

**UNIVERSITY OF PORT HARCOURT  
FACULTY OF LAW**

**2<sup>nd</sup> SEMESTER 2025/2026 SESSION  
LECTURE NOTE ON HUMAN RIGHT, 200 LEVEL**

**TOPICS:** 1. Human Rights Under the Constitution of The Federal Republic of Nigeria.  
2. Fundamental Objectives and Directive Principles of State Policies.

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**Introduction:**

It is expedient that start the background of this lesson note by reproducing *ipsissimaverba*, the immutable expressions of the eminent philosophers listed hereunder on their conversations on and perceptions of the inevitable essence of Human Right and its value in our society. Thus;

“If you have never found something so dear and so precious that you will die for it then you ain’t fit to live... You die when you refuse to stand up for right. You die when you refuse to stand up for truth. You die when you refuse to stand up for justice” – **Martin Luther King Jnr**<sup>2</sup>

“Is life so dear, or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, as for me, give me liberty or give me death” – **Patrick Henry, 1736-1799** – Speech, Virginia Revolutionary Council, Richmond, 1775<sup>3</sup>

“It Is better to die on your feet than live on your knees” – **Franz Fanon**<sup>4</sup>

Human Rights are rights which all human beings at all times equally have and or ought to have by virtue of being human beings. They are claims which are invariably supported by ethics and which should be supported by Law, made on society especially on its official managers by individual or groups on the basis of their humanity.<sup>5</sup> They are rights that pertain to human beings because of their humanity and are therefore inherent and

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<sup>2</sup> Osita Nnamani Ogbu *Human Right Law and Practices in Nigeria* (Snaap Press Nigeria Limited, (2013), 1.

<sup>3</sup> *Ibid*,

<sup>4</sup> *Ibid*, p2

<sup>5</sup> U.O. Umozurike cited in *ibid* n.2, p3

inalienable. According to Professor Osita, Human Rights are “demands or claims which individual or groups make on society some of which are protected by law and have become part of the *lex lata* while others remain aspirations to be attained in the future”<sup>6</sup>. Essentially Human Rights are by their real nature entitlements of human beings by the mere fact of their humanity. In sum, constitutions and other codes do not create Human Rights but rather declare and preserve existing rights. The above doctrinal statement of law resonated in the immutable words of Kayode Eso in the Supreme Court case of **Ransom Kutiv A.G Federation**<sup>7</sup> when the noble law Lord and eminent jurist with ample lucidity defined Human Rights in the manner hereunder appearing as:

A right which stands above the ordinary law of the land and which in fact is antecedent to the political society itself, it is the primary condition to a civilized existence and what has been done by the Nigeria constitution since independence is to have these rights enshrined in the constitution so that the rights should be immutable to the extent of the non-immutability of the constitution.

This accounts why, I suppose, the first-generation Human Rights are couched in negative terms for example, to say that no persons shall be deprived of its personal liberty presupposes that personal liberty is an existing right<sup>8</sup>.

### Three Generations of Rights

Liberty Rights are the **first-generation rights**. These civil and political rights were the first to be established historically, and have often being viewed as the basis or core of any possible rights system. These rights emerge to protect the interests and negative liberty of the individual against the power and encroachments of state and include freedom of speech, religion and association, rights to a Fair trial, voting rights amongst others. They are codified in the **UN’s International Covenant on Civil and Political Rights**<sup>9</sup>

The **second generations rights** recognized that certain basic goods should be equally available to all people; that a certain set of political and economic circumstances are needed for human flourishing. These rights include but not limited to rights to basic levels of economic subsistence, education, work, housing and health care. They are found in the **UN’s international Covenant on Economic, social and Cultural Rights**<sup>10</sup>.

The **third-generation rights** known as fraternity, solidarity or group rights attend to communal aspect of human beings. These rights extend the reach of Human Rights to matters such as the recognition of minority groups, social identity and cultural issues. This category of rights is the most controversial and least institutionalized.

<sup>6</sup> Eze, O ,Human Rights in Africa (Macmillan press (1984) 5 cited in *ibid* n2, p3

<sup>7</sup> (1985) N.W.L.R (Pt. 6) 211

<sup>8</sup> Nwabueze B.O, Constitutionalism in Emergent State (Hurst and co limited ,1973) p41

<sup>9</sup> Michael GoodHart, *Human Rights, Politics and Practices* (Oxford University Press ,2009) 16

<sup>10</sup>*Ibid*,

It must be noted that this regime of rights is captured in one form or the other by the constitution of federal republic of Nigeria particularly the provision for the fundamental objectives and directives principles of state policy. Some are justiciable while many remain a moral code, a road map and national aspiration and thus non-justiciable.

### **Fundamental Rights in the Constitution and Provision of the African Charter on Human and Peoples Right**

Our courts have in myriads of cases given credence to the applicability of the African charter in Nigeria. In 2017, the Court of Appeal in **Nnaike v. AG Enugu state & Ors**<sup>11</sup> held that by the ratification of the African charter, it became part and parcel of the domestic laws of Nigeria and thus enforceable in any part of the country. This case cited with approval the authority of **Abacha v Fawehimi**.<sup>12</sup> However, a question of supremacy between the African Charter and chapter IV of the constitution has long been settled as it is trite law that the provision of the constitution is supreme and any other law which is inconsistent with the provision of the constitution shall be *pro tanto* void. Vide section (1) and (3) of the 1999 constitution (as amended). In the case of **P.D.P v. C.P.C.**<sup>13</sup> **Fabiyyi JSC** (as he then was) explaining the principle of supremacy of the constitution of the Federal Republic of Nigeria has this to say:

The Constitution of Nigeria is the grand norm, otherwise known as the basic norm from which all the laws of the society derive their validity. Each legal norm of the society derives its validity from basic norms. Any other law that is in conflict with the provision of the constitution must give way or abate.

The essence of the principle of supremacy of the constitution is better encapsulated in the dictum of **Tobi JSC** (as he then was) in the celebrated case of **AG Abia state v. AG federation**<sup>14</sup>, to the effect that:

The constitution of the nation is the **fons et origo**, not only of the jurisprudence, but also of the legal system of the nation. It is the beginning and the end of the legal system. in Greek language, it is the alpha and omega. It is the barometer with which all statutes are measured in line with kingly position of the constitution; all the three arms of government are slaves of the constitution; not in the sense of undergoing servitude or bondage, but in the sense of total obeisance and loyalty to it. This is in recognition of the supremacy of the constitution over and above every statute be it an Act of National Assembly or the law of the House of Assembly of a state.

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<sup>11</sup> (2017) LPELR-43443(CA)p30 para f.

<sup>12</sup> (2000) NWLR pt. 600 p228

<sup>13</sup> (2011) 17 NWLR (Pt. 1277) 485 at 511

<sup>14</sup> (2006) 16 NWLR (pt. 1005) 265 at 381 cite in A .Madebayo ,*1999 constitution of the Federal Republic of Nigeria (as amended and annotated with case)*(Princeton Publishing Company ,2012 ) 2

## **Human Rights Under the Constitution of the Federal Republic of Nigeria(CFRN)**

### **1. Right to Life—S.33<sup>15</sup>CFRN,1999**

The Right to Life is sacred and sacrosanct. Abiriya JCA considered the sacredness of right to life when he held in **COP Taraba State & Anor v Dabo & Anor**<sup>16</sup> that the first right is the right to life. It is the most precious gift on earth. The right to life is the highest and most fundamental right of every human being. This is because, for one to enjoy one's fundamental rights one has to be alive. Put differently, however decisively, the Right to Life depends only on the preexistence of life for its operation. It is guaranteed under **Section 33(1)**<sup>17</sup> which stipulates that:

Every person has the right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of the court in respect of a criminal offence of which he has been found guilty in Nigeria.

Kindly note that it is hereby submitted and rightly too that African Charter on Human and Peoples' Right did not provide for permissible limitations and or derogations on rights to life: thus, **Article 4 of the African Charter** guarantees the right to life in the following terms:

Human beings are inviolable; every human being shall be entitled to respect for his life and integrity of person. No one should be arbitrarily deprived of this right.

In the case **Bugdaycay v Secretary of State of the Home Department**, Lord Bridge of the United Kingdom stated thus:

The most fundamental of all human rights is the individual right to life and, when an administrative decision under challenge is said to be one which may put the applicant right to life at risk, the basis of the decision must surely call for the most anxious scrutiny.<sup>18</sup>

The courts acknowledged with clarity that right to life is the most important of all the fundamental human right and it is common to all human beings. See the cases of **Okuka & Ors v The State**<sup>19</sup> See also **Peterside v IMB Nig Ltd**<sup>20</sup>. In **Mustapha v Governor of Lagos State & Ors**<sup>21</sup> the court pronounced that the right to life is a right that attaches to

<sup>15</sup> CFRN,1999 (as amended)

<sup>16</sup> (2019) LPELR-47215(CA)P20, para-D

<sup>17</sup> CFRN, 1999 (as amended)

<sup>18</sup>Ibid p 22

<sup>19</sup> (1988) 1 NWLR pt. 72 539 pt. 556

<sup>20</sup> (1993) 2 NWLR pt. 278, 712 at 734 cited in Yinka n 18 p 23

<sup>21</sup> (1987) 2 NWLR pt. 58 539 at 585

man just for the mere fact of his humanity. Pronouncing on the vital nature of protecting the right to life of citizens in any country, the court in **Saidu v The State**<sup>22</sup> held that:

If Nigeria is to survive as a democratic nation free from tyranny, fear and intimidation, the life of its citizens must be protected according to our laws and in accordance with the provisions enshrined in our constitution and these provisions must be carefully and jealously watched and preserved.

### **THINGS TO NOTE ABOUT RIGHT TO LIFE UNDER THE NIGERIAN CONSTITUTION AND AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS RATIFICATION AND ENFORCEMENT ACT**

A cursory look at the provisions of the Constitution *vis-à-vis* the African charter reveals that drafting wise the African Charter is more elegant and preferable to that of the constitution. This is because while the constitution makes use of "every person" the African charter makes use of "human beings" in its opening paragraph. The effect of this is that the constitutional provision will raise interpretation issues because it is trite in law that the term "person" means both natural and artificial persons. Hence, it is arguable that "every person" as used in the constitution include artificial persons such as corporate entities. However, the use of the words Human beings in the Charter categorically denotes that only human beings and no other entity is subject of the right to life guaranteed thereunder.

Another point for concern is that the right to life is a qualified right under **section 33** of the constitution. This is however not the case with the African Charter where the right to life is arguably absolute. This vital disparity raises concern about enforceability and which of the provision shall prevail before our court.

The African Charter has been ratified by Nigeria in compliance with the constitution. The ratification and enforcement act states that "as from the commencement of this act, the provisions of the African charter shall have force of law in Nigeria and shall be given full recognition and effect and applied by all authorities and persons exercising legislative, executive or judicial powers." The enforceability of the African Charter has been given judicial confirmation by the courts in a plethora of cases. In the case of **Fawehinmi v Abacha**<sup>23</sup> the court of appeal stated in respect of the right to liberty under the Charter that "The African charter, by process of incorporation, and in historical and international character assumed a status of law that equally, like Chapter 4, regulates the freedom or liberty of a Nigerian.

Similarly, in **Ogugu v The state**<sup>24</sup> the supreme court held that: "since the charter has become part of our domestic laws, the enforcement off its provisions like our other laws fall within the judicial powers of the courts as provided by the constitution and all other laws relating thereto".

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<sup>22</sup> (1982) 1 NCR 49 and 67

<sup>23</sup> (1996) 9 NWLR pt. 711 10

<sup>24</sup> (1994) 9 NWLR pt. 366 1

By establishing that the African Charter has legal force in Nigeria, the issue is which prevails between its provisions and that of chapter four of the constitution. In Nigeria normative order, the constitution is supreme and any law, which is inconsistent with it, is void to the extent of such inconsistency. Therefore, is it the absolute right to life in the African charter or the qualified one under the constitution that shall prevail. This battle of supremacy between these two provisions was led to rest by the Supreme court in **Abacha v Fawehinmi** where the apex court held emphatically that where there is conflict between the Nigerian constitution and the African Charter the constitution prevails. However, in relations to other domestic legislation in Nigeria, the court held that the other charter has “a greater vigor and strength”. In **Hon Kehinde Odebunmi v. Ojo Oyetunde Oladimeji & Ors<sup>25</sup>** the court of appeal pronounced extensively on the relationship between the Nigeria Constitution and the African charter, the court stated that:

The African Charter on Human and People’s Rights (Ratification and enforcement) Act, as demonstrated in **Abacha v Fewehinmi (2004) 4 SCN) 400 at 423**, even though it has international flavor, is not superior to the constitution. It is inferior to constitution like any other statute enacted by the National Assembly. It was an international treaty domesticated or incorporated into the municipal laws of the federation by dint of Section of **Section 12 (1)** of the constitution which provides that no treaty between the federation and any other country shall have the force of law except to the extent to which such treaty has been enacted into law by the National Assembly.

Another important issue is the word “intentional” used by the constitution, does it mean reckless or negligent deprivation is permissible. This provision has also been criticized because it seems to create a canopy under which the security officers and hoodlums can hide to escape liability for extra judicial killings such as their famous “accidental discharge defense” usually pleaded by the police.

### **SCOPE OF RIGHT TO LIFE IN NIGERIA**

- a. Right to life of the unborn child
- b. Abortion
- c. Euthanasia
- d. Right to life and Sharia law

### **DEROGATIONS FROM RIGHT TO LIFE UNDER THE NIGERIA CONSTITUTION**

The right to life under the Nigerian constitution is not absolute. Section 33 (1) though guaranteeing the right to life, however provides that death resulting from the execution of

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<sup>25</sup> (2012) LPELR-154119 (CA)

the sentence of a court in a criminal offense in which the deceased has been found guilty in Nigeria is permissible.

Further qualification includes sub section 2 of section 33 which provides thus: a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary-

- a. For the defense of any person from unlawful violence or for the defense of property;
- b. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- c. For the purpose of suppressing a riot, insurrection or mutiny.

All together, there are five qualifications to right to life under the Nigerian law, they are:

#### A. Execution of death sentence by court

The constitution permits the taking of life in execution of a sentence of a court in respect of a criminal offence which the accused have been found guilty as contained in **section 33 (1)** of the constitution. The qualified nature of right to life under the Nigerian constitution and justifiability of death penalty in Nigeria has been subject of debate. This was judicially tested in the case of **Kalu v the State**<sup>26</sup> where the constitutionality of **section 33 (1)** of the 1999 constitution was challenged. The supreme court clearly stated that the right to life under the Nigerian constitution is qualified and death sentence is constitutionally valid. In fact, Belgeore JSC (as he then was) was emphatic when he stated thus “therefore it is clear that much as the victim of a murderous assault was entitled to life so also is the murderer liable to death for his deed. Even the bible permits death penalty, by stating that: who so sheds a man’s blood, by man shall his blood be shed”.<sup>27</sup> Contrast the above with the clemency granted to Cain after killing his brother Abel by God the giver of life who never retaliated even in the presence of Genesis 9:6 to pronounce the death of Cain. No wonder the amnesty international and some other human right organizations are championing this call for the abolition of death penalty contending that, it’s a violation of the right to life and constitute cruel and inhuman treatment under **section 34 (1)** of the 1999 constitution. Excitedly, Prof B Nwabueze, a stiff opposition to death penalty has this to say “....it is inhuman to terminate human existence by killing and the fact it is inflicted as a punishment for crime does not make it any less so....”<sup>28</sup> Further, **Oliyede and Awolowo** in submitting the opposition against death penalty stated thus;

Criminalizing taking of life and providing punishment for such is understandable, however, what is difficult to understand is the retaliation of murder by the state engaging in another “murder” .....<sup>29</sup>

<sup>26</sup> (1988) 13 NWLR pt. 583 at 531

<sup>27</sup> Genesis 9:6

<sup>28</sup> B O Nwabueze *The Presidential Constitution of Nigeria* (C Hurst & Co 1981)

<sup>29</sup> Yinka n18 p37

There are also proponents to death penalty as same is not only reasonable is also justifiable in our society. The provision of section 33 of the 1999 constitution supported that plethora of supreme court decisions all in support of death penalty also receive judicial blessings and endorsement in the case of **Becan Singh v State of Punjab**<sup>30</sup> where the apex court in India held that; by no stretch of imagination can it be said that the death penalty either per say or because of its execution by hanging constitute unreasonable, cruel or unusual punishment by the constitution. In the same vein, the supreme court of Zimbabwe, in the case of **Catholic Commission for Justice and Peace v AG Zimbabwe**<sup>31</sup> held that;

It is was not sort or could it reasonably be to overturn the death sentences on the ground that they were unlawfully imposed. The constitutionality of death penalty per say as well as the mode of its execution by hanging are also susceptible of attack.

In some states in the United States of America such as Georgia, death penalty has been upheld. See the case of **Craig v Georgia**<sup>32</sup> however, in some state, right to life is absolute and death penalty is unconstitutional. In 1995, the constitutional court of South Africa in **Sate v Mekwanyane & Anor**<sup>33</sup> interpreted section 9 of the transitional constitution of South Africa which provides that “every person shall have the right to life and held further that death penalty is not constitutional and violates the right to life and freedom from inhuman, cruel and degrading treatment. In 2010, and in the Kenyan case of **Motiso v Republic of Kenya**, the question of death penalty arose before the Kenya court of appeal and court held that “Section 204 of the Criminal code which provide for mandatory death sentence is antithetical to the constitutional provisions on protection against inhuman or degrading punishment or treatment.

However, in the case of **Okoro v State**<sup>34</sup> it was held that death penalty and the means of its execution is constitutional and valid under the Nigerian constitution. In **Lateef Adeniji v The state**<sup>35</sup> the Supreme court held that death penalty is clearly and expressly provided for by the constitution. In **Amoshima v The state**<sup>36</sup> The Supreme court held thus;

that it must be noted that the right to life as provided under our constitution is qualified-not absolute..... though section 33 (1) of the constitution guarantees the right to life of every one, it equally permits the deprivation of life in execution of the sentence of a law in respect of a criminal offense such as robbery, for which the person have being found guilty.

<sup>30</sup> (1983) 2 ACR 583

<sup>31</sup> (1991) 4 SA 239

<sup>32</sup> 428 US 153 AC CT 2909 (1976)

<sup>33</sup> (1995) 6 BCLR 665

<sup>34</sup> (1998) 14 NWLR pt. 584 at 181

<sup>35</sup> (200) 645 NWLR 356 cited in Yinka n18 p 34

<sup>36</sup> (2011) ALL FWLR pt. 597 601

## B. Defence of safe of property

This limitation to right to life under the constitution is to the effect that were death arises for the employment of reasonable force were necessary by any person in personal defense or defense of his property, just death is justifiable and does not amount to the violation of right to life. See **Section 33 (2) (a) CFRN** and the case **Brit-amins Co Ltd v Edema-silo<sup>37</sup>** See also **sections 282, 286 and 287** of the criminal code which enthroned the remedy of self help and further justify in the Penal Code by virtue of **section 59-67**. Further see **sections 32 (3)** of the criminal code. See generally the case of **Maiyaki v The State<sup>38</sup>** the court held

The court held that the provisions of **section 33 (2) (a)** of the the constitution of the federal republic of Nigeria asserts boldly that where a person dies as a result of the use of reasonably necessary force to such extent and in such circumstance as his permitted by law in one's personal defence from unlawful violence or for the defence of property, the death is justifiable and does not violate the right to life.

See the case of **Musa v The State<sup>39</sup>** were it was held that the person is exonerated from the violation of right to life if the person uses such force which is reasonably necessary for the preservation of his own life, notwithstanding that such force causes death or grievous bodily harm. In this connection therefore, it is reasonable to assert that "to kill, the killing might be justifiable if it was the only way to avoid being killed". This so contended in the case of **Ali Zama v The State<sup>40</sup>** However, in the case of **Ezeadukwa v Maduka<sup>41</sup>** the fact in issue was whether an oral threat to kill can justify a violation of the right to life under **section 33 (2) (a)**, the court held that it does not and can not constitute a defence for the breach of the right to life. See also **Iffie v AG Bendel state<sup>42</sup>**

## C. lawful arrest of preventing escape

The constitution provides that it is the provisions of our constitution contain in **section 33 (2) (b)** that any violation of a person right to life resulting from effective lawful arrest or to prevent the escape of a person lawfully detain is permissible. To me, this provision negates the sacredness and sanctity of human life and renders bunkum and grossly otiose the provision of **section 36 (5)** of the constitution that provides for presumption of innocence. For this proposition, see the case **Odunlali v Nigeria Navy<sup>43</sup>**.

<sup>37</sup>(1993) 2 NWLR (pt 277, 550 at 565)

<sup>38</sup>(2008) 3 NWLR (pt 1075, 429)

<sup>39</sup>(1993) 2 NWLR (pt 277, 550)

<sup>40</sup>(2015) LPELR-24595 (CA) at 58-62 paras e-e

<sup>41</sup>(1997) 8 NWLR (pt 518, 535 CA)

<sup>42</sup>(1987) 4 NWLR (pt 67 972 CA)

<sup>43</sup>(2011) ALL FWLR pt 954 83

#### **D. Suppression of riot, insurrection or mutiny**

It is within the ambit and express provisions of **section 33 (2) of the 1999 constitution** that any violation of right to life resulting from the suppression of riot, insurrection or mutiny is permissible.

#### **E. Death resulting from act of war**

Death resulting from acts of war is justifiable or excusably and can not be regarded as offensive to section 33 of the criminal code. See the proviso of **section 45 (2)** of the constitution.

### **Critique On Right To Life**

The right to life requires state not only to abstain from taking life but also to take positive steps to protect life, and I make haste to add, to enhance living. After all, of what relevance is the right to life without the means of livelihood? In the **Olga Tellis v. Bombay municipal corporation**<sup>44</sup> which is a landmark 1985 supreme court of India case concerning the right of pavement and slum dwellers in Mumbai. The petitioners, Olga Tellis and other pavement dwellers filed a writ petition in the supreme court in 1981 challenging the constitutional validity of the Bombay Municipal Corporation's eviction notices. The notices directed them to move their belongings and vacate the pavements and slums where they were residing. The petitioners contended that demolishing the pavement means demolishing their right to livelihood. The key legal issues presented in the case involved examining whether the right to life under **Article 21 of the India Constitution** includes the **right to livelihood and shelter**. The court had to balance this with the state duty to protect public land. The case marked important development in Indian constitutional law regarding socio-economic rights. The court landmark judgment upheld the **right to life to include the right to livelihood and shelter**. The India supreme court held further that not including right to livelihood and shelter in right to life is a contradiction of the constitution. The dictum of the **Chief justice of India supreme court, Chandrachud** in the above case was very solemn and I deem it pertinent to reproduce him *ipsissima verba*:

These writ petitions portray the plight of lakh of persons who live on pavement and in slums in the city of Bombay. They constitute nearly half of the population in the city. Those who have made pavements their homes exist in the midst of **filth and squalor**, which has to be seen to believed. **Rabid dogs** in search of **stinking meat** and **cats in search of hungry rats** keep them company. **They cook and sleep where they ease**, for no conveniences are available to them. Their daughters, come off age, **bath under the nosy gaze of passers-by**, unmindful of the feminine sense of bashfulness. The cooking and washing over, women pick lice from each other's hair. The boys beg. Men folk, without occupation snatch chains with the connivance of the defenders of the law and order. It is these men and women who have come in this court to ask for judgment that

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<sup>44</sup> (2007) CHR 2036

they cannot be evicted from their squalid shelters without being offered alternative accommodation. They rely for their rights on Article 21 of the constitution which guarantees that no person shall be deprived of his life except according to the procedures established by law. They do not contend that they have a right to live on the pavements. Their contention is that they have a right to life, a right which can not be exercised without the means of livelihood..... their plea is that the right to life is illusory without a right to the protection of the means by which life alone can be lived and the right to life can only be taken away or abridged by a procedure established by law, which has to be fair and reasonable, not fanciful or arbitrary. They also rely upon their right to reside and settle in any part of the country which is guaranteed by Article 19 (1) (e)..... The charge made by the government in its affidavit that slum and pavement dwellers exhibit special criminal tendencies is unfounded. These people have merged with the landscape, became part of it like the chameleon, though their contact with their more fortunate neighbors who live in adjoining high-rise buildings is casual. One of the most important findings is that the pavement dwellers are a peaceful lot, for they stand to lose their shelter on the pavement if they disturb the affluent. The charge of the state government besides been contrary to scientific findings, is born of prejudice against the poor and destitute. Affluent people living in sky scrapers also commit crimes varying from living on the gains of prostitution and defrauding the public treasury to smuggling. But they get away. The pavement dwellers when caught defend themselves by asking "Who does not commit crime in this city? As observed by Anand Chakravarti "The separation between existential realities and the rhetoric of socialism indulged in by the wielders of power in the government can not be more profound" Having considered the contentions of the parties, we are of the opinion that the commissioner was justified in directing the removal of the encroachments committed by petitioners on pavements, foot paths or accessory roads but the eviction should not take effect until after one month. In the meanwhile, steps may be taken to offer alternative pitches to the pavement dwellers though we do not propose to make it condition precedent. Apart from the further misery and degradation, eviction of slum and pavement dwellers is ineffective remedy for decongesting the cities.... Malnourished babies, wasted mothers, emaciated corpses in the streets of Asia have definite and definable reasons for existing. Hunger may have been the human race's constant companion and "the poor may always be with us". Their condition is not inevitable but is caused by identifiable forces within the province of rational, human control.

To summarize we hold that no person has the right to encroach by erecting a structure or otherwise on foot paths, pavements or any other place reserved or earmarked for a public purpose. In order to minimize the hardship involved, pavement dwellers who were censured should be given alternate pitches. Slum dwellers who were given identity cards or whose dwellings were numbered must be given alternative site for their resettlement". The ratio of the judgment is that **eviction of pavement dwellers using unreasonable force, without giving them a chance to explain is unconstitutional. It is a violation of**

their right to livelihood. The pavement dwellers manage to find a habitat in places which are mostly filthy or marshy out of sheer helplessness. The court contended that if the right to livelihood is not treated as part of the constitutional right to live, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point abrogation. The supreme court emphatically objected to authorities treating pavement dwellers as mere trespassers as the pavement dwellers live on filthy footpaths out of sheer helplessness and not with the object of offending, insulting, intimidating or annoying anyone. They live and earn on footpaths because they have small jobs to nurse in the city and there is no where else to go. On prior notice the court held that the procedure of eviction should lean in favor of procedural safeguards which follow the natural principles of justice like giving the other side an opportunity to be heard which gives them a chance to express themselves with dignity.

## RIGHT OF A CONVICT TO LIFE PRIOR TO THE EXECUTION OF HIS DEATH SENTENCE

### 2. Right to Dignity of Human Person—S.34 CFRN,1999.

This right guarantees that no individual shall be subjected to torture, inhuman or degrading treatment and no person shall be held in circumstances that amount to slavery or servitude or be required to perform forced or compulsory labor. The Court of Appeal in **Nigeria customs Service Boardv. Mohammed<sup>45</sup>** while citing the case of **Uzochukwuv. Ezeonuii,<sup>46</sup>** defined inhuman treatment as a barbarous, uncouth, and cruel treatment, a treatment which has no human feeling on the part of the person inflicting the barbarity or cruelty. Thus, any actions which inflicts intense pain to the body or mind of a person of any act of physical cruelty which endangers the life or health of a person or creates a well-founded apprehension of such danger or any act done in such a manner as to bring a person to public ridicule, disgrace, dishonor or contempt comes within the provision of section 34. (1) (a) of 1999 constitution. Prof Nwabueze opined that the provision of Section 34 (1) (a) CFRN outlaws not only the kind of punishment given to an offender but includes the treatment meted out to him in police custody or prison. The court finally held in **Uzochuku v Ezeonu ii** that the right to human dignity protected by Section 34 (1) (a) of the constitution is enforceable, not only against the state but can be enforced against government agencies and private persons. Thus, in the case of **Ushae v COP<sup>47</sup>** the court held that flogging the appellant with the edge of a cutlass in order to get a confessional statement was within the realm of torture. **Uzorkwu v Ezeonu ii**, the court defined inhuman treatment as an act that is: "Barbarous, uncouth and cruel treatment, a treatment, which has no human feeling on the

<sup>45</sup> (2015) LPELR-25938(CA) p.39. para A-B

<sup>46</sup> Supra

<sup>47</sup> (2005) 11 NWLR pt. 937, 499

part of the person inflicting the barbarity or cruelty". In **Alaboh v Boyles**<sup>48</sup> where the defendant beat up the applicant and submersed his head in a pool of water, the court held that such action amounts to inhuman and degrading treatment.

### 3. Right to Personal Liberty - S.35(1) CFRN, 1999

This right guarantees the freedom against physical restraint and no person shall be deprived of such liberty save in the circumstances and procedures permitted by law. See the case of **Rhodes&Anor v.IGP&Anor**<sup>49</sup> held that restraints of liberty maybe exercised by physical force amounting to assault or by the apprehension of such force.

### Right to Fair Hearing – S 36(1) CFRN 1999

Fair hearing entails a hearing which does not contravene the principles of natural justice. It means given equal opportunities of the parties to be heard in the court as was contended in the case of Registered Trustees of **Revival Faith International Ministries v. Uyoh-Obot**<sup>50</sup> see also **INEC v. Musa**<sup>51</sup> **Par Tobi JSC (as he then was)**. The right to fair hearing is contained in section 36 (1) of the 1999 constitution (amended) thus:

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

The supreme court held in **Omojuv. FRN**<sup>52</sup> that Section 36(8)- (right against trial upon retroactive legislation) and (12)- (right to be tried only for an offense known to law) of CFRN provided against retroactivity in legislation and punishing accused persons for offenses not provided by statute in other words, while sub section 8 provided against retroactive legislation, under **sub section 12**, a person cannot be punished for an offence in customary law or any court which is not written as was held in the famous case of **Aoko v. Fagbemi**.<sup>53</sup> Pursuant to sub **section, (12)**, a person shall not be convicted by a criminal offence unless such an offense is defined and the penalty therefore is prescribed in a written law. This legal principle is captured by the Latin maxim "*Nulla poena sine lege*" meaning "*no penalty or punishment without a law*" also there is no crime without law as captured by the Latin "*nullum crimen sine legem*" In **Olieh v. FRN**<sup>54</sup>, the Supreme court held that nobody could be convicted of an offense except that created under a written law; and to

<sup>48</sup> (1984) 3 NCLR 830

<sup>49</sup> (2018) LPELR; 44118 (CA) pp12-13 para D-B

<sup>50</sup> (2019) LPELR-47087(Ca)

<sup>51</sup> (2002) 17NWLR (pt. 796) p.412

<sup>52</sup> (2008) 7 NWRL (pt. 1085) 38

<sup>53</sup> (1961) 1 All NLR 400

<sup>54</sup> (2005) ALL FWFR (pt. 281) 1746

convict any person under a non-existing offense or an offense unknown to law is unconstitutional, null and void. Even when a section of the law defines an offense without providing a penalty as required by **section 36(12) CFRN**, an accused person cannot be said to have been charged with an offense known to law. See the case of **AGF v.Clement Esono**.<sup>55</sup> **Section 36(9)** provides that no person who shows that he has been tried by competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for criminal offence having the same ingredients as that offence save upon the order of a superior court. The above provision was given judiciary expression in the case **N.I.I.A v. Ayanfalu**<sup>56</sup> In this case, the arraignment of the respondent in a magistrate court and subsequent trial before the appointment and promotions committee constituted double jeopardy which the above provision frowns at and the court held that the interdiction of the respondent, charged before the magistrate court brings her case squarely within the contemplation of **section 36(9)of CFRN**. The court followed the dictum in the case of **NnamdiAzikiweUniversityv. CasmirNwafor**<sup>57</sup>, thus:

The decision of the appellant terminating the respondent appointment in the circumstance of this case violates respondent fundamental rights.

She cannot be subjected to trial twice on the same set of facts

Finally on fair hearing, every person is entitled to fair hearing which is known as natural justice. In English law, natural justice is technical terminology for the rule against bias (*nemo judex in causa sua*)and the right to fair hearing (*audi alteram partem*) According to lord Hewitt C.J in the celebrated case of **Rex v Succex Ex parte McCarthy**, ‘justice should not only be done but should manifestly and undoubtedly seen to be done,’

Thus, in considering whether there was a real likelihood of bias, the court does not look at the mind of the judge, the court looks at the expression which should be given to the people. Even if he was impartial as he could be, nevertheless, if right minded persons would think that in the circumstances, there was a real likely hood of bias on his part, then he should not sit and if he does sit, his decision should not stand. In **Unizik v Nwafor**<sup>58</sup>, the court of appeal quashed the disciplinary action against the Respondent for exam malpractice because the members of the examination malpractice committee who allegedly caught the respondent took part in the meeting of the University Senate which ratified the disciplinary action. The members of the committee acted both as judges and complainants which is against Nemo judex rule. As touching the principle of **audialteram partem**, Oputa JSC (as he then was) in **GarbauniversityofMaiduguri**, lucidly explicated the principle in the following colorful words:

“ God has given you two ears, hear both sides”

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<sup>55</sup> (1986) 1 QLRL 75

<sup>56</sup> (2007) 2 NWLR (pt. 1080) 246

<sup>57</sup> (1999) 1 NWLR (pt. 585) 116

<sup>58</sup> *ibid*

## ELEMENTS OF FAIR HEARING

### 1. Independence and Impartiality of the Judiciary

A combined reading of section 36 (1) and (4) of the 1999 constitution provides for independent and impartial court as part and parcel of fair hearing. In the case of **Abiola v FRN**<sup>59</sup> The supreme court held that it can be gleaned from section 36 (1) of the 1999 constitution that impartiality and independence of the court are part and parcel of fair hearing.

### 2. Natural Justice

The principle of natural justice is anchored on two pillars: *audi alterem partem and nemo judex in causa sua* respectively. The doctrine of natural justice and fair hearing seems similar but they are coterminous. Fair hearing is larger in scope than the principle of natural justice. The court held in **Ori-oge v AG Ondo State**<sup>60</sup> that the two pillars of natural justice are contained in the provisions of fair hearing but fair hearing extend beyond that.

### 3. Trial in Public

Section 36 (3) of the constitution provides that proceedings of the court or tribunal measured in (1) of this section including the announcements of the decisions of the court or tribunal shall be held in public. The court held in **Mohammed v Nwobodo**<sup>61</sup> that any act of secrecy however desirable it might seem, detract of the aura of impartiality, independence, publicity and unqualified respect which enshrouds justice given without fear of favour.

#### *Audi Alterem Partem*

The principle of *audi Alterem Partem* provides that before a decision affecting any person is taken, the affected person must be heard. This is the first leg of natural justice, see the case of **Garba v University of Maiduguri**.

#### *Nemo Judex In Causa Sua*

This is called the rule against bias. It is defined as the “opinion or feeling in favour of one side in a dispute or argument resulting in the likelihood to the judge so influenced will be unable to hold and even scare, the judge or administrator was disqualified. At common law, a court, tribunal or administrative body before making a decision affecting the right of any individual must be duly constituted in a manner that will ensure its impartiality and independence. In **Adeboye v The state**<sup>62</sup>, the court held that: The law does not permit or licence any person be he a police man, a soldier or otherwise to be the complainant, investigator. Judge and executioner all at the same time.

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<sup>59</sup>(1998) 1 HRLRA 221

<sup>60</sup>(1982) 3 NCLR 743

<sup>61</sup>(2000) 12 WRN 138

<sup>62</sup>(2007) 1 AC pt 11 32

## **FEATURES OF FAIR HEARING**

In the case of **Kotoye v CBN<sup>63</sup>**, the court extrapolated on the features of fair hearing Per Nnaemeka-Agu JSC (as he then was) as follows: there are certain basic criteria and attributes of fair hearing, they include:

- I. That the court shall hear both sides, not only in the case but also on all material issues in the case before reaching a decisions which may be prejudicial to any party in the case;
- II. That the court or tribunal shall give equal treatment, opportunity and consideration to all concerned;
- III. That the proceeding shall be held in public and all concerned shall have access to and be informed of such a place of public hearing and;
- IV. That having regard to all circumstances in every material decision in the case, justice must not only be done but be manifestly and undoubtedly be seen to have been done.

## **FAIR HEARING IN CRIMINAL TRIAL**

The right of accused person to fair hearing is provided for in **section 36 (4)-(12)** of the constitution. These rights available to the accused person in all trials including capital offenses as was contended in the case of **Solomon Ogbor v The Federal Republic Of Nigeria<sup>64</sup>**

**1. Fair hearing in public and within reasonable time (section 36 (6) (c) of 1999 constitution)** : Section 36 (4) provides that “when ever by a person is charged with a criminal offense he shall, unless the charges withdrawn be entitled to a fair hearing in public within a reasonable time by a court or tribunal. The determinate of whether a trial was held in public, does not pertain to the venue but whether the public had access to the trial. Adio JSC in **Effiong v The State<sup>65</sup>** has this to say about reasonable time in criminal trial. In this particular case:

The cause of delay was the inability to produce the appellant for continuation of the proceedings as there was no motor vehicle to convey the appellant from prison to the court. This is a matter over which the trial court had no control as it is not part of the judicial functions of a trial court to arrange for or to pay for the transport from prison to the court of a prisoner being trialed by it. Although, there was a delay, in the prevailing circumstance it was not unreasonable. The word reasonable in its ordinary

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<sup>63</sup>(1989) 1 NWLR pt 98 419

<sup>64</sup>(2002) 4 AC pt 2 106

<sup>65</sup>(1995) 1 NWLR pt 373 507

meaning, though not defined by the provision of this section means moderate, tolerable or not excessive.

In the case of **Ogwueri v The state**<sup>66</sup> the court considering fair hearing within a reasonable time granted the bail application of an accused that was standing trial for 8 years.

## 2. Presumption of Innocence

According to **section 36 (5)** of the 1999 constitution, every person who is charged with a criminal offense shall be presumed to be innocent until he's proved guilty. This was referred to as the golden rule for fair hearing in the case of **Woolmington v DPP**<sup>67</sup>. In the case of **Alabi v The State**, the trial judge expressed the view that he was not comfortable with the evidence of the accused person on the ground that the evidence failed to convince to him of his innocence. On appeal, the court held inter alia;

The constitution of the federal republic of Nigeria.... invest on every person who so charged with the commissioner of a crime, a presumption of innocence. In other words, the accused person is not obliged to prove his innocence. On the contrary, the law and the constitution presume that he is innocent until his guilt is proved

## 3. Right to be properly informed in the language he understands and in detail the nature of the offense he is charged **Section 36 (6) (a):**

This is the most important part of arraignment of a suspect and can vitiate a trial if not properly complied with. In **Durwode v The State**<sup>68</sup> the court considered this right to be a basic constitutional requirement failure to which a trial can be vitiated. In **Gozie Okeke v the State**<sup>69</sup>, the supreme court Per Eguh JSC construed this provision and stated that:

This section is more concerned with and prescribes the constitutional entitlement of a person to be informed promptly in the language that he understands and in detail of the nature of the criminal offense with which he is being charged than with the requirement of a valid plea.

The conviction of an accused person on a charged which was not sufficiently explained to him is a violation of his right to fair hearing.

## 4. Right to be given adequate time and facility for the preparation of his defence **Section 36 (6) (b):**

In the case of **Newman v Modern Book Binders**<sup>70</sup>, the court held that the common law take cognizance that an accused person must be given adequate written notice of what its been alleged against him. In the case of **Gokpa v IGP**<sup>71</sup>, the accused had no notice that his

<sup>66</sup>(2000) 5 WRN 27

<sup>67</sup>(1935) AC 462

<sup>68</sup>(2001) 7 NWLR pt 691 467

<sup>69</sup>(2003) 21 WRN 1 at 63

<sup>70</sup>(2002) ALL ER 814

<sup>71</sup>(1962) 1 ALL NLR 423

trial was coming up on that day so he asked for adjournment so as to brief his lawyer but he was given till afternoon of that same day by the trial court. It was discovered that the nearest legal practitioner in that area was about 23 miles away, thus the accused person did not partake in the trial and was convicted. On appeal, the conviction was quashed on the ground that the accused was not given enough time to prepare for his defense.

**5. Right to defend himself in person or by practitioner of his own choice (section 36 (6) (c) 1999 CFRN)** see the case of **Uzodimma v COP**, the court held that an accused person even if he is literate, stands to benefit from the assistance of the counsel at the criminal trial. Criminal law and criminal procedure are not easily understood by the untrained....the knowledge of the procedural tools, the substantive materials and the effective use of both in court require more than ordinary intelligence, cleverness or literacy of the accused.....In the case of **Ezea v The queen<sup>72</sup>**, the court held that the right of fair hearing denotes that the accused shall not have counsel vested on him but shall be at liberty to choose his own council.

**6. Right to examine prosecution witnesses and present his own witnesses (Section 36 (6) (d) CFRN:**

See the case of **Ukwumanyi v The State**, where the court held that where examination of witnesses is conducted by the accused person personally the court must hear him and consider it appropriately no matter how stupid it is.

**7. Right to be assisted by an interpreter (Section 36 (6) (e):**

The accused person is entitled without payment the assistant of an interpreter if he cannot understand the language used at the trial of defense, see the case of **Buraimoh v Zaria Native Authority<sup>73</sup>**, the duty to inform the court the accused can not understand the language of the proceeding of the court lies with the accused or his counsel otherwise the court will presume that he does understand and so can not be heard to complain, see the case of **Madu v The state<sup>74</sup>**

**8. Right to be given record of proceedings (section 36 (7) CFRN):**

The law is that when an accused is being trial, the court is enjoined to keep a record of the proceedings which the accused or any person on his behalf is entitled to obtain copies. For this proposition, see the case of **Akpan v COP<sup>75</sup>**.

**9. Absence of retrospective legislation**

By virtue of section 36 (8) of the constitution, no person shall be held to be guilty of a criminal offense on account of any act or omission that did not, at the time it took place constitute such an offense and no penalty shall be imposed for any criminal offense heavier than the penalty enforced at the time the offense was committed. See the case of **AG**

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<sup>72</sup>(1963) 1 ALL NLR 254

<sup>73</sup>(1963) 1 ALL NLR 169

<sup>74</sup>(1997) NWLR pt 482 306 at 402

<sup>75</sup>(2002) 37 WRN 74 at 55

**Federation v ANPP**<sup>76</sup>, in criminal law, the constitution prohibits any construction that will give a statute retrospective effect, see the case of **Afolabi v Governor of Oyo state**<sup>77</sup>.

## **10. Double jeopardy:**

The constitution prohibits subjecting a person to trial twice for an offense that has the same element with the earlier one he has been tried for, see **section 36 (9)** and see the case of **Nafiu Rabiu v The state**<sup>78</sup>, please note, for the rule of double jeopardy to be pleaded successfully in Nigeria, the former trial must have ended in acquittal or conviction. This is as opposed to what obtains in US. See the case of **Arizona v Washington**<sup>79</sup>.

## **11. Pardon (section 36 (10) CFRN):**

It is against the rule of fair hearing for a person who has been pardoned for a criminal offense to be tried for that same offense.

## **12. Right against self incrimination:**

A person under trial can not be compelled to testify against himself at his trial, **section 36 (11)** provides that “ no person who is tried for a criminal offense shall be compelled to give evidence at the trial.

13. No person shall be convicted of a criminal offense unless the offense is defined and penalty stated in a written law, this is as provided for in **section 33 (12) CFRN** and is captured by the Latin maxim “*Nulla poena sine lege*” meaning “*no penalty or punishment without a law*” also there is no crime without law as captured by the Latin “*nullum crimen sine legem*” and judicially endorsed in the famous case of **Aoko v Fagbemi**<sup>80</sup>, the supreme court with ample lucidity stated with judicial finality in the case of **Ogbomor v The state**<sup>81</sup>

## **4. Right to Private and Family Life-S.37, CFRN,1999**

This section provides that the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications are hereby guaranteed and protected. Privacy at its fundamental level is the right to be left alone. In the case of **MDPDTv.Okonkwo**<sup>82</sup>, the supreme court held:

The patient's constitutional right to object to medical treatment or particularly, as in this case to blood transfusion on religious grounds is founded on fundamental rights protected by the 1979 constitution as follows:

- I. Right to privacy: section 34(now **section 37 CFRN 1999**);
- II. Right to freedom of thought, conscience and religion; **section 35(now section 38 CFRN 1999)**

<sup>76</sup>(2003) WRN 62 at 91-92

<sup>77</sup>(1985) 2 NWLR pt 9 7 34

<sup>78</sup>(1980) 8-11 AC 130 at 164-166

<sup>79</sup>434 US 503-505 (1978)

<sup>80</sup>(1961) 1 ALL NLR 400 HC

<sup>81</sup>(1985) 1 NWLR pt 2 223

<sup>82</sup>(2001) FWLR (PT 44) 542

In the case of **Emerging Markets Telecommunication Services Ltd v. Eneye**<sup>83</sup>, the respondent instituted a fundamental right action for a violation of his right to private life occasioned by the appellant numerous unsolicited football news and advert in his Etisalat line despite the respondent efforts to stop same. The court held that by giving those unknown persons and organizations access to the respondent etisalat GSM phone number to send unsolicited text messages into it amount to violation of the respondent right to privacy guaranteed by **section 37** of the constitution which include the right to the privacy of personal telephone line.

According to **S.U. Ortuanya**,<sup>84</sup> the right to private and family life is the right against intrusion from others. The search of a person's home, office or anything to which he is legally entitled without a warrant is a potential infringement of his right to privacy. In **Ojomavthe state**,<sup>85</sup> the court of appeal held that the invasion of the house of the native doctor (Chibuike) is unlawful as it violates his fundamental right to the privacy of his person and his home. In the U.S case of **Roe v. Wade**<sup>86</sup> the U.S Supreme Court held that a woman's right to abortion was implicit in the right to privacy protected by the 14<sup>th</sup> amendment. Conversely, in Nigeria, abortion is a crime except when performed to save a woman's life<sup>87</sup>.

## 5. Right to Freedom of Thought, Conscience and Religion<sup>88</sup>—S.38 CFRN, 1999

Every person is entitled to freedom of thought, conscience and religion, including freedom to change his religion and belief, and freedom (either alone or in community with others), and in public or private) to manifest and propagate his religion or belief in worship, teaching, practice and observance. The limit of this freedom is when it impinges on the rights of others or where it puts the welfare of society or public health in jeopardy. The above section of the constitution receives judicial endorsement in the case of **Theresa Nwafor Onwo v. Oko**<sup>89</sup> where the applicant claims damages against the respondent for shaving her hair and locking her up as incident of mourning her late husband. According to her, it offends her religious belief and devotion. The court of appeal held that that act was a breach of the appellants fundamental right to freedom, conscience and religion to forcibly make her shave her hair and adopt mourning posture because of the death of her husband. Reconcile sub sections 2 and 3 of section 38.

**Sub section 4** provides that nothing in **section 38** shall entitle any person to form, take part in the activity of secret society. Secret society is contained in **section 318** of 1999 constitution and it is unlawful to belong to such society proscribed by law. For this

<sup>83</sup> (2018) LPELR-46193(CA)

<sup>84</sup> Simon Uchenna Ortuanya, *Human Rights in Nigeria Law, Practice and international perspectives* (Princeton and Associate Publishing Co. Ltd 2022) 83

<sup>85</sup> (2014) LPELR-22942 (CA)

<sup>86</sup> 410 US 113 (1973)

<sup>87</sup> Ss 228, 229, 230 of the criminal code; Ss 232, 233, 234 of the penal code. See generally Ortuanya n31, 84

<sup>88</sup> Section 38 CFRN 1999 (as amended)

<sup>89</sup> (1996) 6 NWLR (pt. 456) 584

provision, see the case of **Awoniyi & Anors v. Registered Trustees of Amorc**.<sup>90</sup> The supreme court held that the respondent was a secret society because it uses signs, oaths, rites, and symbols in its worship. The court ordered the IGP to seal up all the offices of the respondent nationwide and to prosecute any persons carrying on activities in the name of the respondent.

## 6. Right to Freedom of Expression--S.39 CFRN,1999

Freedom of expression is the cornerstone of every old, nascent and striving democracy. Freedom of expression is the right of the citizens to freely express themselves and even criticize and speak truth to power without fear of molestation or reprisal. It is the right guaranteed under **section 39(1)** of the 1999 constitution. The court in **Okedarav. A.G. Federation**<sup>91</sup> while citing the supreme court in **Din v. African Newspaper of Nig.Ltd**<sup>92</sup> per **Kabiri-Whyte, JSC**, (as he then was) held that “the right to comment freely on matters of public interests is one of the fundamental rights of free speech guaranteed to the individual in our constitution. It is so dear to the Nigerian and of vital importance and relevance to the rule of law which we clearly treasure for our personal freedom”. Also, in **ArchBishop Okogie v. AG of Lagosstate**,<sup>93</sup> the Supreme Court observed that **section 39(2)** conferred unfettered right on any individual to establish and run any educational institution as a medium for the dissemination of ideas. **Sub section 3** provides circumstances which validate laws that are reasonably justifiable in a democratic society which prevents the disclosure of information received in confidence and for the purpose of maintenance of independence of court or regulating means of communication and also laws that impose restrictions upon persons holding certain offices under the government of the federation or members of the armed forces.

It should be noted that access to information held by public authorities is a fundamental element of the rights to freedom of expression provided in the **section 39** of 1999 constitution<sup>94</sup>. Also note that the freedom of expression is not absolute. The supreme court in **amalgamated press v. Queen**<sup>95</sup> held that freedom of expression could not be used as a license to spread false news likely to cause fear and alarm to the public.

## 7. Freedom of Expression and Sedition

Sedition is the offense of bringing into hatred or contempt or inciting disaffection against the person of the president or governor of a state. It is punishable under **section 51** of the criminal code. The offense of sedition like the hate speech bill is aimed at protecting the state from subversive activities. In the case of **DPP v. Chike Obi**,<sup>96</sup> the defendant

<sup>90</sup> (2000) LPELR-655 (SC)

<sup>91</sup> (2019) LPELR-47298 (CA)

<sup>92</sup> (1990) LPELR 947 (SC)

<sup>93</sup> (1981) 2 NCLR 337

<sup>94</sup> *ibid* n31 p90

<sup>95</sup> (1961) LPELR 25124(SC)

<sup>96</sup> (1961) ALL NLR 186

distributed a pamphlet titled “The People, Facts that you know” which contained as follows: “down with the enemies of the people, *the exploiters of the weak and oppressors of the poor! The days of those who enriched themselves at the expense of the poor are numbered. The common man in Nigeria can no longer be fooled by sweet-talk at election time only to be exploited and treated like dirt after the booty of office has been shared among the politicians*”. He was charged with distributing seditious materials contrary to **section 50 and 51** of criminal code. The Apex Court per **Adetokunbo Ademola CJF** (as he then was) convicted the appellant for according to the court, non-incitement to violence and the fact that the publication was true could not avail him as a defense.

On another occasion, the court of appeal did a commendable job by striking down the law of sedition as being contrary to **section 39(1)** of the constitution. In the case **Arthur Nwakwo v. The State**<sup>97</sup>, the defendant was charged with sedition under **section 51** of the criminal code before a high court in Onitsha for publishing a pamphlet titled “How Jim Nwobodo Rules Anambra State”. He was convicted and sentenced to 1 year imprisonment. His conviction and sentence were quashed by the court of appeal on the ground that the offense of sedition is illegal and unconstitutional. **Olatawura JCA** held *inter alia*:

We are no longer the illiterate and mob society our colonial masters had in mind when the law was promulgated.... To retain **Section 51** of the criminal code in its present form, that is even if not inconsistent with the freedom of expression guaranteed by our constitution will be a deadly weapon to be used at will by a corrupt government or a tyrant.... Let us not diminish from freedom gained from our colonial masters by resorting to laws enacted by them to suit their purpose<sup>98</sup>.

#### 8. Right to Peaceful Assembly and Association---S 40<sup>99</sup>CFRN,1999

By **section 40** of the 1999 constitution of Nigeria, every person shall be entitled to assemble freely and associate with other persons, and in particular may form or belong to any political party, trade union or any other association for the protection of his interest provided that the provision of this section shall not derogate from the powers conferred by this constitution and the INEC with respect to political parties to which the INEC does not accord recognition. In the case of **Agbai and ors v. Okogbue**<sup>100</sup>. **Paul Nkemdilim ,Nwokeji J.S.C** (as he then was) has the following to say:

Much as one would development project in the community, there must be caution to ensure that the fundamental rights of a citizen are not trampled upon by the popular enthusiasm. These rights have been enshrined in legislation, that is, the constitution,

<sup>97</sup> (1985) 6 NCLR 228

<sup>98</sup> *ibid*

<sup>99</sup> CFRN (1999) (as amended) by section 40

<sup>100</sup> *Ibid* Ortuanya n 31, 96

which enjoys superiority over local customs. Freedom of association and religion are enshrined in **section 24(1) and 36(1)** of the 1963 constitution as amended respectively<sup>101</sup>

**Karibi-Whyte J.S.C** observed in the case as follows:

It is necessary to draw the critical and fundamental distinction, between enforcing the customs against a voluntary member of the association, and enforcement of the custom against a member who is so by operation of an alleged custom. In the first case, a voluntary member of an association enjoys its benefits *cum onere*. He cannot complain. In the second case, nobody can be compelled to associate with other persons against his will. Our constitution guarantees every citizen that freedom of choice. Accordingly, every purported drafting of any person into an association against his will even by operation of customary law is in conflict with the provisions of **section 26(1)** of the constitution, 1963 and is void.

In the same vein, in the case of **A.G Federation v ABUBAKAR**<sup>102</sup>

The court held:

Under the provision of **section 40** of the constitution of the federal republic of Nigeria 1999, it will operate illegality, injustice and unconstitutionality to refuse or deny a citizen of this country the right to opt out, join, belong to any political party, trade union or any other association for the protection of his interest, except where, in case of political parties, the INEC has not recognized the party. In the instant case, it has not been shown by credible evident that the party said to have been formed by the 1<sup>st</sup> respondent and to which he said to have defected, Action Congress (AC), has not been recognized by INEC. Thus as a citizen of Nigeria, the 1<sup>st</sup> respondent cannot be subjected to any such disability

## **9. RIGHT TO FREEDOM OF MOVEMENT -S.41 (1)<sup>103</sup> CFRN, 1999**

Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exist therefrom. The case of **DSS v Agbakoba**<sup>104</sup> is very instructive and apposite in the circumstance. Similarly, in **Shugaba v Minister of Internal Affairs**<sup>105</sup> it was held that the deportation of applicant to chad even though he is a citizen of Nigeria by virtue of his mother being a Nigerian was a breach of his freedom of movement guaranteed under the

<sup>101</sup> Now section 38 and 40 of the 1999 constitution

<sup>102</sup> (2007) 10 NWLR(Pt.1041)1

<sup>103</sup> CFRN 1999 (as amended)

<sup>104</sup> (1999) 3 NWLR (Pt.593) P314

<sup>105</sup> (1981) 2 NCLR 459

constitution. Note that freedom of movement is not absolute. The constitution recognizes that there may be circumstance in which it is reasonably justifiable to restrict the movement of persons in the interest of public safety or public order. By S41(2) of the 1999 constitution, the right to freedom of movement may be deprived under a law that is reasonably justifiable in a democratic society that imposes restriction of movement of any person who has committed or is reasonably suspected to have committed a criminal offence, in order to prevent him from leaving the country.<sup>106</sup>

#### **10. RIGHT TO FREEDEOM FROM DISCRIMINATION -S.42 CFRN,1999**

By the virtue of S.42, a citizen of a particular community or ethnic group, place of origin, sex, religion, shall not be discriminated upon. In **Adamuv A.G Borno state**<sup>107</sup>, the court of appeal relying on a similar provision to S.42(1) of the 1999 constitution, held that the practice where by Gwoza local government paid salaries of Islamic teachers while compelling a Christian -parents to pay for the religious instructions of their wards was a violation of the parents and pupils' rights against discrimination. Here the discrimination was by reason of religion.

#### **11. RIGHT TO ACQUIRE AND OWN INMOVEABLE PROPERTY-S.43<sup>108</sup>CFRN< 1999**

S.43 under the constitution of Nigeria 1999 re- emphasized the right of every citizen of Nigeria to acquire and own immovable property anywhere in Nigeria. This was so contended in the case of **Asika v Atuanya**<sup>109</sup>

#### **12. RIGHT AGAINST COMPULSORY ACQUITISION OF ANY MOVEABLE OR INTEREST IN ANY IMMOVEABLE PROPERTY--S.44(1)<sup>110</sup>**

No moveable property or any interest in a moveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsory in any part of Nigeria except in the manner and for the purposes required by law. The apex court in the case of **OgunleyevOni**<sup>111</sup> held inter alia as follows:

no one shall be deprived of his land. The state has no right to dispossesspersonof his property lawfully acquired without reasons and that reason shall be in thepublic interest with adequate provision made in the enabling statutes to paycompensation that is just.

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<sup>106</sup> CFRN, 1999 (as amended)

<sup>107</sup> 234(1996) 6 NWLR (Pt465)203

<sup>108</sup> CFRN, 1999 (as amended)

<sup>109</sup> (2008) NWLR(Pt.1117)484

<sup>110</sup> CFRN 1999 (as amended)

<sup>111</sup> (1990)2 NWLR(Pt.135)745,773

## **IN CONCLUSION**

The constitution of the Federal Republic of Nigeria 1999, has made adequate provisions on human rights which are captured under fundamental human rights and which are justiciable. There are also provisions for fundamental objectives and directive principles on state policy, which created elaborate and far reaching generation of rights and which are largely non -justiciable. Many of the rights contained therein are also captured by African Charter on Human and Peoples' Rights. Many a time, there appears a conflict between the provisions of African Charter on human and peoples rights and the constitution of the federal republic of Nigeria. The law is trite on the result of such conflict. However, the provisions of the African charter having been domesticated and enacted into the Nigeria law, it has become enforceable in Nigeria, in so far as there is no conflict in the constitution.