

LAW 241: Human Rights Law 1



NATIONAL OPEN UNIVERSITY OF NIGERIA



LAW 241
HUMAN RIGHTS LAW 1

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Introduction

Welcome to Law: Human Rights Law 1

This Course Guide provides you with the various topics on the introductory course in Human Rights Law. It is prepared for students in the second year study in Law in the National Open University of Nigeria (NOUN).

Human Rights Law is an area of Law which deals with the study of Human Rights and authorities of the state and the organization of the state. Traditionally, Human Rights law has often been studied by means of volume and very large textbooks; this guide provides the student with concise understanding of the basic principles and focuses on views that are germane in the study of Human Rights Law.

To study this course, and the various units, you need to be ready to think critically and analytically. You need to develop a constructive mind to be able to weigh different arguments carefully, trying to determine which arguments you find most plausibly convincing and why. This is to enable you decipher properly which positions you would like to take without being a “copy-cat” student. If it is by understanding different positions that one can develop one’s ability to do the same.

In this introductory section, aims and objectives of the course will be explained. The module provides some useful advice on the reading system, the role in using the course guide, the structure of the module, and guidance and preparing for the assessment. It is important that one understands all these at the beginning, of ensure that one is able to get the most out to the course and so the best one can.

Course Aims

- a. To be able to demonstrate an understanding and knowledge of the Human Rights of a modern state.
- b. To outline and critically analyze Human Rights viewpoints in Constitution
- c. To apply the main theories, and concepts used in the study of Human Rights Law to the analysis of key institutions of the modern state.
- d. To critically evaluate different concepts, principles, theories, logic etc.

Course Objectives

- To introduce you to what Human Rights Law is all about.
- To put you through the various methods used to make constitution and to make projections covering events and or phenomenon.
- To highlight the major areas within Human Rights Law as a field of study and show how these relate to other disciplines.
- To show you that all activities of government affect our lives and that constitution is very important in every society.

Working through this Course

To complete this course, you are advised to check the study units, read the recommended books as well as other course materials provided by NOUN. Each unit contains Self-Assessment Exercises (SAE) and Tutor-Marked Assignments (TMAS) for assessment purposes. There will be a written examination at the end of the course. The course should take you about 14 weeks to complete. You will find all the components of the course listed below. You need to allocate time to each unit so as to finish the course successfully and on time.

Course Materials

For this course, you will require the following materials:

1. The course guide;
2. Study units which are fifteen (15) in all;
3. Textbooks recommended at the end of the units; and
4. Assignment file where all the unit assignments are kept.
5. Presentation Schedule

Study Units

There are seventeen study units in this course broken into five modules. They are as follows:

Module 1

Unit 1	Definition Meaning and Classes of Human Rights
Unit 2	Introduction to Human Rights and Civil Liberties
Unit 3	Historical Antecedents of Human Rights in Nigeria
Unit 4	Human Rights as a Universal Concern

- Unit 5 Fundamental Objectives and Directive Principles of State Policy; Fundamental Rights and Fundamental Right Cases

Module 2

- Unit 1 Fundamental Rights
Unit 2 Fundamental Human Rights Cases
Unit 3 Violation – Consequences of Disobedience

Module 3

- Unit 1 Right to Life
Unit 2 Right to Life and the Scope and Limit of Exercise of Police Powers
Unit 3 Judicial Attitude to Individual or Fundamental Human Rights in Nigeria
Unit 4 Right to Life and Abortion in Nigeria
Unit 5 Euthanasia and the Right to Life

Module 4

- Unit 1 Fundamental Human Rights section 37, 38, 42 and 43 of the 1999 Constitution
Unit 2 Right to Freedom of Association
Unit 3 Right to Accommodation, Food, Education and Equal Opportunities I
Unit 4 Right to Accommodation, Food, Education and Equal Opportunities II

Module 5

- Unit 1 Comparative Analysis of Human and Civil Liberties under Nigerian Law and International Instruments I
Unit 2 Comparative Analysis of Human and Civil Liberties under Nigerian Law and International Instruments II
Unit 3 Comparative Analysis of Human and Civil Liberties under Nigerian Law and International Instruments III

Each unit contains some exercises on the topic covered, and you will be required to attempt the exercises. These will enable you evaluate your progress as well as reinforce what you have learned so far. The exercises, together with the tutor-marked assignments will help you in achieving the stated learning objectives of the individual units, and the course.

Textbooks and References

You may wish to consult the references and other books suggested at the end of each unit, to enhance your understanding of the material. This will enhance your understanding of the course.

Assessment

Your assessment for this course is in two parts. First, is the Tutor-Marked Assignment, and second is a written examination. You will be required to apply the information and knowledge gained from this course in completing your assignments. You must submit your assignment to your tutor in line with submission deadlines as stated in the assignment file. The work that you submit in your tutor-marked assignment for assessment will count for 30% of your total score.

Tutor-Marked Assignment

In this course, you will be required to study fifteen (15) units, and complete Tutor Marked Assignment, provided at the end of each unit. The assignments carry 10% marks each, the best four of your assignments will constitute 30% of your final mark. At the end of the course, you will be required to write a final examination, which counts for 70% of your final mark.

The assignments for each unit in this course are contained in your assignment file. You may wish to consult other related materials apart from your course materials to complete your assignments. When you complete each assignment, send it together with a Tutor Marked Assignment (TMA) form to your tutor. Ensure that each assignment reaches your tutor on or before the deadline stipulated in the assignment file. If, for any reason you are unable to complete your assignment in time, contact your tutor before the due date to discuss the possibility of an extension. Note that extensions will not be granted after the due date for submission unless under exceptional circumstances.

Final Examination and Grading

The final examination for this course will be for a duration of two hours and count for 70% of your total mark. The examination will consist of questions, which reflect the information in your course material, exercises, and tutor marked assignments. All aspects of the course will be examined. Use the time between the completion of the last unit and examination date

to revise the entire course. You may also find it useful to review your tutor-marked assignments before the examination.

Presentation Schedule

Your assignment file consists of all the details of the assignments you are required to submit to your tutor for marking. The marks obtained for these assignments will count towards the final mark you obtain for this course, more information on the assignments can be found in the assignment file.

Course Marking Scheme

ASSESSMENT	MARKS
Assignments	Four assignments, best three marks of the four count at 30% of course marks
Final Examination	70% of total course mark
Total	100% of course marks

Course Overview and Presentation Schedule

Units	Title of work	Weeks Activity	Assessment (End of Unit)
	Course Guide		
Module 1			
1	Definition, Meaning of Human Rights	Week 1	
2	Introduction to Human Rights and Civil Liberties	Week 2	Assignment 1
3	Classification of Constitution	Week 3	
4	Human Rights as an Unusual Concern	Week 4	
5	Fundamental Objectives and Directive Principle of State	Week 5	
Module 2			
1	Fundamental Right	Week 6	Assignment 2
2	Fundamental Rights Cases	Week 7	
3	Violation and Consequences of Disobedience	Week 8	
4	Judicial Attitude	Week 9	
5	Right to Life	Week 10	
Module 3			
1	Right to Life	Week 11	Assignment 3
2	Right to Life and Scope of	Week 12	

	Police Powers		
3	Judicial Attitude to Individual Human Rights in Nigeria	Week 13	
4	Right to Life and Abortion	Week 14	
5	Historical Antecedent of Human Rights in Nigeria	Week 15	Assignment 4
Module 4			
1	Fundamental Human Rights: Sections 37, 38, 42 and 43 of the 1999 Constitution		
2	Right to Freedom of Association		
3	Right to Accommodation and Equal Opportunities		
Module 5			
1	Comparative Analysis of Human and Civil Liberties under Nigerian Law and International Instruments I		
2	Comparative Analysis of Human and Civil Liberties under Nigerian Law and International Instruments II		
3	Comparative Analysis of Human and Civil Liberties under Nigerian Law and International Instruments III		
	Revision	Week 16	
	Examinations	Week 17	
	Total	Week 17	

How to Get the Most from This Course

In distance learning, your course material replaces the lecturer. The course material has been designed in such a way that you can study on your own with little or no assistance at all. This allows you to work, and study at your pace, and at a time and place that best suits you. Think of reading your course material in the same way as listening to the lecturer. However, you are advised to study with your course mates. In the same way a lecturer might give you some reading to do, the study units give you information on what to read, and these form your test materials. You are provided exercises to do at appropriate points, just as a lecturer might give you an in-class exercise.

Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this, is a set of learning objectives. These objectives let you know what you are required to know by the time you have completed the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If you make this a habit, it will improve your chances of passing the course significantly.

The main body of the unit guides you through the required reading from other sources. This will usually be either from the reference books or from a reading section.

The following is a practical strategy for working through the course. If you run into any difficulties, telephone your tutor. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor for help or visit the study centre.

Read this Course Guide thoroughly, it is the first assignment.

1. Organize a Study Schedule. Design a 'Course Overview' to guide you through the course. Note the time you are expected to spend on each unit and how the assignments relate to the units. You need to gather all the information into one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide and write in your own dates and schedule of work for each unit.
2. Once you have created your own study schedule, do everything to be faithful to it. The major reason students fail is that they get behind with their course work. If you get into difficulties with your schedule, please, let your tutor know before it is too late for help.
3. Turn to Unit 1, and read the introduction and the objectives for the unit.
4. Assemble the study materials. You will need the reference books in the unit you are studying at any point in time.
5. Work through the unit. As you work through the unit, you will know what sources to consult for further information.

6. Before the relevant due dates (about 4 weeks before due dates), access the assignment file. Keep in mind that you will learn a lot by doing the assignment carefully. They have been designed to help you meet the objective of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due date.
7. Review the objectives for each study unit to confirm that you have achieved them, if you feel unsure about any of the objectives, review the study materials or consult your tutor.
8. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.
9. When you have submitted an assignment to your tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the Assignment is returned, pay particular attention to your tutor's comments, both on the tutor-marked assignment form and also the written comments on the ordinary assignments.
10. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the Course Guide).

Facilitators/Tutor and Tutorials

There are 15 hours of tutorials provided to support this course. Tutorials are for problem solving, and they are optional. You need to get in touch with your tutor to arrange date and time for tutorials if needed. Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and provide assistance to you during the course. You must submit your tutor-marked assignments to your tutor well before the due date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor by telephone, e-mail, or discussion board. The following might be circumstances in which you will find help necessary. Contact your tutor if

- You do not understand any part of the study units or the assigned readings.
- You have difficulties with the exercises.
- You have a question or problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

To gain the maximum benefits from course tutorials, prepare a question list before attending them. You will learn quite a lot from participating in the discussions.

Summary

The course guide has introduced you to what to expect in Introduction to. It examines the nature and scope of Human Rights Law, approaches to the study of Human Rights development in a sovereign modern state, power of the police, rights of the individual, legitimacy and influence. The course also discusses human rights and international instruments. Upon completion you should be equipped with the foundation for analyzing human rights issues.

We wish you success with the course and hope you will find it both engaging and practical.

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MODULE 1 HISTORICAL DEVELOPMENT OF HUMAN RIGHTS

Unit 1	Definition: Meaning and Classes of Human Rights
Unit 2	Introduction to Human Rights and Civil Liberties
Unit 3	Historical Antecedents of Human Rights in Nigeria
Unit 4	Human Rights as a Universal Concern
Unit 5	Fundamental Objectives and Directive Principles of State Policy; Fundamental Rights and Fundamental Right Cases

UNIT 1 HUMAN RIGHTS IN PRE-MODERN TIMES

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2.0	Objectives
3.0	Main Content
3.1	Classes of Human Rights
3.2	Ideology and Moral Rights
3.3	Human Rights: Historical Perspectives
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Readings

1.0 INTRODUCTION

“Human” means “relating to human beings”, relating to members of the races of *homo sapiens* – men women, children.

‘Right’ refers to that which is just or correct, truth, fairness, justice, just or legal claim.

‘Human Rights’ mean the freedoms, immunities and benefits that according to modern values, all human beings should be able to claim as a matter of right in the society in which they live.

2.0 OBJECTIVES

After you have read through this unit you should be able to:

- define or explain the term “Human Rights”
- differentiate the nature and scope of human rights on the basis of ideology

- explain whether or not human rights are time and culture specific or universal
- give a historical account of the evolution of human rights from pre-modern age.

3.0 MAIN CONTENT

3.1 Classes of Human Rights

There are different categories of rights which pertain to human beings. Some are immediately enforceable binding commitments. These latter rights are reflective of the values of the community. Others are regarded as merely specifying possible future patterns of behaviours. These rights savour of ethics and morality. Entitlement to them can only arise under specific conditions. Thus enforcement and sanction determine the characterization of any particular human rights

3.2 Ideology and Moral Rights

Adherents of the natural law principles have said that certain rights exist as a higher law than the legal system or any positive law. Such rights are universal and absolute, irrespective of space and time. For example, the social contract theory postulates the existence of inalienable right to life, liberty and property, which serves as a powerful restraint on arbitrariness. The United States Declaration of Independence (1776) was a restatement of the Natural Law postulate.

Marxists have little place for human rights within the framework of the legal order. Tunkin emphasized: “conventions on human rights do not grant rights directly to individuals” the contents of human rights obligations are defined solely by the state in the light of the socio-economic advancement of the state.

Human rights means no more than that

- a. all states have a duty to respect the fundamental rights and freedoms of all persons within their territories.
- b. states have a duty not to permit discrimination by reason of sex, ethnicity, religion or language: and
- c. states have a duty to promote universal respect for human rights and to cooperate with each other to achieve this objective.

Positive rights are contained the Legal System. It is discoverable from the system with or without moral or ethical consideration. Positivism has little place for human rights beyond these rights that are enshrined in the legal system. This is consistent with its doctrines of state sovereignty

and supremacy of national jurisdiction. Following important development in the 20th century, as you will see later, some basic civil and political rights became universal constraints of powers of governments.

Such rights acquired recognition, meaning and effect irrespective of space and time. But note the following observations:

1. Economic rights were only desired,
2. Colonised peoples were hardly heard, and were denied of human rights especially right to freedom.
- 3 Economic inequalities of states was a non-issue

Certain issues also arose e.g.

- whether the concept of human rights differ in different culture; and
- whether human right are granted to all individuals, regardless of culture and by reason only of their membership of human race.

Perhaps it is human right, what the international community accepts as human rights.

3.3 Human Rights: Historical Perspectives

The global concept of Human Rights transcends any known period in history. History itself is full of event and struggle for rights by people all over the world at all times. The fight for the protection of Human rights still continues, and the main organization in the forefront is the United Nations Organisation and lately the African Union.

From Biblical history, we see that the ancient Israelites made efforts, at one time in Egypt, at another time in Babylon, to free themselves from slavery and bondage. Essentially, the concept is an evolution of revolt against authoritarianism, tyranny, slavery, discrimination and all other ways by which rights, which are innate to all human beings have been suppressed. Amongst the writers on Human Rights, the settled fact is that the human being, without any regard to time and space, is entitled to the exercise of some freedoms. These freedoms are not granted by any authority but they are paradoxically claimed and exercised by every human being as of right. These include freedoms of worship, speech, association, opinion and of the pursuit of happiness and worthwhile vocations and professions.

The first use of the word with an equivalent meaning of freedom was in the 24th century B.C. in the Lagash province of Sameria. Then the king

of Lagash, Urukagina, had to come to the aid of his citizens against the tax collectors and the high Priests. Urukagina had no other option but to chase the tax collectors and high Priests out of town in order to save his crown from protests from his subjects.

The Progenitor of Human Rights in Natural Law

This is the jurisprudential aspect of law that was developed by the ancient Roman and Greek Philosophers. Much of the content of literature on Human Rights, as we have them today, however, is an improvement on Roman Law by the Hellenistic stoic philosophers. At the time, Roman Law had what they called the Jus Gentium. These were the laws and rules basically for all mankind.

During the tyrannical period, the question of the “Rights of Man” became a slogan in the struggle against the injustices and indignities committed by some governments. These “rights” were termed “natural rights” and they were claimed to derive from “natural law”, the law that ruled the universe.

The Stoic philosophers declared their unreserved conviction for a natural law which they said ruled over gods and men. Sophist’s heroine, Antigone declared that there were laws higher than the royal laws and the kings’ government. Through these laws, she contended that she and every human being had certain rights which though could be violated by royal force yet they could never be cancelled or taken away.

The origin of natural law is ascribed to the old and indefensible movement for the progress and maintainance of eternal and immutable justice. This justice, d’ Entreves said

...is conceived as being higher or ultimate law, proceeding from the nature of the universe from the being of god and reason of man.

d’ Entreves added that.

...Law in the sense of law of last resort is somehow above law making ... Lawmakers, are under and subject to law.

He concluded by saying that:

...it was among the stoic philosophers of the Hellenistic age that the movement first attained a large and general expression and the expression became a tradition of human civility which runs continuously from the porch of the American Revolution of 1776 and the French Revolution of 1789....

Aligning with d' Entreves, Bodin, the celebrated French Jurist held that though the acts of the sovereign were ultimate yet the sovereign was bound by the laws of God and nature.

The Stoic's conception of natural law was strictly upheld by the Romans. Cicero's opinion was that natural law allows any part of it to be repealed entirely. We cannot be freed from its obligations by senate or people "...And there will not be different laws at Rome and at Athens or different laws now and in the future but one eternal unchangeable law will be valid for all nations and for all time."

Cicero's immutable natural law gave birth to human rights which down the ages up to the present day have been the hall mark of constitutional provisions on fundamental human rights in different countries. All nations have tried to standardize their provisions on Human Rights though not all of them practice them to the letter.

Human rights are natural rights which are conferred by natural law on every human beings and are:

...not the particular privileges of citizens of certain states but something to which every human being, everywhere, was entitled by virtue of simple fact of being human or rational.

These natural rights are the special gifts to human beings by nature which are standard, immutable and universal. They are only comprehensible to human beings alone. About this Gaius Ezeji for noted that;

...men...could comprehend and obey this law of nature because of their possession of reason and capacity to develop and attain virtue. They were by this able to emphasize the notion of freedom and equality of all men.

The view of other writers are not different, most especially on its universality, immutability and uniqueness. In the words of Louis Henkin:

Human rights are claims which every individual has, or should have...to call them human suggest that they are universal. They are the due of every human being....They do not differ with geography, history or culture, or ideology, political, or economic stage of development.

Gaius Ezejiofor highlighted the existence of some specific fundamental human rights in some ancient Greek city states even before the advent of the much talked about stoic philosophers. He mentions, for example, “Isogoria” being equal freedom of speech; ‘Isotimia”, being equal respect for all; “Isonomia” being equality before the law. These are all rights existing in the Bill of Rights of all civilized nations today.

4.0 CONCLUSION

You have defined human rights. You can then visualize human rights form the perspective of persons claiming them and also from the perspective of those whose duty it is to protect them. You have also seen the approach of the exponents of the principles of natural law, positivism, Marxism as the developing sates. Human rights exist social as social facts.

5.0 SUMMARY

In this Unit, you have learnt about what ‘human Rights’ is, what is or what is not human rights may all depend on acceptance by the International community.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define the term “Human Rights.”
2. Compare and contrast the philosophy of human rights with the politics of human rights. (culled from: Mansell: *Public International Law* 2006).

7.0 REFERENCES/FURTHER READINGS

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UNIT 2 INTRODUCTION TO HUMAN RIGHTS AND CIVIL LIBERTIES

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1.0 INTRODUCTION

The two hottest issues that are topmost on the agenda of states whether on the domestic or on the international scene as of the present are human rights and the question of environment. Human rights, because without human rights, man is nothing but a slave to the society. Issues relating to human rights have since the end of the cold war regained ascendancy in international fora and discourse. The subject is even more pertinent to Nigeria and indeed Africa as a whole where misrule and repression accompanied by gross human right violations have become an intractable problem over the decades.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- define and explain the term Human Right
- identify the various philosophies that led to the concept of Human Right
- distinguish between the various generations of human rights.

3.0 MAIN CONTENT

3.1 Definition of Human Rights

Various definitions of human rights abounds, some rather, too narrow and inadequate, others open-ended and imprecise for easy comprehension. According to professor Osita Eze, "Human right represent demands or claims which individuals or group make on

society, some of which are protected by Law, while others remain aspirations to be attained in future.

Simply put, Human Rights are inherent in man; they arise from the very nature of man as social animal. They are those rights which all human beings enjoy by virtue, of their humanity, whether black, white, yellow, malay or red, the deprivation of which would constitute a grave affront to one's natural sense of justice.

Human rights themselves are not a new phenomenon or a new morality. They have a history dated back to antiquity. The rights of man as expression of political philosophy may be traceable to the writings of early naturalists. Thomas Paine, Hobbes, John Locke, Baron de Montesquieu, Jean Jacques Rousseau and Immanuel Kant to mention a few. There were the times when the writings of publicist had great impact on law and the society within which the law operated. According to these philosophers, every individual within society possesses certain rights which are inherent and which cannot be wantonly taken away and for which man is beholden to no human authority. That the major reason for individuals coming together to form a government is to enable these rights to be protected and fostered. Social contract, to which is traceable the origin of society itself is based on the concept of natural law to the effect that certain principles of justice are natural, that is, rational and unalterable and that the rights conferred by natural law are something to which every human being is entitled by virtue of the fact of being human and rational.

Based on this philosophy, man has over the centuries struggled and got human Rights or their understanding of them, enshrined in the constitutions and political traditions of their various societies. As Frederick Douglas aptly put it, "Power concedes nothing without demand. It never did and it never will."

Many examples of the outcome of these struggles have undoubtedly influenced later Constitutional and legal development all over the world - the great Magna Carta of England (1215), the United States Declaration of Independence (1776), the French Declaration of the Rights of man and the citizen (1789), and the American Bills of Rights of 1791 etc.

Apart from individual struggles, the world community as a whole has in recent times drawn attention, in important declarations, to the universality of human rights and adopted a number of durable conventions in which these declarations have been enshrined. The first in the series was the Universal Declaration of Human Rights (1948). This is a declaratory statement of those basic inalienable and inviolable rights, though mainly of civil and political nature, to which men are

entitled. International Covenant and Civil and Political Right (1966) including its optional protocols; International Covenant on Economic, Social and Cultural rights, The European Convention for the Protection of Human rights and Fundamental Freedom (1950); the inter-America Convention on Human Rights (1970) and the African charter on Human Rights (1981).

3.2 Classification of Rights

3.2.1 The Concept of Generation

Since 1997, when Karel Vasak introduced the concept of generations into the corpus of human rights discourse, the debate has taken many forms and shapes. Vasak traced the developments of human rights and concluded that, basically, rights are three generations. The first he called *iberte* (Liberty) i.e Civil and Political Rights, the second he termed *egalite* (equality), which relates to Economic, Social and Cultural Rights; and the third he termed *fratenite* (solidarity), refereeing to those rights that are held by the collectives in other words, “ group or people’s right. These classifications, sometimes discribed by a colour scheme of “blue” “red” and “green,” are based on three different philosophies. Each generation has its destructive characteristic but it suffices to note that the first generation rights are negative rights or immunity claims in citizen towards the state, in the sense that they limit the power of a government and protect peoples rights against its power. They relate to the sanctity of the individual and his rights within the socio-political milieu in which he is located. They imply that no government or society should act against individuals in certain ways that would deprive them of inherent political or personal rights, such as the rights to life, liberty, and security of person, freedom of speech, press, assembly and religion.

3.2.2 Second Generation Rights

The second generation rights are claims to social equality consisting of economic, social and cultural rights. They are positive rights in that they enhance the power of government to do something to the person to enable her or him in some ways. They are generally interpreted as programmatic clauses, obligating governments and legislature to pursue social policies, but do not create individual claims. They require the affirmative action of government for the implementation.

3.2.3 Third Generation Rights

Unlike the first two generation rights which focus largely on individuals, the third generation rights include the rights of people and groups. It has received increasing rhetorical affirmation at the international level though “only the people’s rights to self-determination and to disposal of

natural wealth, included in the international covenants have received authoritative acceptance in international law. Other group rights include “the right to development, the right to peace, the right to environment, the right to ownership of the common heritage of mankind, and the right to communication.

SELF ASSESSMENT EXERCISE

What is Human Rights.?

4.0 CONCLUSION

Human Rights is a universal concept. It is an inherent right which no law can invalidate. This unit highlighted the definition and the different struggles by individual communities, group and the United Nations to make it a universal phenomenon.

5.0 SUMMARY

In this unit, you have learnt about

- the history of the evolution of Human Rights
- the definition of human rights
- the periodisation of Human Rights
- the universality of Human Rights

6.0 TUTOR-MARKED ASSIGNMENT

1. Define the concept Human Right
2. Explain in detail the term periodisation of rights
3. Explain the concept generations of Rights
4. Human Right is only operational at the domestic level? Do you agree?

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UNIT 3 HISTORICAL ANTECEDENTS OF HUMAN RIGHTS IN NIGERIA

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Nigeria did not have to fight a war to gain independence from the British. As a matter of fact it was proclaimed that independence was given to us on a “platter of gold”. Equally so, we did not have to demand or fight a war for entrenchment of human rights in our Constitution. There was never a Lord Coke to press for anything of the soil.

There was no John Somers and no parliamentary wrangling. What the minority ethnic groups demanded was the right to self determination which they believe could offer them an escape route from the tyranny of the majority ethnic groups in the regions. The Commissions that investigated their fears went out of its way to recommend the entrenchment of fundamental palliative as a safeguard against alleged oppressive conduct by majority ethnic group.

2.0 OBJECTIVES

At the end of the unit, you should be able to:

- explain the historical antecedent of Human Rights in Nigeria
- identify the evolution of human rights from independence Constitution of 1960 to the 1999 Constitution of Nigeria
- identify the various ways in which the court has aided the entrenchment of the provisions of fundamental Human Rights in our various Constitutions.

3.0 MAIN CONTENT

The clamour for human rights in Nigeria dates back to the Colonial days before Nigeria attained independence in 1960. Colonialism was planted in Nigeria through three prong attacks:

In 1861, Lagos settlement was ceded by King Dosumu of Lagos to the British, the Sokoto Emirate had been acquired by conquest, while the rest of the country was subtly acquired by the British through bilateral transfer of friendship and protectorate. Much later the acquired provinces of Northern and southern Nigeria were amalgamated by Lord Lugard in 1914 and this brought under one government the various elements which now constitute Nigeria.

Since the emergence of the geographical entity known as Nigeria, it has had several Constitutions. Some of were fostered on her while others were fashioned with the participation of the diverse interests in Nigeria. The Clifford Constitution of 1922, like the ones that were to follow it, was entirely a Colonial Constitution designed to achieve specific objectives. None of the other pre-independence constitutions was designed with any formal or conscious objective to safeguard human rights. Indeed, it would have been most interesting to see how a constitution with human rights provisions would have been fashioned at a time slavery, forced labour international discrimination and restriction of movement were legitimate instruments in the lands of colonial administrators not only in Nigeria, but all over Africa. For example in most of Colonial Africa including Nigeria, European reserves were a no-go area to African natives except for cooks, stewards and domestic help. European clubs were exclusive for whites and admission to black natives was prohibited.

The Nigeria (Legislative Council) order-in-Council of 1946 was principally aimed at bringing the whole of Nigeria under one Legislative jurisdiction. The Nigeria (Constitution) order in-Council of 1951 was concerned essentially with the introduction of representative democracy into Nigeria's body polity. The system of governance tacitly embraced the principle of self determination, which the United Nations, in its charter of six year earlier, had adopted.

Nigeria forged ahead in Constitutional development, and with the various nationalist of the time, agitating for self – government, the need to introduce some elements of human rights into the country's constitution gained prominence. One factor which prompted this was the heterogeneous nature of the country and the fear of the minority that their survival would be threatened in a country dominated by three major tribes – the Hausa, Igbo, and the Yoruba. The minorities therefore, urged the British Colonial government to allay their fears by the creation of state for them before independence was granted. The British government's response was the minority commission under the chairmanship of sir Henry Willinks with a mandate to ascertain the facts about the fears of the minorities and suggest means of allaying those fears.

The Commission did not, surprisingly, recommend the creation of more states. Rather it recommended the entrenchment of fundamental rights provision in the Constitution, even though the commission observed that such provisions would be difficult to enforce and sometimes difficult to interpret.

In spite of its observation, the Commission went ahead to recommend the provisions largely in its view that:

“Their presence defined beliefs widespread among democratic countries and provides a standard to which appeal may be made by those whose rights are infringed ...a government determined to abandon democratic courses will find ways of violating them but they are of great nature in preventing a steady deterioration in standards of freedom and the unobtrusive encroachment of a government on individual rights.”

The above was the basis for the inclusion of fundamental rights in Nigeria independence Constitution of 1960. One may observe that by opting for the inclusion of fundamental rights in the country’s constitution rather than create more states at that time, the British government tactfully left a legacy of agitation for the budding independent state.

As Prof J. D. Ojo observed:

“Only the threat of succession by the Eastern Region forced Nigeria, in a panic mood, to split the country into 12 states on 27 May 1967.”

The fundamental rights provisions in the 1960 independence Constitution were contained in Chapter III of that Constitution. Sections 17 to 32. The full text of that chapter is similar in every respect to what was contained in the Bill of rights first adopted as the sixth schedule to the Nigerian (Constitution) order-in-Council, 1954 to 1958. However, only 12 out of the 16 sections in that chapter positively recognized certain rights for protection. These are:

1.	Deprivation of life	Section 17
2.	Inhuman Treatment	“ 18
3.	Slavery and Forced Labour	“ 19
4.	Deprivation of Personal Liberty	“ 20
5.	Determination of Right	“ 21
6.	Private and Family Life	“ 22
7.	Freedom of Conscience	“ 23
8.	Freedom of Expression	“ 24
9.	Peaceful Assembly and Association	“ 25
10.	Freedom of Movement	Section 26

- | | | |
|--|---|----|
| 11. Freedom from Discrimination | “ | 27 |
| 12. Compulsory Acquisition of Property | “ | 30 |

These rights have since then generally remained the same in substance except for minor alterations in arrangement, nomenclature and amplification here and there. For example, in the independence Constitution of 1960 and the Republican Constitution of 1963, the right summarily referred to as the right against “Inhuman Treatment” has been altered to read the “Right to Dignity of the Human Person” in the 1979 and 1999 versions of the Nigeria Constitution. Also in 1963, fundamental rights were inserted in chapter III of the Republic Constitution, whereas under the 1979 and 1999 Constitution, the insertions are in chapter four. These changes in the arrangement do not affect the substance of the rights themselves.

SELF ASSESSMENT EXERCISE

Briefly explain the fears of the minorities in Nigeria before independence.

4.0 CONCLUSION

For Nigeria the Willinks Commission set up in 1958 by the British Colonial Government to look into the demands of the minorities recommended the adoption of some of the norms of the 1948 Universal Declaration of Human Rights into the Nigeria Constitution as a panacea for fears expressed by the minority groups in the country. These norms were adopted and introduced into chapter III of the independence Constitution of 1960 as Fundamental Rights. These were subsequently entrenched in the 1963, 1979 and the 1999 constitution of the Federal Republic of Nigeria. In fact with the exception of just two, all the Articles of the Declaration found their way into the 1999 Constitution either as fundamental Rights in chapter 4 or Directive principles of state policy in chapter 2.

Deliberations on Human rights Issues during the 1979 and 1999 Constitutional debate revolved around the intricacies of imposing economic and social rights as legal as against moral obligations on the government. It appeared that the Legal recognition of social and economic rights is an economic burden which the dominant and ruling elite in the country is most unwilling to shoulder.

5.0 SUMMARY

You have learnt in this Unit about, the history of Human Rights in Nigeria and how the Universal Declaration of Human Rights by the United Nation in 1948 impacted positively on the Constitutional development of Human Rights in Nigeria.

6.0 TUTOR-MARKED ASSIGNMENT

1. The Recommendation of the Williks Commission of 1958 solved the problem of the minority groups in Nigeria. Discuss.
2. Explain and Discuss why all the Nigeria Constitutions before the Independence Constitution did not have a provision for Fundamental Human Rights.
3. Democratic ideal was first introduced into Nigeria by the colonial master through the Nigeria (Constitution) order in Council of 1951. Discuss.

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UNIT 4 HUMAN RIGHTS AS A UNIVERSAL CONCERN

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Content of International Human Rights Norms: A Brief Historical Survey
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Declarations are mutually agreed upon, through general consensus – based on tests of states accepting them. They are legally binding in international law only if they become part of what is called Customary International Law through the constant practice of states, the international community or of international institutions invoking their provisions over time.

The central declaration in international rights law is the Universal Declaration of Human rights (UDHR) adopted by the United Nation in 1948. This Declaration is seen as the foundation of international human rights protection and subsequent international human rights laws. The UDHR is widely considered to be part of customary international law and therefore binding upon all state as customs.

2.0 OBJECTIVES

At the end of this unit you should be able to

- explain the term universalization of Human Rights, the origin and the content of international human rights norms;
- understand the meaning of fundamental objective and directive principle of state policy; and
- contrast it with the meaning and provision of fundamental rights in the 1999 Constitution.

3.0 MAIN CONTENT

Since the end of World War II in 1945, some scholars have observed two crucial instrument of state policy – the sword of armed forces and the shield of international law. Both have cast long opposing shadows on the foreign policy of nations. This makes another of the United Nations charter as “the cornerstones of contemporary Law.” The Article requires all members of the United Nations to refrain in their International Relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations.

However, three years later, in 1948, the Declaration revolutionized the Human rights issues. States were now held responsible and accountable for any violations of the human rights of their citizen or foreigners under their control in war or peace time. The universalization of human rights touched off the initial controversial debated on whether human rights conception was really universal or cultural relative. However, today there is a fair level of consensus that the human rights conceptions, particularly as documented in the various instruments of the Declaration of Human Rights have “their roots in specific circumstances of the western society “and” are of western origin.

Consequently, right from the beginning and particularly in the 1960s and 1970s, Africa and Third World Countries in general “have argued that the philosophy and conceptions of human rights existed in other culture as well and equally deserved attention and recognition. Naturally what is embodied in the African and third world human rights conceptions include the notions of human dignity and worth, which exists in all societies, but which historically colonialism, slavery and imperialism had tended to ignore. This therefore, does not mean that the core elements of the Universal Declaration of Human Rights of 1948 are alien to non-Western Cultures including African cultures. Indeed, traditionally, African cultures “have given the greatest importance to the preservation of life and the promotion of human welfare”. Hence the dead are given the most decent and solemn burial. It also explains the significance of ancestral worship which still prevails in most African countries.

The proclamation of 1948 by the United Nation gives the concept of human rights a Universal application. The declaration has found effective application in settling the problems of human rights violations in places like Kosovo, Sudan, Chad etc. where International attention was drawn due to internationalized national crises.

3.1 Content of International Human Rights Norms: A Brief Historical Survey

Before the Second World War, human rights have found protection in domestic courts. The National courts of each country gave expression to the protection according to the socio-economic problems and political demands of the State at the point in time. There was no recourse to international norms however. Let us take the example of Great Britain which founded the Common Law. In 1215, the Magna Carter was signed at Runnymede, which is now Surrey by King John of England and a committee of feudal barons. This could be the first instance of the British formalized and justiceable Human rights provisions following on the pattern of the XII Tables in Ancient Rome. The XII Tables, be it noted, have been described by the poet, Livy, as “corpus onmis Romani viris” and “fons publici pirvatique viris” and by another scholar, Tacitus as “finis acqui viris.” In reality, the XII Tables were not so much “finis” as much as a fresh starting point for a new and vigorous legal development. The Table removed the uncertainty in law, placing all freemen irrespective of their birth or order, on equal footing in respect of legal right and duty – a real exposition of human rights.

The Magna Carter, for its part, declares:-

“No freeman may be taken or imprisoned or diseased of his freehold or liberties, or free customs or be outlawed or exiled or in any way molested or judged or condemned except by lawful judgment or in accordance with the law of the land nor may justice be sold, or denied or delayed to any subject,. And the crown or its ministers may not imprison or coerce the subject in any arbitrary manner.”

SELF ASSESSMENT EXERCISE

Compare and contrast the Twelve Tables and Art 1,3,4,9, 17, of the Universal Declaration of Human Rights 1948).

The Petition of Rights and Bill of Rights provide inter alia –

- a) no person owing allegiance to the Crown may be committed to prison or detained by special command of the sovereign without any cause shown.
- b) excessive bail or fines ought not to be required or imposed nor cruel and unusual punishment inflicted.

- c) the Crown may not suspend laws or the execution of laws without the consent of Parliament, nor may it dispense with laws, or with their execution.

The 1688 revolution is usually regarded as the Glorious Revolution. Bloodless it was. Parliament was by an Act, signed by Williams of Orange (1650 – 1702), empowered to protect the rights of the individual. In 1701, still during the reign of Williams of Orange, judges were given security of tenure and it was by this that they were able, finally, to establish their independence from the Government

In the 19th Century the Reform Act of 1832 extended voting rights to men of substantial property, thereby widening voting rights. Fifty years later (that is in 1884), householders were granted the vote right. But the 19th century did not actually see a total enfranchisement for Britain, for it was not until 1918, after the first World War, that women got voting rights. Even then, the right was for women of over 30 years and women over 21. Others had to wait till as recently as 1928, to have equal enfranchisement with men and their more older counterparts. This inward-looking phenomenon, in regard to fundamental human rights no longer had support after the Second World War or rather, after the Universal Declaration of Human rights as a global affair in 1948. Paine, in presenting his-book “Rights of Man” to George Washington in 1791 had prayed “that the rights of man may become universal”. Those prayers were not to be answered until 1948, when the United Nations adopted the Universal Declaration of Human Rights. The General Assembly of the United Nations adopted and proclaimed these rights by resolution 217 A (iii) of 10 December 1948.

On 4th of November 1950, the European Convention for the Protection of Human rights and Fundamental Freedoms was adopted by government signatories who were members of the Council of Europe. Great Britain was a party to this Convention. The Convention was fashioned on the International Bill of Rights. The 66 Articles contain and consist of the first generation rights of life, that is, right to life, protection from torture, or degrading treatment, and also non-discrimination. Of importance to the advance of Human rights is the fact that United Kingdom citizens can enforce the rights at the European Commission and Court of Human Rights in Strasburg, France. This individual right to have access to the court has been attained by United Kingdom citizens since 1966. This is laudable. Some day in Africa, a court, similar to the European Commission and Court of Human Rights, would be established under the African Charter to supplement the African Commission which, from all practical purposes has always appeared toothless and *a fortiori* impotent.

For those interested in statistics, the United Kingdom has been found guilty at the European Court of Human Rights abuses and of more breaches of the Convention than any other State apart of course from Italy, which holds the unenviable record of being adjudged guilty in practically every reference made to the court since 1966. Incidentally, such rights as non-discrimination, degrading treatment, protection from torture and use of corporal punishment in schools (which was abolished by the court in 1987) can be enforced by the United Kingdom citizens at the Commission and the court. Greece has the least of guilt- judgment by the court and indeed, the lowest reference to the Court, followed by Denmark. Luxembourg has had no cases preferred against her.

In England, it is notable that the majority decision in *Liversidge v Anderson* has ceased to be the law. (see *R v Home secretary ex-parte Khawaja*. See also *Reg v Inland Revenue Commissioners Ex parte Roseminster Ltd. (1980) AC 952; 1011*. The minority judgment of Lord Atkin has triumphed. The law has ceased to remain betrayed!

One would at this stage perhaps leave Europe and go to South Africa, where apartheid, up till the very recent, was valid law. The question of human rights was never raised in court, and if politically raised it was with impunity. The courts hardly, if at all, had any experience of hearing ordinary constitutional matters. The judges, even now, would rather wish to be relieved of constitutional cases in post-apartheid South Africa.

The Inter-American Convention on Human Rights came into being in 1969. Known as the Inter-American Convention on Human Rights, it was within the Organization of American States and of interest is chapter VIII which, like the European Commission, sets up an Inter-American Court of Human rights.

The African Charter is important, in any human rights quest in Africa generally and Nigeria in particular. In June 1981, the Heads of States and Governments of the Organization of African Unity adopted the African Charter on Human and Peoples' rights. This was at Nairobi, Kenya.

The Charter, which has been ratified by upwards of forty African states, guarantees right to equality before the law, human dignity and inviolability. In the words of Prof. Umozurike,

perhaps nowhere else is a continental organization for the protection and promotion of human rights more desirable than in Africa which has experienced some of the worst abuses of human rights.

Like its predecessors, the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African Charter provides for political and civil rights as well as economic, social and cultural rights and group rights for the individual vis – a – vis the state.

There are 68 Articles in all and they also, apart from providing for rights, provide for duties (Articles 27-44) of the individual to the state. The Charter establishes the Commission which is to be within the Organization for African Unity and invest it with mandate *inter alia* to-

“ensure the protection of human and peoples’ rights under the conditions laid some by the (Present) charter”.

The setting up of a Commission conforms with the norms of the Charter of the European Convention (Art. 19) and the American (Art 33) Convention but as earlier indicated, unlike the provisions of those other Conventions, the African Charter, apart from the provision of the Commission and vesting the Commission with a mandate, (chapter 11 of part II), there is, regrettably no provision for a court. It is clear therefore, that if the provisions of the Charter are to be given a real effect, the domestic courts of the member nation of the Organization of African Unity would, to an almost total extent, have to be relied upon. It is humbly submitted that for the Commission to be relied upon. It is believed, in any event, that it would prove an Herculean task for the Commission to ensure, in all the African States, the protection of human rights all by itself. Such assurance would have, firstly to be predicated on the good faith of member nations. Good faith, may not prove a good guarantee for ensuring compliance with human rights, having regard to the political, social and, economic statuses of the African States at present, especially when most to these states accept a veiled totalitarianism or neo-totalitarianism as the accepted norms.

Indeed that is what calls for the title of this piece, the enquiry must be whether the judiciary in these days that call for domestic application of human rights norms – *quo vadis* Nigerian judiciary?

4.0 CONCLUSION

In this Unit, you have been exposed to the rudimentary aspect of universalisation of human rights, the fundamental objective and Directive principle of state policy and provisions of fundamental rights which evolved from the Universal Declarations of Human Rights.

5.0 SUMMARY

At the end of this Unit, you have learned how to:

- Identify fundamental Rights as enshrine in the domestic Constitution of Nigeria i.e. 1999 Constitution of Nigeria.
- Various cultures ad tradition found placement in the universal declaration of human right of 1948
- The fundamental objective and directive principle of the state was influenced by the provisions of the Universal declaration of Human Rights and How UDHR has Universalised Human Rights.

6.0 TUTOR-MARKED ASSIGNMENT

Distinguished between fundamental objective and directive principle of the state and fundamental Rights.

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UNIT 5 FUNDAMENTAL OBJECTIVE AND DIRECTIVE PRINCIPLE OF STATE POLICY, FUNDAMENTAL RIGHTS AND FUNDAMENTAL HUMAN RIGHT CASES

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Definition of Fundamental Objective and Directive Principle of the State Policy, Fundamental Rights and Selected Cases on Fundamental Human Rights
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

There are other rights in the Constitution of 1999 other than the civil and political rights that deserve recognition and comment; these are fundamental objective and Directive principles of state policy in chapter II of the Constitution. They were introduced into the Constitution for the first time in 1979. These are peculiar rights. Their peculiarity is that they are not justifiable in the sense that any individual who claims that his right has been infringed in relation to any of them cannot go to court to vindicate such rights. These rights are those to education, to work and earn remuneration, right to protection against unemployment, sickness, disability or old age.

However, fundamental human rights are enshrined in the 1999 constitution. These fundamental Rights are sacrosanct and not liable to be abridged by any legislative or executive order. Individuals whose rights are violated can resort to the law courts for the appropriate remedy. But those who suffer from breach of Fundamental Objective and Directive Principle of State Policy provision cannot do so.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- define and explain fundamental objective and Directive principles of the state
- identify fundamental Rights as enshrined in the Constitution

- distinguish between fundamental objective and Directive principle of state and fundamental Rights.

3.0 MAIN CONTENT

3.1 Definition of Fundamental Objective and Directive Principle of State Policy

The Constitution of the Federal Republic of Nigeria, 1999, Chapter II states:

“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 confirm, observe, and apply the provisions of this Chapter of this Constitution.

The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice. It is hereby, accordingly declared that:

- (a) sovereignty belongs to the people of Nigerian from whom government through this Constitution derives all its powers and authority;
- (b) the security and welfare of the people shall be the primary purpose of government; and
- (c) the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.”

The composition of the Government of the federation or of any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that Government or in any of its agencies.

The composition of the Government of a state, a local government council, or any of the agencies of such Government or Council, and the conduct of the affairs of the Government or Council or such agencies shall be a carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the peoples of the federation

The motto of the Federal Republic of Nigeria shall be “Unity and Faith, Peace and progress.”

Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

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;
- (c) encourage inter-marriage among persons from different places of origin; or of different religious; ethnic or linguistic association or ties; and
- (d) promote or encourage the formation of associations that cut across ethnic, linguistic, religious or other sectional barriers.

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.

The State shall abolish all corrupt practices and abuse of power.

The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution:

- (a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy,
- (b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
- (c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy manage and operate the major sectors of the economy,
- (d) without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economy activities outside the major sectors of the economy.

The State shall direct its policy towards ensuring:

- (a) the promotion of a planned and balanced economic development;
- (b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;

- (c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and
- (d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

A body shall be set up by an Act of the National Assembly which have power –

- 1(a) to review, from time to time the ownership and control of business enterprises operating in Nigeria and make recommendations to the President on same; and
- (b) to administer any law for the regulation of the ownership and control of such enterprises.

For the purposes of subsection (1) of this section –

- (a) the reference to the “major sectors of the economy” shall be constructed as a reference to such economic activities as may, from time to time, be declared by a resolution of each House of the National Assembly to be managed and operated exclusively by the Government of the Federation; and until a resolution to the contrary is made by the National Assembly, economic activities being operated exclusively by the Government of the Federation on the date immediately preceding the day when this section comes into force, whether directly or through the agencies of a statutory or other corporation or company, shall be deemed to be major sectors of the economy;
- (b) “economic activities” includes activities directly concerned with the production, distribution and exchange of wealth or of goods and services; and
- (c) “participate” includes the rendering of services and supplying of goods.

The State social order is founded on ideals of Freedom, Equality and Justice.

In furtherance to the social order

- (a) every citizen shall have equality of rights, obligations and opportunities before the law;

- (b) the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced;
- (c) governmental actions shall be humane;
- (d) exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented; and
- (e) the independence, impartiality and integrity of court of law, and easy accessibility thereto shall be secured and maintained.

The State shall direct its policy toward ensuring that

- (a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means or livelihood as well as adequate opportunity to secure suitable employment;
 - (b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;
 - (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;
 - (d) there are adequate medical and health facilities for all persons;
 - (e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever;
 - (f) children, young persons and the aged are protected against any exploitation whatsoever, and against moral and materials neglect;
 - (g) provision is made for public assistance in deserving cases or other conditions and need; and
 - (h) the evolution and promotion of family life is encouraged.
1. Government shall direct its policy towards ensuring that there are equal adequate educational opportunities at all levels.
 2. Government shall promote science and technology
 3. Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide:-
 - a. free, compulsory and universal primary education;
 - b. free secondary education
 - c. free university education; and
 - d. free adult literacy programme.

The foreign policy objectives shall be-

- a. promotion and protection of the national interest;
- b. promotion of African integration and support for African unity.
- c. promotion of international co-operation for the consolidation of universal peace and mutual respect among all nations and elimination of discrimination in all its manifestations;
- d. respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication; and
- e. promotion of a just world economic order.

The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.

The State shall-

- a) protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter; and
- b) encourage development of technological and scientific studies which enhance cultural values.

The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the people.

The national ethics shall be Discipline, Integrity, dignity of Labour, Social Justice, Religious Tolerance, Self-reliance and Patriotism.

It shall be the duty of every citizen to:

- a. abide by this Constitution, respect its deals and its institutions, the National Flag, the National Anthem, the National Pledge, and legitimate authorities;
- b. help to enhance the power, prestige and good name of Nigeria, defend Nigeria and render such national services as may be required;
- c. respect the dignity of other citizens and the rights and legitimate interest of others and live in unity and harmony and in the spirit of common brotherhood;

- d. make positive and useful contribution to the advancement, progress and well-being of the community where he resides;
- e. render assistance to appropriate and lawful agencies in the maintenance of law and order; and
- f. declare his income honestly to appropriate and lawful agencies and pay his tax promptly.

4.0 CONCLUSION

In this unit, you have been exposed to the other rights, the fundamental objective and Directive principle of state policy and right and fundamental human rights cases.

5.0 SUMMARY

At the end of this unit, you have learned the definition of:

- Fundamental objective and directive principle of state policy
- Fundamental rights and selected cases of fundamental human rights

6.0 TUTOR-MARKED ASSIGNMENT

1. What is fundamental Rights?
3. Give one example of selected case of fundamental Human Rights.

7.0 REFERENCES/FURTHER READINGS

Legal thoughts Ademola; Prof. Babatunde Oloyede Ihomade.

Ray Onyegu: Legal Protection of Women Right, April 2001 Published by Mbei Passoga.

Human rights as a Universal Concern: *A Nigeria Case Study*. NILA

M. A. Ajomo and Bolaji Owasanoye (1993). *Individual Rights under the 1989 Constitution*. NIALS.

MODULE 2

Unit 1	Fundamental Rights
Unit 2	Fundamental Human Rights Cases
Unit 3	Violation – Consequences of Disobedience

UNIT 1 FUNDAMENTAL RIGHTS

CONTENTS

1.0	Introduction
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1.0 INTRODUCTION

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

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- identify the fundamental human rights provisions
- know the derogative from it thereof.

3.0 MAIN CONTENT

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 defence of any person from unlawful violence or for the defence 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

3.1 Right to Dignity of Human Person

1. Every individual is entitled to respect for the dignity of his person, and accordingly:
 - a. no person shall be subjected 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.
2. For the purpose of subsection (1) (c) of this section, “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 the members of the armed forces of the federation or the Nigerian Police Forces 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 threatening the life of 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 any act of the National Assembly, or
 - (iii) such compulsory national service which forms part of the education and training of citizen of Nigerian as may be prescribed by an act of the National Assembly.

3.2 Right to Personal Liberty

1. Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law:
 - a. in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
 - b. by reason of his failure to comply with the order of a court to secure the fulfillment of any obligation imposed upon him by law;
 - c. for the purpose of bringing him before a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
 - d. in the case of person who has not attained the age of eighteen years, for the purpose of his education or welfare;
 - e. in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drug or alcohol or vagrants, for the purpose of their case or treatment or the protection of the community; or
 - f. for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody, awaiting trial, shall not continue to be kept

in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

2. Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.
3. Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.
4. Any person who is arrested or detained in accordance with subsection (1)(c) of this section shall be brought before court of law within a reasonable time, and if he is not tried within a period of:
 - a. two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail, or
 - b. three months from the date of his arrest or detention in the case of a person who has been released on bail.
5. He shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

In subsection (4) of this section, the expression “a reasonable time” means-

- a. in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and
 - b. in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.
6. Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person, and in this subsection, “the appropriate authority or person” means an authority or person specified by law.

7. Nothing in this section shall be construed-
 - a. in relation to subsection (4) of this section as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and
 - b. as invalidating any law by reason only that it authorizes the detention for a period not exceeding three months of a member of the armed forces of the Federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria Police Force, in respect of an offence punishable by such detention of which he has been found guilty.

3.3 Right to Fair Hearing

1. In the determination of his 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 and impartiality.
2. Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority, power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law –
 - a. Provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and
 - b. contains no provision making the determination of the administering authority final and conclusive.
3. The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.
4. Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that:

- (a) A court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interest of justice;
 - (b) If in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a Commissioner of the Government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to the matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.
5. Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty:

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of providing particular facts.

6. Every person who is charged with a criminal offence shall be entitled to:
- a. be informed promptly in the language that he understands and in detail of the nature of the offence
 - b. be given adequate time and facilities for the preparation of his defence;
 - c. defend himself in person or by legal practitioners of his own choice;
 - d. examine, in person or by his legal practitioners, the witness called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witness called by the prosecution; and
 - e. have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.
7. When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused

person or any person authorized by him in that behalf shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case.

8. No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.
9. No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as the offence save upon the order of a superior court.
10. No person who shows that he has been pardoned for a criminal offence shall again be tried for the offence.
11. No person who is tried of a criminal offence shall be compelled to give evidence at the trial.
12. Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a Law of State, any subsidiary legislation or instrument under the provisions of a law.

3.4 Right to Private and Family Life

The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

3.5 Right to Freedom of thought, Consumer and Religion

1. Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.
2. No person attending any place of education shall be required to receive religious instruction or take part in or attend any religious ceremony or observance if such instruction, ceremony or

observance relates to a religion other than his own or a religion not approved by his parent or guardian.

3. No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.
4. Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

3.6 Right of Freedom of Expression and the Press

1. Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.
2. Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the Government of the federation or of a State or any other person or body authorized by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

3. Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:
 - (a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephone, wireless broadcasting, television or the exhibition of cinematograph films; or
 - (b) Imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

3.7 Right to Peaceful Assembly and Association

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

3.8 Right to Movement

1. 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.
2. 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.

3.9 Right to Freedom from Discrimination

1. A citizen of Nigeria or a particular community, ethnic group, place, or origin, sex, religion or political opinion shall not, by reason only that he is such a person:

- (a) be subjected either expressly, or in the practical application of any law in force in Nigeria or by any executive or administrative action of the government, to disabilities or restrictions to which citizens of the Nigeria of other communities, ethnic groups, places or origin, sex, religions or political opinions are not made subject: or
 - (b) Be accorded either expressly, or in the piratical application of, any law in force in Nigeria or by any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, place of origin, sex, religions or political opinions.
2. No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.
 3. Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.

3.10 Right to Acquire and Own Immovable Property anywhere in Nigeria

Subject to the provisions of this Constitution, every citizen of Nigeria shall have the rights to acquire and own immovable property anywhere in Nigeria.

1. No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by law, among other things-
 - (a) requires the prompt payment of compensation therefor; and
 - (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.
2. Nothing in subsection (1) of this section shall be construed as affecting any general law:

- (a) for the imposition or enforcement of any tax, rate or duty;
 - (b) for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence;
 - (c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;
 - (d) relating to the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of unincorporated bodies in the course of being wound-up;
 - (e) relating to the execution of judgments or orders of court;
 - (f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
 - (g) relating to enemy property;
 - (h) relating to trust and trustees;
 - (i) relating to limitation of actions;
 - (j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;
 - (k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;
 - (l) providing for the carrying out of work on land for the purpose of soil-conservation; or
 - (m) subject to prompt payment of compensation for damage to buildings, economic, trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.
3. Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be him to engage the services of a legal practitioners prosecute him claim, and

For ensuring that allegations of infringement of such rights are substantial and the for financial or legal aid is real.

4.0 CONCLUSION

The position of chapter 4 in the 1999 constitution in Nigeria is of immeasurable importance. Domestic application of these Laws is an index for measuring how civilized a country is and it requires a good Judiciary to enforce these rights and so set the pace for the happiness and orderliness of society

5.0 SUMMARY

If you have comprehended this unit, you should now be able to explain what fundamental human rights provisions are under chapter 4 of the 1999 constitution and the attitude of Nigeria court to fundamental human Rights provisions.

6.0 TUTOR-MARKED ASSIGNMENT

1. List the rights Covered by chapter 4 of the 1999 constitution.
2. What is the role of courts in upholding fundamental human rights?

7.0 REFERENCES/FURTHER READINGS

1999 Constitution.

Akin Ibidapo-Ibe; Essay on Human Right Law in Nigeria.

UNIT 2 FUNDAMENTAL HUMAN RIGHT CASES

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

No modern society can exist without a system of Laws. The institution of law is therefore crucial to the social organization of human beings. A modern society is not like the state of Nature (Primitive Society) where life was 'solitary' Nasty, brutish and short.

2.0 OBJECTIVES

At the end of the unit you should be able to:

- identify and discuss fundamental Human right provisions
- know the jurisprudence behind each right.

3.0 MAIN CONTENT

The fundamental rights of Nigerians are enshrined in the Nigerian Constitution and various international treaties to which Nigeria is a signatory. The Second World War was a good omen with regards to the restatement of human rights as the shocking and heinous crimes of the Nazi regime during the war, led to the Declaration of Universal Human Rights. Since 1948 when the Universal Declaration on Human Rights was passed at the United Nations, various governments all over the world have incorporated its ideals in their Constitutions. The Nigerian nation is no exception. As Neil Macdermott noted.

“Human rights are part of the common heritage of all mankind without discrimination on grounds of race, sex, religions or other differences. These rights, common to all mankind, have a long history many of them finding their origin in religions teachings. But now in our life-time, they have been formulated more fully than ever before and agreed to by all people from all parts of the world.

In Nigeria the rights recognized by the Constitution are:

1. Right to Life - Section 30
2. Right to dignity of human person – Section 31
3. Right to personal liberty – Section 32
4. Right to fair hearing – Section 33
5. Right to private and family life – Section 34
6. Right to freedom of thought, conscience and religion – Section 35
7. Right to freedom of expression and the press – Section 36
8. Right to peaceful assembly and association – Section 37
9. Right to freedom of movement – Section 38
10. Right to freedom from discrimination – Section 39
11. Protection from compulsory acquisition of private property – Section 40(1).

The rights referred to above are not unlimited in nature as the Constitution provides that most of the rights shall not invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons.

Whenever we have a military regime in Nigeria, one of their first acts in office is to legislate in a manner that derogates from the essence of the fundamental human rights. Examples are, the Federal Military Government (Supremacy and Enforcement of Powers) Decree, Constitution (Suspension and Modification) Decree and the Federal Military Government (Supremacy and Enforcement of Powers) Decree State Security (Detention of Person) Decree. The impression one gets is that every military rule is an emergency and its activities are outside the realm of the law. But this is not necessarily so. (The judiciary has emphasize) the view that:

“Once military regime comes in whether by their being handed over power by democratically elected government or through act of a coup de’etat and the effective governance is being exercised by such regime whether *defacto or de jure* effect must be given to the ouster. No military regime claims to respect laws inimical to its policy. Perhaps I shall make the point clearer by asserting (that) even though courts are not happy with ouster clauses in decrees and edicts, it should be borne in mind that a military regime will be an anomaly if it decides to govern by the entrenched rights as contained in chapter IV of the Constitution of the Federal Republic of Nigeria of 1979; in fact the military came and suspended and modified those Constitutions. At the time material to the orders now in question Decree 10 of 1976 and Decree No.

37 of 1968 clearly ousted the jurisdiction of the court in respect of any act done in the forfeiture of assets. It made irrelevant all the protective provisions of other laws and the constitution and indeed this includes the Constitution itself. (*Per Belgore JSC: AG (Federation) V. Sode.*)

If this statement represents the approach of the courts to the military then the sustenance of human rights is bereft of all hopes. What happens where the military orders that all judges of the supreme Court be clamped into detention under Decree 2 of 1984? Would the courts dimply fold their arms and look helpless in the face of such tyranny and assault on the bench? The dictum quoted above gives the military the notion that they could trample on all rights and expect protection from the courts.

The positivist's notion that laws are the command of the uncommanded commander to which the dictum being breeds tyranny and anarchy and could bring the judiciary to ridicule. However, one takes solace in the fact that the ingenuity of Nigerian judges has not been stifled by ouster clauses or such ominous provisions. There are a number of cases where the justices of the Supreme Court have faced great responsibility of ensuring compliance with the rule of law. For example, in *Garba v Federal Civil Service Commission* the, Court held the government is bound to comply with the provisions of a decree before it can rely on the ouster jurisdiction contained therein. The Supreme Court held that the act of the Respondents in dismissing the Applicant from office during the pendency of the action was contemptuous of the judiciary and could not stand. One of the sages of our time, Kayode Eso J.S.C. went on to say that:

“The military in coming to power is usually faced with the question as to whether to establish a rule of law or a rule of force. While the latter could be justifiably a rule of terror, once the path of law is chosen, the mighty arm of government, the militia, which is an embodiment of legislature and executive, must in humility, bow to the rule of law thus permitted to exist. The rule of law knows no fear, it is never cowered down; it can only be silenced by the only arm that can silence it, it must be accepted in full confidence to be able to justify its existence.

4.0 CONCLUSION

It is impossible to conceive of a modern society operating without the benefit of the rule of law as enshrined in the constitutions or worthy the carefully formulated principles, standards and rules that keep the social complex from disintegration indeed the intricate problems arising in an

Urban society cannot be dealt with in the absence of statutes, courts, legislatures, executive policemen and other personnel of the justice systems.

5.0 SUMMARY

In this unit you have learnt about the fundamental human rights and cases involving fundamental human right provision. An understanding of the importance role of the courts in enforcing fundamental Human rights cannot be sufficiently stressed. We shall learn more cases in the next unit.

6.0 TUTOR-MARKED ASSIGNMENT

1. Identify and discuss the Right Covered by section 30, 31, 32 and 33 of the 1999 constitution.
2. What is “Fundamental Rights?”
3. Write a critique on the case of “*AG (Federation) V. Sode*”.

7.0 REFERENCES/FURTHER READINGS

The 1999 constitution.

Prof. I. O. Smith (2004). Law and Development of Nigeria.

UNIT 3 VIOLATION-CONSEQUENCES OF DISOBEDIENCE

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Constitutionalism is a means to an end; it refers to the regularity of political life within a state by means of a constitution. As a concept, constitutionalism means limited government i.e. a system of restraint on both the ruler and the ruled constitutionalism asserts that there are fundamental limits which must be observed in other relationship between the rulers and the ruled.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- analyse the consequences that flow from the violation of fundamental Human Rights
- know the attitude of Nigeria Courts to violations of Human Rights.

3.0 MAIN CONTENT

A court of law has many ways of enforcing its judgments generally. In *Government of Gongola State V. Tukur Nnaemeka-Agu*, J.S.C. considered the various methods of execution of judgments.

These are:

- (i) A judgment for possession of land may be enforced by a writ of sequestration or a committal order.
- (ii) A judgement for delivery of goods may be enforced by a writ of specific delivery or restitution or their value, a writ of sequestration or writ of committal.

- (iii) A judgement ordering or restraining the doing of an act may be enforced by an order of committal or writ of sequestration against the property of the disobedient person.

Where in the enforcement of fundamental rights the court awards damages in favour of a litigant, a proper method of enforcement is by way of the writ of *fieri facias*. Where the party condemned in damages is an individual or non-government body, it is quite easy to enforce the same. But where damages is payable by the State, there are problems in levying execution against state property. Order V, Rules 5 Judgement (Enforcement) rules provides thus:

“Property in the custody or under the control of any public officer in his official capacity shall be liable to attachment in execution of a judgement with the consent of the Attorney-General and property in *custodia legis* shall be liable also to attachment by leave of the court.

The problem is that the Attorney-General may view his position as one in which his first allegiance is to the executive rather than the government as a whole. He may refuse to give his consent, in which case the judgement creditor may seek a writ of mandamus to compel the performance of the duty. Or where he does not refuse outright he could cause considerable delay in issuing his consent. As a matter of practice, if one applies for his consent his first action is to call on the erring public officer to pay up. It is only after they refuse to pay that he issues his consent to the writ of attachment.

Another useful method of enforcement is the issuance of a committal order arising from contempt proceedings. Once again, it is easier to enforce the order against individuals as opposed to government functionaries. The experience of Justice Yaya Jinadu is a case in point. It was the case of *Garba v Federal Civil Commission*. During the period when the case was pending in court, Mr. Garba's appointment was terminated by one Mr. John Oyegun, the then Permanent Secretary, Ministry of Internal Affairs. Garba's lawyer complained to the court that the sack amounted to undue interference with the administration of Justice. So a contempt application was filed against the said Mr. Oyegun. When the contempt proceedings came up before the court, Mr. Oyegun refused to appear. Despite series of adjournments, the contemnor refused to appear or comply with the court order to withdraw the offensive sack letter. The State counsel resorted to all sorts of tricks to excuse the absence of his client by claiming that he could not locate the contemnor. The court was unable to effect its orders either through its bailiffs or even Counsel representing the contemnor. On the final adjourned date neither the contemnor nor his counsel was in court. The

contempt proceedings died a “natural” death. His Lordship in a letter he forwarded to the Chairman, Advisory Judicial Committee on the matter, has this to say:

“I believe the Judiciary has an important role to play in this country as it is the last hope of the common man. The Judiciary has to be firm, fair and courageous and must not employ any form of double standards. It is not right in my view to regard or treat the courts of Justice as an extension of the Federal Ministry of Justice. I cannot condone any attempt to destroy the judicial system in this country using me as scapegoat.”

The approach of Justice Jinadu is a way of bringing it home to the functionaries of government that judges are not to be taken for a ride. He paid a price so that other colleagues may be better placed in the administration of justice. It might after all be better if one does not lend its weight to injustice than remain on a job which at the end of the day could only be sustained by integrity with the generality of the people.

It is important that the courts should constantly strive to ensure that their judgements are not treated with levity or brought to ridicule through an exercise of arbitrary or abuse of executive power.

The Supreme Court in *Federal Government Civil Service Commission v Laoye* would not allow destitution to be drawn in the enforcement of judgements against the state or the individual. The court said that:

“One aspect of our much vaunted equality before the law is that all litigants be they private persons or government functionaries, approach the seat of justice openly and without any inhibitions or handicap... In the unequal combat between those who possess power and those on whom such power bears, the courts primary duty is protection from the abuse of power”.

There is the need to protect the ordinary citizenry from an over-zealous and protective Ministry of Justice and make it truly reflective of its role. The Ministry of Justice properly so called must take the word “Justice” more seriously and seek to pursue the interest of the individual and the state and create a conducive balance between the various interests. In *Attorney-General of the Federation v The Nigerian Bar Association (Lagos and Ikeja)* the Attorney-General sought to restrain the legal practitioners of the Lagos and Ikeja branches from carrying out their threats to boycott the courts. The legal practitioners impressed on the State to respect judicial orders.

Honourable Justice Adeyinka on June 10 1992 granted an interim injunction as prayed by the Attorney-General. However, on July 2, 1992 when the Judge gave a more detailed ruling the court set aside his earlier order. His Lordship went on to chide the Attorney-General for being a party to attempts to bring court orders to ridicule this lordship stated that

“for the Attorney-General to be a party to the ridicule and disparagement of the court is reprehensible.” He added

“if citizen follow government’s bad example and refuse to obey court orders, it will lead to not only the disruption of the due administration of justice and the transition to civil rule programme, but also to chaos, anarchy and ultimate dismemberment of the Federal Republic of Nigeria.

Also in the case of *Dr. Beko Ransome Kuti v President Ibrahim Babangida and Others*, the plaintiff sued the Federal Government seeking a declaration that his arrest and detention was unlawful and claimed 15 million Naira as damages. Owolayi, J. hold that the detention order issued in respect of the plaintiff under the hand of the Vice President Consequent upon the illegal arrest of the applicant’s fundamental rights. Of more fundamental and was a violation of the applicant’s fundamental rights. Of more fundamental importance was the posture of the judge as regards the enforcement of his orders. He held that even if he had concluded that the detention order was not defective, he would still have rejected it along with the government’s counter affidavit because of the government’s persistent refusal to obey the order of the court for the production of the applicant.

This bold assertion on the part of the judiciary is welcomed and portends a good omen for the efforts at enforcing fundamental human rights decisions. If the judiciary had merely folded its arms as if it had suffered a technical knockout in a boxing duel, then it would have gone into slumber and the death knell would begin. Judges must be bold and forthright in their views. Cases on fundamental human rights must be treated with the dispatch which proceedings under the Fundamental Rights (Enforcement Procedure) Rules 1979 envisage. Fundamental rights cases should not be listed like any other matter but dealt with expeditiously. In this way, the courts would accord greater respect to themselves, the law and the fundamental rights. A man who does not respect himself cannot call on others to accord him the same respect. As Justice Arthur T. Vanderbilt explained

“...it is in the courts and not in the legislature that citizens primarily feel the keen, cutting edge of the law. If they have respect for the work of the courts, their respect for the law will survive the shortcomings of every

other branch of government; but if they lose respect for the work of the courts, their respect for the law and order will vanish with it to the great detriment of the society”.

Another important step in judicial enforcement of its own decisions is found in the case of *Gloria Mowarin v. Nigerian Army and others*. In that case my Lord, Honorable Justice Francis Owobiyi declared the detention of the applicant as illegal and unconstitutional and quashed the detention order. He took a rather ingenious approach to the issue without offending the ouster clause in Decree No. 2 of 1984. The detention order was expected to be signed by the Vice President, but the office was non-existent when the Vice President purportedly signed the detention warrant. The state refused to comply with the order of release of the detainee, but rather filed a notice of appeal and sought a stay of execution. In his ruling on the application for stay, his Lordship said *inter-alia*

“I have never known of any case in which the court has ordered the release of a detainee under the *Habeas Corpus* procedure or that of the Fundamental Rights (Enforcement Procedure) Rules, 1979 and the detaining authority has lodged an appeal against the order of release and asked for a stay of execution pending the determination of the appeal lodged by it while not carrying out the order of court.... The conduct of the Respondents/Applicants herein does not give much comfort as regards the rule of law and it is nothing to write home about.

The Court then refused to grant the order for as it will not be in consonance with the interest of justice and the cause of the rule of law.

4.0 CONCLUSION

The discourse so far brings us to the role of judges in the enforcement of indicial decisions on fundamental human rights. There is need to protect the ordinary citizens from an over-zealous and protective state. Justice must be seen to be done in all cases.

5.0 SUMMARY

In this unit, you have learnt about the

- violation of fundamental human rights
- the role of judges in Enforcement of fundamental human rights and
- the role of judges in enforcing judicial decisions.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss in details the attitude of Nigeria Court in protecting fundamental Human Rights.
2. Discuss the role of judges in enforcing judicial decisions.

7.0 REFERENCES/FURTHER READINGS

M. A. Ajomo of B. Owasanoye (1993). (ed) *Individual Rights under the 1989 Constitution*. MALS

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MODULE 3

Unit 1	Right to Life
Unit 2	Right to Life and the Scope and Exercise of Police Powers
Unit 3	Judicial Attitude to Individual or Fundamental Human Rights in Nigeria
Unit 4	Right to Life, Nigeria Abortion Law
Unit 5	Euthanasia and the Right to Life

UNIT 1 RIGHT TO LIFE

CONTENTS

1.0	Introduction
2.0	Objectives
3.0	Main Content
	3.1 Definition of Right to Life
	3.2 Enforcement Procedure
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1.0 INTRODUCTION

The Right to life is a phrase that describes the belief that a human being has an essential right to life particularly that a human being has the right not to be killed by another human being. The concept of a right to life is central to debates on the issues of capital punishment, euthanasia, self defense and war. In 1776, the United States Declaration of Independence declared that “life” is one of the inalienable rights, implying that all persons have the right to live and/or exist and a government has the obligation to secure the inalienable rights of its people.

In 1948, the Universal Declaration of Human Rights, adopted by the United Nations General Assembly declared in article three:

“Everyone has the right to life, liberty and security of person”.

In 1950, the European Convention on Human Rights was adopted by the Council of Europe, declaring a protected human right to life in Article 2. There are exceptions such as Lawful executions and self defense, arresting a fleeing suspect and suppressing riots and insurrections.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- define and explain the term Right to Life
- identify the various Laws both International and Domestic Laws that govern Right to Life
- distinguish between exception to the rule and unlawful termination of life.

3.0 MAIN CONTENT

3.1 Definition of Right to Life

The right to life asserts the sanctity of human life. The African charter on Human and Peoples Right puts it thus:

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

Section 33(1) of the 1999 constitution of the Federal Republic of Nigeria states that:

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

Section 33(2) 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 defence of any person from unlawful violence or for the defence 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.

It must be stated that the rights enumerated in chapter V of the 1999 Constitution are not absolute. Derogation from them is permissible under the Constitution. The rationale for the principle of derogation is founded on the basis that freedom is in itself limitless.

With regards to right to life, the 1999 Constitution accept that life is sacrosanct; it is the basis of human existence and the right to it can only

be derogated from in respect of death resulting from acts of wars. Not only that the 1979, 1989 and 1999 constitutions go on to protect this right by prohibiting the use of retroactive legislation to impose a penalty heavier than that existing at the time a crime for which the penalty is prescribed, was committed.

It is on account of the sacredness accorded to this right that caused the Supreme Court to condemn in a most caustic language the action of the Oyo State Governor in the premature execution of a convict whose appeal was pending before the court of appeal. In the case of, *Aliu Bello and 13ors V Attorney-General Oyo State (1986) 5 NWLR 828*; the accused had been convicted of armed robbery and had been sentenced to death by the Oyo State High Court under the Robbery and Firearms Law of the State. The convicts appeal was pending before the court of appeal when the Governor ordered his execution. The deceased dependant brought an action claiming damages for the illegal killing of their breadwinner.

The Appeal was heard by the Supreme Court embank. The Court castigated the Government of Oyo State in the case, the first of its kind in which the government “Hastly and illegally snuffed life of an Appellant whose appeal had vested and was in being considered”.

Thus in effect, the courts have stood stoutly in defence of the citizen’s right to life.

SELF ASSESSEMENT EXERCISE 1

1. What are the derogations to right to life under the 1999 Constitution?
2. Give the facts and decision in the case of *Bello V. Ag (Oyo) state (1986)*.

The right to life guaranteed by the 1999 constitution has been interpreted in other jurisdiction, particularly by the India supreme court, not only as a right to:

- physical existence,
- the use of other limbs or facility through which life is enjoyed.
- live in basic human dignity. Since without basic human dignity, life would not be worth living.
- the state duty to reduce infantile Mortality.

The Human Rights committee of the United Nations dealing with Article 6 of International Covenant on Civil and Political Rights, which guarantees the rights to life, has rejected a narrow interpretation of this

right. The committee has interpreted the commitment undertaken by this Article to include the duty to take steps to eradicate infantile mortality, the elimination of malnutrition to prevent epidemic and to banish weapons of destruction.

3.2 Enforcement Procedure

The 1999 Constitution confers a special jurisdiction on the High Court for the purpose of enforcement of the fundamental Rights provisions. It provides that “Any person who alleges that any of the provision of chapter IV of the 1999 Constitution 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. The Constitution empowers the Chief Justice of Nigeria to make rules with respect to the practice and procedure of a High Court for the purpose of fundamental human right enforcement. The High Court has the power, in its original jurisdiction, to make an appropriate order or use any of the prerogative writs of habeas corpus, mandamus, certiorari, and prohibition and its power of contempt to ensure compliance. The courts may also resort to injunctions and declaratory judgments.

SELF ASSESSMENT EXERCISE 2

Discuss the role of the courts in the enforcement of the right to life.

4.0 CONCLUSION

The right to life is a constitutional concept which no other law can invalidate. This unit has highlighted the normaline and the procedural framework for the protection of the rights to life in Nigeria. The Nigeria courts have been more courageous in interpreting constitutionally and international guaranteed rights.

5.0 SUMMARY

In this Unit, you have learnt about the:

- Right to life
- International Covenants and Conventions on Right to life.
- Domestic Laws on Right to life
- The 1999 Constitutional provision on Right to life.
- The framework for enforcement of right to life, as a Fundamental Human Right

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss in details the altitude of Nigerian courts to enforcing right to life.
2. What is the derogation from right to life under the 1999 Constitution?

7.0 REFERENCES/FURTHER READINGS

M. A. Ajomo & B. Owasanoye (1993). (ed.) *Individual Rights under the 1989 Constitution*, N.I.A.L.S.

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The 1999 Nigeria Constitution.

UNIT 2 RIGHT TO LIFE, ITS THE SCOPE AND THE LIMIT OF EXERCISE OF POLICE POWERS

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Concept of Right to Life
 - 3.1.1 Power of the Police
 - 3.2 Derogation of Right to Life
 - 3.3 Police Brutality and Right to Life
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

The Right to Life finds expression in all the major human rights instrument including the Universal Declaration of Human Rights (UDHR). The International Covenant on Civil and Political Rights (ICCPR), the European and American Conventions and the African charter. The Right to life also features prominently in the Constitution of all African Countries. Typically, every person's right to life is guaranteed but made subject to some factors, particularly the Criminal Law on death penalty.

In this Unit, we shall look at the scope and the limits of police powers and examine the implications of extra judicial killing, brutality, assassination etc.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- identify the Constitutional limitations of the Nigeria Police Force
- know the various ways by which they are empowered by the Law to take life
- know when police are exceeding their constitutional mandate and the remedies.

3.0 MAIN CONTENT

3.1 Constitutional Statue of the Police

The Constitution of the Federal Republic of Nigeria 1999 made the police force a Constitutional creation.

Under the 1999 constitution section 214 stipulated that

“there shall be a police force for Nigeria which shall be styled the Nigeria Police Force and subject to the provisions of this section, no other police force shall be established for the federation or any part thereof”.

The Nigeria Police is under the command of the Inspector-General of Police who is appointed by the President at his discretion.

3.1.1 Power of the Police

The Criminal Procedure and Criminal Procedure Code make provisions for circumstances, where the police may use force in the performance of their duties. In addition to the powers of arrest by police officers, as provided for under the Criminal Procedure Act, the Criminal Procedure Code the Police may use such force as is reasonably necessary to:

Overcome any force used in resisting arrest.

- prevent the escape of an arrested person,
- if arrested for a felony, may kill him if he cannot by any means otherwise be arrested.
- suppress a riot. (see the Criminal code section 276 – 278) Though the discretion is to use “reasonably force”, the elastic nature of this phrase amounts to an open cheque for police abuse. Obedience to higher command is clearly stipulated as a defense for police officers who use force to quell riots but not otherwise. The cumulative effect of these section is that “a Police Officer may use such force as a reason necessary to prevent the commission, whether in his presence or not, of any offence whatever.

3.2 The Right to Life and Derogation

The Right to Life asserts the sanctity of human life. The Nigeria Constitution by Section 33 provides

“Every person has a right to life and no one shall be deprived intentionally of his life save in execution of the sentence of a court in

respect of a criminal offence of which he has been found guilty in Nigeria.

Most Constitutions provide that the right to life may be derogated from where a sentence of death is imposed under due process of Law. This particular exception has been touted as being the justification for the imposition of death penalty in Nigeria.

Section 33(1) (2) (a) (b) and (c) of the constitution clearly defines situations where the Nigeria Police could use force and even kill in the process of trying to perform their official duty and they will not be liable but many atimes the police do extend the scope of their activities.

3.3 Police Excesses

Improper use of heated force obviously amounts to “brutality”. But brutality (Lethal Force) is not limited to situations of use of firearms. It could extend to “the deadly deployment of police batons, police belts, police boots, gun butt, even heavy-handed blows. Noxious substances such as “tear gas” may constitute a lethal force.

The constitutional and statutory duty of the Police include:

- The task of protecting life and property,
- the apprehension of offenders,
- the detection of crime,
- the preservation of Law and order,
- enforcement of all laws and regulations with which they are directly charged
- performance of such military duties within and without Nigeria as may be required of them, see section 4 of the Police Act
- “the Nigeria Police is at the vanguard of protecting all the wealth that Nigeria and Nigerians have either individually or collectively. The capacity of the police to effectively execute its functions is primarily hinged on the exercise of the power conferred on them. To enable the police officers to do their job well, they are vested by the state with a monopoly in the use of certain powers. These powers include the powers to arrest, search, seize, and interrogate prosecute and if necessary to use lethal force.

Police are employed by society to mention order by dealing largely with disorderly elements of the society. However, some police officers are over zealous and this is evident in instances of police brutality and human rights infringements.

SELF ASSESSMENT EXERCISE 1

Explain the statutory power of the police and police excesses, if any, with local examples.

An example of a suspected case of police brutality was recorded in South Africa. Stephen Bantie Biko also known as Steve Biko (18 December, 1946 – 12 September, 1977) was a noted non violent anti apartheid activist in South Africa in the 1960. He was a student at the University of Natal Medical School.

In the aftermath of the Soweto riots, police began to target Biko. On 18 August, 1977 he was arrested at a police roadblock under the Terrorism Act No. 83 of 1967. He suffered a major head injury while in police custody and was chained to a window grille for a full day. On the 11th September, 1977 police pushed him into the back of a car and began the 740 km drive to Pretoria. He died shortly after the arrival in the Pretoria prison. Police claimed his death was the result of an extended hunger strike. He was found to have massive injuries to the head which many saw as strong evidence that he had been heavily and brutally clubbed.

The following year on the 2nd February, 1978, the Attorney-General of her Eastern Cape stated that he will not prosecute any police involved in the arrest and detention of Biko.

On Human right Infringements in Nigeria, there are allegation ranging from torture, cruel and inhuman treatments of persons in police custody or arrest of friends and relations of suspects. One known instance worthy of mention is when the Nigeria Police used teargas on non violent women staging a peaceful rally on 16th December 2005 in protest against poor air safety following a plane crash in which about 50 of the 106 people were killed.

INVESTIGATION TECHNIQUE

Though by section 34(3) of the Constitution of the Federal Republic of Nigeria, 1999 and other similar provision, a standard has been enacted for police investigation and techniques. But in Nigeria, allegation s strong that torture as a technique of investigation is common. In some cases investigation, is often preceded by several unlawful acts. In extreme cases the methods of torture employed may be i.e. beating with horse whip, handcuffing, chaining hands and feet, inserting pins and broom sticks into servitude area of the body, has once be reported against the police, but it was denied.

EXTRA JUDICIAL KILLING

The concept of extra-judicial killing has come to be associated with all manner of unlawful killings by the police. However, the term is used here to mean deliberate and premeditated execution by the police or other government agents of suspects

SUMMARY EXECUTION OF SUSPECTS

A case that illustrates the nature of the practice of extra-judicial execution is the newspaper report of a notorious Oko-Oba killing. Sometimes in March 1991, the police was alleged to have arrested seven persons "on suspicion of armed robbery". They were to return to the house of one of them ostensibly to recover evidence when at some point, the suspects were all sent to be lined up and shot dead at close range. The police came up with a statement that they had only successfully eliminated a seven-man robbery gang who fired on them whilst resisting arrest.

In the Apo traders Saga, seven traders in Abuja in 2006 were killed by the police. The Federal Government set up a panel of enquiry headed by a judge to investigate the circumstances of the killing of the 7 Apo Traders by the police. The police officers were subsequently charged with murder of the traders.

REVENGE KILLING

Police have also been accused of employing wanton and rampaging techniques in attempt to avenge the deaths of their comrades. An accident which was reported in Patani, Delta State in February 1994.

Is a picture of revenge killing. A police sergeant was killed by some robbers on 14th February, 1994. The next day, police went into the town, randomly arrested 7 youths of the town, lined them up and executed them. The police on their part announced on Delta Radio, Warri that they had engaged some robbers in an exchange of gunfire during which seven members of the gang got killed.

POLICE CHECKPOINT KILLINGS

The ostensible purpose of roadblocks is to facilitate security checks so as to assist police to arrest car thieves, armed robbers, drug carriers and other criminal suspects. It is also meant to assist in recovering arms and ammunition. These policemen carry arms some times in a threatening posture. Unfortunately a number of innocent citizens have met their untimely death at the checkpoints. Example is the killing of Dele Udoh,

a Nigeria athlete based in the United State in 1981 at a checkpoint also the killing in 1992 of Colonel Israel Ringim at a checkpoint nearly led to a confrontation between the police and the army. On this occasion, the Federal government disbanded all check throughout the Federation.

CROWD CONTROL SITUATIONS

The crowd-control situations which may attract police intervention include students protest demonstrations, or political agitations. One of the notable incidents of police high handedness is the control of students protest. Example is the University of Ibadan, when, during a protest in 1977, one Kunle Adepeju was felled by police bullet. In 1981 at the Obafemi Awolowo University (OAU) eight students were killed. At Ahmadu Bello University (ABU) in 1986, four students were shot dead by the police. Also at the Lagos State University (LASU) in 1992, a first year student of biochemistry was killed by the police during a demonstration.

Killing is the ultimate brutal act in dealing with students protest. The Abisoye panel set up in 1986 recommended that police should not use live bullets in quelling students protest; but rather, that rubbers bullets should be introduced which would stall demonstrators but not to kill them. The government accepted the recommendation.

The panel also recommended that mobile policemen should, never be drafted to institutions to quell protest. The government promised to examine this recommendation forms.

The police are also called upon to quell political demonstrations; the same brutal tactics used for students is adopted. (Mass arrest, torture examples are the Bakolorin riot, Sokoto in 1980 and the Ogoni people Rivers state.

SELF ASSESSMENT EXERCISE 2

Under what condition can the police kill lawfully in the course of performing their duties.

4.0 CONCLUSION

In the area of criminal Law, relating to crows control and police powers needs to be reviewed at lent to be in line with what obtains in civilized societies. The present position of the Law gives the police wide powers to use force to control crowd, investigate crime and enforce law and order in the society. The need for reform in our Law to control the police powers of deploying force in all cases need a review. The

advantages of reform outweighs any social harm implicit in retaining the laws as they are.

5.0 SUMMARY

If you have comprehended, this unit you should be able to explain the constitutional provision that gave police wide powers to maintain law and order and at the same time be able to explain police lawful and unlawful killing in any given situation.

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the statutory duties of a Policeman?
2.
 - a. Explain the term “Police Excesses”.
 - b. Identify 5 techniques which the police adopt in the course of their official duty that can lead to innocent people being brutalized.

7.0 REFERENCES/FURTHER READINGS

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Akin Ibidapo Obe: Essays on Human Right Law in Nigeria.

The Nigeria Police Act

The 1999 Constitution of Nigeria

UNIT 3 JUDICIAL ATTITUDE TO INDIVIDUAL OR FUNDAMENTAL HUMAN RIGHTS IN NIGERIA

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Constitutional Constructions
 - 3.2 Rights Entrenched in the 1999 Constitution
 - 3.3 Samples of Judicial Attitude
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

The striking features of fundamental rights provision in the Constitution is that they provide a just balance between the rights of the subject on the one hand and that of the government or state on the other (per Idigbe J.S.C, in the” All Nigeria Judges Conference in 1982).

Thus to the great jurist, “human rights” is more of an earthly concept. In *Saude V Abdullahi (1989) 4 NWLR (pt 116) 32 at 418 – 419*, the court said: “I regard them as not just mere rights. They are fundamental. They belong to the citizen. These rights have always existed even before orderliness prescribed rules for manner they are to be sought.

“Indeed, human rights have to stand above the ordinary laws of the land. They are antecedent to the political society itself. Human Rights are and must be, a primary condition to a civilized society. Thomas Paine one of the greatest thinkers of rights of man vilified governments without constitutions for the reason that the Laws of such governments would be irrational and tyrannical. He said of the British system of government -
“one of the vitest that can be set up”

He went on: - “Government without a Constitution for the want of a constitution in England to restrain and regulate the wild impulse of power, many of the laws are irrational and tyrannical and the administration of them vague and problematical.

The concept of “remedies” is clearly related to the concept of “right”, as well expressed in the Latin maxim *Ubi ius ubi*

remedium or “a remedy accrues only where there is a right
Remedy “is the means employed to enforce or redress an
injury.”

2.0 OBJECTIVES

At the end of this Unit you should be able to:

- explain what Human Rights are, their origin and the remedies for the breach of the rights
- differentiate between rights that are enforceable and the ones that cannot be enforced in the law court.

3.0 MAIN CONTENT

3.1 Constitutional Construction

Judicial attitude to individual rights in the 1999 Constitution is dictated by the principles which the courts do or should follow in the interpretation and construction of the provisions of the Constitution. Sir Udo Udoma JSC, said in *Nafiu Rabiu V The State (1981) 2 NCLR 293 at 326* that:

“the function of the Constitution is to establish a framework and principle of government, broad and general in the terms intended to apply to the varying conditions which the development of our several communities must involve. Ours being a plural dynamic society, and therefore, more technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principle of government enshrined in the Constitution..... this court should whenever possible and in response to the demands of justice, team to the broader interpretation. It is my view that the approach of this court to the construction of the Constitution should be and so it has been one of liberalism, probably a variation on the theme of the general maxim ut, *res magis valeat quam pereat*. I do not conceive it to be the duty of this court so as to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provision will serve to enforce and protect such ends”.

Nnamani, JSC followed suit in *Bronik Motors Ltd V Wema Bank Ltd (1983) 6SC 158* that: “....a constitutional instrument should not necessarily be construed in a manner and according to rules which apply to Acts of Parliament. Although the manner of interpretation of a Constitutional instrument should give effect to the language used, recognition should also be given to the character and origins of the

instrument. These I believe should be the approach of the courts in construing all the provisions of the Constitution which entrenched individual rights.

3.2 Rights Entrenched in the 1999 Constitution

The rights entrenched in the 1999 Constitution, just like those entrenched in the 1979 constitution, can be grouped under two broad headings, namely, those which appertain to every person within our borders, and those claimable as of right by citizen. All these rights come under chapter IV of the constitution sections 32, 33(1) 34, 35, and 36,37,38,39,40,41,42. All the rights stated in those eleven sections are assured to all citizen of this country.

Section 33(1) says that every person within our borders has the right to his life, while section 34 assures every such individual respect for the dignity of his person etc.

3.3 Samples of Judicial Attitude

The examination of this heading should begin by recalling the dictum of Eso JSC in *Ariori & Ors V Elemor&ors (1983) ANLR I at 19* where he said:

“Having regard to the nascence of our Constitution, the comparative educational backwardness, the socio-economic and cultural background of the people of this country and the reliance that is being placed and necessarily have to be placed, as a result of this background on the courts, and finally the general atmosphere in the country, I think the supreme court has a duty to safeguard the fundamental rights in this country, which from its age and problems that are bound to associate with it, is still having an experiment democracy”.

The following cases serve as a clear testing of attitude of the Supreme Court to the entrenched provision of the Rights to life:

In *Aliu Bello V Attorney-General of Oyo State*, the Oyo State Ministry of Justice sanctioned the execution of the appellant convicted of armed robbery but whose appeal was pending in the court of appeal. Anigoli UJSC gave vent to his deep annoyance at such flagrant breach of the Constitutional Provision when he said (at pg 860).

“This is the first case in this country of which I am aware in which a legitimate Government of this country – past or present, Colonial or indigenous- hastily and illegally snuffed off the life of an appellant whose appeal had vested and was in being, with no order of court upon

the appeal, and with a reckless disregard for the life and liberty of the subject and the principle of the rule of law. The brutal incident has bespattered the face of the Oyo State Government with the paint-brush of shame”.

These are strong words, but they indicate the abhorrence which the Supreme Court has against the illegal taking of life of any person within our borders outside the provisions of the Constitution and outside the procedural rules laid down.

In the *Governor of Lagos State V. Chief - Odumegwu Ojukwu & Anor.* (1997) INWLR (pt 482) 429. The Supreme Court castigated the executive Lawlessness displayed by the Military Administration and authority in ejecting the Respondent forcefully and unlawfully from his residence, it was a disrespect for the Rule of law which they (the military) claimed to be cornerstone of their administration. This made Oputa, JSC to observe as follows:

The rule of Law presupposes:

1. That the state including Lagos State Government is subject to the Law.
2. That the judiciary is a necessary agency of the rule of law.
3. That the government including the Lagos State Government should respect the right of individual citizens under the rule of law.

“I can safely say that here in Nigeria even under military Government the Law is no respecter of persons, principalities, government or powers and that courts stand between the citizens and government alert to see that the state or government is bound by the Law and respect the Law”.

Whilst Eso JSC, who wrote the erudite lead judgment in Ojukwu’s case stated about the rule of law in these terms. “The essence of rule of law is that it should never operate under the rule of force or fear, to use force to effect an act and while under the marshal of that force seek the court’s equity is an attempt to infuse timidity into court and a sabotage of the cherished rule of law. It must never be”.

SELF ASSESSMENT EXERCISE

The decision of the executive is final. Discuss this in relation to *Aliu Bello V AG (Oyo State)*.

Another case that demonstrates the court’s high regard for entrenched provision of the Constitution on the liberty of citizens is the case of Hon.

Justice Nwachukwu. Nwachukwu was a High Court judge in Imo State. He was appointed Chairman of a commission of inquiry to look into certain contracts awarded by the government between 1979 and 1983. In the course of the proceedings of the commission Hon. Justice Nwa-Nwachukwu received a letter to which he took objection. Without making an investigation whatsoever he ordered the arrest of one Dickson Ikonne. There had been a long history of mutual animosity between the two men, which had nothing to do with the proceedings or the subject of the commission. Ikonne applied to a High Court to quash the warrant of arrest, which the court did.

Subsequently, Hon Justice Nwa-Nwachukwu obtained leave to appeal against the order of the judge Ikonne then appealed to the Supreme Court. Aniagolu JSC in *Dickson Ikonne V Commissioner Of Police And Hon Nanna Nwa_Nwachukwu* (1986) NWLR 473 at 496 said

“it is clear from the facts of this matter on appeal that the judge, the Hon Justice Nnanna Nwa-Nwachukwu; had no valid legal reasons for issuing the warrant of arrest complained of in his appeal. The issue of the warrant of arrest was, in the circumstances of this matter on appeal, an abuse of legal process, an abuse of judicial authority, it is particularly painful that I should come to this conclusion concerning a judge of the High Court, but the conclusion is inevitable having regards to the facts and circumstances of this matter on appeal.

“The conduct of the judge in issuing the warrant of arrest upon what was obviously a fictitious reason, had the undesirable effect of derogating the judiciary in the eye of the public and eroding the confidence of people in judicial process and the rule of law”.

There is plethora of decided cases on the attitude of the court to individual rights or civil rights of individual entrenched in the 1999 constitution.

4.0 CONCLUSION

The position of the judiciary in any community is of immeasurable importance. A good, efficient and incorruptible judiciary sets the pace for the happiness and orderliness of society. However, in the last two decades question of civil rights have come prudently within the focus of international communities. For that reason, domestic courts in many countries including Nigeria have started to expand their vista and to look at fundamental rights as rights which must be accorded universal recognition and in a very expansive area covered by international treaties, conventions and international Law.

5.0 SUMMARY

If you have comprehended this Unit, you should now be able to explain what the judicial attitude of Nigeria court is to fundamental Human Rights and the relationship of Domestic Courts to international law, Convention and Treaties.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is the role of the court and the Nigeria Police in upholding the Fundamental Human Rights?
2. Can Treaties, Convention and International Law on Human Rights be enforced by courts in Nigeria?
3. The government does no wrong. Discuss this in relation to the case of *Nasiru Bello V Attorney General of Oyo State*.

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UNIT 4 RIGHT TO LIFE: NIGERIA ABORTION LAW

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Abortion Law in Nigeria
 - 3.2 Constitutional Aspect of Abortion
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Abortion may be described as the termination of a pregnancy by the willful act of any person. This activity impinges on many areas of Law. Abortion and Contraception have been widely available throughout the history of Western Civilization, despite ethical concerns on the part of some. Plato and Aristotle both argued in favour of compulsory abortion under certain circumstances though Hippocrates expressly disapproved of the practice. Under Roman Law, abortion sometimes occurred but family planning was conducted mainly through the exposure of healthy newborns – usually to protect the rights and interests of the biological father.

Religious authorities have taken various positions on abortion. As a matter of common law in England and the United States, abortion was illegal anytime after quickening – when the movement of the foetus could first be felt by the woman. Many Western countries used statutes to codify or further restrict abortion. However, by the 20th century, many countries had begun to legalize abortions when performed to protect the life of the woman, and in some cases to protect the health of the woman.

Abortion under International Law

In addition to national and regional Laws, there are multinational and international treaties, conventions and laws that may actually be enforced on or within signatory nations. However, there is an inherent difficulty in the enforcement of International Law due to the issue that state sovereignty poses. As such the effectiveness of even binding multinational efforts to legislate the rights to life and liberty in general, or abortion in specific it difficult to measure. Examples of such efforts that have bearing for Abortion Law, nationally or internationally includes;

The 1995 Beijing Platform for Action States in paragraph 96

“The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence”.

The non binding document has been adopted by 189 countries at the United Nations fourth World Conference on Women held in Beijing, China.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- identify constitutional prescription for right to life
- know the various schools of thoughts and jurisprudence on abortion
- the right of an unborn child vis-avis the constitution.

3.0 MAIN CONTENT

3.1 Abortion Law in Nigeria

Abortion related offences under the Nigeria law are mainly:

- i. Attempt to procure abortion, knowingly supplying things to procure abortion,
- ii. Killing an unborn child,
- iii. Child destruction and (in the case of the death of the victim) Murder or manslaughter as the peculiar facts of each case may determine.

1. Attempt to Procure Abortion

The Criminal Code Act (CC); Penal Code (P.C.); also codify this offence. This offence is committed when

“any person with intent to procure the miscarriage of a woman, whether or not she is with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever.”

The offence of attempting to procure an abortion is a felony which attracts a punishment of 14 years imprisonment.

Knowing supplying things to procure Abortion

Any person who unlawfully supplies to or procures for any person anything whatsoever, knowing that it is intended to be unlawful used to procure a miscarriage, is guilty of a felony and is liable to imprisonment for 3 years. *In RV Edgal (1938) 4 WACA 133*. it was contended that the thing supplied by the appellant were mere “abaisoko leaves, blue powder, “urine” seed and ‘kaun’ (potash) which the prosecution had not proved to be noxious, poisonous, by definition of S. 230 of the Criminal Code. Dismissing the contention, the court noted that section 230 spoke of “anything whatsoever” and therefore the prosecution was not required to prove that the substance were in fact noxious.

The English Law regarding abortion has been expanded beyond the scope of Nigeria law on the subject. In 1967, the Abortion Act was passed in England which introduced some notable changes to section 58 and 59 of the Offences against the Persons Act 1891. Importantly, it stipulated that a person is not liable for the offence of procuring an abortion where such a person is a registered medical practitioner, if two other registered medical practitioners are of the opinion formed in good faith that the abortion should be carried out for the purpose of:

- i) Preventing risk to the life of the pregnant woman
- ii) Preventing injury to the physical and mental health of the pregnant woman
- iii) Preventing injury to existing children of her family.
- iv) Preventing substantial risk of physical or mental abnormality in the unborn child.

The Act further provides that, in determining the necessity for an abortion, the medical practitioner responsible may take cognizance of the pregnant woman’s actual or foreseeable environment.

“Under Section 1 (3) of the 1967 Law, any treatment for the termination of a pregnancy must be carried out in a “hospital registered in the Minister of Health or the secretary of State under the National Health Services Acts. The 1967 Act is obviously a remarkable development in the Law.

Killing an Unborn Child

The offence of killing an unborn child in Nigeria is created under section 328 and 236 of the Criminal and Penal Codes Respectively. The Codes provide for the punishment of life imprisonment for any persons who by an act of omission or commission prevents a child from being born alive by a woman about to be delivered of a child. Allowance is

made under section 297 and 235 of the Criminal and Penal Codes respectively for a situation where the unborn child may be killed for the preservation of the life of the mother. This is the only statutory expression of the preservation of the life of a mother as a lawful justification for “abortion” under Nigeria Criminal Law. When this provision is read in conjunction with section 228 and 229 of the criminal code, it reinforces the judicial position expressed in *RV Edgal* to the effect that an abortion performed to preserve the life of a pregnant woman is lawful.

3.2 Constitutional Aspect of Abortion

Constitutionally abortion touches on several fundamental rights guaranteed under the constitution of Nigeria namely, the rights to life, the Right to Privacy and family life; the Right to freedom of thought, conscience and religion. Whenever the individual asserts any of these rights; he invariably struggles for more leeway against state intervention.

4.0 CONCLUSION

In the area of Criminal Law, there is no doubt that the law relating to abortion needs to be reviewed, at least along the lines of the English Abortion act 1967 to allow for legally supervised abortions. The present law presents the prospects of serious physical danger to many pregnant women seeking abortion who are forced to patronize back street abortions and quack chemist peddling dangerous drugs.

The present Law stifles progressive development of Medical expertise in this area because Medical practitioners are understandably afraid to engage their skills for fear of Criminal sanctions. Despite the Criminalization of abortion, a number of women still go ahead and fund their own means of getting it. The need for legal but regulated abortion procedures definitely outweighs any social harm implicit in retaining laws against the practice.

5.0 SUMMARY

At the end of this Unit, you have learned about:

- The Nature of Abortion Laws.
- The Criminalisation of Abortion in Nigeria Statute.
- The modern trend in Abortion laws in other jurisdictions.
- The Reproductive Right of Woman.

6.0 TUTOR-MARKED ASSIGNMENT

What is Reproductive Right? Discuss this in relation to right to Abortion in Nigeria.

1. Abortion laws in Nigeria are old and outdated. The Law needs to be reformed. Discuss.
2. Discuss the 1995 Beijing platform for action (Paragraph 96) and compare it with the Nigeria Abortion Laws.

7.0 REFERENCES/FURTHER READINGS

The Nigeria 1999 Constitution

Criminal Code Act 1958

Penal code (P.C)

England Abortion Act, 1967

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UNIT 5 EUTHANASIA AND THE RIGHT TO LIFE

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Definition
 - 3.2 Meaning of Euthanasia
 - 3.3 Types of Euthanasia
 - 3.4 Right to Life
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

In the last Unit, you learned the meaning of Right to life as a constitutional provision and derogation therefrom. Furthermore, there is a growing opinion that there are many other ways by which there can be derogation of right to life outside the ambit of the Constitutional provisions. It has been suggested that technological development should also impact on our Law. This unit is devoted to examining the debate about the necessity of Euthanasia as derogation from right to life.

2.0 OBJECTIVES

By the end of this Unit, you should be able to:

- state the argument for and against the existence of Law in society
- understand what euthanasia is
- enable students to take position as to the desirability or otherwise of right to die.

3.0 MAIN CONTENT

3.1 Definition

Euthanasia is the act and practice of ending the life of an individual suffering from a terminal illness or an incurable condition, as by lethal injection or the suspension of extraordinary Medical treatment.

3.2 Meaning of Euthanasia

Euthanasia is the intentional killing by act or omission of a dependant human being for his or her alleged benefit.

3.3 Types of Euthanasia

Euthanasia could be voluntary, involuntary Assisted Suicide or By Action or Omission.

Voluntary Euthanasia

This is when the person who is killed has requested to be killed through a living 'Will' or by giving power of Attorney to a health proxy to take the decision on his/her behalf.

Involuntary Euthanasia

This is a situation when the person who is killed made an expressed wish to the contrary.

Assisted Suicide

This is a situation where someone provides an individual with the information, guidance, and means to take his or her own life with the intention that they will be used for this purpose. When it is a doctor who helps another person to kill himself, it is called "Physician Assisted Suicide."

Euthanasia by Action

When a person intentionally causes a person's death by performing an action such as by giving a Lethal Injection.

Euthanasia by Omission

Intentionally causing death by not providing necessities and ordinary (usual and customary) care. The act or practice of painlessly terminating the life of a person. It is accepted in some cultures. In Nigeria it may be treated as criminal and subject, to prosecution under the Criminal and Penal codes.

An exception to prosecution has been developed in some jurisdictions in which the termination of the life of an incurable ill patient is no longer treated as criminal if:

- done by a guardian or immediate family member
- after consultation with an ethics committee of a hospital, and
- accomplished by the negative means of withdrawing life support systems or extraordinary medical care rather than by some affirmative act.

In other jurisdiction like United State America, England, Canada, etc. the state is highly involved in euthanasia cases. The state can specify the number of individuals that must agree for euthanasia to be performed; the state can specify how frequently someone can sign an euthanasia authorisation. The state can also specify that only the individual can decide.

Living Wills are part in the legal aspect of euthanasia. A living Will expresses a patient's thoughts towards his/her future medical treatment. Living will allows anyone capable of making decisions to tell the doctors before hand that he/she does not wish to be put on life support.

3.4 Right to Life

The right to life asserts the sanctity of human life. The African Charter on Human and Peoples' Rights put it thus:

“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”.

The exceptions allowed by the Nigeria Constitution with regard to right to life, amount to a serious derogation. For example, the police may , in specified circumstances, kill in the process of arrest, of quelling a riot insurrection or mutiny. See section 33 (2) (c) of the 1999 constitution. Most constitutions provide that the right to life may be derogated from where a death sentence is imposed under due process of Law.

The right to life has often been extended in some jurisdictions to cover “the right to die” either by committing suicide or assisted suicide, as in voluntary euthanasia in case of a terminally ill patient. Several organizations exist in many parts of the world which espouse suicide and euthanasia as fundamental rights.

Dr. Akinola Aguda expressed this idea that Right to die is a fundamental postulate. He said suicide is an offence which ought to be decriminalized. He asserts that suicide is a manifestation of the illness He asked; “what does the right to life mean when indeed he feels he will be happier if that very life is taken away from him; it does not matter to him whether he lives or not? Consequently, cases of attempted suicide

should not be punished; as such an action will only increase his social depressions.

Euthanasia similarly is a question of morality and not of Criminal Law. Thus, people suffering from terminal diseases should in Aguda's view have the right to end their suffering.

SELF ASSESSMENT EXERCISE 1

What are living Wills?

4.0 CONCLUSION

In this Unit, you have been exposed to the rudimentary aspect of Law regarding the right to die in Nigeria. The effort here is to show that our law needs to be in tune with developments in Science and Technology; it doesn't have to be mechanical or static in its approach to issues.

SELF ASSESSMENT EXERCISE 2

Discuss why Attempted Suicide should be decriminalized in Nigeria.

5.0 SUMMARY

This Unit is to be taken as a further elaboration of the concept of right to life. The main objective is to expose you to debate about the necessity of the law on the right to die as an entrenched provision in the Nigeria Constitution. You have now read both the argument for and against the provisions for the right to die. The awareness will inform our position in future law reforms in this country or to appeal to the brooding 'omni spirit' of the future for an amendment to the provision of the right to life in our constitution and make it more expansive enough to accommodate right to die.

6.0 TUTOR-MARKED ASSIGNMENT

1. In Nigeria Euthanasia by action is pure murder, Discuss.
2. Explain the following terms
 - (a) Assisted Suicide
 - (b) Voluntary Euthanasia
3. The Right to Die is entrenched in the 1999 Nigeria Constitution. Do you agree with the statement? Discuss.

7.0 REFERENCES/FURTHER READINGS

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MODULE 4

Unit 1	Fundamental Human Rights: Section 37, 38, 42, and 43 of the 1999 Constitution
Unit 2	The Right to Freedom of Association and Political Participation
Unit 3	Right to Housing, Food, Education and Equal Opportunities I
Unit 4	Rights to Housing, Food, Education and Equal Opportunities II

UNIT 1 FUNDAMENTAL HUMAN RIGHTS: SECTION 37, 38, 42 AND 43 OF THE 1999 CONSTITUTION

CONTENTS

1.0	Introduction
2.0	Objective
3.0	Main Content
3.1	Right to Private and Family Life
3.2	Right to Freedom of Thought Conscience and Religion
3.3	Right to Freedom from Discrimination
3.4	Right to Acquire and Own Immovable Property anywhere in Nigeria
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Readings

1.0 INTRODUCTION

Constitutions all over the world contain copious provisions on Human Rights. The whole of chapter IV of the 1999 Constitution of Nigeria contains a long list of rights. In this Unit, we shall be dealing with the following rights

- i. Right to private and family life
- ii. Right to freedom of thought, conscience and religion
- iii. Right to freedom from discrimination
- iv. Right to acquire and own immovable property anywhere in Nigeria.

2.0 OBJECTIVE

By the end of this Unit, you should be able to:

- explain freedom of religion, the right to property, freedom against discrimination and family rights.

3.0 MAIN CONTENT

3.1 Right to Private and Family Life

Section 37 of the Constitution simply provides that

“The privacy of citizens, their homes, correspondence, phone conversations and telegraphic communications is hereby guaranteed and protected”.

This right is limited by the provisions of section 45 which contains a wide power of derogation in the interest of defence, public safety, public order, public morality or health or for the purpose of protecting the rights and freedom of other persons.

3.2 Right to Freedom of Thought, Conscience and Religion

This right is provided in Section 38 of the 1999 Constitution there was no attempt at any definition of the words thought, conscience or religion anywhere in the Constitution. However, a graphic view is given of this freedom by Abraham Henry who observed as follows:

“Each individual does of course possess the basic right to believe what he chooses, to worship what he pleases and how he pleases, always with the right of others. We have those who believe in nothing, those who believe but doubt, those who believe without questioning, those who worship the Judeo-Christian God in innumerable different ways, those who adhere to Mohammed’s creed, those who worship themselves, those who worship a cow or other animals, those who worship several gods to mention just a few of the remarkable variety of expectations of belief that obtain.”

According to Prof. Bolaji Idowu,

“Religion is very much and always with us. It is with us at every moment of life, in our innermost being and with regards to the great or minor events of life; it is discussed daily in the newspaper, through the radio and television and in our conversations. It is with all of us inevitably whatever may be our individual, a vowed attitude to it.”

Section 10 of the Constitution prohibits the adoption of any religion for the nation. Both sections read together give the correct impression of the guarantee of freedom of worship, practice and observance of individual religious belief. They ensure secularization for the state.

Provision for the protection of the rights to freedom of thought, conscience and religion, is a great philo-legal ideology meant to improve the lot of human beings. However, notwithstanding such provisions, one is greatly disturbed by the selfish exploitation of worshippers and religious adherents by religious leaders on the one hand and the mischievous manipulations and deliberate distortions of sacred religious truths by governments on the other hand. A few others too, who occupy fiduciary positions in religious matters vis-à-vis adherents are equally guilty of this allegation.

Citizens and adherents are often cajoled, confused and misled. Religious leaders sometimes engage in improper proselytism; governments engage in using religion to fan the embers of discord. Once we agree that religion is the opium of the people, we need not look too far to know why this is easily possible especially in countries where the literacy level is low.

Prof. Wole Soyinka, a Nobel Laureate, is of the view that;

“the use to which religion is put today (and we speak here not merely of extremists but of government complicity) often translates directly into politics and does not require much effort to envisage. There have been too many lost moments, moments when this particular disease could have been firmly routed out, when leadership chose instead to exacerbate such divisions for its own agenda of control rather than set an example in the harmonization of faiths, we are speaking, to name concrete instance, of a nation of multiple faiths.....”

Whoever is conversant with Nigerian politics will agree with Soyinka and will be bothered by such governmental action or inaction. This observation is not peculiar to any one country. For example, Osama Bin Laden and his Al Qaeda network had been quoted as saying that the September 11, 2001 attack on the United States of America “was a religious and logical obligation..... the killing of Americans and their civilian and military allies is a religious duty.....”

One may recollect also the ‘*Fatwa*’ issued by the Iranian religious authority on Salman Rushdie over comments contained in his book: The Satanic Verses. Such a call to have someone killed for expressing an opinion is generally deemed unacceptable, whatever cultural or religious belief.

The terms “thought”, “belief” and sometimes “religion” may cover a wide range of intellectual and spiritual activity. The rights to freedom of thought, conscience and religion are largely exercised inside an individual’s heart and mind and cannot be separated easily. Only when one manifests one’s religion or beliefs will the state even be aware of its existence or character. A person has an inalienable right to think whatever he desires, to believe whatever he hears, reads or thinks about and to profess any religion that suits him, provided such thought, belief or practice of the chosen religion is not repugnant to natural justice, equity and good conscience.

The right to freedom of thought, conscience and religion is an extension of the rights to freedom of expression, assembly and association. It gives the latitude to every person to change his belief and to manifest and propagate his religion in worships, teachings, practice and observance either alone or in concert with others.

But this excludes membership of a secret society. See section 38. of the constitution. According to Idowu Adegbite, like every other fundamental right of man, the right to freedom of conscience, thought and religion is basic to meaningful existence as a human being; it predates the Constitution and all human rights documents. This right is for everybody to believe in and worship the creator or whoever he considers as his God or god, or not to believe in the existence of any supreme being at all. A man is free to practice, disseminate and propagate his religious beliefs in whatever form he chooses. It must however be within the confines of the law.

3.3 Right To Freedom From Discrimination

This right is contained in Section 42 of the Constitution. By this provision, no person, being a Nigerian, shall be subjected to discrimination merely for circumstances of his birth, sex, creed, religion or political opinion. This issue came up for consideration in the case of *Bosedede Badejo V Ministry Of Education (1990)*,³ NCLR 915. In this case, the Appellant sued the respondent for the enforcement of her fundamental human right of freedom against discrimination. She was piqued by the policy which allowed a candidate from Kano State, for instance, with 151 marks to have a place in Unity Schools as against herself from Ogun state who scored 293

While admitting that the applicant’s right of freedom against discrimination had been breached, the court however leaned more on the issue of *locus standi*.

3.4 Right to Property

Section 43 of the Constitution provides that

“Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria”.

This means that a citizen of Nigeria is free to acquire landed property anywhere in Nigeria.

Section 44 states that no movable property or any interest in an immovable property shall be taken possession of compulsorily in any part of Nigeria except in the manner prescribed by law. The Land Use Act of 1978 which has been entrenched into the 1999 Constitution through section 315 provides for compulsory acquisition of property for public interest.

The issue of public interest was first decided way back in 1944 in the case of *Chief Commissioner Of Eastern Provinces V. Omony* (1944), *NLR 142*. In this case, the Court held that the acquisition of a private land by the crown for the purpose of granting a lease of it to a commercial company was a departure from the meaning of public purpose. Acquisition must actuate compensation.

It should be noted that the Federal Government of Nigeria has sole exclusive property rights in minerals, mineral oils and natural gas in, under or upon Nigeria territory, territorial waters and the country’s exclusive economic zone.

The case of *Attorney General Bendel State V. Aideyan* (1989) 4 *NWLR Pt. 118 P.649*, lays the precedent that any extra legal acquisition of property constitutes a trespass and gives rise to a claim for damages.

SELF ASSESSMENT EXERCISE

What do you understand by the right to freedom from discrimination?

4.0 CONCLUSION

To conclude, the 1999 Constitution of Nigeria forbids any state religion, and protects individual freedom of thought consumer and religion Britain extremists and even governments have derogated from these rights. See the case of *Bosede Badejo v. Ministry of Education*. (1990 gain.

5.0 SUMMARY

In this Unit, we have considered four fundamental human rights provisions as enshrined in chapter IV of the 1999 Constitution of Nigeria. You should now be able to determine when these rights have been breached and seek for enforcement or redress.

6.0 TUTOR-MARKED ASSIGNMENT

- 1) Define Religion.
- 2) Right to property, how absolute is it?
- 3) Discuss the implication of Sharia Law and the constitutional provision right to religion.

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UNIT 2 THE RIGHT TO FREEDOM OF ASSOCIATION AND POLITICAL PARTICIPATION

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 The Right to Freedom of Association and Political Participation
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Civil and Political rights as guaranteed in the Constitution are sacrosanct. The Nigeria Constitution of 1999 essentially embodies the right to peaceful assembly and association in section 40. This provision helps us bring order and sanity to our society. In this Unit, you will be introduced to what the Right to freedom of Association and Political Participation is all about.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

Discuss the Right to freedom of

- Association
- Political Participation
- The Press and Expression.

3.0 MAIN CONTENT

3.1 The Right to Freedom of Association and Political Participation

The freedom of association, assembly and to a large extent, freedom of the press and Expression go together to promote the political participation of citizens. The democratic wind sweeping throughout Africa and the resulting collapse of dictatorships is a signal that Africa is joining the rest of the world in installing accountability, good governance and human rights as an important socio-political ideal.

1. Freedom of Expression

What is freedom of Expression?

Rather than give a definition of the expression, we shall look at the description given by the second declaration of independence by the United State of America, where it is described as:

“A self evident principle that the creator has endowed man with”

And all these inalienable rights, endowed by nature, include life, liberty and obviously, the pursuit of happiness. But man has not left these as a mere endowment of nature. Man has gone further by entrenching them in the man-made constitution. Practically every written constitution of nations in the free world have them entrenched. Where the Constitution is not written, as in Great Britain, acceptance of human rights has been, not only through the mores of the people, but also through the courts which have, by a long line of decisions, through the ages, written human rights into their legal system.

This also is entrenched in the constitution of the Federal Republic of Nigeria, 1999.

The 1999 constitution provides inter alia in section 39:

1. Every person shall be entitled to freedom of expression, including freedom to hold opinions, and information without interference.
2. Without prejudice to the generality of subsection (1) of this section every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions

By these provisions both the individual and the media have freedom, guaranteed by the constitution, of speech, expression and to hold opinion, impart and disseminate them without let or hindrance or interference whatsoever. What the constitution has guaranteed is very wide, but it noted the right so given is not absolute. Sub-section (3) of the same section permits enabling laws curtail freedom in some respect. The subsection provides

“(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society.

The court of Appeal laid down a useful approach to the interpretation in the matter covering section 39 of the 1999 Constitution of the Federal Republic of Nigeria.

In Nwankwo V the State (1985) NCLR 228 at Pg 237. SMA Belgore JCA (as he then) dealing with relationship between section 39 of the Constitution (right of freedom of expression) and sections 50, 51 and 52 of the criminal code.

“While Chike Obi V DPP (1961) INLR p 186 and Wallace – Johnson V the King (1940) AC 231 were birds of their respective periods. It is my view that section 50(2) and section 51, and section 52 which cover them are inconsistent with the provisions of section 36 and section 41 of the 1979 Constitution and are by implication repealed from the 1st day of October 1979. there is no ban in the 1979 constitution against publication is false news with intent to cause fear and alarm in public there is section 59 of criminal code to cover it. If a person feels defamed there is the civil remedy of suing for libel and slander. There are also provisions in chapter XXXIII of the criminal code law as to defamation. See section 374 thereof. By looking at the constitution in the light of the existing law so as to accommodate and save provisions of existing law is inconsistent with the constitution, the existing law is null and void to the extent of that inconsistency”.

The result of this case, put a to prosecution for the offense of sedition in Nigeria. The case of Tony Momoh V Senate (1981) INCLR 337 is pt on the interpretation of section 39 of the 1999 Constitution of the federal republic of Nigeria. Here, the Applicant as the Editor of “Daily times Plc, a Nigeria Daily News paper had written under the title “Grapevine”. He accused some senators of parading in the office of permanent secretaries asking for contracts to be awarded to them. The senate summoned the Applicant through a letter to appear before it with a view to giving it details of this allegation. He challenged this letter on the force of section 36 of the 1979 constitution which is a replica of section 39 of the 1999 constitution. It was held that the letter of invitation was an infringement on his right to freedom of expression.

SELF ASSESSMENT EXERCISE

Discuss the importance of establishment of private Radio and Television station in Nigeria in relation to Section 39 of the 1999 Constitution.

RIGHT TO FREEDOM OF ASSEMBLY AND POLITICAL PARTICIPATION

This Right is entrenched in section 40 of the Constitution of the Federal Republic of Nigeria 1999 and it provides inter alia:

every person shall be entitled to assemble freely and associate with other persons, and in particular he/she may form or belong to any political party, trade Union or any other association for the protection of his interests provided that:

- (a) the provisions of this section shall not derogate from the powers conferred by this Constitution on the National Electoral Commission with respect to associations to which that Commission does not accord recognitions; and

The right to peaceful assembly consists in two or more individuals associating and assembling or belonging to any lawful organization. This power does not derogate from the power of the police to manage, control and disperse unlawful assembly with reasonable use of force, if necessary. An exception to the right of peaceful assembly is found in the case of *Cheranchis V Cheranchi* (1960) NRNLR 24 where the court held that in spite of the provisions of right of peaceful assembly and association, it was only reasonable in a democratic society to exclude juvenile from political activities generally.

4.0 CONCLUSION

In this Unit, we have attempted to examine the Law relating to peaceful assembly, political participation and the Law relating to freedom of expression and the press. The relationship between the provision of the 1999 Constitution of the Federal Republic of Nigeria and the provisions of the Criminal Code was also explained.

5.0 SUMMARY

You have learnt that in a democratic society the Constitution is sacrosanct; the Constitution entails and contains essentially the embodiments of the most fundamental rules, principles and institution which constitute the fabric of the State. It is the harmonious relationship between all the organs created by the Constitution that helps to bring order, sanity and good governance into the society.

6.0 TUTOR-MARKED ASSIGNMENT

1. Right of peaceful assembly can be extended to the juvenile under the 1999 Constitution of the Federal Republic of Nigeria. Discuss
2. The law of sedition exists independently of the provisions of section 39 of the 1999 Constitution of the federal Republic of Nigeria. Discuss with reference to decided cases.

3. Discuss the right of peaceful assembly in relation to police powers to disperse, control and manage riotous crowd.
4. Membership of secret cults and society is Legal because of the provisions of section 40 of the 1999 constitution. Discuss.

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UNIT 3 RIGHT TO ACCOMMODATION, FOOD, EDUCATION AND EQUAL OPPORTUNITIES I

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Definition of Rights
 - 3.2 Sources of Rights
 - 3.3 Classification of Rights
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- 5.0 Summary
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1.0 INTRODUCTION

The term “right’ is complex. Holmes S. says that a ‘Right’ is “one of the most deceptive of pitfalls; it is so easy to slip from a qualified meaning in the premise to an unqualified one in the conclusion. Most rights are qualified”: *American Bank of Trust Co. V. Federal Reserve Bank of Atlanta (1921)*. The complexity is worse compounded by the general legal and political order.

Right is a correlative to duty; where there is no duty, there can be no right. But the converse is not necessarily true. There may be duties without rights. In order for a duty to create a right, it must be a duty to act or forbear and that act or forbearance must be external. It is only to acts and forbearance that others have a right. As this discourse progresses, you should, at every stage, stop and reflect on the issue: whether or not, the right in question creates a correlative duty in the state –to act or forbear – some kind of external acts or forbearance.

2.0 OBJECTIVES

After completing this Unit, you should be able to:

- explain the term “Right” in relation to UDHR and ECOSOC Rights
- identify Political and Civil Rights
- distinguish Economic, Social and Cultural Rights
- discuss the contents of the Constitutional Provisions for Rights to accommodation, food, education and equality of opportunity

- take a position in defence or otherwise of the policy of non justiciability of the rights to accommodation, food, education and equal opportunities.

3.0 MAIN CONTENT

3.1 Definition of Rights

Rights and Law are sometimes used interchangeably as though they mean the same thing. For example, *Jus* (Latin) and *Recht* (German) may mean ‘right’, ‘a right’ or ‘law’.

A right may be legal or moral. Holland says “Moral Right” means: ‘one man’s capacity of influencing the acts of another by means, not of his own strength, but of the opinion or the force of the society’. The sanction for a violation of a moral right lies in public opinion.

Legal Rights are;

- legally protected interests (Von Ihering)
- Anything you can bring before court and base a claim upon (Earle Richards)
- When another or others are bound or obliged by the law to do or forbear towards or in regard to another (Austin)

SELF ASSESSMENT EXERCISE 1

What do you understand by the term “Right(s)”. How is it different from “Privilege?”

3.2 Sources of Rights

The Fundamental Human Rights may derive from the following sources;

(a) NATURAL LAW

Certain Rights exist as a result of higher law than positive law; such higher law constitutes a universal and absolute set of principles governing all human beings in time and space.

(b) SOCIAL CONTRACT THEORY

John Locke argued that the subject people conceded power of government only on trust and any infringement by the rulers of individual fundamental natural rights automatically put an end to the

trust and entitled the people to resume their authority. In this view, the fundamental human rights are inalienable.

- (c) Rousseau allied with John Locke and both impacted considerably on the leaders of the French Revolution as well as the Constitution of the United States of America.
- (d) The Magna Carta, the Bill of Rights, the Renaissance and the Reformation in turn influenced the human rights development. For example, the Renaissance broke down the medieval order and subscribed to the idea:
 - (1) that man possessed certain fundamental rights and
 - (2) when the civil society came into being through social contract, man retained those rights in his new civil status protected in his enjoyment of them by natural law.
- (e) The Positivists have little sympathy for rights other than the specific rights emanating from the Constitutional Structures of the legal system. Similarly, the Marxists, in their belief in the existence of certain immutable historical laws governing the development of the state, have denied the existence of rights outside the framework of the legal order. The Marxists regard the state as the highest synthesis attainable and the individual is no value by himself. Rather he is absorbed in the family and the family in the state; the real substance of which individuals are accident.
- (f) The United Nations Declaration of Human Rights (UNDHR).

The United Nations recognized that every human being has a minimum core of rights, which no state authority can take away. These rights became known as Civil and Political Rights and they covered a wide range of rights. Among such rights are:

- Right to life
- Freedom from torture and inhuman treatment
- Right to liberty
- Freedom from slavery and forced labour
- Freedom of movement
- Right to fair trial
- Freedom of thought, conscience and Religions
- Rights to Property
- Right to vote and be voted for.

The Commission on Human Rights excised Economic, Social and Cultural Rights in the process of formulating the International Covenant on Human Rights.

The reasons were that

- The civil liberties lend themselves readily to judicial processes; socio-economic and cultural rights do not.
 - Social and economic rights entail the development of practical institutions to enforce and implement.
 - Social and economic rights require the making of appropriations to implement the kind of policy involved.
- (g) Economic, Social and Cultural Rights (ECOSOC Rights) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The human rights, which the Human Rights Commission could not accommodate in the International Covenant on Human Rights were relegated to the category of Economic, Social and Cultural Right (ECOSOC Rights) and were constituted, for purpose of implementation in the International Covenant on Economic, Social and Cultural Rights.(ICESCR)

The rights pertained to the necessities of life, and material well-being, and egalitarian ideals. Examples are;

- Right to work and to just conditions of work
- Right to fair remuneration
- Right to adequate standard of living
- Right to organize, form, and join trade union.
- Right to equal pay for equal work
- Right to social security (food, education etc.)
- Right to participate in one's community's cultural life.

SELF ASSESSMENT EXERCISE 2

Explain the sources and classification of Human Rights.

(h) African Charter

The position of the African Charter is that all rights are equal The charter accordingly merged both the Civil and Political Rights and the Economic, Social and Cultural Rights. Specifically the African Charter provided for:

- Right to work under equitable satisfying conditions (Act 15)
- Right to the best attainable state of health (Act 16)
- Right to every individual to Education (Act 17)
- Right to economic, social and cultural development (Act 22)

(i) The Constitution

Prior to the advent of colonialism in 1861, man was part of the family unit which bore the responsibility for the essentials of life for its members.

From 1861 – 1922, there was no constitution. There were written Constitutions from 1922 – 1959; but there were no provisions for fundamental human rights. Colonialism is a denial of right of self determination and itself was antithesis of human rights and freedoms.

Human Rights became an issue as independence. Chapter IV of the Independence Constitution, 1960, contained the Civil and Political Rights. All subsequent Constitutions made identical provisions.

The Federal Republic of Nigeria Constitutions 1979 and 1999 provided for Civil and Political rights; namely;

- Right to life
- Right to dignity of human person
- Right to personal liberty
- Right to fair hearing
- Right to private and family life
- Right to freedom of thought, conscience and religion
- Right to freedom of expression and the press
- Right to peaceful assembly and association
- Right to movement
- Right to freedom from discrimination
- Right to acquire and own immovable property anywhere in Nigeria

Both Constitutions also provided for Economic, Social and Cultural Rights in chapter II, captioned ‘Fundamental Objectives and Directive Principles of State Policy’. These Rights are modeled into;

- i. Political Objectives (Sec 15)
- ii. Economic Objectives (Sec 16)
- iii. Social Objectives (Sec 17)
- iv. Educational Objectives (Sec 18)
- v. Environmental Objectives (Sec 20)
- vi. Directives on Nigerian Cultures (Sec 21)

vii. Obligations of the Mass Media (Sec 22).

The Nigeria approach is to maintain a duality of treatment of;

- a. Civil and Political Rights (Chapter IV)
- b. Economic, Social and Cultural Rights (Chap II)

The formulation of Chapters II and IV of the Constitution is suggestive that one set of fundamental human rights is superior and worthy of enforcement over and above another. It is probably a reflection of the confusion as to what constitutes human rights and how they should be enforced.

Justice Bhagwati of the Indian Supreme Court noted that the conferment of an aura of sanctity and inviolability on such formal rights as are designated Fundamental Rights and relegating the Directive Principles to insignificance creates a situation where manifest public good and substance is sacrificed to private interests and obeisance to empty form. (*Minerva Mills Ltd V. Union of India (1980)*).

All the rights are interwoven. The Civil and Political Rights themselves entail certain minimum of social amenities – minimum basic requirement for human existence e.g. Food, clothing, housing, education, medical and sanitary services and employment. To the ordinary man, conception of government is largely in terms of its ability to provide these basic needs.

The idea of free human being, enjoying freedom from fear and want can only be achieved if conditions are created whereby anyone may enjoy his economic, social and cultural rights as well as his civil and political. The frustration generated by poverty, ignorance and disease tend to alienate the citizenry and nullify civil and political rights. The enforcement and protection of civil and political rights therefore is a mirage where poverty, stagnation, marginalization and under-development prevail.

(j) Rule of Law

The International Congress of Jurists Delhi, 1959 and Lagos 1961 redefined and expanded the Rule of Law beyond the Civil and Political Rights for the third world and then Africa. The Jurists acknowledged that the rule of law is a dynamic concept and charged the Jurists to use it to establish social, economic, educational and cultural conditions under which man's legitimate aspirations and dignity may be realized.

SELF ASSESSMENT EXERCISE 3

Explain the evolution of ECOSOC Rights in Nigeria.

3.3 Classification of Rights

The law has not classified Rights. History, policy and writers have divided them as follows:

1. (a) Civil and Political Rights
(b) Economic, Social and Cultural Rights.
2. (a) First Generation Rights
(b) Second Generation Rights
(c) Third Generation Rights
(d) Fourth Generation Rights
(e) Fifth Generation rights
3. (a) Justiciable Rights
(b) Non Justiciable Rights
4. (a) Legal Rights
(b) Moral Rights

The Civil and Political Rights are the same as First Generation Rights, Justiciable rights, or legal rights. In the same way, the Economic, Social and Cultural Rights as well as second, third, forth and fifth generations rights, non justiciable or moral Rights mean the same thing.

4.0 SUMMARY

The term 'right' is complex; and hierarchical. Civil and political rights are immediately enforceable binding commitments. Economic, Social and Cultural rights are a beacon light for possible future patterns of behaviour and are closely allied with ethics and morality. Rights to accommodation, food, clothing. Education and equal opportunities are economic and socio-cultural rights and have been expressed in Chapter II of the Constitution, while the civil and political rights are contained in Chap IV. The separation has some significant implication.

5.0 CONCLUSION

This is the first part of our discourse on human rights to accommodation, food, education and equal opportunities. We explained what 'Right' means, the different sources of human rights and classification. You will appreciate that the initial intendment of the UN

Commission on Human Rights and of African Charter is to treat all rights as equal. By reason of practicability, enforcement or implementation and divergent views of the bounds and compasses of “rights”, some jurisdictions including Nigeria have separated ECOSOC Rights from Civil and Political Rights. In the next Unit, some specific ECOSOC Rights will be examined in greater details.

6.0 TUTOR-MARKED ASSIGNMENT

1. To which class of rights are rights to accommodation, food, clothing, education and equal opportunities?
2. Is the classification justifiable?

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UNIT 4 RIGHTS TO ACCOMODATION, FOOD, EDUCATION AND EQUAL OPPORTUNITIES II

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Specific ECOSOC Rights
 - 3.2 Reality of ECOSOC Rights
 - 3.2.1 Right to Accommodation
 - 3.2.2 Right to Food
 - 3.2.3 Right to Education
 - 3.2.4 Right to Employment and Equal Opportunities.
 - 3.3 The Constitution and the People
 - 3.4 Judicial Interpretation
 - 3.5 The Modern Trend
- 4.0 Summary
- 5.0 Conclusion
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Following the Delhi declaration (1959) and the Lagos Law (1961), the Rule of Law has been expanded to include the use of law for establishment of rights to food, medicine, shelter, education and employment. The Government of Nigeria accepted this in principle and provided for them in chapter II of Constitution. In this Unit, we shall examine some of these Constitutional provisions.

2.0 OBJECTIVES

After completing this Unit, you should be able to;

- identify important economic, social and cultural rights.
- compare and contrast the above rights with other fundamental Human Rights
- indicate the extent to which the provisions of Chap II of the Constitution are observed or violated
- proffer solutions to the impasse between UDHR and ECOSOC Rights in Nigeria.

3.0 MAIN CONTENT

3.1 Specific ECOSOC Rights

The Constitution of the Federal Republic of Nigeria, 1999 provides for certain ECOSOC rights. Let's examine some of these provisions.

Section 14: The Government and the People:

1. The Federal Republic of Nigeria shall be a state based on the principle of democracy and social justice.
2. It is hereby, accordingly declared that:
 - a. Sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority.
 - b. The security and welfare of the people shall be the primary purpose of government, and
 - c. The participation by the people in their government shall be ensured in accordance with the provisions of the Constitution.

Section 16: Economic Objectives

The state shall direct its policy towards ensuring:

- That suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

Section 17: Social Objectives

1. The State social order is founded on ideals of Freedom, Equality and Justice.
2. In furtherance of the social order:
 - a. Every citizens shall have equality of rights, obligations and opportunities before the law
 - b. Governmental actions shall be humane
3. The state shall direct its policy towards ensuring that:
 - a. Conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life.

- b. There is equal pay for equal work without discrimination on account of sex, or any other ground whatsoever.
- c. Children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect.

Section 18: Educational Objectives

1. Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.
2. Government shall promote Science and Technology.
3. Government shall strive to eradicate literacy, and to this end, government *shall as and when practicable* provide:
 - Free, compulsory primary education
 - Free secondary education
 - Free university education and
 - Free adult literacy programme.

SELF ASSESSMENT EXERCISE 1

Compare and contrast fundamental Human Rights Declaration and ECOSOC Rights and Chap II of the Constitution, 1999.

3.2 Reality of ECOSOC Rights

We shall now relate these Constitutional provisions to such specific rights as accommodation, food, education and equal opportunities.

3.2.1 Right To Accommodation

- a. See Sections 14 and 16 (2) (d) of the Constitution. Read the provisions over.
- b. Compare the expectation of “suitable and adequate shelter” with the reality.
- c. How near or far are we to housing for all citizens.

The economic laws of supply and demand interplay with the availability of housing units and population growth to impose on the majority of citizenry a deteriorating socio-economic condition.

3.2.2 Right to Food

- a. See the Constitution of Federal Republic of Nigeria, 1999. Sections 14, 16 (2) (d)
- b. What do you understand by the term “suitable and adequate food”?

- c. Consider the percentage contribution of agricultural sector to the National Gross Domestic Product (GDP).
- d. Consider also the capital expenditure on agriculture in relation to planned expenditure.
- e. Look at the external trade and expenditure on importation of food items.

In situation where percentage contribution of Agriculture sector retrogresses, capital expenditure on agriculture declines and import of food items increases, there is likely to be deficiency in the quantity and quality of food supplies. The obverse situation will also yield to enhanced quantity and quality of food supply.

Jenkins and Kposowa said:

“No matter what actions are taken now, living standards (in Africa and the rest of the third world) appear to set to decline for some time to come in the face of rapid population, growth and an accelerated deterioration in the size and quality of natural resources”.

As early as 1949, Lord Boyd-Orr noted:

“the rapidly increasing population of the world, together with the decreasing productivity of the soil makes world famine as great a threat to our civilization as the atomic bomb”.

Note the role of the Food and Agriculture Organization (FAO), and the World Food Programme (WFP)

3.2.3 Right to Education

Read Section 18 of the Constitution of the Federal Republic of Nigeria, 1999 once again. The government objective is to ensure that there are “equal and adequate opportunities at all levels” “as and when practicable”. Also note Section 14.

Ade Ajayi Nigeria and Education: The Challenges Ahead defines education as the ‘process by which every society, as a people, acquire the skills and resources necessary for its survival, and transmits this through formal and informal means to the next generation”.

Philosophers from Plato to Rousseau and Dewey have identified five bases for education: namely:

- i. Education for civility and culture
- ii. Education for individual empowerment
- iii. Education for public enlightenment and democracy

- iv. Education for manpower and economic development.
- v. Education for national power.

The National Policy on Education states that:

Education is the most important instrument of change in any society. Any fundamental change in the intellectual and social outlook of any society has to be preceded by an educational revolution.....The Federal Government shall undertake to make life-long education the basis for the nations education policy and that at any stage of the educational process after primary education, an individual will be able to choose between continuing his full-time studies, combining work with studies, or embarking on full-time employment without excluding the prospect of resuming studies later on.....The education, system will be restructured to develop the practice of self learning.”

Education is the most important instrument of meaningful change generally and fundamental change in the intellectual and social outlook in particular. In all ramifications, education is the engine of development.

Consider the number of primary schools at independence (1960) and today.

Consider also the number pf secondary and tertiary institution in 1960 and today.

What is the learning population like at each tier?

3.2.4 Unemployment and Equal Opportunities

How has the Constitution provided for employment possibilities?

See the Constitution of the Federal Republic of Nigeria 1999:

1. Section 14
2. Section 16 (2) (d)
3. Section 17 (3) (a); (f)

The average unemployment rate ranges between 3.5 and 5.0. In Lagos State, this rate has been higher than 7.0. However, unemployment and under employment (seasonal or structural) appear more critical than official statistics admit. The spate of retirements, dismissal and withdrawal of services is an exacerbating factor.

3.2.4 Equal Pay For Equal Work

The Constitution provides that the state shall direct its policy towards ensuring that there is equal pay for equal work.

Does equal pay for equal work mean the same thing as equal pay for equivalent educational certificate? How does one measure the quantity or quality of work, in the private sector and the public sector for example?

Different states have different minimum wage. Does this reflect the policy of equal pay for equal work?

It used to be the practice that women enjoyed 12 weeks maternity leave when they were pregnant. And during the period, they received full salaries for the first 6 weeks and half salaries for the latter 6 weeks. In some other jurisdictions, (not Nigeria), the ratio of men to women salary is 10:9. This discrimination has been removed and women (to the exclusion of men) enjoy maternity leave with full pay.

The rights enumerated in Chaps II and IV may not be exhaustive. The maxim "*expressio unius est exclusio alterius*" does not seem to apply. But Nigeria has no similarity to the IXth amendment to the US Constitution which provides that:

"The enumeration in the Constitution of certain rights shall not be construed to deny or dispense others retained by the people".

SELF ASSESSMENT EXERCISES 2

Compare and Contrast the provisions of chapter II and IV of the constitution of Nigeria, 1999.

3.3 The Constitution and the People

Are the provisions of chapter II of the Constitution binding or are they statements of contemporary political realities only to be observed or ignored at will by the government of the day?

The Preamble of Nigeria's Constitution States "WE THE PEOPLE of the Federal Republic of Nigeria" made, enacted and gave to ourselves the Constitution. The Constitution is an original law of the people. It operates with supreme authority and any government under it must act in accordance with it.

In Ghana and TC-had, it has been held that the Preamble to the Constitution cannot create legal right or obligation. It has mere moral force. Where it is intended to protect human rights, the normal method is to guarantee them in the substantive provisions of the Constitution; but the efficacy of such guarantee depends upon how it is formulated. An example can be found in the Central African Republican Constitution.

3.4 Judicial Interpretation

The judiciary does not inhabit a vacuum and cannot be completely isolated from the political realities and social pressures.

The Simon Commission on the Indian Constitution, 1930 states:

“Abstract declarations are useless, unless there exists the will and the means to make them effective”.

An English judge with his positivist background would shun noble phrases, metaphysics and dialectical materialism. He would opt for pragmatism and literal interpretation. The francophonic African is likely to respect all beliefs and attachments to the fundamental human rights provisions. The Nigerian approach is a cautious one: - provisions are difficult to enforce; and their presence in the Constitution merely defines beliefs widespread among democracies and provides a standard to which appeal may be made by those whose rights are infringed.

In this view, chapter II provisions would be outside the purview of judiciary scrutiny and therefore legally ‘irredressible’ if they are breached. See (1) *Archbishop Olubunmi Okojie V. Attorney – General of Lagos State (1981)*.

Sokefun has observed that the judicial attitude to the fundamental objectives and directive principles of state policy (Chap II) has consistently been one of non-justiciable. The provisions he said, are probably mere “homilies”.

Ipaye was obviously agitated. He states:

“the Constitution is always a serious document which essentially is an embodiment of the systems and principles according to which a state or organization is governed. Can it be acceptable that provisions or certain portions of the all-important document are merely inserted with no serious intention of pursuing and implementing them?”

SELF ASSESSMENT EXERCISE 3

Give a critique of the facts and decisions in the case of *Archbishop Okojie V AG. (Lagos State)*.

3.5 The Modern Trend

There appears to be a gradual shift in the direction of a legal right to compel observance of these fundamental objectives and directive principles of state policy in other jurisdiction: Let's take the example of India.

1. *Keshavananda Bharati V State of Kerala (1973):*

The majority of judicial opinions was that what is fundamental in the governance of India cannot be less significant than what is significant in the life of an individual.

Matthew J. went as far as asserting that "in building up a just social order, it is sometimes imperative that the fundamental rights should be subordinated to directive principles".

In Mohini Jain V State of Karnacata (1992), the Indian Supreme Court confirmed that the right to education is included in the concept of right to life. The reason of the court is that one cannot have a meaningful and successful life without any education, more particularly in the present age of technology and information. The Supreme Court, in that case, declared invalid, a state law which permitted a medical college to charge expensive admission fees that in effect discriminated against poor applicants.

The Court in various divisions, have expanded the right to life to include:

- a. the right to the means of livelihoods and
- b. right to Education: *Krishna V State of Andhra Pradesh (1993)*.
- c. "the right to live with humanity and all that goes with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings. The magnitude and components of this must include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self". [*Francis Mullin V the Administrator, Union Territory of Delhi (1981)*]. It would probably not be long for the Indian Court to hold that individual right to the dignity of human person encompasses the cognate rights to health, safety and welfare, all of which are conceived in ECOSOC Rights which are Nigeria's fundamental objectives and directive principle of state policy.

Nigerian courts need to adopt a more activist posture and liberal interpretation of the constitutional provision so as to effectuate a full realization, enjoyment and protection of rights to basic essentials of life.

4.0 CONCLUSION

In Nigeria, expenditure on social services is sharply down; over-all school enrolments are falling, shortage of food, deterioration in nutrient value and of calories deficiency continue to be high. Unemployment and underemployment in the Urban, especially of graduates, is also on the increase. Livings standard appear set to decline for sometime in the face of rapid population growth and an accelerated deterioration in the size and quality of natural resources. These constitute erosion of right to life and right to human dignity. One cannot but feel much concerned that the objectives and Directive Principles are “homilies” and utopia. The state of affairs may linger on for sometime or so long as the Legislature and the judiciary remains inertia.

5.0 SUMMARY

The Constitution provides that the ideals of democracy and social justice, security and welfare of the people shall be the primary purpose and responsibility of government. Social justice implies moral principles such as that all people are equal and have access to basic necessities of life, e.g. education, employment, shelter, food and medicare. Security ranges from ability to protect both the collective national interests and the legitimate interests of the individual citizens and groups from internal and external threats to the physical, social, psychological quality of life of a society and its members both in the domestic setting and within the larger regional and global system. The domestic socio-economic and political conditions of the state on which the tranquility and well being of its citizens primarily depend are important and critical pre-conditions of its security. Access to accommodation, food, education, medicine and employment therefore is a *sine qua non* to security. It is compelling in the circumstances to ask as Ipaye did: “Can it be acceptable that provisions or certain portion of the all important document are merely inserted (in the Constitution) with no serious intention of pursuing and implementing them?”

6.0 TUTOR-MARKED ASSIGNMENT

‘Right to life is hollow unless it includes the bare necessities of life’. Discuss exhaustively with reference to decided cases and relevant authorities.

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MODULE 5

Unit 1	Comparative Analysis of Human and Civil Liberties under Nigeria Law and International Instruments I
Unit 2	Comparative Analysis of Human and Civil Liberties under Nigeria Law and International Instruments II
Unit 3	Comparative Analysis of Human and Civil Liberties under Nigeria Law and International Instruments III

UNIT 1 **COMPARATIVE ANALYSIS OF HUMAN AND CIVIL LIBERTIES UNDER NIGERIA LAW AND INTERNATIONAL INSTRUMENTS I**

CONTENTS

1.0	Introduction
2.0	Objectives
3.0	Main Content
3.1	History of International Covenants and Conventions on Human Rights
3.2	African Charter on Human and Peoples' Rights
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Readings

1.0 **INTRODUCTION**

In the previous Unit, you learnt about what the concept of Human Rights and Fundamental Human rights is all about and the development of the subject matter over the ages in the field of International Law. This Unit introduces us into the field of study in international law and as well as in the analysis of the various applications of the Laws within the domestic arena.

2.0 **OBJECTIVES**

At the end of this Unit, you should be able to:

- identify the subject matter of Human Rights in International Law
- identify the various international instruments that made provisions for the enjoyment of Human Rights no matter, the colour, ethnicity, or religion
- differentiate between the laws that have been incorporated into the National Law and enforceable within domestic jurisdiction.

3.0 MAIN CONTENT

3.1 History of International Covenants and Conventions on Human Rights

The United Nation Charter Marks a significant step forward in the development of international law. In a sense, it is both a continuum and a new chapter in world history.

It does not pretend to usher in a golden age, but it opens up fresh vistas, and new horizons in international law.

One of the most notable initiatives taken by the organization in the period was the preparation and adoption of the Universal Declaration of Human Rights in 1948 proclaiming a number of fundamental rights and freedoms of mainly a political nature.

Civil and political rights constitute a component of human rights in general. Human rights are natural, divine, fundamental and inalienable right which attach to all human beings by virtue of their common humanity.

The prevailing “Universalist” doctrine of human rights, embraces the fact that all societies have a coherent notion of human rights. However because each society has its own particularities, divergences do exist in the articulation of human rights, and it is the duty of an increasing globalized world to find or create minimum standards below which no nation should fall. It is usual to trace the modern concept of human rights to the Greek period- Socrates, Plato and Aristotle being the significant protagonists of human rights in their age.

The contribution of the Catholic theoreticians notably St. Augustine in the 5th Century A.D. and Thomas Aquinas in the 13th century is also often mentioned.

The Renaissance period was another Mile Stone, featuring the writings of Thomas Hobbes Jeremy, Bentham, Cessare Beccaria, John Locke, Montesquieu, Rousseau, et al.

Then came the period of the major human rights documents – the Magna Cartha (1215) the English Bill of Rights (1689); the American Declaration of Independence (1788/89); and the French Declaration of the Rights of man and the citizen (1791). Every Modern Political State has subsequently included some form of guarantee of human rights in its constitution. Important as these human rights document were, they were only of domestic application and merely presaged a trend of

international documentation of human rights ideas. The Slavery Convention (1926), the United Nation Charter (1948), the Universal Declaration of Human Rights (UDHR) 1948, the International Conventions of Civil and Political Rights (ICCPR) and the International Covenant on Civil and Political rights, both of 1966. are examples of the major international human rights instruments. They were supplemented by various specialized treaties such as convention on Elimination of All forms of Discrimination Against Women (CEDAW) 1979; the Convention on the Rights of the Child (1986); the Torture Convention, (1984), the Genocide Convention (1948) and the Refugee Convention (1951).

Other sources of international human right law include the governing instruments of various specialized agencies of the United Nation like the International Labour Organization (ILO); United Nations Educational Scientific and Cultural Organization (UNESCO) etc.

Human rights have become so pervasive in international Law that regional mechanisms have also been created for their enforcement. These include the European Convention on Human Rights (1969), the African Charter on Human and Peoples Right (1981), the Arab Charter on Human Rights (in draft).

SELF ASSESSMENT EXERCISE

What do you consider to be the subject matter of International Law?

The Concept of Civil and Political Rights

In the hierarchy of human rights, civil and political rights have taken primacy being usually referred to as the “first generation rights”. Social, Economic and cultural Rights constitute the second, the Right to development, the third. The Right to a Sustainable Environment and the Right to Democracy and Good Governance are being touted as the fourth and fifth generation rights respectively.

The dichotomization of human rights in the post 1945 era, can be traced to the ideological warfare between the East and the West. The Universal Declaration of Human Rights of 1948 (UDHR) contains provisions for both civil and political rights and economic and social rights, but the western European countries in the United Nation lobbied for a separation:

- purely “legal” rights which are enforceable, and

- “programme” or manifesto rights (i.e. economic and social rights), which were considered unenforceable, depending on the relative capability of government to support its realization.

3.2 African Charter on Human and Peoples’ Rights

Many African Countries, presumably on grounds of financial incapacity, relegate economic and social rights to the level of “fundamental objective of State” separate from civil and political rights, which are regarded as core rights. The future of human rights jurisprudence is to increasingly forge a unity of these rights, one inseparable from the other.

Happily, this trend is championed by the African Charter on Human and Peoples’ Right, which has departed from the norm by uniting civil and political rights, with the social economic and cultural rights in its provision.

4.0 CONCLUSION

In this Unit, we have attempted to examine the provisions in many international instruments bordering on human rights. The relationship between socio-economic rights and civil and political rights was also examined and explained.

5.0 SUMMARY

As can be seen from the above outline, no satisfactory explanation of the different categories of rights in different countries without looking at the legal framework on individual countries. All the Rights whether fundamental or not have largely derived their existence from the legal and constitutional framework of the system.

6.0 TUTOR-MARKED ASSIGNMENT

Explain the importance of the African Charter of Human and Peoples’ Rights on the strength of the provisions of the socio-economic rights and the Civil and Political Rights.

7.0 REFERENCES/FURTHER READINGS

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UNIT 2 COMPARATIVE ANALYSIS OF HUMAN AND CIVIL LIBERTIES UNDER NIGERIA LAW AND INTERNATIONAL INSTRUMENTS II

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 The Right to Life
 - 3.2 The Right to Human Dignity
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

In the previous Units, you learnt about what international Law, and International instrument is all about and the development in the field of international Human Rights. This Unit introduces us to the comparative analysis of the content of civil and political rights, using the provisions of the African charter on Human and Peoples' Right as the basis of our analysis.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- explain the content of civil and political rights in various international legal instrument and
- explain their applications or enforceability within the domestic jurisdiction and regional jurisdiction.

3.0 MAIN CONTENT

The Content of civil and political rights has its individual and group application. Apart from rights to life, dignity, fair trial, conscience and religion, press, association/assembly, movement, privacy and property, which are common to individuals and groups, "People" (to use the language of the African Charter) enjoy the additional civil and political rights of self determination, asylum and the free disposal of their natural resources.

Our analysis shall be under approximate sub-segments roughly connecting related or symbiotic themes. Also, because individual rights

often divided into the rights of groups and peoples, the discussion does not rigidly separate both types of beneficiaries of right.

3.1 The Right to Life

The right to life finds expression in all major human rights instrument including the Universal Declaration of Human Rights (UDHR), the international Covenant on Civil and Political Rights (ICCPR), the European and American Conventions and the African Charter on Human and Peoples' Rights. The right to life features prominently in the constitutions of all African countries. Typically, "every person's right to life is guaranteed but made subject to some factors, particularly the criminal Law on death penalty.

One worrying aspect of the right to life in many African countries is the power given to law enforcement agents to kill in the process of suppressing a riot or insurrection. This power provides a veritable loophole for police abuse of the use of lethal weapons. There is a clear conflict between the United Nations standard on the use of lethal weapons and the domestic standard of many African Countries, including Nigeria. The UN standards are to be preferred and enforced, possibly more effectively by a fast emerging Africa Court of Human Rights.

Finally, on the right to life in the African socio-economic context, can the right to life be said to exist outside the means for its sustenance? Is the quality of life itself not being daily compromised by poor economy, endemic diseases violated environment, lack of security of life and property.

3.2 The Right to Human Dignity

The right to human dignity continues to be an emotive issue for Africans, given the triple scourges of slavery, colonialism and neo-colonialism. Hence, under many of its Constitutions, the right to human dignity is expressed in terms of "freedom from slavery, and forced or compulsory Labour".

The Internal contradictions within the Criminal Justice System of the various African Countries have their own impact on human dignity, particularly people under arrest, incarceration over one alleged crime or the other. The endemic congestion in the prison systems all over Africa has caused men and women to live in abysmal conditions that do not conduce to human dignity. Prisons conditions have continued to attract local and international intervention.

A recurrent fact is that, promotion and sustenance of human dignity goes beyond mere legislation. What are the existing socio-economic factors that compromised the human dignity for Africans? It is one thing to outlaw slavery and servitude, for instance. But the parlous state of African economies has sentenced large portions of its citizens to involuntary “second slavery” and servitude. This is often the case of young Africans who flee to western countries in droves at grave risk to life and limbs across the hot sands of Sahara, over the cold and deep seas of the world, if they manage to overcome the odds of travel and land at their imagined Eldorado. The reality of their illegal status sentences them to menial and demeaning labour and existence. The African Charter on Human and Peoples Rights appears to have tackled the matter with the interconnectivity that is necessary. It guarantees the right to asylum and strengthens this in article 12(54) by prohibiting “mass expulsion of aliens”. No such sympathy exists for alien (or “illegal immigrants) under the European Convention on Human Rights nor the International Covenant on Civil and Political Rights (ICCPR).

The other important component of human dignity is the freedom from torture, inhuman and degrading punishment. However, African law enforcement agencies are steeped in the oppressive mentality of the colonial imposed force. Many still behave like a law unto themselves, routinely deploying torture in its physical and mental dimensions on genuine suspects and the innocent alike.

SELF ASSESSMENT EXERCISE

How does African Socio-Economic condition, violate the Right to Human Dignity?

Still on human dignity, corporal punishment compromises human dignity when applied in relation to adults in pursuance of a criminal sanction. Such corporal punishment has been outlawed by the supreme Court of Zimbabwe in *NCUBE & ORS V The State (1988) LRC (court) 442* as being violative of the Zimbabwean Constitution that prohibits torture and Inhuman and degrading punishment. In Nigeria, flogging is sanctioned by the Criminal and Penal Codes.

In similar vein, amputation of limbs and stoning to death applies in Nigeria, Sudan and other Islamic and pseudo – Islamic states.

4.0 CONCLUSION

In this Unit, we have attempted a comparative analysis of the Civil and Political Rights. We also examined the different provisions and the level of compliance by various countries in Africa. We looked at the basic tenets of the provisions for human rights and the level of attainment of the enjoyment of all the basic rights.

5.0 SUMMARY

If you have comprehended this Unit, you should now be able to explain what economic and political rights are, understand the jurisprudence of these right and the differences between theory and practical application of the concept. i.e. enforcing the various provisions of civil and political rights. You should also be able to understand the limitations to the implementation of civil and political rights in Africa.

6.0 TUTOR-MARKED ASSIGNMENT

1. Briefly state and explain the components of Civil and Political Rights.
2. What are the limitations to the implementations of the provision of the civil and political rights as contains in the African Charter in African Countries.
3. State 3 of the Nigeria Laws that encourage the violation of the right to human dignity.

7.0 REFERENCES/FURTHER READINGS

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Individual Rights under the 1989 Constitution: Edited by M. A. Ajomo and Bolaji Owasanoye.

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UNIT 3 COMPARATIVE ANALYSIS OF HUMAN AND CIVIL LIBERTIES UNDER NIGERIA LAW AND INTERNATIONAL INSTRUMENTS III

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 The Rights to Liberty and Fair Trail
 - 3.2 The Rights to Equality and Freedom from Discrimination
 - 3.3 Right to Privacy in the African Charter
 - 3.4 The Enforcement of Civil and Political Rights
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

In the previous Unit we introduced you to the content of Civil and Political Rights and their interrelatedness.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- understand the basic concepts of international Human Rights Laws
- apply the concept of civil and political rights in analytical and critical writing.

3.0 MAIN CONTENT

3.1 The Right to Liberty and Fair Hearing

The African charter is in unity with other international human rights instruments in making copious provisions on liberty and fair hearing. Liberty is all about an accused person's right not to be incarcerated unduly. A suspect should be taken before a court in the shortest possible time to have his matter tried. The "twenty-four-hour rule" may be ambitious but it is a useful time-base from which to begin to negotiate for a person's freedom.

The key problem of the liberty provisions is that the courts which are enjoined to safeguard this freedom are themselves usually, wittingly or

unwittingly, accomplice in its denial. Despite persistent high judicial condemnation of the “Holden charge syndrome” the practice continues routinely and unabated. (the practice which by court with clearly no jurisdiction *ab initio* assumes jurisdiction merely for the purpose of remanding a suspect in prison custody). The usual consequences where the police succeed in remanding an accused via a holden charge then are that they put the case on the shelf awaiting pressure from concerned relatives before forwarding a request for legal advice to the office of the Director of Public Prosecutions. The military regimes that blighted many African governments for several decades have given importance and currency to the need for fair hearing rights – impartial courts, timely hearing, the right to legal representation, the rights of the criminal to know his crime, to be presumed innocent until convicted; to cross-examine his accusers; to appeal to a higher court for review, the right to be protected against retrospective law. Despite such copious constitutional provisions a manifest crisis of justice delivery exists in a system where the police is corrupt, the prosecutor is hardened and overburdened and the justice system is tardy, unresponsive and susceptible to negative manipulation.

Fair hearing does not exclusively translate into formal judicial hearing. The current promotion of Alternative Dispute Resolution (ADR) mechanisms to relieve the pressure on the courts is a welcome development.

This is the feature of fair hearing for Africa’s rural population. In the vein also, the customary and traditional modes of dispute resolution need to be revitalized.

Advocacy of ADR and traditional modes of conflict resolution is not a total rejection of the imposed judicial system. Rather they are to complement one another. To optimize their benefits, there should be a continuous training and retraining of police, judicial and prison officers as well as a regular and adequate funding of all criminal agencies with the collaboration with civil society groups. Legal aids, judicial, police and prison reform appear desirable.

3.2 The Rights to Equality/Freedom from Discrimination

The rights to equality and freedom from discrimination are co-extensive; they also dovetail into other rights particularly the rights to dignity. Virtually all international Bills of rights make provisions for equality and non-discriminations. Such discrimination may be based on race, ethnicity, colour, sex, language, religion, political, national or social origin, fortune, birth, or other status.

As for racial discrimination, the obvious structure for its sustenance seem to have collapsed, but the danger of reversal continues. Consider for example, the spate of decisions by an US Supreme Court reversing affirmative action. Consider also the traces of dangerous racist attitude and xenophobia occurring from time to time in Europe, Africa and the Middle East.

Ethnic chauvinism is a world-wide social virus. It has a particular debilitating impact on Africa, where certain colonial boundaries, largely drawn in Berlin in 1885, randomly divided African people and continued to cause friction, wars and internal conflict. The relevance of the African Charter as a framework of panacea exists in its unique provision asserting freedom from domination, the right to exist, the right to self – determination; the right to liberation and resource control, and the right to development, “Peoples’ rights, in this dimension are civil and political rights.

Perhaps the most critical component of equality in emergent human right, jurisprudence is “gender equality”. The search for equality of opportunity for woman had culminated in the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) in 1979. The Convention recognized existing inequalities and attempted to remedy them in various articles covering “political rights”. CEDAW enjoins the participation of women in national politics and their appointment to foreign and international positions.

Critical issues of religion and cultures have arisen when CEDAW asserts the rights of married women to acquire or change their nationalities and that of their children regardless of marriage ties.

African Cultures have now been widely influenced by Christian and Islamic religions and this may impact Articles 15 and 16 which assert the equality of women in marriage and family relations. This provision has a Euro-centric origin and borne out by the fact that the European Convention has a similar provision in its Article 12 and in Article 5 of its 7th additional protocol. The ICCPR also adopts a similar position. Not surprisingly, the African Charter apparently rejects such jurisprudence of women’s Rights as it does not make a similar stipulation– a position now reversed under the additional protocol to the African Charter.

3.3 Right to Privacy in the African Charter

A unique feature of civil and political rights under the African Charter is the exclusion of the right to privacy stipulated in many African Constitutions and other international instruments. The right relates to the guarantee of the inviolability of home, correspondence and telegraphic

communication. The right also precludes illegal search and seizure of property, and protects the right to personhood. "Personhood" is the concept that subsumes the right to abortion and sexual preferences among other right of individual self – determination. This interpretation of personhood is one of the reasons for African suspicious of privacy rights.

Another reason for its exclusion by the African Charter may be traced to unique human rights conception which emphasizes a communitarian society. Presumably, privacy is seen as promoting a contrary ethos of individualism.

3.4 The Enforcement of Civil and Political Rights

To the extent that civil and political rights are often enshrined in the Constitution of many African countries, domestic avenues exist for their enforcement or implementation to the extent also that the domestic protection of civil and political rights are also the focus of international legal intervention.

4.0 CONCLUSION

The Unit has carefully examined the major contents of the civil and political rights and did a comparative analysis with the provisions of the African Charter. References were often made to other international instrument apart from the African Charter.

5.0 SUMMARY

In this Unit we have examined the contents of civil and political rights and we learnt about the enforcement procedure in domestic courts, since most of the provisions of civil and political rights are provision in the Constitutions of most African countries. We also noted other mechanisms of implementation apart from resorting to the domestic courts.

6.0 TUTOR-MARKED ASSIGNMENT

1. Explain how provision of the Civil and political rights as enshrine in the African Charter and UNDHR of 1948 can be enforced in Nigeria.
2. State and Discuss briefly 2 major content of the civil and political rights.

7.0 REFERENCES/FURTHER READINGS

Essay on Human Right Laws in Nigeria Akin Ibidapo Obe.

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