

INSTITUTIONAL MECHANISMS FOR HUMAN RIGHTS PROTECTION IN NIGERIA: AN APPRAISAL*

Abstract

Human rights are guaranteed in the constitutions of various countries of the world. There are legal and institutional mechanisms for protecting the human rights guaranteed in these constitutions. This paper has focused on the institutional mechanisms for human rights protection in Nigeria. The meaning, features and importance of human rights are dealt with in the introduction. This paper discussed three major institutions that are involved in the protection of human rights within Nigeria. These are: the National Human Rights Commission, the Public Complaints Commission and the Truth and Reconciliation Commission. It discussed the mandate statutorily given National Human Rights Commission, its activities and the complaint mechanism. The Public Complaints Commission is discussed in line with its powers and duties under the law that established it. The writer noted that while the first two institutions discussed are permanent in nature, the last is ad hoc. This paper concludes by making some recommendations that will strengthen these institutions in the discharge of their duties under enabling laws. It must be pointed out that the court is a major institution involved in the protection of the first generation rights. However, the role of the court will not be discussed in this article.

Introduction

The idea of human rights is that there are certain rights attached to the individual which should not be taken away from him except in circumstances considered reasonable and allowed by law. Human rights are those rights which the international community recognizes as belonging to all individuals by the very fact of their humanity. These rights combined with traditional legal system seek to protect the essential rights of its subject.¹

The most banal statement on the concept of human rights is that it is the modern name for what have been traditionally known as natural rights. These rights may be defined as moral rights which every human being everywhere at all times ought to have simply because of the fact that, in contradistinction with other being, he is rational and moral.²

The fountainhead of natural rights is the concept of natural law. According to the Greek and Roman philosophers of the Stoic school, who first formulated it, natural law was universal because it applied, not only to citizens of certain states but rather to everybody everywhere in the metropolis³.

* **S.O. Nnamani**, LL.B (Hons), B.L., LL.M., Lecturer, Dept. of International Law & Jurisprudence, Faculty of Law, Enugu State University of Science and Technology, Agbani, Enugu. G.S.M. No. 08035618261

¹ U.O. Umuzurike **Introduction to international Law**, Spectrum Law Publishing, Ibadan, 1995 p.141

² G Ezejiolor. "The Development of the Concept of Human Rights: Definition and Philosophical Foundation" in A. Obilade, C. Nwankwo and A. Tunde – Olowu (eds) **Text for Human Rights Teaching in school**. Constitutional Rights Project, Lagos, 1999, p.23

³ *Ibid* p.1

Human rights are inherent in all human beings all over the world and are not gifts to be withdrawn, withheld or granted at someone's whim or will.⁴ In this sense, they are said to be inalienable or imprescriptible. If you remove them from any human being, he will become less than human. They are part of the very nature of human beings and attach to all human beings everywhere in all societies, just as much as do his arms and legs.⁵ Constitutions and other codes do not create human rights but declare and preserve existing rights. Perhaps, this is why statutory provisions for the first generation human rights are couched in negative terms. For example, to say that no person shall be deprived of his personal liberty presupposes that personal liberty is an existing right.

Human rights represent the legal expression of life. It therefore impresses that without human life; there can be no human rights. Moreso, since life means free and dignified existence in the framework of legal order that ensures the harmonious coexistence of rights and duties, the purpose of recognizing and safeguarding human rights is to ensure the possibility of living fully and completely in dignified freedom.⁶ Human rights are the result of an age-long struggle against oppression and exploitation. It was out of that struggle that the first set of ethical, moral and religious rules emerged, which systematically metamorphosed into legal rules first at municipal level, then at international level. The aim is to promote fundamental freedoms and protection of human rights.⁷

This work examines three of the institutional mechanisms that are in place for the protection of human rights in Nigeria.

National Human Rights Commission

The National Human Rights Commission was established by the National Human Rights Commission Act, 1995⁸ in line with the resolution of the United Nations which enjoins all member states to establish Human Rights Institutions for the promotion and protection of human rights. The commission serves as a mechanism to enhance the enjoyment of human rights. Its establishment aims at creating an enabling environment for extra-judicial recognition, promotion and enforcement of human rights, treaty obligations and providing a forum for public enlightenment and dialogue on human rights issues thereby limiting controversy and confrontation.

Mandate of the Commission

The mandate of the commission is to carry out the following:

- a. Deal with all matters relating to the protection of human rights as guaranteed by the Constitution of the Federal Republic of Nigeria, African Charter, the

⁴ See the Universal Declaration of Human Rights: A Magna Carta for all Humanity (United Nations Department of Public Information) Feb. 1998 cited in O.N. Ogbu, **Human Rights Law and Practice in Nigeria: An Introduction** Enugu; CIDJAP Press 1999 p.2

⁵ *Ibid* p.2.

⁶ O.W. Igwe, **Preliminary Studies in Human Rights Law**, Ring and Favolit Ltd., Lagos, 2002, p. 1

⁷ M.O.U. Gasiokwu, **Human Rights History, Ideology and law**, FAB Educational Books, Jos, 2003,p.iv

⁸ See Cap N46 LFN 2004 Vol. II. It came into effect on 27th September, 1995.

- United Nations Charter and the Universal Declaration on Human Rights and other international treaties on human rights to which Nigeria is a party;⁹
- b. Monitor and investigate all alleged cases of human rights violation in Nigeria and make appropriate recommendations to the Federal Government for the prosecution and such other actions as it may deem expedient in each circumstance;¹⁰
 - c. Assist victims of human rights violation and seek appropriate redress and remedies on their behalf;⁹
 - d. Undertake studies on all matters relating to human rights and assist the Federal Government in the formulation of appropriate policies on the guarantee of human rights;¹⁰
 - e. Publish regularly reports on the state of human rights protection in Nigeria;¹¹
 - f. Organize local and international seminars, workshops and conferences on human rights issues for public enlightenment;¹²
 - g. Liaise and cooperate with local and international organizations on human rights for the purpose of advancing the promotion and protection of human rights;¹³
 - h. Participate in all international activities relating to the promotion and protection of human rights;¹⁴
 - i. Maintain a library, collect data and disseminate information and materials on human rights generally;¹⁵ and
 - j. Carry out all such other functions as are necessary or expedient for the performance of these functions under the Act.¹⁶

To carry out the above functions, the Commission has a Governing Council which consists of 16 members made up of a chairman who shall be a retired Justice of the Supreme Court of Nigeria or the Court of Appeal or a retired Judge of the High Court of a State and an Executive Secretary.¹⁷ The members of the Council are appointed by the President on the recommendation of the Attorney – General of the Federation.¹⁸

Activities of the Commission

Since inception, the Commission has carried out activities in various fields in line with the law establishing it and the mandate. The Commission as the highest National Institution dealing with human rights has presented a common front on human rights and put in place adequate mechanisms for the effective promotion and

⁹ Section 5(a) National Human Rights Commission Act Cap N46 LFN, 2004 (hereinafter referred to us as NHR Act)

¹⁰ *Ibid*

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ *Ibid*

¹² *Ibid*

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *Ibid*

protection of human rights in Nigeria. This it has done through public enlightenment and education, investigation of complaints, mediation and reconciliation, conflict resolution, peace building, research advocacy and training programmes on contemporary issues in the field of human rights. Through a consultative and collaborative process the commission has developed a National Action Plan for the promotion and protection of human rights in Nigeria. The National Action Plan includes effective complaint mechanism, regular hosting of enlightenment seminars, workshops, rallies and continuous reengineering of its strategies. It is expected to be a benchmark on which Nigeria's human rights records can be judged.

For effective performance and result oriented approach to its work, the Council identified fifteen (15) main thematic areas of focus on the National Human Rights Commission and these include:

1. Women and other Gender Related Matters;
2. Children
3. Corruption and Good Governance;
4. Police, Prisons and other Detention Centres;
5. Environment and the Niger – Delta;
6. Education
7. Freedom of Religion and Belief
8. Torture, Extra-Judicial, Summary and Arbitrary Executions
9. Law Reform and Law Review
10. Independence of the Judiciary and Access to Justice
11. Labour
12. Food and Shelter
13. Communal Conflicts and other Related Violence;
14. Health
15. Freedom of Expression and the Media¹⁹.

The Commission's Strategic Work Plan is based on the thematic focus mentioned above and includes the following: public education and enlightenment, training, mediation, on – the- spot assessment, policy – oriented research and so on. It includes strategies targeted at promoting democracy and good governance, rights of vulnerable groups, conflict situation and issues relating to extra – judicial killings/torture and other violence²⁰. The commission's mandate rests squarely on two platforms: promotion and protection of human rights²¹. Under promotions, the commission has held workshops, seminars, conferences, and interactive sessions with relevant institutions. Similarly, it has continued to observe and mark International Human Rights Day, publish the Human Rights Newsletter and collaborate with NGOs in the field of human rights. A lot of sensitization, education and enlightenment programmes have been carried out by the Commission. The Commission hosted the first ever Nigeria Human Rights Summit that brought together all the stakeholders in

¹⁹ See National Human Rights Commission flier "About Us" p. 5.

²⁰ *Ibid* p. 6

²¹ *Ibid*

the human rights community towards drafting the National Action Plan for the promotion and protection of human rights in Nigeria.²²

The Human Rights forum which is an initiative of the new Governing Council aimed at reaching out to a greater number of people outside the Headquarters of the commission takes place every month. It provides opportunity for various enlightenment and interactive programmes between the Commission and members of the public particularly the less privileged in society. Village Square meetings are also held across the country to discuss the mandate of the commission and other issues relevance to the specific local environment.²³ In its effort to protect human rights, the Commission monitoring activities remain a cardinal point of its statutory mandate. In a bid to add impetus to its role and become more proactive, the commission set up a Monitoring Unit under the office of the Executive Secretary. This is in the belief that with adequate monitoring of human rights abuses, many violations could be prevented rather than commence redressing after violations.

Complaint Mechanism

All complaints are addressed to the Executive Secretary of the Commission.²⁴ Complaints may be made in writing or orally to the national office of the commission at the zonal or other offices of the commission. The complaint must be signed or thumb printed by the complainant or his agent. A complaint made orally must be reduced into writing by the officer or representative of the commission to whom the complaint is made and signed or thumb printed by the complainant or his agent.

A complaint must contain full names and contact address of the complainant and the body or person against whom the complaint is made. Full particulars of the complaint and the facts in its support must also be stated, as well as the relief sought. A complaint should not be made in abusive language. The commission usually assigns a complaint to a unit headed by a staff to investigate. The complainant may be called on phone or written to come to the Headquarters or Zone depending on where the complaint was directed. It collaborates with Non Governmental Organizations (NGOs), and Civil Society Organizations (CSOs) to raise awareness of human rights²⁵. The functions and powers of the commission are set out in section 5 of the Act²⁶. It can assist victims of human rights violation and seek appropriate redress and remedies on their behalf²⁷.

Public Complaints Commission

The Public Complaint Commission was established by the Public Complaints Commission Act 1975. Under the Act, the Public Complaint Commission²⁸ is given wide powers to inquire into complaints by members of the public concerning the administrative action of any public authority and companies or their officials and other

²² *Ibid*

²³ *Ibid*

²⁴ *Ibid*

²⁵ About US “*op. cit*”

²⁶ Section 5(a) – (j) of NHRC Act

²⁷ *Ibid*

²⁸ See Public Complaints Commission Act Cap P. 37 LFN 2004 Vol. 14. It came into effect on 16th October, 1975

matters ancillary thereto. The commission shall consist of a Chief Commissioner and such number of other Commissioners as the National Assembly may from time to time determine.²⁹

The commission may establish such number of branches of the Commission in the states of the Federation as the National Assembly may from time to time determine.³⁰

The powers and duties of Commissioners are enumerated in Section 5 of the Act. It provides that all Commissioners shall be responsible to the National Assembly but the Chief Commissioner shall be responsible for co-ordinating the work of all other Commissioners.³¹ Under the Act, a Commissioner shall have power to investigate either on his own initiative or following complaints lodged before him or any other person, any administrative action taken by

- (a) Any Department or Ministry of the Federal or any State Government;
- (b) Any Department of any Local Government Authority (however designated) set up in any State of the Federation;
- (c) Any Statutory Corporation or Public Institution set up by any Government in Nigeria;
- (d) Any company incorporated under or pursuant to the Companies and Allied Matters Act whether owned by any Government aforesaid or by private individuals in Nigeria or otherwise howsoever; or
- (e) Any officer or servant of any of the aforementioned bodies.³²

For effective protection of human rights, every Commissioner shall ensure that administrative action by any person or body mentioned in subsection (2) above will not result in the commitment of any act of injustice against any citizen of Nigeria or any other person resident in Nigeria and for that purpose he shall investigate with special care administrative acts which are or appear to be contrary to any law or regulation; mistaken in law or arbitrary in the ascertainment of fact; unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs; improper in motivation or based on irrelevant considerations; unclear or inadequately explained, or otherwise objectionable.³³

Under the Act, in every case where a commissioner discovers that a crime may have been committed by any person, he shall report his findings to the appropriate authority or recommend that, that person be prosecuted.³⁴ Also in every case where a Commissioner is of the opinion that the conduct of any person is such that disciplinary action against such a person be taken, he shall make a report in that regard to the appropriate authority which shall take such further action as may be necessary in the circumstances.³⁵

²⁹ *Ibid*

³⁰ *Ibid*

³¹ *Ibid*

³² *Ibid*

³³ *Ibid*

³⁴ *Ibid*

³⁵ *Ibid*

By section 9 (1) of the Act, a Commissioner in the discharge of his function shall have power to summon in writing any person who in the opinion of the Commissioner is in the position to testify on any matter before him, to give evidence in the matter and any person who fails to appear when required to do so shall be guilty of an offence under the Act.

Any person guilty of an offence under section 9 shall on conviction be liable to a fine of ₦500 or imprisonment for six months or to both such fine and imprisonment.

The writer is not aware of any one who has been prosecuted under the Act.

Truth and Reconciliation Commission

The Judicial system is perhaps, the most popular mechanism for human rights protection. However, the judicial system produces victors and the vanquished and may not provide the healing effect where massive and grave human rights violations have polarized the society. Furthermore, the judicial system is usually expensive, protracted and may in some cases not produce justice, as a result of some facts such as the bias of evidence, and the technicality of the law.³⁶

Though Truth and Reconciliation Commissions may not in most cases, lead to legal (retributive) justice tribunals, they may result in some other dimensions of justice- restorative justice or corrective justice – which aim at moving away from the traditional punitive verdicts and towards truth seeking and reconciliation. The Argentine experience was however, peculiar in that there were prosecutions of the members of the military and their collaborators for gross human rights abuses.³⁷

President Olusegun Obasanjo in less than ten days after being sworn in as a democratically elected President of Nigeria inaugurated a Judicial Commission known as Human Rights Violations Investigation Panel on 7th June, 1999, headed by a renowned retired Justice of the Supreme Court, Justice Chukwudifu Oputa. The commission is popularly known as the Oputa Panel. The emergence of the Commission was received by members of the public with great enthusiasm. The commission called for and received memoranda from members of the public. It began hearing of the past human rights abuses in Nigeria from October 23, 2000. However, the laudable initiative was almost totally scuttled when the Supreme Court held in **Fawehinmi v. Babangida**³⁸ that:

The Tribunals of Inquiry Act, 1966 promulgated by the Federal Military Government for the entire Federation under the enabling laws is an existing law pursuant to section 315 of 1999 Constitution and is deemed to be an Act enacted by the National Assembly for the Federal Capital Territory, Abuja only and a law enacted by a State House of Assembly under the residual powers of both legislatures. This is because the National Assembly has no power under the 1999 Constitution to enact a general law on tribunals of inquiry in

³⁶ O.N Ogbu. "Truth and Reconciliation Commission as Human Rights Protection Mechanism: The Tragic Near Demise of Nigerian's Oputa Panel" in E. Chianu, (ed) **Legal Principles and Policies: Essays in Honour of Justice Idigbe**, Distinct Universal Limited, Lagos, 2006, p.1

³⁷ *Ibid* p 2

³⁸ [2003] F.W.L.R. . (Pt. 146) 835 @ 879

the form of the said Act to have effect throughout the Federation of Nigeria.

Before the setting up of the Oputa Panel, Nigeria went through nearly two decades of military dictatorship under the regimes of Generals Mohammed Buhari, Ibrahim Babangida and Sani Abacha.

Government agencies were at their worst during the Babangida and Abacha regimes. Cases of torture and wanton killing abound. Abacha allegedly went all out to eliminate significant members of the opposition. Prominent pro-democracy activists assassinated during the reign of Abacha include, Alhaja Kudirat Abiola, activist wife of the late Chief Moshood Abiola; Chief Alfred Rewane, a National Democratic Coalition Leader; Admiral Emmanuel Omotechinwa (rtd). So many narrowly escaped death while others went into exile to save their lives. The security agencies were allegedly empowered to kill and maim any person perceived to be opposed to Abacha's self-succession bid³⁹. Right to life, guaranteed under the Constitution allegedly meant nothing to the regime. Deprivation of right to liberty was rampant⁴⁰. Military tribunals instead of the regular courts were used to try specific individuals in order to secure their conviction. The climax was the hanging in 1995 of Ken Saro-Wiwa and other environmental rights activists after a trial which international observers described as flouting established legal norms.

The manner of selecting members of truth commission differs from country to country. In the case of Nigeria, the former President (Olusegun Obasanjo) appointed the members who were of high reputation and integrity with terms of reference.

On its reconciliation mandate, the commission reconciled the warring communities of Maroko village. The war-torn Ife and Modakeke communities in Ogun State signed a Joint Memorandum of understanding and a Joint Declaration pledging to live in peace and harmony and to adopt only peaceful means of settling their differences and pursuing their rights. The Commission facilitated a Peace Accord among the warring factions and groups in Ogoni land. The proceedings of the Commission witnessed the warm embrace of some warring individuals and groups.

In **Fawehinmi v. Babangida**⁴¹ the competence of the Federal Government to set up Oputa Panel was challenged. The 1st appellant, Chief Gani Fawehinmi, submitted a petition to the commission in which he accused the respondents of the murder of Dele Giwa, a Nigerian journalist murdered by a parcel bomb in 1986. In the course of hearing the petition, the Commission caused to be served on the respondents summonses to appear to answer to the allegations made against them. The respondents filed suits at the Federal High Court seeking, *inter alia*

1. A declaration that the Tribunals of Inquiry Act, 1966 No. 41 is not enactment on any matter with respect to which the National Assembly is empowered to make law under the 1999 Constitution and accordingly, its effect is as a law enacted by a State House of Assembly.

³⁹ Ogbu, O.N. *op. cit*

⁴⁰ Ogbu, O.N. *op. cit*

⁴¹ [2003] F.W.L.R. (Pt. 146) 835

2. A declaration that it is not lawful for the 1st and 2nd defendants to summon the plaintiff to appear before it to testify or to produce documents.

The questions of constitutional nature were isolated and referred to the Court of Appeal for determination. The Court of Appeal held that the Tribunals of Inquiry Act was promulgated as Decree No. 41 of 1966, by the Federal Military Government, and took effect from May 31, 1999, as an existing law pursuant to section 315 of the 1999 Constitution. The Court, however, held that the compulsive powers of the Commission were unconstitutional for contravening sections 35 and 36 of the Constitution. On further appeal to the Supreme Court, it was held, *inter alia* that the National Assembly cannot enact a general law for the establishment of tribunals of inquiry for, and applicable in the Federation of Nigeria. The powers to enact such a law have become a residual matter for the states in respect of which the House of Assembly can legislate for their respective states while the National Assembly can legislate on it only for the Federal Capital Territory. It has been argued that if the Supreme Court had asked the proper question and applied international instruments, it would have reached a different conclusion in the case.⁴²

Notwithstanding the Supreme Court decision, the important findings and recommendations of the Commission have generated issues for national discourse. The report of the commission can also form a basis for providing administrative remedies for victims of human rights violations highlighted in the report. Further investigations based on the recommendations of the commission may also lead to criminal prosecution. In all, truth and reconciliation commissions have become veritable instruments for human rights protection.

Conclusion

This work has examined the institutional mechanism for the protection of human rights in Nigeria as it relates to the National Human Rights Commission, Public Complaints Commission and Truth and Reconciliation Commissions. National Human Rights Commission and Public Complaints Commission are permanent standing institutions whereas Truth and Reconciliation Commissions are ad hoc arrangements.

The national Human Rights Commission has tried in the protection of human rights but more still needs to be done in line with its mandate. The commission is urged to assist victims of human rights violation and seek appropriate redress and remedies on their behalf as mandated by the Act establishing it. Not much has been done in that regard. The Commission should also liaise with local and international organizations for the purpose of advancing the promotion and protection of human rights. Non-governmental organizations would be of immense assistance to the Commission in this area.

The Public Complaints Commission seems to be the most ineffective of the institutions appraised in this work. It is surprising to note that no one has been prosecuted by the Commission since its inception till date in spite of numerous reports made to it. It is suggested that a lawyer should head the Commission to enable it live up to its responsibility. Secondly, lawyers from the Federal Ministry of Justice should

⁴² See O.N. Ogbu, Truth and Reconciliation Commission... *op cit* p. 239

be posted to the Commission to prosecute established cases as provided for in the Act.⁴³

In spite of the Supreme Court decision in **Fawehinmi v. Babangida**⁴⁴ truth and reconciliation commissions remain veritable instruments for human rights protection. Its transitional nature is proper and in line with what obtains in other jurisdictions.⁴⁵ It is however, recommended that the reports of such commission should be made available to members of the public. Citizens of Nigeria should be able to know what the Commission found out and what recommendations were made. It is only when the public knows what the report contains that they will be in a better position to demand the implementation of the recommendations as human rights violations and abuses sought to be redressed cut across ethnic and geographical boundaries.⁴⁶

⁴³ See Section 9 of the Act

⁴⁴ O.N. Ogbu *op.cit.*p. 240

⁴⁵ See B.K. Murungi, "Trading Justice for Truth" Kayode Fayemi (ed.) **Truth Commissions in Africa Deepening the culture of Constitutionalism Regional Institutions and Constitutional Development in Africa**. Centre for Democracy and Development, Abuja, 2003 p.121.

⁴⁶ See the Jos crisis for instance. People from various parts of the country are affected in one way or the other, and would be interested in knowing the outcome of the Panel set up to investigate the cause of the crisis.

