

CONSTITUTIONALISATION OF HUMAN RIGHTS IN SELECTED AFRICAN STATES AND REASONS FOR ABUSE*

Abstract

It is incontrovertible that Africa has made a tremendous progress in the globalisation of human rights in the past decade. This is demonstrated through the proclamation of African Charter on Human and Peoples' Rights. However, despite this progress, abuse of human rights appears to be on the increase as a result of several factors to wit: insecurity, poverty, unemployment, attitude of government officials and security agents. The above prompted this research for the purpose of unearthing the factors responsible for human rights abuse in selected African countries. This paper adopted doctrinal approach hinged on exposition and comparative analysis of primary and secondary sources of materials such as case law, statutes and internet resources. The paper revealed that the constitutions of most African countries repeated in detail the provisions of international bill of rights and African Charter on Human Peoples' Right yet several practices hindered the protection of human rights in Africa. Such practices include ouster clauses, locus standi, non-justiciable provisions among others. The paper also discovered that most international human rights instruments and treaties ratified by some African countries have neither been incorporated in the municipal laws of the countries nor that the relevant enforcement mechanisms put in place, thus rendering the treaties or instruments worthless for the purpose of human right protection and enforcement among others. The paper recommends a number of measures which, if adopted and relentlessly pursued, would stem the ugly tide of human rights violation and generally improve the living condition of the people of Africa.

Keywords: Constitutionalisation, Human Rights, Africa States, Abuse.

Introduction

In this paper, we shall examine the constitutionalisation of human rights in selected African States and the reasons for abuse. It was established that the desire to assure accountability of government, its agencies and officials to the people through a range of techniques and institutions as well as to limit and control the powers of government and ensure respect for human right is the origin of the concept of constitutionalism and rule of law. The nagging question, however, is that despite the entrenchment of fundamental human rights in most African constitutions, why have these right been constantly violated and abused? Cases of impunity on the part of government and political parties abound even in countries practicing democracy. This unfortunate trend has encouraged crime wave and general insecurity in the continent. Cases of kidnapping, robbery, cultism and youth restiveness have assumed a startling dimension in practically every country of the continent. What factors are responsible for this paradoxical development since Africa as a continent is now almost entirely democratized? Are they new challenges in the enforcement of Human Rights in the region or are there flaws in the constitutions of these countries, having regard to their human rights provisions? These and other questions shall be addressed in this paper.

2. United Nations Arrangement for Protection of Human Rights

At the global level, the United Nations has played dominant role in the protection and enforcement of human rights. In particular, the organization has established various bodies and charged them with the monitoring and enforcement of the various Human Rights Instruments which it established through their State reports mechanisms. Obligation is placed on State – parties to all International Human Rights

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Instruments to take definite measures to ensure the enforcement of these instruments within their domestic jurisdiction.

These instruments include the following:

- a. The International Covenant on Civil and Political Right.
- b. The Internal Covenant on Economic, Social and Cultural Rights and Optional Protocol to Civil and Political Rights created in 1966 by United Nations Commission on Human Rights and adopted in 1976 by the General Assembly.

For effective protection and implementation of these Covenants, UN instituted procedures which are applied by its various bodies and organs. These bodies are categorized into Charter-based bodies and Treaty bodies. These are also several agencies and court independent of its human rights treaties with the responsibility of addressing continuing human right abuses.¹

2.1 UN Charter – Based Bodies

1. UN General Assembly: This is one of the principal organs and the main representative body of the UN where every member – State is represented with one vote. It is this organ that initiates studies and makes recommendations for the purpose of promoting international cooperation in the economic, social, cultural, educational, and health fields and assisting in the realization of human rights and fundamental freedom for all without distinction as to race, sex, language or religion². In 1948, General assembly adopted the UDHR and later a host of declarations and conventions all focusing on human right issues such as apartheid genocide, racial discrimination, alien refugees, stateless persons and many others.
2. Economic and Social Council: This is one of the UN principal organs composed of 54 members. It has the responsibility of initiating studies or reports about international economic, social cultural, educational, health and related matters. It can also recommend such issues to the General Assembly, UN members and specialized agencies concerned. It can as well, recommend, draft conventions and convene international conference all for the purpose of promoting respect for, and observance of human rights and fundamental freedoms.
It equally receives reports from member States and specialized agencies concerning compliance to its recommendations on Human Rights. This council created the commission on Human Rights and the commission on the status of women in order to effectively discharge its mandate.
3. The Security Council: This is the organ of the UN charged with the responsibility of maintaining international peace and security. It has the power to take far-reaching decisions on matters of international peace and security. It can authorize military and diplomatic interventions in order to quell armed conflict in any part of the world. It receives reports from all UN organs and can take action based on such reports.
4. UN Secretariat: High Commissioner for Human Rights: This serves as a full-time advocate for human rights within the UN. The office of the High Commissioner for Human Rights looks closely with treaty bodies and acts as coordinator of Human Rights activities within UN:
 - a. Assists in development of new treaties and procedures
 - b. Sets agenda for human rights agencies within the UN
 - c. Provides advisory services to government.

¹ SU Ortuanya, 'Enforcement of International Human Rights – The Role of States as Protectors and Enforcers', (2012) 11 *Journal of Nigeria and Comparative Law*, 53.

² Ibid.

2.2 UN Treaty Bodies

These are bodies established by UN to monitor and study human rights under the leadership of the office of the High commissioner on Human rights. These include:

1. The Committee on the Elimination of Racial Discrimination (CERD) established in 1970 by virtue of Article 8 of the International Convention on the Elimination of all forms of Racial Discrimination. The committee is mandated among other things, to consider reports submitted by state parties on the extent of their compliance with the provisions of the convention, and based on these reports, it makes suggestions and recommendations.
2. The Human Right Committee: This Committee was instituted by the international Covenant on Civil and political Rights in 1977 pursuant to article 28. It functions to promote participation with the standards of ICCPR. It need be noted that under the optional protocol to the ICCPR, individual written communications on violation of civil and political rights are submitted to and considered by the committee, provided that such individual has exhausted local remedies and that he is from a State-party to the optional Protocol.
3. The Committee on Economic, Social and Cultural Rights under ICESCR. This was created in 1985 to monitor implementation of international covenant on Economic, social and cultural rights.
4. The Committee on the Elimination of Discrimination against Women (CEDAW). This was created in 1982 under Article 17 of convention on the Elimination of all Forms of Discrimination against Women.
5. The Committee against Torture (CAT). This was established under Article 17 of the convention against Torture and other cruel, inhuman and degrading treatment or punishment.
 - i. The Committee on Migrant Workers under the international convention on the Rights of Migrant Workers.
 - ii. The Committee on the Rights of Persons with Disabilities under the convention on the Rights of Persons with Disabilities.
 - iii. The Committee on the Rights of the Child – CRC, 1989.

2.3 UN Specialized Agencies

The specialized agencies of the UN that have interest in the field of Human Rights include the following:

1. International Labour Organization (ILO). This was established in 1919 as an autonomous institution associated with the League of Nations. This organization seeks as its main focus, to pursue objective of promoting the right of all human beings to pursue their material well-being and spiritual development in conditions of freedom and dignity, economic security and equal opportunity. It prepares international labour standards and their effective execution concerning human rights issues such as elimination of discrimination in employment and occupation, enforcement of the principle of equal remuneration for both men and women doing the same job, trade union rights, social security, etc.
2. United Nations Educational, Scientific and Cultural Organization (UNESCO). This agency was established to contribute to peace and security by promoting collaboration among nations through education, science and culture. The aim of this collaboration is to facilitate universal respect for justice, rule of law, and human rights and fundamental freedoms without discrimination. It also considers communications on the field of human rights – i.e. communications on violation of right to education and participation in cultural life through its committees on conventions and recommendations.
3. Food and Agriculture Organization (FAO). The primary purpose of FAO is to contribute to the expansion of world economy and guarantee human freedom from hunger. Accordingly, it engages

in increasing levels of nutrition, standards of living, food security and improvement in the efficiency of production of food and other agricultural products.

4. World Health Organization. The preamble to the constitution of this organization emphasizes that it is the fundamental right of every human being to enjoy the highest attainable standard of health. It therefore coordinates international health work, maintains certain international health services, promotes and conducts research and works to improve the standards of teaching in the health, medical and other related professions.³

3. Challenges to Protection Human Rights in African Region

There are three main regions with distinct human rights protection arrangements which supplement those of the United Nations. These are the regions of Europe, Americas and Africa. These regions have agencies which being closer to the States within the regions are more effective or efficient in human rights protection and enforcement. They are in a much better position to appreciate the peculiarities of the regions with regard to their cultural identity and special circumstances. However, here we are concerned with the region of Africa. Under the African system, the Organization of African Unity (OAU) was replaced by the African Union in 200 through a constitutive Act which reaffirmed the union's commitment to promotion and protection of human rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments. The constitutive Act of the African Union referred to above provides, inter alia, the fundamental principles of the AU established by Article 4 that the union "should function in accordance with": respect for democratic principles, human rights, the rule of law, and good governance. Respect for sanctity of human life, condemnation and rejection of impunity and political assassinations, acts of terrorism and subversive activities, and condemnation and rejection of unconstitutional changes of government.⁴

This manifested in the adoption of African Charter on Human and Peoples Rights with far-reaching provisions of advancement of human rights in Africa. Suffice it is to say that despite of the prominent and effective role played by the African Charter, some serious challenges are still staring the charter and other stakeholders in the face having regard to the full realization and protection of human rights in the region. These include the following:

3.1 Non – Ratification of International Human Rights Instruments

Ratification of international human rights instruments by state – parties gives life and meaning to such instruments. The parties to such instrument, by signifying their approval and commitment to them through the act of ratification, impliedly undertake to be bound by the contents of such instruments. Consequently, failure or refusal to ratify an international treaty by a state is tantamount to a rejection of the instrument by the state and refusal to be bound by same. Thus, ratification which was traditionally used to confirm that the government of a state who negotiated such a treaty had the full power to do so, it has now come to be used as a way of subjecting the executive's treaty – making power to parliamentary control. The implication of this change is that a state can only be bound by a treaty when it has been subjected to ratification by the state.⁵ 'Thus, when a state ratifies a treaty, it is under obligation to bring its domestic laws with its obligation under international law. It cannot invoke the provision of its constitution or laws as an excuse for failing to fulfill its agreement under an international agreement.' Therefore refusal by a State to incorporate an international human rights treaty is one sure

³ Ibid, P. 56.

⁴ Constitutive Act, 2000, Article 4; SU Ortuanya, (n. 33).

⁵ DJ Harris, Cases and Materials on International Law, (5th ed. London: Sweet & Maxwell, 1998) p. 784 – 785; Vienna Convention on the Law of Treaties 1969, Art. 14.

way of refusing to apply or enforce such a treaty. Some African States are yet to ratify some international human rights instruments such as CEDAW and CAT. Consequently human rights are massively violated in these States.

3.2 Non-Incorporation of Human Rights Instruments

After ratification of a treaty, the next necessary step is to incorporate the treaty into the domestic laws of ratifying State. It is the incorporation of treaty into the legal system of the State that gives life to the treaty. Articles 55 and 56 of the United Nations Charter enjoins ‘to take joint and separate actions in co-operating with the organization’ to achieve its purpose of “observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.’ Unfortunately, a good number of African countries under reference are yet to incorporate the international Human Rights Instruments which they have ratified. Hence these instruments cannot be enforced within their domestic jurisdictions since they are not yet part of the municipal laws of the State. To achieve incorporation of international human rights treaty, two techniques are often used: legislative incorporation and automatic incorporation. Legislative incorporation also known as transformation demands that for an international law to have effect at national plane it must be expressly “transformed” into municipal law through appropriate constitutional machinery, automatic incorporation or transformation does not require such constitutional procedure. Thus through the process of incorporation, the State best perform their role as enforcers and protectors of human rights. On the contrary, when a State refuses or is reluctant to incorporate any international instrument which it has ratified through the appropriate parliamentary machinery, such an instrument remains unenforceable within that State. This is the status of many international human rights instruments ratified by African States.

4. Factor Responsible for Human Rights Abuse in Selected African States

4.1 Non-Justifiability of Social & Economic Rights under Some Constitutions

The principle of universality and indivisibility of human rights has come to be internationally accepted. Nevertheless, some jurisdictions still insist on compartmentalization of human rights. Hence, while they accept and recognize as exercisable the first generation of rights (fundamental human rights), they argue that the second generation of rights i.e. (economic and social rights) are not immediately realizable and thus should not be constitutionally enforced. This is in contrast to the declaration by the former United Nations Secretary General, Kofi Annan, that human rights are a “cross-sectoral UN subject that was to apply to all UN areas of responsibility.” Some legal jurisdictions in African, including Nigeria, have sought to qualify the applicability of this principle of universality and indivisibility of human rights by pleading peculiar disabilities of economic, cultural and religious nature.

In Nigeria, the Nigerian Constitution provides that it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers to conform to, observe and apply the Fundamental Objectives and Directive Principles of State Policy.⁶ Although these provisions are couched as mere aspirations, there is a constitutional obligation on the State to observe and apply them. Paradoxically, the same constitution further provides that the judicial powers shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy.⁷ The combined effect of the provisions of Section 13 and Section 6(6) (c) of the Nigerian Constitution

⁶ Constitution of the Federal Republic of Nigeria (1999), Section 13.

⁷ Ibid, Section (6) (a); L Megwara, ‘The Legal Profession and National Development’ *Daily Champion*, Wednesday, September 2, 1998, p. 25.

1999 renders the inherent rights (i.e. social, economic and cultural rights) under the Fundamental Objectives and Directive Principles a legal atrophy.⁸ Consequently, the jurisdiction of the court to entertain matter in respect of the enforcement of this category of rights contained in the Directive Principles has been ousted by Section 6(6) (c) of the Nigerian Constitution 1999. This is a major drawback to the development of human rights in the country since the enjoyment of the first generation of right cannot be complete without the second generation of rights being made enforceable. Igwe noted that ‘Right to dignity of human person is meaningless to persons who are deprived of essential foodstuff, healthcare, shelter, and basic education.’⁹ It has been suggested by legal writers that, as has been practiced in other jurisdictions such as India, the Nigeria Supreme Court should adopt measures such as judicial review of executive or legislative acts to ensure that the Directive Principles are seriously taken into consideration and implemented.¹⁰

In Ghana, the Ghanaian and Nigerian constitutions have considerable similarity in term of their human rights contents and especially in terms of the protection of such rights by the courts when infringed. There are however remarkable differences between the two. For instance, there is affirmative action for women under the Ghanaian Constitution. Economic, social and cultural rights are entrenched under the justiceable provisions of the constitution which also provides for the establishment of the Ghanaian Human Rights Commission quite unlike Nigeria where the Human Right Commission is only a statutory creation.¹¹ Just like in Nigeria, a person may apply to the High Court in Ghana for redress where he alleges that a provision of the constitution on fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him.¹² Ghana has ratified the International Criminal Court treaty. This is undoubtedly a significant step towards the advancement of human rights protection in the international front.

It has also been observed that the Ghanaian Constitution provides more extensively for the right to property than the Nigerian Constitution with regard to the right of spouses.¹³ “A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.”¹⁴ The beauty of the above provision is that it is not gender specific but neutral.

In Uganda, there are remarkable improvements on human rights provisions in the Uganda Constitution over the Nigerian Constitution. Apart from the more extensive and elaborate provisions for the various fundamental human rights, the constitution also provides that the State affirmative action in favour of groups should take marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom for the purpose of redressing them.¹⁵ In so far as the economic, social and cultural rights are concerned, the Uganda Constitution tersely provides that “All persons have a right to education.”¹⁶ The Constitution equally provides for special affirmative action for the purpose of

⁸ EA Udu, *Human Rights in Africa* (Lagos: Mbeyi & Associates (Nig) Ltd. 2011), p. 203.

⁹ IO Igwe, ‘Appraisal of the Interrelatedness of Social and Economic Rights with Right to Dignity of Human Person in Nigeria.’ (2022) vo.2 Issue 1, *Redeemer’s University of Nigeria Journal of Jurisprudence and International Law*, 11.

¹⁰ EA Udu (no.1), p. 204.

¹¹ Ibid, p. 215; The report of Colloquium on Social and Economic Rights held in Chelsea Hotel, Central Area, Abuja from July 5-8, 2000.

¹² Constitution of the Republic of Ghana 1992, Section 33; Constitution of Federal Republic of Nigeria, 1999, Section 46(1).

¹³ EA Udu (no.1), p. 215.

¹⁴ Ghanaian Constitution 1992, Section 22(1).

¹⁵ The Constitution of the Republic of Uganda adopted on September 22, 1995, Section 32.

¹⁶ Ibid, Section 30.

redressing the imbalances created by history, tradition or custom, whilst prohibiting all laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status.¹⁷ Other rights provide under the Ugandan Constitution include: the right to culture,¹⁸ right to clean and healthy environment,¹⁹ and economic rights.²⁰ Thus, the Ugandan Constitution has clearly advanced considerably over and above those of other Anglophone African countries especially by embodying economic, social and cultural rights in the group of enforceable, fundamental human rights and also for being the first constitution to establish a Human Rights Commission.²¹ Equally remarkable is the categorization of the rights to freedom from torture, cruel, inhuman or degrading treatment, freedom from slavery or servitude, the right to fair hearing and the right to an order of habeas corpus as non-derogable rights.²²

In Senegal, the economic, social and cultural rights have remained a mirage. Unfortunately, since non-respect for this set of rights negatively affects the enjoyment of other rights, this country has remained backward as far as human right development and advancement are concerned. The currency devaluation of 1994 and the Structural Adjustment Programme since 1979 have greatly affected these rights.²³ It is noteworthy that both the Senegalese Constitution and the Labour Code provide all workers with the right of association and the freedom to form or join unions. In addition, Senegal has ratified various international treaties which guarantee workers' rights.²⁴ Despite the above, there are recurrent cases of protests and industrial disputes occasioned by non-implementation of these treaties and constitutional provisions. Even the rights of women to labour, is not often respected in practice. Also, domestic violence against women is common in Senegal.²⁵

Human rights provisions in the Constitution of South Africa are titled "Bill of Rights." The Bill of Rights is the corner-stone of democracy in South Africa. The Bill of Rights applies to all laws and binds the legislature, the executive, and judiciary and all organs of the State. It binds a natural person as well as a juristic person. The major improvement of the constitutional provision of human rights in South Africa over Nigeria is the inclusion of economic, social and cultural rights as "justiceable rights." These rights are contained in both the Universal Declaration of Human Rights, 1948 and the International Covenant on Economic, Social and Cultural Rights of 1976 which South Africa is a party to. However, there are new approaches to the incorporation of these rights into domestic law and new approaches to their enforcement. As noted earlier, South Africa has gone beyond recognizing these rights to including them in the chapter on fundamental rights. Certain other social and economic rights were included, example: the right to children, to security, basic nutrition and basic health and social services, and the right of every person to basic education. This rather very expansive posture of the South African Constitution on the subject of social and economic rights which include those in respect of health, education, housing, land and social assistance, has been attributed to the country's long history of apartheid.²⁶

¹⁷ Ibid, Section 33(5) and (6).

¹⁸ Ibid, Section 37.

¹⁹ Ibid, Section 39.

²⁰ Ibid, Section 40.

²¹ Ibid, Section 51.

²² Ibid, Section 44.

²³ EA Udu (no.8), p. 260.

²⁴ A Study funded by the Canadian Centre for international Research and Development done in Dakar and Kaolack in 1996, 87% of of 515 women interviewed had suffered from some forms of domestic violence.

²⁵ Ibid.

²⁶ Report of Colloquium of Social and Economic Rights, hold at Chelsea Hotel, Central Area, Abuja from July 5-8, 2000.

Despite these elaborate provisions for the protection of human rights under the South African Constitution, there have been notable human rights abuses in the country. On July 12, 2005 unarmed members of the Treatment Action Campaign (TAC), who were protesting over the slow roll-out of anti-retroviral treatment for HIV/AIDS victims were baton-charged, tear-gassed and shot at with rubber bullets by police.²⁷ On May 26, 2005, three Free State Police Officers were charged in the Harrismith Regional Court with murder and 16 counts of assault with intent to cause grievous bodily harm in connection with the fatal shooting of 17- years old Tebono Mkhonza and the wounding of scores of other demonstrators by the police. Also, fifty – one supporters of the Landless People’s Movement (LPM) remained on trial in the Lenaisa Magistrate’s Court on a charge of breaching the Electoral Act by taking part in a demonstration on an Election Day in April, 2004. This amounts to an “unfair trial.”²⁸ Other challenges to the effective realization of the plethora of rights in the South African Constitution include the problem of insecurity. There is also housing problem and high rate of unemployment. It has been said that over sixty-five (65) percent of the population live below poverty line. This is why South Africa reacted when the Commissioner of Police suggested that the constitution should be amended to relax the bill of rights a little in order to track down criminals.²⁹

4.2 Locus Standi

Prior to the year 2009, the issue of “*locus standi*” was yet another inhibition to the effective realization of remedies against human rights violation. It entails the legal capacity to institute, initiate or commence an action in a court of competent jurisdiction or tribunal without any hindrance or obstruction from any person or body whatsoever, including the provision of any existing law. It could also be termed the standing right or interest a person has to prosecute an action. A party has no *locus standi* in a matter if he does not have sufficient personal interest in the subject matter of the outcome of the controversy or if he has not suffered or does not stand to suffer some injury either by the enforcement or threatened exercise of some power, authority or right.³⁰

In *Adesanya v. President of Nigeria & anor*,³¹ it was held as follows:

- a. A litigant must show that he is directly affected by the act before he can be heard.
- b. A general interest common to the public at large is certainly not a litigable interest to accord a right to sue or standing in a court of law.
- c. The litigant must have a right peculiar or personal to him, and that right must have been infringed, or they must be a threat of such infringement.

The above decision clearly is indeed very restrictive. However, the Supreme Court took a rather radical decision on this question of *locus standi* in the case of *Fawehinmi v. Akilu & Anor*,³² where the court decided that “within the context of criminal law, every Nigerian is his brother’s keeper.” The decision

²⁷ EA Udu, (no.8), p. 228.

²⁸ The magistrate rejected a defence application for her refusal (withdrawal from the case) on the ground of bias after she made comments in open court that she had to report to the Minister of Justice about the trial. On 29 November, the magistrate rejected a defence application for the dismissal of the charges without giving reasons for the ruling.

²⁹Report of the Colloquium on Economic and Social Right.

³⁰ Military Administration, A.K.S. V. Obong (2001) NWLR (pt 60) 1456 at 1471; Ojukwu V. Ojukwu (2001) NWLR (pt 41) 1948.

³¹ (1981) 2 NCLR 358.

³² (1988)2 NWLR (pt 67) 122.

does not over rule the Adesanya's case as most of the pronouncements in Fawehinmi's case were probably obiter, thereby providing an avenue for some lower courts to ignore the decision.³³

Section 46(1) of the 1999 Nigerian Constitution provides as follows: 'Any person who alleges that any of the provisions of this chapter (i.e. chapter on fundamental human rights) has been, is being, or likely to be contravened in any State, in relation to him may apply to a High Court in that State for redress.' This restrictive doctrine of *locus standi* has the capability of inhibiting public-spirited individual, and Human Rights Non-Governmental Organizations from protecting the rights of the down-trodden and defenseless from bringing to the attention of the court some infringement of the constitutionally guaranteed human rights for redress. It is noteworthy that in advanced democracies such as America, Britain, and even India, the requirements of *locus standi* is no longer a challenge to the proper administration of justice and human rights enforcement. Fortunately, in Nigeria however, the enactment of the Fundamental Rights (Enforcement procedure) Rules, 2009 in Nigeria by the Chief Justice of Nigeria pursuant to Section 46 (3) of the 1999 Constitution, has engendered a lot of positive changes in human rights enforcement procedure in the country which include the elimination of the impediment or requirement of *locus standi* in the enforcement of human rights of the citizens.

The Fundamental Rights Enforcement Rules now allows individuals whose rights have been violation or any one acting on their behalf, including non-governmental organizations to bring action in court to redress human right violations.³⁴ Thus these Rules also ensure public interest litigations aimed at enforcing human right provisions. Order III of the Fundamental Rights (Enforcement Procedure) Rules states that statutes of limitation do not affect human right enforcement. This means, a public officer or institution could be sued at anytime irrespective of the duration of the infringement of human right he has committed.³⁵ In the litigation these positive developments, the twin monsters of "locus standi" and "statute of limitation" both of which constituted the greatest obstacles to the enforcement of human rights in Nigeria have been eliminated through the promulgation of the Fundamental Rights (Enforcement procedure) Rules, 2009.

It is recommended or suggested that in order to make the remedies for breach of fundamental rights more effective, all African countries should emulate the good example of Nigeria by relaxing the requirement of "locus standi" in Africa as practiced in Britain and even India where this requirement has been consigned to history, allowing breaches of human rights to be redressed without hindrance.

4.3 Ouster of Court's Jurisdiction

Ouster clauses are provisions in a military decree or enactment which takes away or limits the jurisdiction or power of ordinary courts to determine matters which ordinarily fall within their jurisdiction. During the military regimes in Nigeria, ouster clauses featured prominently. These clauses are aimed at precluding the jurisdiction of the courts from inquiring into the validity of acts done by Governments or their agents even when these acts violate the fundamental human rights of the citizens. Such ouster clauses are often couched like this: "No question as to the validity of this or any other Decree or of any Edict shall be entertained by any court of law in Nigeria."

³³ Olisa Agbakoba, "The Role of Non-Governmental Organizations in the Development and Protection of Individual Rights", in *Individual Rights Under the 1989 Constitution*. Op. Cit. PP. 149-150.

³⁴ Preamble Rule 3 (a)-(b) (1) – (d), Fundamental rights (Enforcement Procedure) 2009.

³⁵ AA Akume, 'The abolition of Locu Standi statute of limitation in Fundamental Rights in Nigeria', *Human Rights Enforcement Review*, Vol. 1, No 1. An Annual Publication of ABU and the National Human Rights Commission of Nigeria.

The courts have contrived some strategies to try to circumvent the harsh effects of these ouster clauses. In some, the Supreme Court's position has been that those provisions do not of themselves bar the jurisdictions of court,³⁶ and where, however, the court finds that the ouster clauses apply, the effect is that the decision of the legislature or executive on the matter is final and the court is handicapped, no matter how unjust or inequitable the decision may be.³⁷ The Nigerian Constitution 1999 contains some ouster clauses some which are particularly glaring. A good example is Section 6 (6) (c) and (d) which expressly prohibits the courts from exercising jurisdiction on any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter 11 of the Constitution. By this provision, the Fundamental Objectives and Directive Principles which embody economic and social rights have been rendered non-justiceable and consequently unrealizable and unenforceable.

4.4 Other Challenges Militating against Effective Enforcement and Development of Human Rights in Africa Include:

- a. Absence of adequate enforcement framework for International Human Right Instruments.
- b. Non-ratification, reservation, and non-incorporation of international Human Right Treaties into domestic law of State parties.
- c. Judicial Timidity and Timorousness.
- d. Executive lawlessness and disobedience to court orders.
- e. Cultural impediments.
- f. Political instability.
- g. Religious impediment-Sharia law absolutely violation of women's rights.
- h. Cost of litigation.
- i. Non incorporation and domestication of ratified international treaties.

5. Conclusion and Recommendations

The paper has been able to establish that most African states have well entrenched provisions for protection of human rights. However, the challenge from the full realisation of human rights in Africa ranges from ouster clauses in the law, locus standi, poverty, insecurity, abuse by government officials and security agents, non-incorporation of international human rights instruments and treaties among others. The paper discovered that barriers like non-justiceable provisions against social, economic and cultural rights in the constitutions of selected African countries like Nigeria plays anti-clock movement in the advancement of human rights in African.

It is therefore recommended that stronger approach for the respect of human rights in Africa as the basis of achieving peace, development and cooperation within the region. This will relentlessly pursued, and stem the ugly tide of human rights violation and generally improve the living condition of the people of Africa.

³⁶ Wilson V. Attorney – General of Bendel State (1985) 1 NWLR (pt 4) 572.

³⁷ Oyelowo Oyewo, "The Judiciary in period of Political Crisis and Conflicts in Nigeria", in Ado-Ekiti Law Review, Maiden edition, 1999, pp. 84-85. Nwosu V. Imo State Environmental Sanitation Authority (1990). NWLR (pt 135) 668. See also O. Okpara, "Human Rights, Law & Practice in Nigeria, Vol 1, (Enugu: Chenglo Ltd, 2005) P. 321.