

Right to Dignity of Human Person

Provision for...

The right to dignity of the human person is the right of a person to be valued and respected for their own sake as humans, and to be treated ethically. It generally recognises that human beings possess a special value intrinsic to their humanity and as such are worthy of respect simply because they are human beings, irrespective of race, nationality, gender, social status and ability.

Articles 1, 4 and 5 of the **Universal Declaration of Human Rights** provides, respectively:

- (1) All human beings are born free and equal in dignity and rights...
- (4) No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
- (5) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 5 of the **African Charter on Human and Peoples' Rights** provides that:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishments and treatment shall be prohibited.

(Similar to Article 8 (1-3) of the International Covenant for Civil and Political Rights) **section 34 of the Nigerian Constitution** provides that:

- (1) Every individual is entitled to respect for the dignity of his person, and accordingly -
 - (a) no person shall be subject to torture or to inhuman or degrading treatment;
 - (b) no person shall be held in slavery or servitude; and
 - (c) no person shall be required to perform forced or compulsory labour.

Scope of the Right to Dignity of Human Person

1. Prohibition of torture, inhuman or degrading treatment

The right against torture, inhuman or degrading treatment, covers all forms of that treatment, whether by governments, its agencies, private agencies or individuals.

Niki Tobi JCA in *Uzochukwu v Ezeonu II* (1991) 6 NWLR (pt. 200) 208, p. 708 & 724, defined 'torture' and 'inhuman treatment' (under section 30(1)(a) of the 1979 Constitution now section 34(1)(a) of the 1999 Constitution) as follows:

The word torture etymologically means to put a person to some form of pain which could be extreme. It also means to put a person in some form of anguish or excessive pain... The torture under the subsection could be physical brutalization of the human person. It could also be mental torture in the sense of mental agony or worry. It covers a situation where the person's mental orientation is very much disturbed that he cannot think and do things rationally, as the rational human being he is.

[Inhuman and degrading treatment is] barbarous, uncouth and cruel treatment, a treatment which has no human feeling on the part of the person inflicting the barbarity or cruelty. [It was also defined in the case of *Isenalumhe v Joyce Amadin* to mean 'reviling, holding one up to public obloquy, lowering a person in the estimation of the public, exposing to disgrace, dishonour, or contempt.']

See: *Alaboh v Boyles* (1984) 3 NCLR 830, (where the defendant beat up the applicant and submersed his head in a pool of water; the court held the such action amounts to inhuman and degrading treatment);

Kekere-Omo v Lagos State Government (1995) 6 NWLR (pt. 404) 760 (where the court held that compelling a woman to shave her hair under Customary Law as a symbol of mourning her husband is a breach of the right to human dignity);

Helen Ugochukwu v Stephen Ugochukwu (2006) CHR 344 at 351 (the court held that the act of locking a widow out of her matrimonial home is not only discriminatory but constitutes inhuman and degrading treatment);

Egenokwu v AG Federation & Anor (Suit No FCT/HCM/5094/11 delivered in 2/4/2013, *per* Anenih J) (where the court held that unjustifiably arresting, handcuffing and parading the applicant on the streets before his family and neighbours, and physically abusing and torturing him, stripping him of his clothes, detaining him in squalid conditions in the cells of the 2nd respondent without food and lavatory, constitutes torture, inhuman and degrading treatment, and a grave violation of his fundamental right to dignity under s. 34 of the 1999 Constitution.)

Ifeanyi Anyanor v Commissioner of Police, Delta State & 3 Ors (2007) CHR 183 at 196 (where it was held that beating a person in detention with horse whip, inflicting blows on him and leaving him in handcuffs throughout the night constitutes torture);

Fawehinmi v Abacha (1998) 1 HHLRA 543 CA (where the Court of Appeal held *inter alia* that it is the duty of the state to provide necessary facilities and ensure that a person who is confined in **prison custody** does not have his/her health and safety jeopardized by inhuman conditions in the prison).

Generally, the right to human dignity has been used to assess the acceptability of a number of punishments and situations:

a. Capital punishment

Many nations view the death penalty as inhuman and degrading punishment, and have gone on to abolish it in law and/or practice. Same has been retained in the law and practice of several countries like Nigeria.

See: *Joshua v State* (2009) ALL FWLR (pt. 475) 1626, where the accused was sentenced to death for armed robbery, and appealed to the CA challenging the death sentence as unconstitutional, as it constitutes arbitrary deprivation of life, and inhuman and degrading punishment contrary to ss. 33 and 34 of the 1999 Constitution. Noting that he personally shares the sentiments of the accused regarding the scrapping of the death sentence, and that no man but God has the right to take life, **Denton-West JCA** upheld the death sentence, stating that the Nigerian law is clear on the issue.

Do prisoners on death-roll retain or lose their right to human dignity? Tsammani JCA in *Solomon v AG of Ogun State* (2014) LPELR-22569 throws some light on this: ‘If after the death sentence has been passed and the convict is in prison custody, if anything arises outside the normal custody that amounts to ‘torture or inhuman and degrading treatment’, that will be cause of action... but not militating against the death sentence.’ In other words, convicts on death row retain their right against torture, inhuman and degrading treatment until death.

Even though the death penalty is not a violation of the right to human dignity in Nigeria, can the same be said of the method of carrying out the death sentence? In Nigeria, the mode of executing death sentence is by ‘hanging the convict by the neck until he be dead or by lethal injection’, according to **section 402(1) of the Administration of Criminal Justice Act, 2015** (which Act repealed and replaced the **Criminal Procedure Act** that only prescribed ‘hanging by the neck’ in **section 367(1)**). Giving the pain and agony associated with the method of

execution by hanging (and that the Constitution does not provide that execution of death sentence, especially by hanging, is a limitation to the right to human dignity), is it compatible with section 34(1)(a) of the 1999 Constitution? For technical reasons (that the parties did not address the court on the issue), the Supreme Court avoided ruling on this question in the case of *Kalu v The State* (1998) 13 NWLR (pt. 583) 531, but from the ruling of **Kutigi JSC** in that case, it is quite clear that executing the death penalty by hanging may violate the right to human dignity; he said: '[While the death penalty does not under the Constitution amount to torture or inhuman and degrading punishment], what may amount to torture or inhuman and degrading punishment will be the method or procedure or way in which a condemned prisoner is kept or executed.'

b. Non-capital punishments

E.g. Is sections 144 and 145 of the Zamfara State Sharia Penal Code Law which provides for the amputation of the limbs of those who commit the offence of theft compatible with section 34(1)(a) of the 1999 Constitution?

How about corporal punishment at home and in schools?

2. Prohibition of slavery and servitude

Also, **section 34(1)(b) of the Nigerian Constitution** provides that 'no person shall be held in slavery or servitude' as same is contrary to the right to dignity of the human person. This provision was upheld in the case of *Abodunrin v Arabe* (1995) 5 NWLR (pt. 393) 100.

In support of this provision, **section 364 of the Criminal Code Act** (on 'kidnapping') provides:

Any person who-

- (1) unlawfully imprisons any person, and takes him out of Nigeria without his consent; or
- (2) unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to a court for his release or from discovering [sic; *disclosing*?] to any other person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned, is guilty of a felony and is liable to imprisonment for ten years.

Furthermore, **section 366 of the Criminal Code Act** (on 'compelling action by intimidation') provides:

...any person who, with intent to prevent or hinder any other person from doing any act which he is lawfully entitled to do, or with intent to compel him to do any act which he is lawfully entitled to abstain from doing, or to abstain from doing any act which he is lawfully entitled to do-

- (a) threatens such other person with injury to his person, reputation, or property, or to the person, reputation, or property of anyone in whom he is interested; or
- (b) persistently follows such other person about from place to place; or
- (c) hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or
- (d) watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or

- (e) follows such other person with two or more other persons in a disorderly manner in or through any street or road; or
 - (f) induces or attempts to induce that person to believe that he, or any person in whom he is interested, will become an object of displeasure to the Government of Nigeria or to any person employed in the public service of Nigeria,
- is guilty of an offence and is liable on conviction to imprisonment for one year.

Particularly, **section 369 of the Criminal Code Act** (on 'slave dealing') provides that:

Any person who-

- (1) deals or trades in, purchases, sells, transfers or takes any slave;
 - (2) deals or trades in, purchases, sells, transfers or takes any person in order or so that such person should be held or treated as a slave;
 - (3) places or receives any person in servitude as a pledge or security for debt...;
 - (4) conveys or induces any person to come within the limits of Nigeria [or go out of the limits of Nigeria] in order or so that such person should be held, possessed, dealt or traded in, purchased, sold, or transferred as a slave, or be placed in servitude as a pledge or security for debt;
- is guilty of slave dealing and is liable to imprisonment for fourteen years.

3. Prohibition of forced or compulsory labour

Section 34(1)(c) of the Nigerian Constitution identifies the subjection of any person to 'forced or compulsory labour' as contrary to the respect for the dignity of such a person, and thus prohibits it. This is however not absolute as the Constitution provides for several exceptions in **section 34(2)**:

For the purpose of [s. 34(1)(c)], "forced or compulsory labour" does not include -

- (a) any labour required in consequence of the sentence or order of a court;
- (b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;
- (c) in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;
- (d) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
- (e) any labour or service that forms part of -
 - (i) normal communal or other civic obligations for the well-being of the community,
 - (ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or
 - (iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.

The National Youth Service Corps (NYSC) programme is the only compulsory national service in operation in Nigeria, and is arguably covered under subsection (e)(iii) above. It is established by the NYSC Decree, now Act of 1993, which has the status of a Constitutional provisions by virtue of section 315(5)(a) of the Nigerian Constitution which saves it.

Report: *Nemi v AG Lagos State* (1996) 6 NWLR (pt. 452) 472; and *Ojuya v Nzeogwu* (1996) 1 NWLR (pt. 427) 713 (as it relates to forced labour)