch, a human rights organisation sought permission to hold a rally in protest of non employment of Nigerian artisan by companies. The destination of the rally was Dangote Plc corporate office where they wanted to submit their petition against the company for employing mainly Chinese. The police failed to reply to the application, but on the day of the rally, prevented the protesters from realising their goal. Women Arise for Change Initiative from 2007 to 2010 in an effort to commemorate March 8, International Women's day, yearly applied for the permit to enable them hold rallies. The police neither replied to those applications nor allow them hold the rallies. They however have enjoyed relative support from the police since 2010.

⁷⁶See CLO publication, supra note 73

Contrary to the position of the Nigerian police on the POA, Nigerian courts (the Federal High Court and the Court of Appeal) in upholding the supremacy of the constitution and immutable nature of fundamental rights, held the Act unconstitutional for its inconsistency with constitutional provision on the right to freedom of association and peaceful assembly. In the words of the Court of Appeal, “The requirement of permit as a conditionality to holding meetings and rallies can no longer be justified in a democratic society... The Public Order Act should be promulgated to compliment the constitution in context and not to stifle or cripple it... It will not only be primitive but also retrogressive if Nigeria continues to require a pass to hold a rally”⁷⁷

The constitution has made adequate provision for the protection of rights defenders in Nigeria. Although some rights defenders argue that they are a special and vulnerable group like women and children and as such, should have a law which specifically protects them,⁷⁸ others share the view expressed in this paper that the extant Nigerian bill of rights is sufficient to protect rights defenders if only the state will submit to the principle of rule of law.⁷⁹ Protection for rights defenders is not a function of proliferation of laws, but discipline and commitment on the part of the state to abide by the law and judicial pronouncements.

In the same spirit, the U.N. High Commissioner for Human Rights has also observed:

“In general, I believe that we all agree that there is no shortage of international human rights standards. Nor, unfortunately, is there a shortage of situations demanding

⁷⁷See *IGP V ANPP* (2008) 12 WRN 65. In this case, the plaintiffs/respondents, registered political parties, on May 21, 2004, applied to the Inspector-General of Police for police permit to hold rallies to invest the rigging of the 2003 general elections. The request was refused by the police. On September 23, 2003, the plaintiffs/respondents held a rally which was violently disrupted by the police basing their action on possible occurrence of breach of the public peace. Some of the issues for consideration before the court were: 1. Whether the police permit or any authority is required for holding a rally or procession in any part of the Federal Republic of Nigeria. 2. Whether the provisions of the Public Order Act (Cap. 382) Laws of the Federation of Nigeria 1990 which prohibit the holding of rallies or processions without a police permit are not illegal and unconstitutional having regard to section 40 of the 1999 Constitution and article 11 of the ACHPR (Ratification and Enforcement) Act (Cap. 10) Laws of the Federation of Nigeria 1990.

⁷⁸Interview, supra note 15

⁷⁹Interview, supra note 26

improvement of respect for human rights. Our basic challenge is to implement human rights standards and make human rights meaningful in people's lives.”⁸⁰

In the democratic Nigeria, continued attack on rights defenders is engendered by flagrant disregard for the rule of law, unhealthy political practices and poor governance. Political offices are occupied by individuals with no vision and character, who lack understanding of politics and have no intention of getting involved in politics but are planted in offices through corruption.⁸¹ Describing Nigerian politics, Femi Falana stated thus:⁸²

“The politics of the country (Nigeria) remains largely violent, crude and personalised. It is not about service to the society but informed by a desperate move by the ruling class to maintain the status quo. Politics is fed on corruption and violence and sustained on violence, corrupt practices such as electoral malpractice. It throws up persons of questionable pedigree. During elections, campaigns run on ethnicity, religion and other primordial considerations; private and official thugs collude with security forces to subvert democracy. Sometimes, figures are simply announced as they rig elections and use state power and resources to fight their opposition.”

Nigeria’s scores in the World Justice Project Rule of Law Index ranking 2013 additionally support the argument that questionable political practices, poor governance and corruption militate against protection for HRDs. On a scale of 0-100, Nigeria performed as follows: Limited Government Power- 0.45, Absence of Corruption- 0.25, Order and Security- 0.47,

⁸⁰ George William Magwanya, “Realising Universal Human rights Norms through Regional Human Rights Mechanisms: Reinvigorating the African System.” 10 *Ind. Int’l & Comp. Law Review*, 35, 1999-2000. P. 40

⁸¹ Interview, supra note 28

⁸² Interview, supra note 26

Fundamental Rights- 0.45, Open Government- 0.35, Regulatory Enforcement- 0.42, Civil justice- 0.53, and Criminal Justice- 0.28. See worldjusticeproject.org/rule-of-law-index-data.

The Nigerian political landscape characterised by impunity sabotages the laws which offer protection to rights defenders. A regime that seizes power by a corrupt means will be opposed to criticism, and that is the case in Nigeria.

III.II INSTITUTIONAL FRAMEWORK

A. NATIONAL HUMAN RIGHTS COMMISSION

Effective protection of rights defenders and of course human rights is a function of several factors. Elaborate substantive and procedural human rights laws; implementation of international human rights obligations in domestic law; accessible and effective state institutions such as independent courts and national human rights institutions for individuals to obtain redress in event of violation; a lively human rights non-governmental organisation (NGO) community; a population with strong human rights culture; and states' willingness to adhere to human rights laws are some of the factors upon which protection of human rights and most importantly, rights defenders is founded.⁸³

National human rights institutions (NHRI) are bodies established by governments under their constitutions, or by-laws or decrees, to protect and promote human rights.⁸⁴ They are established by governments to aid in the promotion and protection of human rights within their respective jurisdictions, through, for example, handling complaints and conducting research,

⁸³Linda C. Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human rights Protection" 13 Harvard Human Rights Journal, 1 2000. P.3

⁸⁴ Webster Zambara, "Africa's National Human Rights Institutions and the Responsibility to Protect" 2 Global Resp. Protect 463, 2010. P. 463. Definition by the UN

advocacy, and educational programmes.⁸⁵ They also have the core responsibility to promote and ensure the protection of human rights through various activities as are determined by their powers and mandate conferred by national legislations.

By the recommendations from the first international workshop in Paris on national institutions, states are urged to establish independent national human rights institutions to promote human rights, advise governments on human rights protection, review human rights legislations to ensure their conformity with international standards, prepare human rights reports, and receive and investigate complaints from the general public.⁸⁶ The Paris Principles (adopted by the General Assembly)⁸⁷ provide the internationally recognised guidelines for the establishment and functions of NHRIs under five key headings as follows:

- The institution shall monitor any situation involving a violation of human rights that it decides to take up.
- It shall be able to advise the government, the parliament, or any other competent body on specific violations or issues related to legislation and its compliance with international human rights instruments, as well as implementation of these instruments.
- The institution shall relate to domestic, regional and international organisations.
- It shall have a mandate to educate and inform in the field of human rights.
- The institution may in some cases be granted quasi-judicial competence.⁸⁸

Commendably, Nigeria statutorily established the National Human Rights Commission 1995(the “Commission”).⁸⁹ Prior to the 2010 amendment to the Act, there was no statutory provision declaring the independence of the Commission and the Commission’s power in relation to investigation of human rights violation under the old Act was limited to making

⁸⁵ Ibid. Definition by the Network of African National Human Rights Institutions.

⁸⁶Ibid. at 464

⁸⁷ See Resolution A/RES/48/134 1993

⁸⁸Op. cit

⁸⁹ National Human Rights Commission (Amendment) Act 2010. The Parent Act was promulgated by the military in 1995.

recommendations to the president for prosecution or for any other action as it deemed fit.⁹⁰ Further, the fund of the commission was not charged on a consolidated fund and there was no fund established for its human rights activities. Upon the said amendment, the Commission is clothed with far reaching powers by the Act. The Commission in the exercise of its promotion and protection of human rights mandate, has the powers to: entertain and investigate complaints and determine appropriate damages and compensations according to the circumstances of each case; examine existing laws to ascertain their compliance with international human rights norms; promote an understanding of public discussions of human rights in Nigeria; institute civil actions in relation to human rights violation; refer any matter of human rights violation to the Attorney General for prosecution; to enter upon any land or premises to for purposes of obtaining evidence or information which in the opinion of the council is material for the functions of the Commission; to summon and interrogate any person, body or authority in respect of a human rights complaint; to compel the attendance of any person or authority so summoned, and to compel any person, body or authority who in its opinion is in possession of any information relevant to its investigation, and to furnish it with such information⁹¹ The awards and recommendations of the Commission are recognised and enforced by the court as decision of the High Court upon an application in writing to the court.⁹² It is an offence for any person or authority to refuse to comply with, obstruct, punish, harass or intimidate an officer of the Commission in his exercise of powers conferred by the Act.

The weight of powers that the Commission wields holds strong conviction regarding its capacity to protect rights defenders in Nigeria. This paper views the Commission not from the standpoint of its mandate and powers in principle, but from its effectiveness in protecting rights defenders.

⁹⁰National Human Rights Commission Act, 1995. Sec. 5 ©

⁹¹ Op. Cit Ss. 5 & 6 for details of The Commissions Powers and Functions.

⁹²Ibid S. 22(1) &(2)

A certain benchmark has been set to measure the effectiveness of national human rights institutions in compliance with Paris Principles. The International Council on Human Rights Policy (ICHRP) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) established eight benchmarks and indicators defined as minimum attributes required of a national institutions in the area of legal foundation, mandate, funding, membership. The indicators are independence, establishment by law, appointment procedure, criteria for membership, composition of membership, professional skills and knowledge of human rights, relations with civil society, and accessibility.⁹³

The Commission is in compliance with the benchmarks. S. 1(1) & (2) of the Act establishes the Commission; S. 2 (3) (b) provides for the appointment of the council members by the president subject to confirmation by the senate; on the criteria for membership, S. 2 (3) (a) requires that council members are persons with proven integrity; S. 2 (2) (a)-(h) enumerates the different categories to be represented in the council- a retired justice or judge of the Nigerian judiciary who shall be the chairman; representatives of the human rights organisations, Nigerian Bar Association, women, print and electronic media, organised labour and Ministries of Justice, Foreign Affairs and Internal Affairs.

The Commission in the exercise of its function and powers under the Act shall not be subject to the direction or control of any other authority or person.⁹⁴ Ensuring the consolidation of the Commission's independence, members of the council are appointed for four years in the first instance and are eligible to be re-appointed for another four years.⁹⁵ The Executive Secretary, saddled with the responsibility of the Commission's daily operation is appointed for five years in the first instance.⁹⁶ Removal from office of a council member during the statutorily

⁹³ 2005 report, "Assessing the Effectiveness of National Human Rights Institutions" See Webster Zambara, *supra* note 83 at 472

⁹⁴ See the Act, *supra* note 89, S. 6 (3)

⁹⁵ *Ibid.* S. 3 (1)

⁹⁶ *Ibid.* S. 7 (2)

guaranteed duration can only be invoked by the President subject to confirmation by a simple majority of the senate in a circumstance where the member:

- Becomes of unsound mind
- Becomes bankrupt or makes compromise with his creditors
- Is convicted of a felony or any offence involving dishonesty
- Is guilty of serious misconduct in relation to his duties⁹⁷

More so, the fund of the Commission is charged on the consolidated fund of the federation⁹⁸, which by implication is an index of independence. By its nature, it frees the Commission from possible political influence, whims and capricious conduct of the government.

The 2010 amendment represents a marked improvement on the parent Act. In conformity with Paris Principles and the call for the promotion and protection of human rights which includes protection for defenders, the Commission, by the amendment to the Act, wields broad and result oriented powers.

Rights defenders attest to the cordial and beneficial relationship they have with the Commission. The current chairman and other members of the Commission are leading members of the human rights community who have built a link between rights defenders and the Commission.⁹⁹

B. THE COURT

HRDs in Nigeria operate in an environment with adequate judicial protection. The 1999 Nigerian Constitution has established the various courts in operation in the country.¹⁰⁰ Judicial

⁹⁷Ibid. S. 4 (1) (a)- (d)

⁹⁸Ibid. S. 12 (2)

⁹⁹ Interviews, supra notes 26 and 27

¹⁰⁰ see Ss. 230- 292 for detailed information on the establishment, functions and mandate of the courts; the appointment and removal of judicial officers of the Supreme Court, court of appeal, federal high court, high court of the FCT, Shari 'a court of appeal of the Federal Capital Territory (FCT), Customary court of appeal of the FCT, state high court.

powers are vested in the courts established by the constitution or as may be established at any time by the national assembly.¹⁰¹ By S. 46 (1) of the constitution, anyone who alleges that any of his fundamental rights has been, is being or likely to be contravened in any state has the legal right to apply to a High Court in that state for a redress. Pursuant to this provision, the High Court has original jurisdiction to entertain such allegations and may make such order, issue such writ and give such direction as it may consider appropriate to ensure the enforcement of the fundamental right allegedly violated.

In furtherance of the powers of the High Court to determine issues bordering on human rights infringement, the Chief Justice of Nigeria has the powers to make rules regarding the practice and procedure of the court.¹⁰² An application for enforcement of fundamental human rights shall be fixed for hearing within 7 days from the filing date of the application.¹⁰³ In *Commissioner of Police Vs. Alhaji Mojeed Agbaje*, the Court of Appeal (Ademola J.C.A) said:

“In this connection, we note with great satisfaction and approval, the expeditious and swift manner in which the matter was dealt with by the learned judge, Aguda J.... Any unnecessary delay in hearing and determining applications of this nature defeats the very end of justice”¹⁰⁴

Worthy of note also is the immunity with which an application for enforcement of fundamental rights is clothed. Such applications are not subject to any limitation statute. They can be made at any time irrespective of the time of the alleged violation.¹⁰⁵

By the Rules, the court is required to encourage and welcome public interest litigations in the human rights field. No human rights case may be dismissed or struck out for want of *locus*

¹⁰¹Ibid S. 6

¹⁰² Ibid. S. 46 (3)

¹⁰³Or. 4 R.1 of the Fundamental Rights (Enforcement Procedure) Rules, supra note 47

¹⁰⁴(1969) 1 NMLR 176 quoted in Femi Falana, supra note 70

¹⁰⁵Op. cit. Or.3

standi. An applicant for the enforcement of fundamental rights has been given a wider definition to include:

- Anyone acting in his own interest;
- Anyone acting on behalf of another person;
- Anyone acting as a member of, or in the interest of a group or class of persons;
- Anyone acting in the public interest, and
- Association acting in the interest of its members or other individuals or groups.¹⁰⁶

By this, human rights activists, advocates or groups as well as any non-governmental organisation may institute human rights application on behalf of any potential applicant.

With the powers conferred on the courts by the constitution and the rules of practice and procedure, the courts are empowered to protect rights defenders. According to Femi Falana, “The courts have always been there for us. Even under the military junta which ousted the jurisdiction of the court, the brave ones were able to stand up for rights defenders.”¹⁰⁷ The court has demonstrated preparedness to protect rights defenders against anti-human rights laws.¹⁰⁸

The POA employed by the police to harass demonstrators has been pronounced unconstitutional by the Court of Appeal when it stated:

“The right to demonstrate and the right to protest on matters of public concern are rights which are individual rights as well as rights in the public interest and which should be exercised without impediment as long as no wrongful act is done... The Public Order Act relating to issuance of police permit cannot be used as a camouflage to stifle the citizens’ fundamental rights in the cause of maintaining law and order... The Public Order Act imposes limitations on the right to assemble freely and associate with others, which right is guaranteed

¹⁰⁶See the preamble to the Fundamental Rights Rules, *supra* note 47.

¹⁰⁷See interview, *supra* note 26

¹⁰⁸ *Fawehinmi V Abacha* (1996) 5 NWLR (PT 446) 198. See also *Director, State Security Service V Olisa Agbakoba* (1999) 3 NWLR (PT 595) 314.

under section 40 of the 1999 constitution, as well as leaves unfettered the discretion on the whims of certain officials including the police. The Public Order Act so far as it limits the freedom of expression and assembly is an aberration to a democratic society; it is inconsistent with the provisions of the 1999 constitution”¹⁰⁹

On the strength of the Court of Appeal ruling, the POA ceases to have the force of law. Judicial authorities and the testimony of rights defenders in Nigeria show that the courts are inclined to uphold respect for human rights thereby contribute to the protection of rights defenders. However, further strengthening of the capacity of the judges on human rights norms and standards beyond national human rights instruments will result in a more optimal judicial performance in protection for rights defenders.¹¹⁰ Rights defenders also expressed disappointment and frustration over the impunity with which the state trample on court decisions as the police continue to harass, intimidate and attack rights defenders.¹¹¹

C. THE POLICE

The police force is one of the security institutions established under Nigerian laws.¹¹² It is employed for the prevention and detection of crime, apprehension of offenders, preservation of law and order, protection of law and property and due enforcement of all laws and regulations with which they are directly charged.¹¹³ For effective discharge of its duties, a police officer has the power to undertake certain actions some of which are:

- Power to arrest without warrant¹¹⁴

¹⁰⁹See IGP V ANPP, Supra note 77. The issue before the court for consideration was “whether the defendant is competent under the POA or any other law whatsoever to stop the holding of any assembly, meeting, procession or rally without permit or licence”

¹¹⁰ Interview, supra note 15

¹¹¹ Ibid. See also Interview, supra note 26

¹¹² Constitution, supra note 5, Section 214 (1); Section 3 Police Act 1967 (Cap P19) LFN, 2004

¹¹³ Ibid. S. 4, Police Act

¹¹⁴ Ibid. S. 24

- Power to arrest without warrant in possession¹¹⁵
- Power to search with the authority of a superior officer, any property or premises in search of a stolen property (as he would have done with a search warrant)¹¹⁶
- Power to detain and search suspected persons on the basis of reasonable suspicion¹¹⁷
- Power to investigate crime
- Power to grant bail to suspects pending the completion of investigation¹¹⁸

It will be absurd to suggest that it is the intention of the law (which confers such broad powers on the police) that police officers in the exercise of their powers will derogate from the law. The power to arrest, detain, search and investigate is not unfettered but subject to legally prescribed regulations. It is required that a police officer adopts a human rights-based approach already provided by the law.

Aware that rights defenders ability to carry out their human rights work depends also on their enjoyment of the right to personal liberty, I now pay attention to police powers of arrest and detention as it implicates the right to personal liberty. Section 35 (1)¹¹⁹ provides that:

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law-

- (a) In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
- (b) By reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

¹¹⁵ Ibid. S. 25

¹¹⁶ Ibid. S. 28

¹¹⁷ Ibid. S. 29

¹¹⁸ Ibid. S. 27 (b)

¹¹⁹ Constitution, supra note 5

- (c) For the purpose of bringing him before a court in execution of the order of a court or upon a reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence...;
- (3) Any person who is arrested or detained shall be informed in writing within twenty four hours (and in a language that he understands) of the facts and ground for his arrest or detention

The law requires that arrests are made in fulfilment of an order of court or on a reasonable suspicion of commission of an offence. It is also required by law that no person is arrested and detained without a disclosure of the reason for his arrest. These constitutional provisions are safeguards to ensure respect for human rights.

However the experiences of rights defenders attest to exercise of power by the police outside the ambit of the law- rights defenders are arrested and detained in circumstances short of those legally prescribed.¹²⁰ Police arrest, detention and attack on rights defenders is believed to be politically motivated as a means to muzzle critical voices.

Under the military, such was the fate of rights defenders whose incarceration was founded on Decrees¹²¹ that ousted the jurisdiction of the court to inquire into anything done pursuant to such Decrees. Conversely, democratic rule built on the constitution and rule of law does not confer such unbridled powers on any person, body or authority. The Nigerian Constitution and other laws¹²² are clear on the principles governing arrest and detention of persons.

The present attitude of the Nigerian police is attributed to its historical connection to colonialism. Primarily, the purpose served by the colonial police was the protection of the political and economic interest of the colonial masters. This objective was realisable through

¹²⁰The arrest and detention of Osmond Ugwu and Raphael Elobuike. See Amnesty International, *supra* note 16; invasion and arrest of Ibuchukwu Ezike, see interview, *supra* note 15

¹²¹ Such as State Security (Detention of Persons) Decree, *supra* note 21

¹²²For instance, Criminal Procedure Act, Criminal Procedure Code, Police Act

the use of violence, repression, and excessive use of force by the police against those who resisted colonial occupation.¹²³ Today, the police as a paraphernalia of the state is employed to satisfy the whims of the political class. The excesses of the security forces and the failure of the federal government to curb them fit into the general tendency of the government toward repression and the establishment of a civilian dictatorship.¹²⁴

Government's use of the police in contravention of the law is evidence of its disregard for the rule of law. Orders from political leaders to arrest, detain and prevent rights defenders from uninterrupted exercise of their fundamental rights do not fit into the statutorily conferred powers and legally provided duties of the police. Rights defenders protection is threatened by the police in deference to the dictatorial disposition of the democratic leaders.

III.III PLACE OF LOCAL NON-GOVERNMENTAL ORGANISATIONS (NGOs)

There are several NGOs operative in Nigeria.¹²⁵ While some in their work focus on specific fields of human rights, others engage in a variety of areas. NGOs as part of the wider spectrum of the civil society play a critical role in the promotion of human rights in Nigeria.¹²⁶ It is important at this point to consider the role of rights defenders in ensuring their protection.

¹²³See Human Rights Watch (2010 report on the Nigerian Police)

¹²⁴ Civil Liberties Publication, supra note 73

¹²⁵ Bonny Ibhawoh (2001). "A report on Human Rights Organisations in Nigeria" contains detailed list of human rights organisations in Nigeria and their mandate.

¹²⁶ Campaigns by human rights NGOs against repressive press laws enacted under military rule led to the abrogation of the Newspaper Registration Decree 43 of 1999, which placed stiff restrictions on the operations of the press in the country; Civil Liberties Organization under its "Media and Governance Programme" has trained over 700 journalists in human rights reporting; NGOs working for the rights of prisoners have come together to form the National Coalition on Penal Reform- a platform for human rights organizations to exchange ideas and collaborate on projects aimed at improving the human rights conditions within the Nigerian prison system; the Centre for Law Enforcement Education (CLEEN) and the Constitutional Rights Project (CRP) have produced radio programme to educate the public and promote an awareness of human rights issues; Constitutional Rights Project (CRP) has been involved in organizing a legislative internship programme consisting of the training of law graduates on human rights legislative advocacy and the placement of selected participants at the training workshop, as interns with federal law makers; See *ibid.* p. 53- 71

A human rights NGO is a private organisation which devotes significant resources to the promotion and protection of human rights, which is independent of both government and political groups that seek direct political power, and which does not itself seek such power.¹²⁷

Prompted by the political and economic realities of Nigeria at various times, human rights organisations and other pro-democracy campaigners in the country have remained active. During the second military phase (1984-1999), 42 human rights NGOs and pressure groups banded under Campaign for Democracy (CD), a human rights organisation founded in 1992, to achieve a human rights-respected and democratic atmosphere for the Nigerian people. The declared objective of the CD included the campaign for the termination of military rule, the campaign for the right of Nigerians to choose their government, and the promotion of fundamental human rights and the rule of law in the country.¹²⁸

Effective domestic implementation of human rights law depends in large part on the ability of these groups to survive and to flourish, as it is their voice, above all, that must be heard in international debates on human rights issues, in order to inform and sensitize the discussion, and thereby help to strengthen international enforcement mechanisms.¹²⁹ Government sensitivities to criticism are particularly acute when private individuals and groups seek to hold them accountable for state-sponsored acts of violence and repression. Domestic human rights groups are viewed as a serious threat by many unstable governments, precisely because they expose official wrong-doing and press for change.¹³⁰ Such chronic violent response by repressive regimes is not limited to the exposure of state-orchestrated human rights abuses but also includes violations by non-state actors to which the state remains unresponsive.

¹²⁷Laurie Wiseberg, *supra* note 34 at 529

¹²⁸Bonny Ibhawoh, *supra* note 124 at 39

¹²⁹Michael H. Posner, "The Establishment of the Right of Non-Governmental Human Rights Groups to Operate" 26 *Stud. Transnat'l Legal Pol'y* 405 1994 at 408

¹³⁰*Ibid.* at 409

On whether rights defenders can contribute to their protection from repression, this paper argues that they have a role to play in enhancing their protection. Cooperation among defenders and a coordination of action will enhance unity in the human rights community. It is believed among rights defenders that a coalition strengthens their work and reduces their vulnerability to attacks. However, there is no coalition of all human rights and civil society groups in Nigeria. There are networks along thematic lines. A coalition like they have in Kenya and Zimbabwe will boost the effectiveness and protection of rights defenders. Unfortunately, human rights groups and civil society organisations are reluctant to relinquish an aspect of their sovereignty; they do not want to be held accountable. A coalition fosters discipline among organisations, creates room for accountability and promotes a common cause.¹³¹

Additionally, the ability of rights defenders in Nigeria to enhance their protection is undermined by “conservatism”- rights defenders in Nigeria shy away from activities and cooperation at the international level. Some consider human rights issues as domestic. Consequently, they miss out on the gains of such cooperation with inherent potential to contribute to their protection.¹³²

The formation of networks of the different rights’ groups is applaudable and deserves to be encouraged. Nevertheless, a central body that unifies and monitors the activities of rights groups will be more effective in securing the protection of rights defenders.

IV. ROLE OF THE INTERNATIONAL COMMUNITY

¹³¹Interview, supra note 15. Some of the examples of the thematic networks are: Social Alert Network-Nigeria, which brings together NGOs working on Social and Economic Rights; and National NGO Coalition on Penal Reform is the umbrella body for NGOs engaged on the rights and welfare of prisoners and penal reform in the country. See Bonny, supra note 124, at 50-60

¹³²Ibid. Ibuchukwu cited a most recent example to buttress his point- The International Federation for Human Rights Defenders organised a fully funded (transportation, feeding, accommodation) international conference in May, 2013 held in Turkey for Human Rights Defenders. CLO was the only organisation (rights defender) in attendance from Nigeria.

Human rights today have considerably impacted the notion of sovereignty as individuals have become subjects of international law. Protection of the fundamental rights of the citizen is primarily the responsibility of the state. Aware of the possibility of neglect of this responsibility by the state, certain mechanisms have been established regionally and internationally to foster promotion and protection of individual fundamental rights and freedom.

More so, in recognition of the grave abuses rights defenders suffer, some measures are established for their protection. The effectiveness of these arrangements is determined by their accessibility to rights defenders and the promptness of their actions. For the discourse under this section, this paper examines the United Nations (UN) and the African Union (AU).

IV.I. UNITED NATIONS

The United Nations established various bodies designed to strengthen the promotion and protection of rights defenders and human rights generally. The scope of this paper will not permit an extensive discussion on all such procedures but will focus on the working group on arbitrary detention,¹³³ Special Rapporteur on the promotion and protection of the right to the freedom of opinion and expression¹³⁴, the Special Rapporteur on the right to freedom of

¹³³ By Resolution 1991/42 of the Commission on Human Rights, The Working Group on Arbitrary Detention was established to among others, investigate cases of arbitrary detention contrary to international human rights standard and to render opinion and make recommendations to the government concerned. In its discharge of duty, the Human rights Council urges it to cooperate with the sources of information, the government and relevant UN bodies and mechanisms. Coordination is required among UN bodies and mechanism in order to avoid duplication of efforts. See <http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>

¹³⁴ Special Rapporteur on the Right to Freedom of Opinion and Expression was established in 1993 the UN Commission on Human Rights; mandate extended by the Human Rights Council by resolution 7/36 of March 2008 and further extended by resolution 16/4 March 24, 2011. To gather all relevant information, wherever it may occur, relating to violations of the right to freedom of opinion and expression, discrimination against, threats or use of violence, harassment, persecution or intimidation directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression, including, as a matter of high priority, against journalists or other professionals in the field of information; See www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx

association and peaceful assembly¹³⁵ and the Special Rapporteur on the situation of human rights defenders.¹³⁶ These offices share almost similar procedures and will be treated together.

PROCEDURE

In carrying out their mandates, they are guided by the relevant human rights instruments. They receive information on human rights violation from individuals, governments and non-governmental organisations. Upon receipt of such information, the Working Group or Special Rapporteur (depending on the mandate implicated) transmits the communication to the government concerned requesting it to investigate the matter and respond.¹³⁷ The Working Group on Arbitrary Detention unlike the others, upon receipt of a reply from the government concerned, sends the reply to the source of the communication for further comments if any.

At the conclusion of their investigation of the alleged violation, they send a report to the government concerned and the Human Rights Council.¹³⁸

Designed to strengthen their activities and to reinforce protection for rights defenders, Working Groups and Special Rapporteurs undertake country visits, which affords them greater understanding of the situation of rights defenders and human rights. It also helps them to identify problems and make recommendations on ways to solve them.¹³⁹ In instances where

¹³⁵ Special Rapporteur on the Right to Freedom of Association and Peaceful Assembly was established by Resolution 15/21 of October 2010 with mandate to report on violations, wherever they may occur, of the rights to Freedom of Peaceful Assembly and of Association, as well as discrimination, threats or use of violence, harassment, persecution, intimidation or reprisals directed at persons exercising these rights, and to draw the attention of the Council and the High Commissioner to situations of particularly serious concern; To gather all relevant information, including national practices and experiences, relating to the promotion and protection of the rights to freedom of peaceful assembly and of association, to study trends, developments and challenges in relation to the exercise of these rights, and to make recommendations on ways and means to ensure the promotion and protection of the rights to freedom of peaceful assembly and of association in all their manifestations. See

<http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx>

¹³⁶The Special Rapporteur on Human Rights Defenders was established by Resolution 2000/61 of the Commission on Human Rights with the mandate to seek, receive, examine and respond to information on the situation of human rights defenders; establish cooperation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the DHRD; recommend effective strategies better to protect human rights defenders and follow up on the these recommendations. See

<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Mandate.aspx>

¹³⁷See the respective websites

¹³⁸Ibid.

¹³⁹Ibid.

there is imminent threat to life or in the case of arbitrary detention, where it appears to the mandate holders that the situation so demands, they employ the “urgent appeal” by which they request the government concerned to take appropriate measures to ensure the protection of rights defenders and human rights.

The commitment of the UN to the protection of rights defenders appears most evident in the establishment of the mandate of a Special Rapporteur on human rights defenders. Also commendable are the other procedures primarily aimed at promotion and protection of human rights to which the rights of defenders belong. As laudable as the attempt by the UN is, certain factors impede its optimal delivery of protection for rights defenders.

First, it is important to note that the recommendations of these bodies are not binding on the governments. Governments are at liberty to either consider or neglect same. Regardless of the status of human rights on a global scale today, state sovereignty appears to still command great respect- it limits the ability of the UN human rights bodies to optimally protect rights defenders. Secondly, governments do not always respond to information of allegation transmitted to them by these mandates.¹⁴⁰ This is similar to the first point in that refusal by a government to answer to allegations of rights violation attract no sanction.

The UN Special Rapporteurs hold an honorary position. They are neither UN staff nor paid for their work. Unavailability of fund is a major challenge to the work of Special Rapporteurs. It hampers their effectiveness and has an indirect effect on the protection of rights defenders.

IV.II AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

The African Commission on Human and Peoples’ Rights is established by Article 30 of the African Charter. It is mandated to:

¹⁴⁰See the website on Special Rapporteur on the situation of Human Rights Defenders and Special Rapporteur on the right to freedom of Peaceful Assembly and Association. *ibid.*

- Promote human rights through sensitization, public mobilization and information dissemination;
- Protect human and peoples 'rights through its communication procedure, urgent appeals and Special Rapporteurs;
- Interpret the charter.¹⁴¹

One of the principal functions of the Commission is to protect the rights and freedoms guaranteed in the Charter under conditions laid down therein.

To achieve this, the Commission is empowered by Articles 48-49 and Article 55, among other things, to receive and consider:

- Communications submitted by one State claiming that another State party to the Charter has violated one or more of the provisions in the Charter and
- Other Communications from individuals and organisations alleging that a State party to the Charter has violated one or more of the rights guaranteed therein.

However, the commission on human rights does not entertain communications against non-member states.¹⁴²

Complainant is required to exhaust domestic remedy prior to lodging a complaint with the commission except where domestic procedure is unduly prolonged or non-existent.¹⁴³

Upon receipt of a communication alleging violation of human rights against anyone by a state party, the government concerned is served with notice of alleged violation of rights and is required to respond. Given that some governments fail to respond to allegations against them, the commission proceeds to decide based on the facts as alleged.¹⁴⁴ It is also empowered to

¹⁴¹Article 45 ACHPR

¹⁴²See Rule 102 (2) of the Commission's 'Rules of Procedure

¹⁴³ Communication 129/94 Civil Liberties Organisation/ Nigeria; Communication 155/96 The Social and Economic Rights Action Center and the Center for Economic and Social Rights/ Nigeria

¹⁴⁴ Communication 60/91 Constitutional Rights Project/ Nigeria; Communication 101/93 Civil Liberties Organisation/ Nigeria

seek further evidence from other sources to verify the veracity of the allegation against a member state.¹⁴⁵

In spite of this effort, certain provisions of the charter and rules of procedure defeat the objective.

First, the prohibition of Africans from accessing the commission as a result of non-membership of their countries forecloses the possibility of obtaining a redress before a regional mechanism.

In an event where the domestic courts and institutions of a state that is not a member, are compromised, the victim of human rights violation, at the regional level goes without a remedy.

Second, the binding force of the decision (recommendation) of the commission is predicated on its adoption by the Assembly of States.¹⁴⁶ This provision renders the commission on human and peoples' rights dependent on the whims of the member states. A state against whom a recommendation is made, depending on its respect for the rule of law may or not assent to adoption of the recommendation. The commission on human and peoples' rights is not independent enough to promote observance of the right to defend fundamental human rights.

Third, implementation of the recommendation of the commission is dependent on the goodwill of states as there is no mechanism yet to enforce implementation.¹⁴⁷

With the above shortcomings, the African Commission appears to offer rights defenders little or no protection.

IV.III AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The African Court on Human and Peoples' Rights was established by Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of the court. The

¹⁴⁵See Article 36 ACHPR

¹⁴⁶Ibid. Article 54

¹⁴⁷ www.achpr.org/communications/procedure/ (last accessed June 30, 2013); interview, supra note 71

protocol was adopted on June 9 1998. It has the mandate to complement and reinforce the functions of the African Commission on Human and Peoples' Rights.¹⁴⁸

Additionally, the court has jurisdiction to hear cases on the interpretation and application of the ACHPR, the Protocol thereto and any other relevant instrument ratified by the state concerned.¹⁴⁹

By Article 5 of the Protocol and Rule 33 of the rules of court, the court can hear matters of fundamental rights violation from the following categories:

- The African Commission on Human and Peoples' Rights
- African inter-governmental organisations
- State parties to the protocol
- Non-governmental organisations with observer status and individuals from the states which have made a declaration accepting the jurisdiction of the court.

This paper argues that Article 5 of the Protocol denies nationals of African states access to the court. It is discriminatory against individuals and non-governmental organisations. By that provision, the genuineness of the AU in promoting and protecting human and peoples' rights is questionable. This is contrary to the position under the European Convention.¹⁵⁰

More so, narrowing it down to the subject of this paper, rights defenders in Nigeria are unable to appear before the court since Nigeria is yet to make the requisite declaration. In view of Nigeria's present attitude towards the rule of law, where impunity is the constitution-¹⁵¹ laws

¹⁴⁸Article 2 of the Protocol to the African Charter on Human and Peoples' Rights 1981

¹⁴⁹ Ibid Article 3

¹⁵⁰ By Article 34 European Convention on Human Rights, the court may receive applications from individuals and groups, of allegation of human rights violation by any High Contracting Parties. The High Contracting Parties pledge not to interfere in the exercise of this right.

¹⁵¹ Interview supra, note 27 (Olisa Agbakoba)

are not respected and judicial decisions not honoured, the UN mechanisms (with their already discussed weaknesses) become the forum for Nigerian nationals.

IV.IV SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS

The mandate of a Special Rapporteur on human rights defenders was established in 2004 by the African Commission on Human and Peoples 'Rights with the adoption of Resolution 69 at its 35th Ordinary Session from May 21- June 4, 2004.

The Office of the Special Rapporteur has the mandate to:

- seek, receive, examine and act upon information on the situation of human rights defenders in Africa;
- submit reports at every ordinary session of the African Commission;
- cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders and other stake holders;
- develop and recommend effective strategies to better protect human rights defenders and follow up on his/her recommendations; and
- Raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa.¹⁵²

In the discharge of his duty, the Special Rapporteur undertakes country visits during which he meets with principal government functionaries, human rights organisations and other relevant groups and individuals. The recommendation of the Special Rapporteur is not binding on the African governments. Similar to other such bodies and offices discussed earlier, its relevance

¹⁵²<http://www.achpr.org/mechanisms/human-rights-defenders/> (last accessed- June 30, 2013)

lies in the subtle pressure it mounts on governments to comply with their national, regional and international human rights obligations.

IV. CONCLUSION/ RECOMMENDATIONS

CONCLUSION

This paper has been able to show that:

- The right to defend human rights is not a creation of law, but rather an offshoot of the fundamental human rights inherent in man which everyone is entitled to exercise without inhibitions.
- The extant Nigerian bill of rights and ratified international human rights instruments make adequate provision to protect rights defenders.
- The political landscape in Nigeria is occupied by dishonest individuals and fraught with systemic corrupt practices.
- Rights defenders in Nigeria under democratic dispensation, still experience attacks, arbitrary arrest and detention, and threat to life. This supports the position of this paper that commitment on the part of the government to the rule of law gives life to laws.
- It is established that there is a strong link between observance of the rule of law and protection for human rights defenders- without respect for the rule of law it is difficult for a government to allow dissenting voices.
- That human rights and rights defenders are better protected at the national level owing to obvious weaknesses identified in the regional and international mechanisms, and the cost of accessing those mechanisms.
- This paper lauds the effort of Nigerian government towards protection for rights defenders through a bill of rights and independent national human rights

commission. However, more is required in the direction of upholding the rule of law.

RECOMMENDATIONS

- The Nigerian Government should respect the ruling of the Court of appeal which pronounced unconstitutional, the POA 1979. The constant disruption of rallies by the security operatives is a display of impunity and disregard for the rule of law.
- This paper urges the Nigerian Government to uphold and abide by the provisions of the constitution which has made adequate provision for the protection of rights defenders in Nigeria. The government should also desist from undemocratic and violent practices such as: electoral malpractice and the employment of the police as tool for the oppression of rights defenders. Government functionaries and politicians are advised to embrace all round international best practices.
- Human rights organisations and the generality of the civil society groups in Nigeria are encouraged to recognise the relevance of a coalition as a strong front to foster their protection and enhance realisation of their goal.
- Rights defenders are urged to take steps towards regular exposure of the Nigerian Government to the regional mechanisms and international procedures. This will increase the knowledge of the international community, of the conduct of the government towards rights defenders and human rights generally and will intensify pressure on the government to respect its human rights national and international commitments.
- Articles 5 and 54 of the African Charter on Human and Peoples' Rights should be amended to allow nationals of member states unconditional access to the court, and to cloth the recommendation of the African Commission on Human and Peoples' Rights with binding force without prior adoption by the Assembly of States.

ANNEX

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