# Human Rights Proceedings: Domestic Provisions and Experiences in Nigeria

by

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## INTRODUCTION

It is necessary to introduce this paper by adverting to one important feature of every human right enforcement. It is this that although, as has been shown by many distinguished speakers, human rights norms are international in the sense that they relate to standards of behaviour in civilised societies all over the world, in the end its enforcement in every State is domestic in that it is essentially a matter between a citizen and his state. Apart from resolutions and imposition of limited sanctions, there are limited machineries for international enforcement of human rights violations within a particular state in the international community. By insisting on non-interference in the internal affairs of member States,[1] the Charter of the United Nations introduced a very effective shackle against international enforcement of human rights. This was for many decades the protective cover-shed for the human rights violators in apartheid South Africa, universally recognised as the worst anti-human rights violations since the abolition of slave trade and slavery and the elimination of colonialism. Admittedly, there are various measures for implementation contained in the two Covenants and in other legal instruments of the Organisation and also efforts to improvise international enforcement procedure, as in the recent case of South Africa, within the framework of the United Nations, yet in the end, the issue of human rights becomes one essentially between a citizen and his state. David Owen underscored this point in 1978 when he said:

> "The debate on human rights is often depicted as an issue between countries, but it is primarily an issue within countries. The espousal of human rights involves a commitment to values at home before, as individuals or as a State, we can expect to carry conviction abroad."[2]

So, although human rights norms are international in content, and it is doubtless the only system which stands between an oppressed or deprived citizen and tyranny, effectiveness of their enforcement in individual cases must, of necessity, depend on the available machinery for their enforcement which in turn brings into

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1. See Article 2.4 of the Charter of the United Nations Organisation, 1945.

2. Owen: Human Rights, p.1 (London, 1978).

focus the existing practice and procedure for their enforcement in the particular State. In considering human rights norms and their international character in the abstract, it is necessary to bear in mind the fact that these rights antedate political society itself. They have always existed, the role of individual States being to recognise and declare them. Judge Tanaka said much the same thing in the case of South West Africa[3] where he stated:

> "A state or states are not capable of creating human rights by law or by convention; they can only declare their existence and give them protection. The role of the state is not more than declaratory. Human rights have always existed in the human being. They existed independently of and before the state. Alien and even stateless persons must not be deprived of them."

This is true. But the difference between the effective enforcement of these rights in one State from the other where it is not effectively enforced lies in the existing machinery for their declaration, determination and enforcement by the courts.

Relatively few lawyers ever stop to consider the importance of practice and procedure in relation to the rights of man. Very few give due recognition to the fact that abstract statements of rights no matter how benevolent or grandiose in themselves can be of no avail in the absence of a proper forum and an effective and efficient set of rules of practice and procedure, which will, of necessity, define the entire cursus curiae. Unless one can initiate proceedings and continue them on to judgment, and have an effective machinery for the enforcement of the judgment, all the abstract statements of one's rights will come to nothing.

A contrast between the practical effects of the African Charter and the European Charter will bring home my point. In terms of abstract statements of human rights norms, both will pass as great documents on the matter. But then the European Charter has a forum and an effective procedure for challenging human rights violations, for adjudicating on cases thereon and for enforcement of the decisions of the European Court of Human Rights. On the other hand, there is no court, and therefore no forum, for the enforcement of human rights carefully selected and stated in the African Charter. The provision for an African Commission on Human Rights is not enough. Indeed the provisions on the mandate and procedure of the Commission in Articles 45 and 46 of the Charter do not go far enough. In the end, the African Commission without a forum or procedure for enforcement, leaves it looking like, in appropriate metaphor, a toothless bulldog.

It can now be assumed that generally the accepted norm in the whole of the Commonwealth, indeed in all common law countries, is that the responsibility for the enforcement of human rights is mainly placed on the judiciary. This responsibility may be said to broadly extend to safeguarding of personal freedoms, protec-

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3. (1951) 1 CJ Reports 1.

tion of political, private and moral rights, guaranteeing proprietary rights, ensuring fair hearing of disputes according to law and the rules of natural justice, and prohibition of inhumane and discriminatory treatment. These rights can, in the constitutions of most civilised common law countries, be lawfully derogated from only in the interest of public order, public safety, natural defence, public health and public morality and, even so, in accordance with rules acceptable in a civilised society.

It is from the above backgrounds that I shall now consider the legal provisions on rules of procedure as well as experience in Nigeria.

**HUMAN RIGHTS PROCEEDINGS IN NIGERIA BEFORE 1979**

It is useful for our present purpose to consider the Nigerian situation from two historical standpoints, to wit: the period before 1979 and after.

Now as a result of the Willink Commission of Inquiry in 1958, fundamental rights provisions were introduced into one Nigerian Constitution one after another i.e. in 1960, 1963, 1979, and also 1989 to be fully operational in 1992. These provisions, initially intended for the protection of the so-called minorities, became applicable to every Nigerian. It is enough for this paper to state that they were largely based on the norms set out in the UN Universal Declaration of Human Rights 1948 and that only two Articles, to wit: the right to enjoy political asylum in other countries in Article 14 and that to freedom of marriage in Article 16 have not found a place either as fundamental rights in Chapter IV or the fundamental objectives and directive principles of state policy in Chapter II.

From the beginning, the founding fathers of the Nigerian Constitution recognised the importance and significance of effective provisions on practice and procedure in order to make the statement of rights work at all. For it was provided in section 31 of the 1960 Constitution as follows:

> "31. - (1) Any person who alleges that any of the provisions of this Chapter has been contravened in any territory in relation to him may apply to the High Court of that territory for redress.
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> (2) Subject to the provisions of section 108 of this Constitution, the High Court of a territory shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement, within that territory of any rights to which the person who makes the application may be entitled under this Chapter.

(3) Parliament may make provision with respect to the practice and procedure of the High Courts of the territories for the purposes of this section and may confer upon those courts such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling those courts more effectively to exercise the jurisdiction conferred upon them by this section."

It is noteworthy that the responsibility of making the rules of practice and procedure was squarely placed on Parliament. As could be expected, Parliament was not alive to its responsibility in this respect. So no rules were made for the purpose between 1960 and 1979.

What did the Nigerian courts do in the unhappy position in which they found themselves due to the absence of rules of practice and procedure? Did they allow this to defeat justice? Or did they, like in some countries such as Ghana and the United States, resort to procedure by way of the prerogative writs? They did neither. Rather, they held the view that an aggrieved person could come to court by any of the usual methods of initiating process, and not necessarily by way of prerogative writs. The attitude of Nigerian courts was summarised by this Court, per Coker, J S C, in the case of In Ref: G M Boyo[4] where he held:

> "No rules of court exist at present specifying the particular practice and procedure by which these Constitutional rights may be protected and it must be protected and it must be accepted that no formal way is required for the invocation of the court's powers to protect the invasion of such rights. See Sanni Akande v Sanusi Araoye (1968) NMLR 283. If the Constitution is to be upheld, and undoubtedly it must be, then a breach of it must be capable not only of being vindicted but also of being prevented. This is the substantive matter to be decided in this appeal and it would be perverse to argue that if the present proceedings are not halted it would still be impossible to rule out the likelihood that a decision on this matter by this Court might be rendered nugatory."

The attitude of the courts was a wise expedient to ameliorate the harshness of a bad situation; but it was certainly not the best. The result was that cases on the fundamental rights enshrined in the Constitution had to compete with other cases on the crowded court lists. They, therefore, got equally bogged down by all the known causes of delay in our courts. This irked our jurists and administrators of justice; but there was not much they could do.

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4. (1970) 1 ALL NLR (Pt.1) 111, at p.115, see also Fajimi v Speaker, Western House of Assembly (1962) 1 ALL NLR (Pt.1) 205; Akande v Araoye (1968) NMLR 283; Aoko v Fagbemi and DPP (1961) 1 ALL NLR 400; and Olawoyin v Attorney-General (1961) 1 ALL NLR 269.

They were, however, able to identify the fact that rules of court should normally be made by leaders of courts and not by politicians in Parliament, some of whom could not see why fundamental rights provisions should be made at all. When the Military took over the reigns of power (1966 - 1979) they did not see much need to advance human rights beyond where the civilians left them. Rather, they suspended them altogether[5] beyond where the civilians left them. The end result, therefore, was that human rights cases were few and far between in Nigeria between 1960 and 1979.

## THE PROMULGATION OF RULES OF PROCEDURE

When the need came for a review of the Nigerian Constitution before the Military handed back power to the civilians in 1979, our lawyers in the Constitution Drafting Committee and the Constituent Assembly were quick to act. The provision in section 32(3) of the 1963 Constitution which required that the rules of practice and procedure for the enforcement of fundamental rights would be made by Parliament was amended. The power to make the rules was handed over to the Chief Justice of Nigeria.[6] The then incumbent Chief Justice moved quickly to fulfil his constitutional obligation in the matter. So between the commencement of the new Constitution on the 1st October 1979 and the end of the year he drafted and promulgated the Fundamental Rights (Enforcement Procedure) Rules 1979. It was printed, gazetted and became operative from 1st January 1980 for the enforcement of fundamental rights in Nigeria.

## THE NATURE AND CONTENTS OF THE RULES

The Fundamental Rights (Enforcement Procedure) Rules (to be hereinafter referred to simply as the Enforcement Rules) are analogous to the procedure for application for the prerogative orders of mandamus, prohibition and certiorari (to be referred to as prerogative order Rules) under our various High Court Rules;[7] but the Enforcement Rules are made up of six different Orders, each dealing with different aspects of the procedure.

The following are the main features/provisions of the new Rules:

1. Like the Prerogative Order Rules, proceedings under the Enforcement Rules are commenced by an ex parte application for leave to apply, to be accompanied by a statement setting out the particulars of the applicant, the relief sought, the

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5. See Section 1 and Schedule 3 of Decree No.1 of 1966.

6. See Section 42(3) of The 1979 Constitution.

7. See 0.22 (Eastern States); 0.41 and 53 (Lagos) and RSC - 0.53 applicable in some other States by implication.

grounds therefore, and by an affidavit verifying the facts relied on.

2. In place of one Order of eight paragraphs in the existing Rules in the East, and two Orders in Lagos, and Orders 53 and 54 of the RSC the Enforcement Rules have six Orders which consolidate and make detailed provisions on different aspects of the proceedings. It is now, by and large, a comprehensive code of procedure for judicial review of administrative action.

3. But the Enforcement Rules provides that if the ex parte application sufficient copies for service on all who may be affected in the proceedings should be filed. This enhances speed in the proceedings.

4. Like in the prerogative orders (Order 22 of the High Court Rules in the Eastern States; Orders 41 and 53 of the Lagos State Rules, Orders 53 and 54 of the RSC applicable by implication in other states), if the court directs, the grant of leave shall operate as a stay of all action or matters relating to, or connected with the complaint until the final determination of the application.

5. Under the prerogative rules, the period of limitation for bringing the application is 6 months from the act of the commission or omission complained about. But under the Enforcement Rules, it is now 12 months. Moreover, the court can entertain an application even though it is being brought more than 12 months of the act of commission or omission complained about.

6. By far the most important provision in the Enforcement Rules is that it has given such proceedings a statutory precedence over all other proceedings - in our over-congested court lists. For it is provided in Order 2 rule 1 (2) thus:

> "(2) The motion or summons must be entered for hearing within fourteen days after such leave has been granted."

In a country like Nigeria where systemic and procedural delays are the hallmarks of the judicial system, this new provision is revolutionary. But considering the importance of human rights and the place given to fundamental rights in the Nigerian Constitution, this revolution is justifiable.

7. In furtherance of the intention to expedite the proceedings, evidence is by statements and affidavit and even though the provision of eight days between service of the motion/summons is retained, the court now has the power to direct a shorter period.

8. Order 4 now contains detailed provisions for the production and/or release of persons unlawfully detained. Perhaps to underscore the importance of these provisions in a country where, under our now endemic military regimes, detention of

persons without trial has been one of our main causes for complaint, the rule (Order 4 rule 1(2)) reduces the period between service and hearing to five days. And, to guard against any bureaucratic causes of delays in the release of persons who have been ordered to be released by a court, it is also provided:

> "Without prejudice to rule 1(1), the Court or judge hearing an application where the applicant complains of wrongful or unlawful detention may, in its or his discretion, order that the person restrained be produced in court, and such order shall be a sufficient warrant to any Superintendent of a Prison, Police Officer in charge of a police station, Police Officer or Constable in charge of the complainant, or any other person responsible for his detention, for the production in court of the person under restraint."
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> Also, provision is made for making of returns with respect of the order of release.

9. The Enforcement Rules have made a serious attempt to nibble at and remove some fangs off the vexed question of locus standi. The rule provides in Order 5:

> "Any person or body who desires to be heard in respect of any application, motion, or summons, under these Rules, and appears to the Court or judge to be proper person or body to be heard, shall be heard notwithstanding that he or it has not been served with the copy of the application, motion, or summons."

Thus it gives the status of amicus curiae to "any person who desires to be heard in respect of any application."

In Nigeria, locus standi is a constitutional issue. For section 6(6)(b) of the Constitution of 1979 limits exercise of judicial power to:

> "... all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."

I shall return to this later on. Suffice it to say at the moment that Order 5 of the Enforcement Rules has not given a locus standi to every person who wishes to be heard in a human right matter. Rather it gives to every body who desires to be heard in such a cause that right, once the action has been properly commenced by a person who has a locus. To my mind, it is an important step forward. But we look forward to a time when Nigeria will advance to the position of Canada where every citizen has not only the right to be heard, but also the locus standi to challenge

such breaches of the provisions of the Constitution.[8]

10. Finally, worthy of special mention is the remedy which is available to an applicant under the Enforcement Rules. The court is empowered to make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the fundamental rights provided for in the Constitution to which the complainant may be entitled. The court may commit a party disobeying such an order to prison in order to compel obedience.

**SIGNIFICANCE OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES**

Every lawyer or student of the English and Nigerian legal histories knows that one of the principles which our law received from the British on the 1st of September, 1900 was the theory that the Crown could do no wrong. An extension of this was the theory that no sovereign could be compelled to answer in his own court.[9] In spite of the protestations of common law judges, the theory persisted giving rise to special procedure, such as petition of rights against the Crown. The Petition of Rights Ordinance of Nigeria, which first found its way into our statute books on the 1st of December 1915, was a perpetuation of this feudal concept. As late as 1958, it was re-enacted as Petition of Rights Act.[10] Under these laws, such suits were commenced by a special procedure. It was only with a fiat of the Governor-General or the President that the suit could be prosecuted. Quite often, no fiat ever came. What is more irksome is that when the British, from whom we borrowed this whole concept, in their wisdom tried to abolish or at least mellow the rigours of the obnoxious practice by the Crown Proceedings Act of 1947, the Act of 1947 did not apply in Nigeria and so the old concept and practice persisted. It took the interpretative skill of the Court of Appeal and the Supreme Court in the case of Chief Dr (Mrs) Olufunmilayo Ransome-Kuti & Others v The AG of the Federation & Others[11] to state categorically that section 6(6)(b) of the 1979 Constitution had impliedly abolished state immunity from suits.

It is from this background of state immunity from suits that we can see the real significance of the fundamental rights provisions in the Constitutions (which have been adequately dealt with in another paper), as now reinforced and given real teeth by the

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8. See Thorson v AG of Canada (1975) 1 SCR 138; Nova Scotia Board of Censors v McNeil (1976) 2 SCR 265.

9. See Pollock & Maitland: History of English Law, 2nd Edition 518.

10. i.e. Cap.149 of 1958.

11. (1985) 2 NWLR (Part 6) 211.

Fundamental Rights (Enforcement Procedure) Rules. Such provisions as are designed to enhance expeditious disposal of cases on human rights, the simplified procedure, the machinery for enforcement, and the wide variety of reliefs now possible, all give the much desired impetus to the civil rights activist. To have also given him the right to be heard in such proceedings only if he so desires is to give him all he wanted. Surely Nigerian courts can no longer complain that they have not been given the free hand and the effective procedure to deal with human rights cases. So, if we fail, we are bound to admit, like Cassius in Shakespeare's Julius Caesar that the fault is not in our stars (or the government) but in ourselves.

In the case if Shugaba Abdulrahaman Darman v The Federal Minister of Internal Affairs & Others[12] the Maiduguri High Court held that where a person alleges an infraction of his fundamental rights under Chapter IV of the 1979 Constitution, he can only approach the court under the Fundamental Rights (Enforcement Procedure) Rules, 1979. This is probably an over-statement. I may observe that when the issue of breach of a fundamental right arises not as a substantiative, but a subsidiary issue, the courts will not ignore it simply because the above Rules have not been followed. Examples are where the right to fair hearing under section 33 of the Constitution arises incidentally in the course of any court proceeding.[13] Furthermore Shugaba's case (supra) illustrates the wide range of reliefs, including damages, which could be granted under the Enforcement Rules for breach of a fundamental right.

Between 1960 when fundamental rights provisions were first written into the Nigerian Constitution and the end of the First Republic on the intervention of the Military on January 15, 1966, and all through the thirteen years of military administration from 1966 to 1979, cases on fundamental rights were few and far between. Indeed all the reported cases all over the country from 1960 to 1979 were not more than twenty. True, the fact that the country had just emerged from colonialism and that human rights were a new experience might have contributed to the paucity of the number of cases. True the Military, during the thirteen years they were in power, deliberately discouraged or completely blocked the exercise of human rights by their ouster provisions in Decrees.[14] Yet the fewness of number of cases in my view, owed so much to the uncertainty of the enforcement process and the inevitable delay which competition of such cases with other cases in our over-congested court lists entailed. For aggrieved persons appeared to have asked, what use was it to go to court to contest

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12. (1981) 2 NCLR 459.

13. See e.g. Grace Akinfe v The State (1988) 3 NWLR 729; also Sunday Okoduwa & Ors. v The State (1988) 2 NWLR 333.

14. See e.g. S.1 (1) 8 and Sch.1 of Decree No.1 of 1966 and Decree No.28 of 1970.

a hot issue such as unlawful detention if the person affected must wait for several years to get relief?

But as if the Fundamental Rights (Enforcement Procedure) Rules, 1979, were the tonic which citizens were waiting for, from 1979, litigation over human rights issues swung into accelerated action. Chief Gani Fawehinmi's Constitutional Law Reports which cover the period 1979 to 1983 cover six large volumes of law reports and reported over three hundred and sixty cases which span over 4000 pages of print. An overwhelming percentage of these cases is on human rights.

In those cases, the courts enforced a variety of human rights - the right to freedom of movement,[15] to personal liberty,[16] to property,[17] to freedom to own, establish and operate any medium for the dissemination of information, ideas and opinions,[18] to fair trial,[19] and the right against various executive abuses, termed executive lawlessness,[20] among many others.

When the Military took over the reigns of Government at the end of 1983, human rights enforcement suffered its worst debacle since its inception. Powers and jurisdictions of courts to adjudicate in human rights cases were suspended by many Decrees.[21] In 1984 alone human rights were suspended or jurisdictions of courts to adjudicate over them ousted by about eleven different Decrees. Although the situation improved considerably when the present Military Administration came to power in August, 1985, some of the ouster provisions still exist. When there were such ouster provisions, the courts merely applied their interpretative jurisdictions to inquire whether the matter in litigation came squarely within the gambit of the ouster provision.[22] Once it was

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15. See Shagaba Abdurahaman Darman v Federal Ministry of Internal Affairs (supra).

16. See Folade v AG Lagos State & Ors (1983) 4 NCLR 771 Onu Obekpa v Commissioner of Police (1983) 4 NCLR 420.

17. See Peenok Investments Ltd. v Hotel Presidential Ltd. (1983) 4 NCLR 122.

18. See AG Imo State v Ukaegbu (1981) 2 NCLR 568.

19. See Uzodinma v COP (1982) 3 NCLR 325.

20. See Ojukwu v Governor of Lagos State (1985) 2 NWLR 806; Ekeocha v Civil Service Commission, Imo State & Anor. (1981) 1 NCLR 154.

21. See Decree Nos.1 and 13 of 1984.

22. See Barclays Bank of Nigeria Ltd. v Central Bank of Nigeria (1976) 1 ALL NLR 409; Sod AG Federation (1986) 2 NWLR 568.

satisfied that it did, it declined jurisdiction to adjudicate.[23] But, as shown by the decision of the Supreme Court in The Governor of Ondo State v Adewunmi[24] and many other cases, the courts guarded their jurisdictions jealously and so critically examined such ouster provisions. In the final analysis, considering the ouster provisions and other constraints during the period 1985 - 1991, it can be stated that strikingly a large number of cases on human rights went through the courts. Prominent among them were cases on fair hearing and cases in which some government agencies tried to abuse human rights. I shall only mention this fact here in passing in view of the theme of this paper. Suffice it, however, to say that on the balance, the courts tried to live up to the standards expected of them as stated by Eso, JSC in Ariori v Elemo[25] where he stated:

> "Having regard to the nascence of our Constitution, the comparative educational backwardness, the socio-economic and cultural background of the people of this country and the reliance that is being placed and necessarily have to be placed as a result of this background on the courts, and finally the general atmosphere in the country, I think the Supreme Court has a duty to safeguard fundamental rights in this country which, from its age and problems that are bound to associate with it, is still having an experiment with democracy."

**FACTORS MILITATING AGAINST EXERCISE OF HUMAN RIGHTS**

Enforcement of human rights is largely a responsibility of the courts which are, under the Constitution of the Federation 1979 vested with judicial power.

In a recent essay,[26] I identified the exercise of judicial power as an act which entails six processes, or some of them, namely:

(i) Ascertainment, or sometimes particularly in the case of the Supreme Court or sometimes the Court of Appeal, laying down the law relevant to the particular case in hand.

(ii) Particularly in the Supreme Court expressing its opinion on any judicial policy as may be relevant to the case in hand.

(iii) In line with the law, as ascertained or laid down, and the

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23. See Civil Service Commission of Bendel State v Okonjo (1987) 3 NWLR 166.

24. (1988) 3 NWLR (Part 82) 280.

25. (1083) 1 SCNLR 1.

26. P Nnaemeka-Agu, JSC, "Judicial Powers: Quo Tendimus" in Nigerian Essays in Jurisprudence (1991).

judicial policy, when relevant, determine the issues in contention by applying the law to the facts of the particular case.

(iv) Sometimes, particularly in the highest appellate court, that is the Supreme Court, when called upon to do so, review the authority of previous decisions not only in the British sense, as illustrated by the case of Cornway v Rimmer;[27] that is bringing the law up-to-date having due regard to recent developments in society by over-ruling the previous decisions; but also, in the American sense, of seeing that the decided case relied upon is in accordance with the letter and spirit of the Constitution;[28]

(v) Making binding declarations of right or such consequential orders as flow from the judgment; and

(vi) Enforcing, by due process of law, those orders which it has made.

I must emphasise that sometimes no positive or negative orders are made. The court merely makes a declaration of right. All parties, be they governments, authorities corporations or private citizens are bound by, and expected to obey, such declarations. As for governments, it must be borne in mind that the courts are also a part of the government. It would be tantamount to executive lawlessness for the same government to refuse, fail or neglect to obey and respect an order or declaration made by its own court.

When a Nigerian court is carrying out any or all of the above functions, it invokes its statutory, interpretative and inherent powers and imposes some sanctions. So judicial powers encompass not only the power of a court to decide issues in litigation but also power to enforce its judgment. It is from these premises that I shall now examine the factors which adversely militate against the enforcement of fundamental rights.

**OUSTER OF COURTS' JURISDICTION**

Paradoxically, every military regime in Nigeria began by declaring that it would respect all existing laws and obligations and would rule according to law. Often in the same Decree, it suspended or modified sections of the Constitution - not in exercise of any constitutional power but by sheer military power. Invariably, it suspended the Chapter of the Constitution dealing with

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27. See (1968) AC 910 in which the decision in (1967) 2 All ER 1260 was over-ruled.

28. See for example: Bucknor-Mclean v Inlax (1980) 8-11 SC 35.

fundamental rights,[29] often in the declared intention to be able to deal with the abuses of the civilian regime which preceded it and whose wrongful acts of omission or commission afforded the reason for the intervention of the Military. These Decrees and Edicts which followed in their wake put the provisions of certain Decrees and Edicts beyond the scope of judicial power. It is a truism that the Courts are by their very nature and position in the Nigerian State as spelt out by the Constitution, a "constitutional opposition" to arbitrariness and other abuses of human rights and an effective bulwark against tyranny and oppression.

By the very practice of ouster of the jurisdictions of courts, particularly under Military regime, it appears that the judiciary is regarded as an apposition to government. But that type of "opposition" as constituted by the courts is necessary for the stability of the State in every democracy. The only alternatives to it are repression and anarchy. Experience in Russia and other countries of Eastern Europe shows clearly that one can repress a people for some time; not for all the time. For, with repression, an explosion at some stage becomes inevitable.

It is refreshing to note that in Nigeria, a newspaper recently reported on a front page banner headline, thus:

> "MILITARY TIRED OF RULING." Col. Ajiborisa
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> "The Military is tired of running the government and would be happy to go back to the barracks at the earliest time possible ..."[30]

This is welcome news. As usual, this return to the barracks, which is scheduled for September 1992, will be heralded by a suspension of all the ouster provisions in our laws. But I dare say that in the absence of repression the only way to keep the apparatus functional and smooth is to allow the courts to function as an independent and co-equal third arm of government, in accordance with the spirit and letter of the Constitution. In that respect, ouster of the jurisdictions of courts over human rights questions - or on any justifiable issue for that matter - is a contradiction in terms. It is bad for democracy when, as has happened often, the Constitution, the organic law of the land, has to be tampered with, by suspending its operation, in order to remove the sting of unconstitutionality from an obviously unconstitutional act, particularly when such an act impinges on human rights norms which have been selected and guaranteed by the Constitution. It is, perhaps, worse when the courts which have been created by the Constitution to safeguard those rights have been compelled not to inquire into them at all. It is hoped that there will be no ouster of courts' jurisdictions in the Third Republic come 1992.

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29. See e.g. Decrees No.1 of (1966); No.28 of 1970; No.1 of 1984; and No.13 of 1984.

30. See The "Daily Champion" Newspaper of October 8, 1991, at page 1.

## Systemic Constraints to Enforcement of Human Rights

Since 1979, Nigeria has embraced the Presidential system of government. But regrettably, perhaps due to its long connection with the Westminster system, there still survive in the country many features which had worked in the former system but are alien to the present. I can only deal with some of these in outline in a paper like this.

### (a) The potential weakness of the judiciary in the enforcement of its process and execution of its process and execution of its judgments

As I said above, judicial power includes the power not only to adjudicate but also to enforce and execute the decision of the particular court. But in our system our courts have no independent organ or machinery of its own for the execution and enforcement of its decisions. They have to rely upon the Executive arm of government to enforce and execute judgments are de jure vested in the Sheriff and Bailiff (court officials) aided by the coercive force of the Police who are themselves a part of the Executive. The powers to serve processes and execute judgments of court are directly vested in the Police by Law.[31] The Police are fully equipped with the wherewithal to perform these functions. What happens, one may ask, if the Police should refuse to co-operate with the courts generally or in any particular case? Certain events which took place in some parts of the Federation during the Second Republic (1979-1983) show that this is not a far-fetched question. Professor Nwabueze catalogued many instances in which some members of the Nigeria Police Force in some parts of the country openly defied or refused to enforce court orders.[32] What will happen where the enforcement order is made against a top member of the police force for the violation of a citizen's civil right? This is why I had to opine elsewhere.[33]

> "It is obvious that in the Nigerian context to leave the courts in a situation in which they cannot even enforce their decisions is to guarantee perpetual impotence of the Judicial arm of government. The only answer appears to me to be the creation of the position of armed court marshals for the enforcement of court decisions and processes. The reliance upon the Police, now an important part of the Executive arm of government, was suitable and served its purpose under a Unitary, Regional, and Quasi-Federal forms of government. But, in my opinion, it is out of tune with, and ineffective in, the present Federal Presidential System in which there are sharp divisions of areas of sovereignty and authority between the Federal and State authorities as

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31. See ss.4 & 22 of the Police Act, Cap.154.

32. See Prof Nwabueze: Nigeria's Presidential Constitution 1979 - 1983, pp.308-323.

33. In my paper on "Judicial Powers: Quo Tendimus" at p.33.

well as clearer separation of powers among the three arms of government."

An important element in the systemic weakness of the Judiciary in the scheme of things is that it is neither in control of its purse, nor of its staff, nor even of its services. It depends upon the legislature to vote the funds, the Executive to release the funds, the Executive to (until the recent civil service reforms) provide it with its staff and provide it with shelter, repair and maintain the residences of judicial officers - indeed with even providing it with water, cold air and security. If the enforcement of human rights in Nigeria must have any meaning, then the courts must be given the power and the wherewithal to run their affairs and enforce and execute their decisions. They must be given a Judicial Service Commission which is not just one of the Federal or State Executive Bodies, but one which is so structured, funded and equipped, to cater fully for the Judiciary. In the United States which we have usually looked up to as model because we run a system similar to their own, such is the case.[34] Provision of armed court marshals who will serve court processes and execute court decisions is the only answer.

(b) Non-Justiciability

Our Constitution of 1979 is very much unlike that of the United States in one important respect. In the United States any law which purports to exclude the jurisdiction of ordinary courts is unconstitutional:[35] it is left for the courts to decide such issues that it is expedient that they do not adjudicate upon because they raise political questions.[36] But in Nigeria, rather like in India, the Constitution itself has selected certain norms which form part of either the Universal Declaration of Human Rights or the two Covenants on social economic and political and educational rights and declared them unjusticiable.[37] They are merely "fundamental objectives and the directive principles of state policy," expected to be observed and applied by all authorities and persons exercising legislative, executive, or judicial functions. This situation is repeated in the 1989 Constitution which will come fully into force in 1992. Considering the difficulties in any amendment to the Constitution in a democratic set-up, it is submitted that this limitation by the Constitution itself is unwise. When it is remembered that all the principles set up in Chapter II of the Constitution under political objectives, economic objectives, social objectives and educational objectives and declared unjusticiable, are well-known human rights norms under the Declaration and the Covenants, one doubts

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34. See (1911) Muskrat v United States 219 US 341.

35. See Toth v Quarless 350 US 11 (1965).

36. See Finkelstein: Judicial Self Limitation - Harv. L Rev. 37 (1923) 3381 at p.344-345.

37. See Chapter II of the 1979 Constitution.

very much the wisdom of the constitutional exclusion of exercise of judicial power from those provisions. In practice, members of the Executive pay little or no heed to those objectives, as they cannot be taken to court for failure to do so. And these breaches by them invariably form a good part of the reason why the military intervenes from time to time.

(c) The position of the Attorney-General

During the Westminster model of democracy which Nigeria operated till 1979, the Attorney-General was the spokesman for the Judiciary and its representative in the cabinet. Since 1979, the position has changed because the Attorney-General is now a member of the Executive. Before 1979 by some provisions in our laws[38] a successful litigant could not execute a court decision over money under the control of a public officer in his official capacity or in custodia legis without the consent of the Attorney-General. From this and similar provisions in the Laws of The Regions, a view was developed that government funds could not be attached in execution, and that execution should not issue in respect of money debt owed by a government, without the consent of the Attorney-General. The argument was that the private interest of the creditor should not be allowed to over-ride the community interest represented by the State. What happens, one may ask, where a citizen's fundamental right has been infringed and he goes to court and is awarded damages against a government or its agency? Granted that the power to execute a judgment is part and parcel of judicial power as vested in the courts under section 6 of the Constitution, it is not an unconstitutional erosion of judicial power to prevent a court from due execution of such a judgment simply because the Attorney-General has not given his consent therefore. Is that provision in the Sheriffs and Civil Process Act still constitutional? In view of the interpretation given to the scope of section 6(6)(b) of the Constitution in the case of Ransome-Kuti v A.G. Federation and Others,[39] one wonders whether such a restraint on due exercise of an aspect of judicial power can still be supported. It cannot be doubted that it is a serious constraint against due enforcement of human rights where a person who has been awarded damages for the unlawful infraction of his right cannot execute the judgment against the government because the Honourable Attorney has withheld his consent. I suggest that such requirements of consent of the Attorney-General before execution be expunged from our statute books and that, pending that, our courts examine critically its constitutional implication.

The court's own responsibility

So far I have dealt with constraints against due exercise of human rights where the blame and the remedy are extra-judicial in that it is for the legislator or the executive to find the solu-

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38. See Section 84 of the Sheriffs and Civil Process Act.

39. (1985) 2 NWLR (Part 6) 211.

tion. I shall now consider some constraints over which the solution lies wholly or partly on the judiciary.

The problem of Locus Standi

Like in all common law countries, a plaintiff's having a locus standi is a pre-condition to his right to sue in any particular cases. The courts will not invoke their judicial powers in favour of a plaintiff who has not shown that he has locus standi.[40] In countries like England which have no written constitutions the principles upon which the courts determine the issue of locus are worked out by the courts. But in most countries with written constitutions, the parameters of locus standi are fixed by the constitution: but even so, it is left for the courts to adumbrate and determine when a plaintiff has locus standi. In Nigeria, it is fixed by section 6(6)(b) of the Constitution of 1979 which states that the judicial powers vested in accordance with that section:

> "(b) shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."

The Supreme Court interpreted this provision in the case of Senator Abraham A Adesanya v President of the Federal Republic and Anor[41] where it unanimously held that the Senator had no locus standi to challenge the appointment of the 2nd defendant as the Chairman of the Federal Electoral Commission - an appointment the plaintiff had unsuccessfully opposed in the National Assembly. His civil rights and obligations were not involved; he had no right to litigate over a right common to all the citizens, unless he could show that he had suffered a damage special to himself, the court reasoned. The argument that every Nigerian had an interest to see that every holder of a public office performed it properly was not accepted by the court. What is striking is that even the respected Chief Justice agreed with his learned brethren, even though he had observed:

> "... In the Nigerian context, it is better to allow a party to go to court and to be heard than to refuse him access to our courts. Non-access, to my mind, will stimulate the free-for-all in the media ..."

However, the principle in Adesanya Case (supra) has been applied in several scores of cases.

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40. See Thomas v Olufosoye (1986) 1 NWLR 669 Ugo v Obiekwe (1989) 1 NWLR (Part 99) 566.

41. (1981) 1 All NLR (Part 1) 1.

In Attorney-General, Kaduna State v Hassan[42] the court opened the gate for access to court wider by giving locus standi to a father to challenge the act of the Solicitor-General (in the State where there was no Attorney-General at the time) who entered nolle prosequi on a charge against those standing trial of unlawfully killing his son. It may be observed that right to life is a fundamental right under our Constitution.[43] Also, in Fawehinmi v Akilu & Anor[44] the gates were thrown wider open in criminal cases on the premises that every Nigerian was his brother's keeper. So a lot of progress has been made on the law since the Adesanya decision. Some of the learned Justices who participated in Fawehinmi's case (supra) made it clear that they were changing the law. Yet a good number of Judges still feel that more could and ought to be done with respect to locus standi in human rights cases. They urge that whatever might be the position with respect to locus standi in respect of civil rights of Nigerian citizens constitutional rights, particularly human rights should be different: every Nigerian citizen ought to have a locus to challenge an unconstitutional act of a public functionary as well as any abuse of fundamental rights guaranteed by the Constitution, they argue. Kayode Eso, JSC in a paper which he read at the All Nigeria Judges' Conference held at Abuja in 1988 said:

> "Whatever one may say of the decision of the Supreme Court in the Akilu Case and the previous decision in Abraham Adesanya Case, the last has not been heard or read on the locus standi issue."

What position should the Nigerian courts therefore take on the matter? It is useful to look at the position in two Commonwealth countries with Federal constitutions.

In Canada, the Supreme Court has recently come out to draw a distinction between locus standi in a litigation over private rights and obligations and one in which the constitutionality of a public legislation or act is being challenged. It has come to the conclusion that unlike in the former class of cases, in the latter case a person who has just as much interest as any other member of the community can maintain an action. Reference may be made to the cases of Thorson v Attorney-General of Canada[45] and Nova Scotia Board of Censors v McNeil.[46]

In India, the relaxation in what have been termed "public interest litigations" is still more far-reaching. Locus standi can be given to any person who writes a letter of complaint from any

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42. (1985) 2 NWLR (Part 8) 483.

43. See Section 30 of the 1979 Constitution.

44. (1989) 2 NWLR 122.

45. (1975) 1 SCR 138.

46. (1976) 1 SCR 265.

part of the country in the name of the People's Union for Democratic Rights to the Chief Justice. Justifying the rationale, Dayal, J, in People's Union for Democratic Rights v Minister of Home Affairs[47] said:

> "Following English and American decisions, our Supreme Court has of late admitted exceptions from the strict rules relating to locus standi and the like in the case of a class of litigations which have acquired classification known as "public interest litigation" that is, where the public in general are interested in the enforcement of fundamental rights and other statutory rights ... Today it is perhaps commonplace to observe that as a result of a series of judicial decisions since 1950, there has been a dramatic and radical change in the scope of judicial review. The change has been described ... as an upsurge of judicial activism."

With the benefit of these two situations in other jurisdictions with similar background with us, I now return to the Nigerian situation, and make the following suggestions.

First: Where the issue is that of infringement of public right, duty, or obligation, every citizen should, following the Canadian example, have a locus. This is the only way by which public accountability can become meaningful. In the peculiar situation which exists in Nigeria, to go to the extent to which India has gone is to kill the judiciary.

Secondly: But when the issue is the enforcement of private rights and obligations, only a person directly affected should have the locus standi to enforce his personal rights and obligations.

Delay

The next impediment to due enforcement of human rights and one which is largely traceable to the courts is the problem of delay. Admittedly the courts in this respect would include judges, lawyers for litigants and officers of courts. Each of them has his own share of blame in the delay of cases on civil rights. Not less important of course is the congestion of case lists, as ordinarily human rights cases must have to compete with other types of cases on the cause list.

But, by their very nature most human rights cases raise issues which ought to be gone into and adjudicated upon as soon as possible. A person who is unlawfully detained without trial, or who is subjected to dehumanising ordeal, or whose freedom of expression is interfered with, or whose right to private life is invaded or right to peaceful assembly is unlawfully interfered with, or a public servant who feels that he has been thrown out of his job without a hearing, needs to go to court and get a verdict one way or the other as soon as possible. A long delay at the trial could defeat the whole purpose of his guaranteed right.

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47. (1986) LRC (Const.) 547

This is why the provision of a sort of time table in the Enforcement Rules for the enforcement of fundamental rights is not only apt but desirable. The time frame runs like this:

(i) File an application for leave to apply for the fundamental right on a motion ex parte just one day before the date of hearing. Enough copies for service are exhibited. The next day the motion may be granted and, in a deserving case, a stay of action or proceedings in the matter complained of granted.

(ii) Then the application is filed by a motion on notice or originating summons and served on the respondent. Not earlier than eight days or later than fourteen days the motion must be set down for hearing.

(iii) On the hearing the applicant gets any relief he is entitled to, including damages, order for release of the person or his property, order nullifying or setting aside the act complained of, and so on.

It follows from the above that given a diligent counsel and a conscientious and hard working court, proceedings in an important human rights case can be over within one month.

But what has been happening in practice? The true position is that these cases when filed just take their turn on the case lists of Nigerian courts. The journey of a case from the High Court to the Supreme Court lasts quite often to about ten years. In the recent case of Alhaji Abdullahi v Nigerian Civil Aviation Training Centre, Zaria & Anor,[48] the plaintiff was on the 27th October 1981 terminated from his employment as the Chief Security Officer of the first defendant. He went to court for a declaration that the termination was void and of no effect on the ground that he was not given a fair hearing. He therefore claimed consequential relief including his salary up to the date of judgment. The dismissal of his claims by the Kaduna High Court was affirmed by the Court of Appeal. His further appeal to the Supreme Court was dismissed only in July, 1991. Thus it took about ten years for him to know his fate over a right guaranteed by the Constitution. I shall give one more set of examples. In 1988 the Military Governor of a State decided to meddle in the administration of a State University in Nigeria. He ordered the termination of the appointment or downgrading of thirteen members of staff of the University including two professors for reasons which would appear to be political. Each of them went to court on the ground that, contrary to the provisions of section 33 of the Constitution they were not heard at all, much less fairly, before their fates were determined. Most of those cases are still pending in the High Court. Political pressure on the courts has been alleged or suspected. If this is so, then the Judges concerned have done a serious damage to the image of the judiciary. Be that as it

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48. (1991) 7 SCN J1

may, it is clear that the spirit and letters of the provisions of Enforcement Rules have not been reflected by the inordinate delay. In my respectful opinion, one resolve I would urge this colloquium to make is to enhance the enforcement of human rights in our courts by giving precedence and priority to human rights cases as against other civil cases. That is, to my mind, the clear intendment of the entrenched rights read together with the provisions of Order 2 rule 1(2) of the Enforcement Rules. Speedy hearing of those cases on human rights is the only way to give a meaning to those rights.

There can be only one answer to the problem of political pressure as often constituting a major source of delay of human rights cases. This is the establishment of a supra-national, perhaps a regional, court of human rights in the pattern of the European Court of Human Rights, with wide powers of adjudication and enforcement. If it is granted, as it must be, that these rights are essentially rights against governments, and their agencies, it can be seen that it is not always easy to enforce them in State High Courts in an atmosphere free from local political pressure or influence. Indeed, State governments, more often than not, see these cases as signs of confrontation by both the litigant and any court which gives a decision against the government, no matter the merit or otherwise of their case. It, therefore, often demands a lot of courage for Judges to decide such cases. Some Judges take the line of least resistance - to the chagrin of the law and the Constitution - by simply adjourning the cases, hoping that the political atmosphere might cool. But in such cases, even if they eventually decide against the government, the long delays might have defeated justice: the popular aphorism that justice delayed is justice denied can scarcely have a more apt illustration.

Lack of necessary equipment in Court

I am aware that many of learned colleagues will plead in defence the lack of necessary equipment in our courts - typewriters, law books and stationery, computers and automatic recording equipment. It is true that we are under-equipped for efficient judicial work. Nigerian Judges have complained about these for quite some time - with every amount of justification. Something ought to be done in this respect as a matter of urgency. But this is not the only cause of delay. For, after all, other cases still go on. Much more relevant to what I am talking about is the fact that Judges, particularly at the trial courts, do not seem to advert their minds to the fact that it is the intendment of Order 2 rule 2(1) of the enforcement rules which I have set out above that human rights cases should be set down for hearing and be disposed of as expeditiously as possible. They should take precedence over other cases, save, perhaps capital cases if the courts must keep to the set out time frame. But because courts do not seem to advert to this at all, they compete with other civil cases on the case list and therefore suffer inordinate delay. This should not be so.

Factors Inhibiting The Right to Personal Liberty

The right to personal liberty of the subject is clearly guaranteed by the Constitution.[49] Right to personal liberty is one of the entrenched rights in the 1979 (as well as the 1989) Constitution. Each clearly spells out circumstances in which a person could lawfully be deprived of that right as well as its wide implications. Order 4, rules 1-7, of the Enforcement Rules makes adequate provisions on the application which could be made by a person who has been unlawfully detained or restrained. It provides for not only the return that should be made therefore but also for the expeditious hearing of such an application; also for the production to court of the person unlawfully restrained and his release. On the whole the rules are a more comprehensive code of procedure for such matters than the provisions in the Rules of the Supreme Court on habeas corpus and other related proceedings. Besides, section 32 and 33 of the Constitution give various rights to a person charged with or suspected of having committed a criminal offence. In particular, I would quote the provision of sub-section (4) and (5) of section 32. They provide:

> "(4) Any person who is arrested or detained in accordance with subsection (1)(c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of -
>
> (a) 2 months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
>
> (b) 3 months from the date of his arrest or detention in the case of a person who has been released on bail,
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> he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.
>
> (5) In subsection (4) of this section the expression "a reasonable time" means -
>
> (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of 40 kilometres, a period of one day; and
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> (b) in any other case, a period of 2 days or such longer period as in the circumstances may be considered by the court to be reasonable."

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49. See section 32 of the 1979 Constitution.

Considering the fact that a Constitution usually states rights in general terms and leave it to the courts to fashion out the details, the contents of the Constitution are not only unusually detailed but also highly commendable. What is more, these provisions are supplemented by provisions in the Criminal Procedure Act and Laws and the Criminal Procedure Code with respect to bail to suspects and accused persons. Most importantly, the Chief Judge of each State is empowered by law to go on jail delivery from time to time and order the release of those who are overstaying in prison custody awaiting trial.

All these are highly commendable provisions: but there are still problems. Indeed the Decree empowering Chief Judges to go round prisons on jail delivery from time to time was informed by the over congestion of prisons by persons awaiting trial who stay in custody some time for periods longer than those of likely sentence if they were expeditiously tried, convicted and sentenced.

The Police sometimes have practical problems in dealing expeditiously with suspects and releasing them on bail. These include communication, transportation and logistical problems of the police force as well as the attitude of some police personnel to bail to accused persons. The funding and equipment of the police do not appear to adequately keep pace with the rapid growth of crime and criminality in society. Also some of the police personnel do not appear to have the correct attitude to the problem of bail. They do not often see it as a right which a suspect has in all bailable offences. A complete orientation, re-equipment and fuller funding of the police are necessary.

The courts, too, are not free from blame. Magistrates who deal with a bulk of criminal cases do not appear to always realise that an accused person has a constitutional right to bail in all bailable offences. The typical guideline in all our laws is as follows:

(1) A person charged with any offence punishable with death shall not be admitted to bail, except by a judge of the High Court.

(2) Where a person is charged with any felony other than a felony punishable with death, the court may, if it thinks fit, admit him to bail.

(3) When a person is charged with any offence other than those referred to in the two last preceding subsections, the court shall admit him to bail, unless it sees good reason to the contrary.[50]

In spite of these, magistrates refuse bail altogether or impose harsh and difficult conditions in many cases.

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50. See section 118 of The Criminal Procedure Act. There are similar provisions in The CPC.

It is common in Lagos State, for example, to come across a condition such as that the surety shall be a person who has a house in Lagos. The number of house-owners in Lagos cannot match the number of crimes in Lagos. Furthermore many of the criminals do not know any house-owner who might be willing to risk taking him on bail. We do not have, as in the United States, companies or professional bailers who can take accused persons on bail. The end result is that our prisons are bursting with persons awaiting trial because the right to bail has been reduced to a sham. Even High Courts do not seem to always remember that under section 118(1) of the CPA they can grant bail to a person charged with a capital offence. I hope that this Colloquium will seize this opportunity to give an indepth consideration to the question of bail as an aspect of human right.

Other Cause of Delay in Criminal Cases

I can only make a passing mention of the way the right of a person charged with a criminal offence to have it tried within a reasonable time by a court of competent jurisdiction (section 33 (4) of the Constitution) is exercised. Even cases of murder sometimes last for over ten years from their inception to the judgment of the Supreme Court; and the accused person is invariably in custody all the time. This is due to the delay which derives from many problems, including competition with other cases, time spent in getting the opinions of, say, forensic and handwriting experts who are mostly based in Lagos and copying case files in order to get the opinion of the Director of Public Prosecutions. As I said in Abuja in September 1990, I believe the only answer is to follow the example of Britain, which was informed by several centuries of similar experience, by establishing for each State of the Federation and Abuja centrally organised and well funded Directorate of Public Prosecutions to which all the Ministries and Departments of Government concerned with public prosecutions will post the necessary personnel to ensure speedy processing of case files through inter-agency co-operation and thereby minimise delay in getting criminal cases to trial. Time wasted in the passage of cases from one court to another can be minimised if all courts borrow a leaf from the Court of Appeal wherein records for appeal to that court are supplied in sufficient numbers as to leave over some for transmission to the Supreme Court in case of further appeal.

Conclusion

My brother Judges, I have tried to focus on domestic enforcement of international human rights norms with particular reference to Nigeria. I have dealt with the procedure before and after 1979. In particular the contents, significance an impact of the enactment of Fundamental Rights (Enforcement Procedure) Rules which came into force on the 1st of January, 1980 have been examined. I have also tried to identify some of the factors still militating against the enforcement of human rights norms in Nigeria - in both civil and criminal cases. In hoping that all Nigerian Judges will see the whole situation as I see it - id est: a great challenge - I would like to end with the message of Honourable Justice Kirby during the Banjul Colloquium, in 1990, in his paper on

The Role of the Judge in Advancing Human Rights where he stated:

> The simple message of this colloquium can be stated in a sentence. When common law judges are faced (as so often we are) with ambiguities of legislation or uncertainty of the common law, it is appropriate and legitimate, in filling the gap to have regard to international human rights norms. The international statements of principle concerning human rights are found in the Universal Declaration of Human Rights, the international covenants, regional human rights instruments, specific treaties, the jurisprudence of international and regional courts, the determinations of international agencies of high authority, and the writings of scholars on international law. In the age of the jumbo jet and rapid developments of international tele-communications, it is necessary to adjust our legal perspective. We must lift our eyes from our own jurisdictions. We must escape the intellectual prisons to which we have been consigned by parochial attitudes, legal training and statements of the law fashioned for the quite different circumstances of earlier times. It falls to us, the common law judges of today, in the post-Hiroshima age, to make a practical contribution to the peaceful evolution of a new international legal order.
>
> This order will not come overnight, any more than the authority of the Royal Courts of England was established without travail. But it will also not come about unless the judges of today are aware of the need for it, sympathetic to its development and aware of the sources to which they may turn for the intellectual guideposts for individual contributions.[51]

Now that our peculiar problems have been highlighted, let us rededicate ourselves to come to firm grips with them, for the enhancement of human rights.

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51. Developing Human Rights Jurisprudence, Vol.3 at p.55.