

# Right to Freedom of Movement

## Provision for the Right to Freedom of Movement

Movement – which basically means *physical* movement from place to place – is one of the most basic natural features of a living thing, especially humans. It is fundamental to human existence and flourishing. Hence, it is one of the earliest recognised human right (as it was provided for in the Magna Carta of 1215). Thus:

**Article 13 of the Universal Declaration of Human Rights** provides that;

Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country.

**Article 12 of African Charter on Human and Peoples' Rights** states:

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

**Section 41(1) of the 1999 Nigerian Constitution** provides, *inter alia*:

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 exit therefrom.

Note that this right under the 1999 Nigerian Constitution belongs to citizens as defined in Chapter III of the Constitution.

This right is further reinforced by the provisions of the African Charter Act stated above, as well as **section 15(3) and (4) of the 1999 Nigerian Constitution** which states that:

- (3) for the purpose of promoting national integration, it shall be the duty of the state to –
  - (a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation;
  - (b) secure full residence rights for every citizen in all parts of the Federation...
- (4) The state shall foster a feeling of belonging and of involvement among the various peoples of the Federation, to the end that loyalty to the nation shall override sectional loyalties.

## Scope of Right to Freedom of Movement (from s. 41(1) of the Constitution)

## **1. Freedom to Move Freely Throughout Nigeria**

This freedom ensures the right to travel throughout and within the thirty-six states of the country. It is also closely related to the constitutional right to personal liberty. Thus, it cannot be taken away except in constitutionally permitted circumstances like restrictions placed on the personal liberty of a convict, persons under reasonable suspicion of having committed a crime, persons suffering from infectious diseases and other types of infirmities, lawful or legal curfews and so on., according to ss. 35 and 45 of the Constitution.

## **2. Freedom to Reside in any Part of Nigeria**

From the freedom to move from place to place, flows the right of every Nigerian citizen to reside, live or be domiciled in any part of the country, permanently or temporarily. This right to change residence or domicile would be meaningless without the right to acquire property for that purpose, subject to the laws of that state as it applies to indigenes. Thus s. 43 of the Constitution provides for the right to acquire immoveable property anywhere in Nigeria. this means that no state or local government can constitutionally make laws which discriminate against people of another state with respect to acquisition of property.

Generally, the freedom to reside anywhere also necessarily carries with it the right to be entitled to all the rights and privileges guaranteed by the federal government to every citizen under the law, and also other rights that are normally granted to citizens of that state. The freedom to reside and be domiciled anywhere would be meaningless if a citizen cannot reasonably claim rights that would make him/her comfortable in his/her choice of residence, and not be treated like an alien in his own country.

## **3. The Right of a Nigerian Citizen not to be Expelled from Nigeria**

Every citizen of Nigeria has an absolute right not to be expelled from Nigeria. In the case of *Shugaba v Minister of Internal Affairs* (1981) 1 NCLR 25, the applicant – the majority leader of the Borno State House of Assembly – was deported from Nigeria on the ground that he was not a Nigerian citizen. It was established that the applicant is a citizen of Nigeria, and the court held that his deportation was unconstitutional under s. 38 of the 1979 Nigerian Constitution (now s. 41 of the 1999 Constitution).

## **4. Right of a Nigerian Citizen not to be Refused Entry into Nigeria**

Every citizen of Nigeria has an absolute right not to be refused entry into Nigeria.

## **5. Right of a Nigerian Citizen not to be Refused Exit from Nigeria**

This right or freedom is one that empowers every Nigerian citizen to travel outside the country. And since no country will allow a Nigerian entry without a passport issued to him/her by the relevant Nigerian authority, the right therefore means that Nigerian citizens have a general right to own a passport in line with the lawful requirements for owning one. Hence, once a Nigerian citizen complies with the lawful requirements for owning a passport and is issued with one, the passport becomes an inherent part of his fundamental right to movement and cannot be seized without due process of law. In other words, inherent in the right to exit from the country is the right to own a passport to make such movement possible. (This does not apply to visa which

are issued and are the properties of the embassies of the issuing foreign country which one is/intends to visit.). See:

- **Director of State Security Service v. Agbakoba** (1999) 3 NWLR, pt. 595, 314 (SC); (1994) 6 NWLR, pt 351, 475 (CA);
- **A.G. Federation v Chief Ajayi** (2000) 12 NWLR pt. 682, 509; and
- **Shugaba v Minister of Internal Affairs** (*supra*)

### **Right to Freedom of Movement for Non-Citizens**

Under various circumstances noted in **Article 12** of the **African Charter on Human and Peoples' Rights**, it is clear that non-citizens of Nigeria generally also have a right to move freely throughout Nigeria provided they entered the country lawfully; it is also clear that, on the basis of that provision, they can be expelled in accordance with the law. Thus, by virtue of **s. 18 of the Immigration Act**, a prohibited immigrant can be refused entry or deported from Nigeria, and such an immigrant is defined to include: (a) anyone without a visible means of support or is likely to become a public charge; (b) a person suffering from any mental disorder or an idiot; (c) anyone convicted anywhere of an extradition crime within the provisions of the Extradition Act; (d) anyone whose admission is contrary to national security; (e) anyone against whom an order of deportation from Nigeria is in force; (f) anyone without a valid passport; (g) a prostitute; (h) a brothel keeper; etc.

### **Limitations to the Right to Freedom of Movement**

Section 41(2) of the 1999 Nigerian Constitution provides that:

Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society-

- (a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or
- (b) providing for the removal of any person from Nigeria to any other country to:
  - (i) be tried outside Nigeria for any criminal offence, or
  - (ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

**See: *Kalu v Federal Republic of Nigeria & Ors*** (2012) LPELR-9287 (CA) *per* Eko JCA, where the court upheld the applicability of s. 41(2)(a).

Further restrictions to the right of freedom of movement are provided under the blanket provision of **section 45(1) of the 1999 Nigerian Constitution**:

Nothing in sections 37, 38, 39, 40 and **41** of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedom or other persons.