

CHAPTER SEVEN
JUDICIAL AND FUNDAMENTAL RIGHTS

Course Outline

1. What is judiciary
2. Types of Judiciary
3. Function of Judiciary
4. The Fundamental Rights
5. The Role of Judiciary in Upholding the Fundamental Rights

What is Judiciary?

Judiciary is the system of courts that adjudicates legal disputes/disagreements and interprets, defends and applies the law in legal cases. It can also be seen as the mechanisms for the resolution of disputes. Under the doctrine of the separation of powers (Legislature, Executive and Judiciary), the Judiciary generally does not make statutory law (which is the responsibility of the Legislature) or enforce law (which is the responsibility of the Executive), but rather interpret, defends, and applies the law to the facts of each case. However, in some countries the judiciary does make common law. By common law, it means the body of law created by judges and similar quasi-judicial tribunals by virtue of being stated in written opinions. Common law courts look to the past decisions of courts to synthesize the legal principles of past cases.

In many jurisdictions, the judicial branch has the power to change laws through the process of judicial review. Courts with judicial review power may annul

the laws and rules of the state when it finds them incompatible with a higher norm, such as primary legislation, the provisions of the constitution, treaties or international law. Judges constitute a critical force for interpretation and implementation of constitution, thus in common law countries creating the body of constitutional law.

Types of Judiciary in Nigeria

The type of judiciary in Nigeria simply refers to the way in which Nigeria courts are arranged and organized at different levels, jurisdiction and region. It also means that the decision of the lower court can be appealed to higher courts. If the judgment of the lower court does not reflect justice in a case, the aggrieved party can appeal to the higher court to seek redress and justice. However, the various courts established in Nigeria can only exercise their responsibility to adjudicate in accordance with the jurisdiction granted to it by the 1999 constitution of the Federal Republic of Nigeria.

The different types of court in Nigeria have varying jurisdiction and structures. According to the 1999 constitution of the Federal Republic of Nigeria with amendment (2011), we have:

- The Federal Court which include the Supreme Court, the Court of Appeal and the Federal High Court
- The State Court which include the High Court of a State, the Customary Court of Appeal of a State and the Sharia Court of Appeal of a State.

The Supreme Court

Under Section 230 of the 1999 Constitution of the Federal Republic (as amended), the Supreme Court is the apex Court of Nigeria, which implies that the jurisdiction of the Court is the highest in Nigeria. The decision of the Supreme Court is final and cannot be appealed. It also has original jurisdiction in cases involving states and other states and states and the Federal government. The Supreme Court of Nigeria is based in the capital, Abuja. It is mainly a Court of appellate jurisdiction. The Supreme Court is made up of the Chief Justice of Nigeria. The number of Justice does not exceed 21 and the president appoint them on the recommendations of the National Judicial Council (NJC), subject to confirmation by the Senate of the Federal Republic of Nigeria.

The Court of Appeal

Under Section 237 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Court of Appeal, rank second among Nigeria Courts. It has the original jurisdiction to determine and hear any matter as to whether anyone has been effectively voted for the position of President, Vice President, Governor and Deputy Governor.

Appeal can be made from the Federal High Court, the High Court of a State, the Sharia Court of Appeal in a State, and the Customary Appeal Court to the Court of Appeal. Additionally, it is one of the judicial bodies in which the country's three legal systems (English, Customary, and Sharia) converge. The body should have at least three judges who are well-versed in Islamic personal law and three in customary law. Also the Court of Appeal has the power to hear and decide appeals made by military courts and other courts in accordance with certain laws of the National Assembly.

The Court of Appeal is made up of the president of the Court of Appeal and 49 judges, appointed by the President on the recommendation of the National Judicial Council (NJC), subject to confirmation by the Senate. There is only one court of Appeal and it has 72 divisions spread across the 36 states in all the six geopolitical zones.

The Federal High Court

Under Section 249 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) has original jurisdiction in civil matters and cases related to the revenue of the Federal Government of Nigeria. Such cases include admiralty, copyright, banking, excise duties, customs, and taxation as set out under Section 251 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). It is headed by the Chief Judge and comprises any number of judges as allowed by an act of the National Assembly. However, it can be properly constituted if it contains at least one judge of the Court. The Federal High Court has a division in each of the thirty-six State in Nigeria.

The State High Court

Under Section 255 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for a High Court in each of the states in Nigeria and in the Federal Capital Territory Abuja. It has the largest jurisdiction under the Constitution of Nigeria in civil and criminal cases. The State High Court is more li

ke the Federal High Court but at a state level. It has appellate jurisdiction over decisions of Customary Courts, Magistrate Courts etc. Each of the state High Court is headed by a Chief Judge. In the case of the High Court of the Federal Capital Territory, Abuja, the number of judges is determined by the State House of Assembly and National Assembly.

It is a court of coordinate jurisdiction with the Federal High Court and the National Industrial Court.

Customary Court of Appeal of a State

The Customary Court of Appeal is presided by the President of the body, and is constituted of any number of judges as may be determined by the House of Assembly of the State. It is provided for under Section 280 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). This judicial body exercises appellate and supervisory jurisdiction over civil cases pertaining to customary law. It hears and determines appeals with questions arising from subordinate customary judiciary bodies' interpretation or application of customary laws.

The Sharia Court of Appeal

Under Section 277 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Sharia Court of Appeal is among the constituent judicial bodies of the unified justice system of North-East Nigeria. This is the region in

which Sharia law is widely practiced. The court reviews cases involving Sharia law and Islamic personal law. It interprets Islamic Customary law. It handles Islamic litigation cases, especially those involving the poor. It is headed by a Grand Kadi and contains a number of Kadis.

Apart from the above discussed, we have the National Industrial Court and the Magistrate Court District Court.

The National Industrial Court

It is provided for Under Section 254 of the 1999 Constitution of Federal Republic of Nigeria (as amended). It is ranked fifth in the list of Courts in Nigeria. The National Industrial Court has exclusive jurisdiction over all industrial disputes listed below

1. Factory law: This is known as the factories Act by virtue of the Designation of ordinance Act 1961. The Act lays down a number of simple but important health rules regarding cleanliness, overcrowding, ventilation, lighting, drainage of floors and of sanitary conveniences.
2. Labour practices: These are practices that affects employee hiring and promotion, remuneration, disciplinary action, complaint response system, transfers and reassignment, termination of employment, human resources development, occupational safety and health, and working conditions (working hours and remuneration).
3. Trade disputes law: Also known as Trade Dispute Act (TDA) are any dispute between employee and workers or between workers and workers, which is connected with the employment or non-empl

oyment, or the terms of employment and physical conditions of work of any person.

4. Trade union law: This law makes provision for democratization and liberalization of the unions and labour and also to guarantee the freedom of association of workers.
5. Workers compensation law: This act is a social securing /welfare scheme that provides comprehensive compensation to employees who suffer from occupational diseases or sustain injuries from accidents at the workplace or in the course of employment.

Additionally, the judicial body also hears and determines appeals from industrial arbitration panels and other bodies that handle employment matters. The body was established in 1976 with the primary aim of settling disputes between trade unions and trade unions, trade unions and workers, workers and workers, and workers and employers. The National industrial court has all powers of a state High Court as well as appellate jurisdiction. It is headquartered at Il, New Bussa Close, Area 3, Garki, with several branches in different states across the country

The Magistrate/District Courts

The Magistrate Court in Nigeria is the only one on the list not provided for under the 1999 Constitution. It is established by the House of Assembly and function primarily as a judicial body of summary of judgment. This means that all decisions in this particular judicial body are summarily determined.

Both magistrate and District Courts refer to the same body only that the form

er term is widely used in southern Nigeria while the later is used in the Northern part of the country. This body is engaged in matters relating to civil law, with each region having slightly different rules.

Special Court in Nigeria

Apart from the court listed and discussed, there are special judicial bodies in the country known as tribunals. Generally, a tribunal is a special judicial body created to settle disputes arising from a specific area of the law. Here are some of the tribunals in Nigeria.

Code of Conduct Tribunal

This tribunal was established under chapter C15 of the code of Conduct Bureau Act. It consists of the Tribunals Chairperson, Vice Chair, and other members as may be appointed by the president upon recommendation by the National judicial council. The tribunal has powers to try those holding public offices in case they breach the provisions outlined by the codes of conduct Bureau and Tribunal Act. Additionally, they can impose any of the punishments outlined below.

1. Disqualifying a member from holding any public office for a period not exceeding ten years
2. Seizing any property acquired as a result of corruption or abuse of power and forfeiting the same to the state.
3. Vacating a public officer from office or legislative house.

Appeals from the code of Conduct Tribunal can be heard and determined by the country's Court of Appeal. Also, the decision of this tribunal does not shield the accused from having criminal charges preferred against them

Election-Tribunal

The election tribunal is a national election judicial body and is usually constituted by members of the Supreme Court and the Court of Appeal. It is divided into several sub-tribunals such as

- **National Assembly Election Tribunals:** This one hears and determines petition involving the election of members of the House of Representatives and the Senate.
- **Governor and Legislative Electoral Tribunals:** They hear and determine petitions involving the election of governors and state legislators
- **Presidential Election Tribunal:** They are created to determine election petitions arising from any presidential election. According to the country's constitution, the tribunal can only consist of Court of Appeal Justices.

Functions of the Judiciary

The main functions of the judiciary include

1. Interpretation of the constitution/laws
2. Adjudicating of cases in courts
3. Advices the Executive and Legislative on some sensitive matters
4. Defends the right/liberties of the citizens.

However, the different judiciary courts have their specific functions to perform.

Example:

At the Federal Court

Function of the Supreme Court

1. It function primarily as an appellate judicial body
2. It is the body that interprets the constitution and laws of the land
3. It is the court of last resort in Nigeria. This means that the Judicial body serves as the final Court of appeal.
4. It plays an advisory role to the Executive arm of government.
5. It settles any dispute arising between State vs Federal government or State vs State.
6. It is the guardian of the country's constitution

Function of the Court of Appeal

1. It has the power to determine the results of presidential and gubernatorial elections as well as the office holders terms in office.
2. It hears and determines appeals from the districts courts.
3. It is the intermediate appellate judicial body in the country's justice system.

Functions of the Federal High Court

They are connected to matters pertaining to:

1. Arms, ammunition and explosives
2. Aviation and safety of aircraft
3. Bankruptcy and insolvency

4. Poisons
5. Mines and minerals (including oil fields, oil mining, geological surveys and natural gas)
6. Weights and measures.

At the State Court

Function of the State High Court

1. It has the authority to hear and determine criminal and civil matters.
2. It is an appellate body for all subordinate judicial bodies.

Functions of the Customary Court of Appeal

1. They exercise appellate and supervisory jurisdiction over civil cases pertaining to customary law
2. It hears and determines appeals with questions arising from subordinate customary judicial bodies interpretation application of customary law

Function of the Sharia Court

1. It handles Islamic litigation cases, especially those involving the poor.
2. It interprets Islamic customary laws
3. It reviews cases relating to Sharia and Islamic personal law.

Fundamental Rights

The fundamental rights are a group of right that have been recognized by a high degree of protection from encroachment. These rights are specifically identified in a constitution, or have been found under due process of law. Constitution is dedicated to the fundamental human rights of a Nigeria, from Section 33 to Section 46. By definition, every individual holding Nigeria's citizenship as recognized in the Nigerian constitution, is inherently entitle to these fundamental rights.

Similarly, the United Nation has its universal declaration of Human rights that is expected to be universal to all humans.

Overall, the Nigerian constitution contains fourteen (14) section on the fundamental human rights of a Nigeria, while the United Nations provides for thirty (30) declarations of the Universal human rights.

The Thirty (30) Universal Human Rights as provided by the United Nations are:

- Right to Equality
- Freedom from Discrimination
- Right to life, Liberty, Personal Security
- Freedom from Slavery
- Freedom from Torture and Degrading Treatment
- Right to Recognition as a person before the Law
- Right to Equality before the Law
- Right to Remedy by Competent Tribunal
- Freedom from Arbitrary Arrest and Exile
- Right to Fair Public Hearing
- Right to be considered Innocent until proven Guilty
- Freedom from the Interference with Privacy, Family, Home and Corre

spondence

- Right to Freedom In and Out of the Country
- Right to Asylum in other countries from Persecution
- Right to a Nationality and the Freedom to Change it
- Right to Marriage and Family
- Right to Own Property
- Freedom of Belief and Religion
- Freedom of Opinion and Information
- Right of Peaceful Assembly and Association
- Right to Participate in Government and in free Election
- Right to Social Security
- Right to Desirable Work and to join Trade Unions
- Right to Rest and Leisure
- Right to Adequate Living Standard
- Right to Education
- Right to Participate in the Cultural Life of Community
- Right to a Social Order that Articulate this Document
- Community duties essential to Free and Full Development
- Freedom from State or Personal Interference in the above rights.

Although the United Nation enlisted Human Rights are meant to be Universal, however different countries could stripe the down to what is applicable in their country considering the country's socio-cultural, religious and economic background. Below are the Fourteen Fundamental Human Rights of Nigerian Government.

Fourteen (14) Fundamental Human Rights of a Nigerian as provided in Chapte

Chapter 4 of Nigerian Constitution

- Right to Life
- Right to dignity of human persons
- Right to personal liberty
- Right to fair hearing
- Right to private and family life
- Right to freedom of thought, conscience and religion
- Right to freedom of expression and the press
- Right to peaceful assembly and association
- Right to freedom of movement
- Right to freedom from discrimination
- Right to acquire and own immovable property
- Compulsory acquisition of property
- Restriction on and derogation from fundamental human rights
- Special jurisdiction of High Court and legal aid

They are fully discussed and specified in the 1994 Nigerian Constitution

Looking at the fundamental human rights of a Nigerian, as reflected in Chapter four (4) of the Nigerian Constitution, could it be considered to be comprehensive? Has it been fully implemented by the previous administration and is it being fully implemented by the government of the day? Can we possibly borrow a thing or two from that of the United Nations?

As Nigerians, it is our duty to know our fundamental human rights, as captured in the constitution and ensure that it is fully implemented. If we consider the constitution as not doing enough to address our perception of what should be included in our fundamental human rights, then we should seek civilized and c

Constitutional means to demand for an amendment that will be congruent with the desires of the people.

One way to possibly achieve this would be to contact the Senator and law makers representing your senatorial ward and pass the information across to him /her, for onward submission to the National Assembly for deliberations. The challenge, however, is how feasible is it to access one senators?

THE ROLE OF JUDICIARY IN UPHOLDING THE FUNDAMENTAL HUMAN RIGHTS

Under doctrines of the separation of powers, the Judiciary branch administers Justice in the name of the State. The law is interpreted and applied by court, Tribunal, Judges, and Lawyers. These actors comprise the Judiciary system as a whole. By ensuring fair dispute resolution, upholding rights, and bringing culprits to Justice, the Judiciary contributes to citizen's trust and Social peace. To that end, it performs its functions of administering Justice in an independent, impartial, transparent, dependable, efficient and timely manner.

Also the Judiciary upholds the concepts of quality services, which include equality, non-discrimination and the broadest possible access to Justice.

Members of the Judiciary have a role to play in preventing Human Rights and thus implementing Universal Periodic Review (UPR) recommendations. To this

end, representative of the Judiciary system should:

1. Implement a Human Right-Based approach in their activities
2. Call for the reform of Laws and Policies that do not sufficiently protect Human Rights, and for the development of National Action Plans
3. Identify adequate resources and expertise to engage in the international Human Rights Arena
4. Remain updated on the State International Human Rights obligations
5. Provide redress to victims of Human Rights Violations
6. Review the UPR recommendation addressing the Role of the Judiciary and follow-up on their implementation
7. Follow-up on recommendation related access to Justice and the Independence of Judiciary
8. Participate actively in the National Mechanism for Implementation, Monitoring and Reporting (NMIRF)

CHALLENGES TO THE ENFORCEMENT OF THE FUNDAMENTAL HUMAN RIGHTS

The procedural rule for the commencement of an action for the enforcement of fundamental Human Rights is guided by the Fundamental Human Rights (Enforcement Procedure) Rules 2009 made pursuant to Section 46 (3) of the 1999 Constitution of the Federal Republic of Nigeria by the Chief Justice of the Federation. Before the 2009 rules, the procedure for the enforcement of Fundamental Rights in the High Court required bringing up the action within a specified period of time from the occurrence of the breach of such rights, but under the 2009 Rules the limitations of the period of time has been done away with.

Equally, under 1979 Rule, leave of court was a requirement for the enforcement of the Right under Chapter IV of the Constitution but under the 2009 Rules, no leave is longer required thus the era of inhibition on issue of locus standi is gone. The new Rules unlike the previous one allow Lawyers or Litigants to file their briefs, even if the Applicant is detained. In other words, it is not necessary that the Applicant must be physically present before the commissioner of the Oaths to swear to his statement or the Affidavit. Under the new rule such application can be made on behalf of an Applicant whose Rights have been infringed upon and who is seeking a redress of same. This has brought some relief to lawyers and litigants as well. However, there are challenges such as:

- **Lack of physical security**

The fact that there appears to be an increase in crime rate in Nigeria is in itself a challenge to the enforcement of Fundamental Right. Where is Right of Freedom of movement, right to own property, right to personal liberty when you are not sure who will be the next to be kidnapped either by ritualist or kidnappers for ransom. Where is right to freedom of association when in the next minute one would be gunned down by political opponent or thrown into prison by those who are supposed to protect such rights of yours because you do not belong to the same political party with them. The degree of insecurity is manifested by the recent invention of the crime of kidnapping, "caging" with metal rods all available opening in dwelling houses, even electricity meters outside are "caged" as well. The right to personal liberty is not enhanced when prevailing circumstances make false imprisonment a wise option.

- **Attitude of some state functionaries or security right**

In spite of the existence of fundamental Human Right provisions in our constitution policies are still determining people for long periods of time without charging them to court for trials. The officials of the Department of customs and exercise raiding markets with guns, horse-whip and tear gases for the seizure of banned imported items without any warrant from court when it was due to their inability to guard our borders that led to the presence of banned imported items in the first place.

- **Religious, Fanaticism and Militancy**

In Nigeria there has been an increase in the activities of religion extremist in the Northern part of Nigeria with specific references to Kano, Maidugari, Bauchi and Plateau States. This religion extremism has led to the death of thousands of innocent citizens whose rights to life have been enshrined in the constitution. Where is the right to life and right to freedom of religion when some people will always want another people to behave in their own religious ways rather than other peoples religious ways. This had led to the threatening of National Security which in turn has led to the violation of people's Human Right.

Despite all the provisions as enshrined in the Constitution of Federal Republic of Nigeria, the Human Rights abuse instead of regressing is progressing in this country called Nigeria. Both social, political and religious factors have continued to constitute the greatest hindrance to the citizens' desire to seek redress for the infringement of their rights.

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