

**AN APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS ON RIGHTS OF A
DETAINEE AND THE DUTIES OF THE POLICE UNDER THE POLICE ACT 2020**

AMADI, Dike Vincent, PhD
Department of Law, School of Legal Studies,
Captain Elechi Amadi Polytechnic, Port Harcourt, Rivers State, Nigeria
Email: dike.amadi@portharcourtpoly.edu.ng

Abstract

This article appraised the legal and institutional frameworks on rights of a detainee and the duties of the police under the Police Act 2020 (PA). The protection and promotion of human rights is at the very core of policing in any country hence, the position is the same in Nigeria. The maintenance of peace and order which are generally seen as the core functions of the police in Nigeria as provided under the provision of section 4 of the PA and the enforcement of laws are first and primarily about the protection of the rights of citizens, and therefore the role of police personnel in respecting and protecting the rights of every individual is fundamental. It is established in this article that protection and promotion of human rights is at the very core of policing. The enforcement of laws and maintenance of peace and order in the society are about protecting the rights of citizens, and therefore the role of police personnel in protecting and respecting the rights of every individual is fundamental. Detainees are entitled to the enjoyment of these rights and the police are to promote and protect these rights more so as the present PA 2020 supports this position under the provision of section 5.

KEYWORDS: Rights, Human Rights, Detainees, Police

Introduction

The protection and promotion of human rights is at the very core of policing in any country hence, cannot be an exception. The maintenance of peace and order which are generally seen as the core functions of the police in Nigeria¹ and the enforcement of laws are first and primarily about the protection of the rights of citizens, and therefore the role of police personnel in respecting and protecting the rights of every individual is fundamental.² This is also the case where a citizen of Nigeria is in detention by the police. There are some basic institutions responsible for the protection of human rights of detainees with respect to the human rights of the detainees in Nigeria. These includes; the Nigeria Police, the judiciary, National Human Rights Commission, Non-governmental Organisations, United Nations Committee on Human Rights, African Court on Human and Peoples' Rights, and African Commission on Human and Peoples' Rights.

Conceptual Framework

Human Rights

Human rights are seen as those rights inherent to every human being. Human rights define the relationships between individuals as well as power structures, particularly the State.³ They are those rights which every human being must have against the State or any other public authority in the State by virtue of his being a member of human family, regardless of any other consideration.⁴

Rights

¹ Police Act 2020, s 4.

² N J Madubuike-Ekwe and O K Obayemi, 'Assessment of the Role of the Nigerian Police Force in the Promotion and Protection of Human Rights in Nigeria' [2019] (23) (1) *Annual Survey of International & Comparative Law*;21.

³ B P Namene, 'Counter-Terrorism and Observance of International Humanitarian Law Principles and Human Rights in Nigeria and the United States of America' [2024] (Special Edition) *Journal of Private and Property Law*;122.

⁴ C O Abakare, 'Human Right: Nature, Concept and Development' [2021] (1) (1) *Pinisi Journal of Art, Humanity and Social Studies*;21.

There are several meanings of rights, and some of the meanings are expressed.⁵ Amongst such definition of rights is that rights are viewed as a moral or legitimate acknowledgment of decisions or interests to which join specific weight. Different other decisions or options confront an individual, and a person is in a position to choose a couple of them.⁶ This opportunity is the critical thought of rights. The individual is provided with the full opportunity to choose the necessary number of choices. Therefore, the arrangement of rights indicates "a type of circulation of opportunity".⁷

Generally, right is a reasonable claim to freedom in the exercise of certain activities. For instance, when a person asserts his right to property, what he or she means is that in using it as he or she will no one can properly or correctly interfere with him or her. There is the insinuation that there ought to be a kind of hedge about the individual or about some fields of his or her activity, keeping others out as well as allowing him or her certain freedoms in the conduct of his or her life.⁸

Therefore, right appears to be on a different idea from that of the actual forces of life, and to imply or mean something of the nature of an ideal. A right is not an actual power allowing someone to do or to prevent interference, but it is a claim to exemption from such manner of interference or to help in the exercise of such power.⁹ Right depends upon duties as a person's right implies his or her duty to recognise it. A person may not actually respect it both in fact and in action, he or she may ride over it rough shod, but the very meaning of a person having a right is that it is a privilege he or she ought to respect and that he or she fails in his or her duty if he or she do not. Therefore, right is only significant in a world of duties.¹⁰

Right is often analysed as key to any reasonable progress, for rights are also perceived as set up mainstays of culture and society. All through the whole existence of each privilege with its turn of events find the historical background of social struggles.¹¹ Accordingly, "rights structure the type of governments, the substance of laws, and the state of profound quality as it is as of now saw".¹² Right connotes a force or an advantage given to an individual demandable from somebody else. Thus, it might likewise allude to title or interest in a property or an item.¹³ A right includes two subjects, to wit; a functioning subject, which alludes to the individual that is qualified for the rights as well as its implementation, and an aloof subject, which is the individual that is obliged to regard or endure the authorisation of such right.¹⁴

Rights are those essential states of public activity without which no person can for the most part understand his or her best self.¹⁵ These are the primary conditions for the strength of both the

⁵ R A Williams, 'Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World' [1990] *Duke LJ*;660.

⁶ J Slaughter, A Question of Narration: The Voice in International Human Rights Law' [1997] [19] *Human Rights Quarterly*;406.

⁷ P H Russell, 'The Political Purposes of the Canadian Charter of Rights and Freedoms' [1983] (61) *Canadian Bar Review*;30.

⁸ C Girard, 'On Norman Wilde's The Meaning of Rights' [2015] 125 (2) *Ethics: An International Journal of Moral, Political, and Legal Philosophy*;543 <<https://philpapers.org/archive/GIRONW.pdf>> accessed 13 January 2025.

⁹ *Ibid*.

¹⁰ *Ibid*, 545.

¹¹ F Viljoen, *International Human Rights Law in Africa* (Oxford University Press 2012) 72.

¹² S S Ali, *Gender and Human Rights in Islam and International law: Equal before Allah, Unequal before Man?* (1st edn, Brill Academic Publishers 2000) 38.

¹³ M Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford University Press 2011) 51.

¹⁴ M O F J Shah and Others, 'The Idea of Rights: A Global Comparative Approach' [2021] 2 (5) *European Journal of Research Development and Sustainability (EJRDS)*;17 <<https://www.scholarzest.com>> accessed 13 January 2025.

¹⁵ T Risse-Kappen and Others (eds), *The Power of Human Rights: International Norms and Domestic Change* (No. 66) (Cambridge University Press 1999) 71.

individual as well as his general public. Individual can build up their characters and also contributes their best administrations to society when they get and appreciate rights.¹⁶ Simply put, rights are the essential cases of individuals which every enlightened society perceives as basic cases for their turn of events, and which are consequently authorised by the State. The privileges of the people have for to a certain extent been a subject of political proposition.¹⁷

Detention

Detention is to the act of holding any person in custody; the confinement of a person to a particular place or compulsory delay.¹⁸ Detention comes in three basic forms and stages, to wit; investigative detention, pretrial detention and preventive detention.¹⁹ Investigative detention involves the holding of a particular suspect without a formal arrest usually during the investigation of the participation of the detained suspect in a crime. Such detention is only proper where there is a probable cause.²⁰ On the other hand, pretrial detention has to do with the holding of a person before trial, especially on criminal charges because the established bail could not be posted or as a result of the fact that the release was denied by the authority involved.²¹ Furthermore, preventive detention relates to the confinement that is imposed on a defendant in respect to crime who has threatened to escape, poses a risk of possible harm, or has while awaiting trial violated the law, or on a person that is mentally ill who may cause harm to others.²²

Appraisal of the Legal Framework on Rights of a Detainee and the Duties of the Police under the Police Act 2020

Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) (CFRN) being the highest law of the land,²³ directs the Government to ensure that the security and welfare of the people Nigeria remains its primary purpose.²⁴ This forms part of the non-justiciable provisions of the CFRN. Human rights are made up of the economic, social, cultural rights only recognised under Chapter II of the CFRN, and civil and political rights both recognised and guaranteed under Chapter IV of the same Constitution. The rights as contained under Chapter II tagged "Fundamental Objectives and Directive Principles of State Policy" only serves as a directive to the Government of Nigeria hence, not justiciable, the provisions under Chapter IV tagged "Fundamental Rights" are justiciable with special procedure for their realisation and enforcement.²⁵

One of the rights guaranteed by the CFRN 1999 that is usually abused by the police in Nigeria is the right to human dignity. This right is guaranteed in the CFRN 1999 when it provides that no one is to be subjected to inhumane or degrading treatment or torture, held in slavery or made to perform forced or compulsory labour.²⁶

¹⁶ R P Claude and B H Weston (eds), *Human Rights in the World Community: Issues and Action* (University of Pennsylvania Press 1992) 21.

¹⁷ J Wronka, *Human Rights and Social Policy in the 21st Century: A History of the Idea of Human Rights and Comparison of the United Nations Universal Declaration of Human Rights with United States Federal and State Constitutions* (University Press of America 1998) 85.

¹⁸ B A Garner (ed), *Black's Law Dictionary* (8th edn, St. Paul Minn: West Group Pub. 2004) 480.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ CFRN, s 1(3); *Ogheneovo v Governor of Delta State* (2023) 2 NWLR (pt 1868) 286.

²⁴ CFRN 1999 (as amended), s 14(2)(b).

²⁵ *Ibid*, s 46; Fundamental Rights (Enforcement Procedure) Rules, 2009.

²⁶ (n24), s 34(1).

Persons in detention with the police are usually tortured. This torture is also experienced at the point of arrest. This is a violation of the right of the detainees. Commenting on the issue of torture, Tobi JSC described it as "physical brutalisation of the human person or mental torture in the sense of mental agony or mental worry, a situation where the person's mental orientation is very much disturbed that he cannot think and do things rationally..."²⁷ Accordingly, the learned jurist concluded by saying that "an inhuman treatment is a barbarous, uncouth, and cruel treatment; a treatment which has no human feeling on the part of the person inflicting the barbarity or cruelty."²⁸ The court held in *Mogaji v Board of Customs and Excise*,²⁹ per Adefarasin that it amounted to a serious violation of the rights of freedom from inhuman or degrading treatment for a raid to be organised with teargas, horsewhips, guns, and to strike or injure custodians of suspected contrabands. The court had equally held that pushing, beating or submerging the head of the applicant in a pool of water amounted to inhuman and degrading treatment.³⁰

The CFRN also guarantees the right to personal liberty to be enjoyed by everyone except in accordance with the procedures spell out by the law.³¹ This right entails the freedom to act as one pleases so long as such action is within the limits of the law. Denning has described personal liberty as "the freedom of every law-abiding citizen to think what he will, to say what he will on his lawful occasions without let or hindrance from any other person."³² Apart from the exceptional circumstances provided under the CFRN 1999,³³ the liberty of a person cannot be deprived. It is worthy of note that in spite of the constitutional provisions these rights are usually abused by police in Nigeria.

Right to silence is the legal protection the law gives to people undergoing interrogation by law enforcement agents just like the case of the police in Nigeria. Accordingly, the CFRN guarantees the right of a person arrested or detained to avoid answering question or remain silent until consultation with a lawyer of his choice.³⁴ The right to silence does not indicate any single right, but rather refers to a different group of immunities, which differ in origin, nature, incidence and importance. Thus, in the case of *R v Director of Serious Fraud Office, ex parte Smith (1992)*,³⁵ lord Mustill identified six rights to silence:

- i. A general immunity, possessed by all persons and bodies, from being compelled on pain of punishment to answer questions posed by others or bodies.
- ii. A general immunity from being compelled on pain of punishment to answer questions the answer to which may incriminate them.
- iii. A specific immunity, possessed by all persons under suspicion of criminal responsibility whilst being interviewed by police officers or others in similar positions of authority, from being compelled on pain of punishment to answer questions of any kind.
- iv. A specific immunity, possessed by accused persons undergoing trial, from being compelled to give evidence, and from being compelled to answer questions put to them in the dock.

²⁷ *Uzoukwu v Ezeonu* (1991) 6 NWLR (pt 200) 708.

²⁸ *Ibid.*

²⁹ (1982) NCLR 552 at 561.

³⁰ *Alaboh v Boyles and Anor* (1984) 3 NCLR 830.

³¹ (n24), s 35 (1).

³² A Denning, *Freedom Under The Law* (Stevens and Sons Ltd. 1949) 5.

³³ (n24), s 35 (1) (a) – (f).

³⁴ *Ibid*, s 35 (2).

³⁵ (1993) AC 1 at 30.

- v. A specific immunity, possessed by persons who have been charged with a criminal offence, from having questions material to the offence addressed to them by police officers or persons in a similar position of authority.
- vi. A specific immunity, possessed by accused persons undergoing trial, from having adverse comment made on any failure (a) to answer questions before the trial, or (b) to give evidence at the trial.

Section 7 of the Canadian Charter of Rights and Freedoms 1982 guarantees the right to silence in terms similar to section 35 (2) of the CFRN 1999. In *R v Hebert*,³⁶ the Supreme Court of Canada explained that this section of the law protects persons accused of criminal offence from divulging any information until they consult with a lawyer of their choice who would advise them on their rights. In that case, Hebert was arrested for armed robbery. He was put in a cell with an undercover agent who pretended to be another arrested suspect. The undercover agent subsequently elicited several incriminating statements from him. McLachin J. held that once an accused person is under police custody, his right to silence could not be undermined through acts of police trickery. Moreover, in *R v Turcotte*³⁷ the same court held that to allow evidence obtained in breach of this right would render the right hollow of meaning.

A suspected offender has right to bail which must be reasonable. Bail is the release of a person in custody on entering into a bond to ensure his or her appearance to face trial or be available for investigation. Three types of bail exist in Nigeria criminal justice system. This classification reflects the stages in the criminal justice system at which issues of bail may arise. The first is commonly called police bail. It arises when a law enforcement officer, arrests and detains suspect pending the conclusion of investigation and a formal arraignment in court. The second is court bail. It arises after the arraignment of the suspect charge with an offence before a court and after taking his plea. The third type of bail is known as court bail pending appeal. Courts grant such bail to convicts pending the determination of their appeals, but subject to the existence of special circumstances. Except in cases involving capital offences,³⁸ the first and second types of bail are granted as of right subject only to judicial discretion in the case of court bails. This is because of the constitutional presumption of innocence in favour of suspects and defendants as well as the constitutional right to trial within a reasonable time.³⁹

The right to reasonable bail is available to all subjects including aliens. Once persons are charged to court, the criminal justice system accords them the same standard of protection without discrimination on grounds of race, sex, nationality, religion or political affiliation and so on.

Anyone who is arrested or detained is to be informed of the reasons for such arrest or detention. Such information must be conveyed in writing within twenty-four (24) hours of the arrest and in a language that the suspect understands.⁴⁰ The section requires the person making the arrest to give the suspect reasons for the arrest. To be useful, however, the information must be sufficient to enable the suspect decide whether to challenge the legality of the arrest or not.

The CFRN guarantees the right of everyone to trial within time.⁴¹ Where anyone is arrested or detained in order to bring him before a court in execution of an order of the court or on reasonable suspicion of the commission of a crime or to prevent him from committing a criminal offence, such person must be arraigned in court within reasonable time. If he is in custody

³⁶ (1990) 2 SCR 151.

³⁷ (2005) 2 SCR 519.

³⁸ Administration of Criminal Justice Act 2015, s 161; O Doherty, *Criminal Procedure in Nigeria Law and Practice* (Blackstone Press Ltd. 1990) 25; O Okpara, *Human Rights Law and Practice in Nigeria* (Enugu: Chenglo Limited 2005) 156.

³⁹ *Eyu v State* (1988) 2 NWLR (pt 78) 602.

⁴⁰ (n24), s 35(3).

⁴¹ *Ibid*, s 35(4).

awaiting trial, he must be released on bail if he is not tried within two months.⁴² Section 35(5) defines reasonable time as a period of one day in the case of arrest or detention in any place where there is a court of competent jurisdiction within forty kilometers radius. In any other case "reasonable time" means two days or such longer period as the court may consider to be reasonable in the circumstances of the case. Subsection (7) of the same section 35 of the CFRN states that subsection (4) does not apply to cases where the arrest or detention is for a capital offence. The police have indefinitely incarcerated suspects on the strength of this provision.

An important consequence of the above analysis is that "holding charges" have no basis in law because the word "court" means a court of competent jurisdiction having the power to decide not only the substantive charge but also the legality of the process and the issue of personal liberty, for instance, applications for bail.⁴³ In Nigeria, the Police use a holding charge to dump suspect in courts that they know lack the necessary competence. Obviously, the holding charge has no place in our criminal justice system and the courts have condemned it in clear terms.⁴⁴

Right to fair hearing consists of a plethora of rights and ancillary principles regarding the determination of the civil rights and obligations of persons by courts or other tribunals established by law. In criminal proceedings, the rights inure not only for the benefit of the defendant but also for the benefit of the State, the complainant and society,⁴⁵ thus giving human rights a communitarian texture. It is a right of respected antiquity. Fair hearing is thus an important element of every trial, civil or criminal and failure to respect this right is very fatal to a proceeding, it can nullify the proceedings no matter how well-conducted. It is not an expression of mere rhetoric but a fundamental right of the individual guaranteed in the Constitution.⁴⁶ The CFRN 1999 guarantees fair hearing in the following terms:

The CFRN does not define the concept of "right to fair hearing" but merely enumerates the plethora of constituent rights and principles. They include the right to public hearing, right to be presumed innocent, right to prompt information concerning the nature of the offence and the right to adequate time for preparation of one's case. Other rights include the right to facilities for the preparation of one's defence, right to be heard in person or by legal practitioners of own choice and the right to interpreter. The principles also include the principles of legality, previous conviction or acquittal, and double jeopardy.⁴⁷ The Supreme Court held in the case of *Ariori v Etemo*,⁴⁸ that fair hearing means a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties in the case.

In the case of a criminal trial, fair hearing further requires that the defendant knows the allegations against him, the evidence in support of such allegations and any statements made by anybody concerning such allegations. The court or tribunal must not hear evidence behind the defendant, and the latter must be given opportunity to correct or contradict any evidence against him.⁴⁹ The police plays important in promoting the right to fair hearing. to this end, it is argued that the police must always ensure that the defendant informed of the reason for his arrest and the charge preferred against him, and provided with every information necessary for the preparation of his trial/defence.

The presumption of innocence is an old concept and very specific to the criminal justice

⁴² *Ibid.*

⁴³ *Okike v Legal Practitioners Disciplinary Committee* (2005) All FWLR (pt 274) 337.

⁴⁴ *Anaekwe v C.O.P* (1996) 3 NWLR (pt 436) 320; *Onagoruwa v State* (1993) 7 NWLR (pt 303) 49; *Jimoh v C.O.P* (2005) All FWLR (pt 243) 648.

⁴⁵ *Osayomi and Ors v State* (2006) All FWLR (pt 342) 1577.

⁴⁶ *Gbadamosi v Daira* (2007) All FWLR (pt 357) 812; (n4), s 36(1).

⁴⁷ A Olujinmi, 'Fair Hearing in Nigeria: The Current State of the Law' in J A Yakubu (ed), *Administration of Justice in Nigeria* (Lagos: Malthouse Press Ltd. 2000) 1.

⁴⁸ (1983) 1 SCNLR 13 at 24.

⁴⁹ *Garba v University of Maiduguri* (1986) 1 NWLR (pt 18) 550.

administration. The CFRN guarantees this right.⁵⁰ This constitutional provision suggests that, from the time of arrest to their conviction, the authorities must maintain the presumption that criminal suspects and defendants are innocent until they are proven guilty beyond reasonable doubt. This presumption puts the burden of proof on the prosecution, and the standard of proof is beyond reasonable doubt.⁵¹ The attitude of the law here is informed by the sacred need to protect the liberty of the subject and the policy that it is better that ten guilty men escape punishment than to punish one innocent man.⁵²

Police Act 2020

The Police Act 2020 (PA) established the Nigeria Police Force (NPF).⁵³ The NPF is organised in accordance with relevant provisions of the PA and it carries out the duties conferred on it by the any other law.⁵⁴ The PA and the NPF are subject to the provision of the CFRN 1999 (as amended).⁵⁵ One of the general objectives of the PA is to provide for a more efficient and effective police service that is based on the principles of protection of human rights and fundamental freedoms.⁵⁶ Generally, the NPF is responsible for the prevention and detection of crimes, and the protection of the rights as well as freedom of every individual in the country as enshrined in the CFRN, African Charter on Human and Peoples' Rights and any other law in Nigeria.⁵⁷ The NPF is also responsible for the maintenance of public safety, law and order.⁵⁸

The PA saddled the NPF with the responsibility of ensuring the protection and promotion of the human rights of everyone in its custody as guaranteed by the CFRN.⁵⁹ For effective observance of this provision, it is provided further that the NPF should always collaborate with and maintain working relationships with any agency of government or private initiatives considered relevant in establishing mechanisms or schemes providing legal services to detainees, accused person or accused persons in its custody in need of proper legal services by ensuring that free access to justice as spelt out under relevant provision of Chapter IV of the CFRN.⁶⁰

In addition to the above, the NPF is also saddled with responsibility of ensuring the promotion and protection of the fundamental rights of everyone as guaranteed under the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act ACHPRREA and other relevant international legal instruments on the protection of human rights to which Nigeria is one of the signatory.⁶¹ The increase in police brutality and shedding of innocent blood of detainees is of great concern in Nigeria. There are many instances of extra-judicial killings by the police that people begin to wonder about the kind of training given to those who are saddled with the responsibility of lives and property.⁶²

Administration of Criminal Justice Act 2015 (as amended)

⁵⁰ (n24), s 36 (5).

⁵¹ Evidence Act 2011, s 135.

⁵² *Ugheneyovwe v State* (2005) All FWLR (pt 245) 1006.

⁵³ PA 2020, s 3(1).

⁵⁴ *Ibid*, s 3(1)(a-b).

⁵⁵ *Ibid*, s 3(1).

⁵⁶ *Ibid*, s 1(b).

⁵⁷ *Ibid*, s 4(a).

⁵⁸ *Ibid*, s 4(b).

⁵⁹ *Ibid*, s 5(1).

⁶⁰ *Ibid*, s 5(2).

⁶¹ *Ibid*, s 5(3).

⁶² B C Okoro, *The Police, Law and Your Rights* (Ikeja: Princeton Publishing Co. 2013) 131.

The Administration of Criminal Justice Act 2015 (ACJA) ensures the protection of the rights of the suspect, defendant and even the victim.⁶³ The law enforcement agencies, the courts and every other agency of criminal justice administration are under obligation to ensure the realisation of this purpose of the ACJA.⁶⁴

The ACJA provides for a police officer in charge of a police station where a suspect is detained to inform the latter of his right to remain silent or to avoid answering questions directed at him until a legal practitioner of his choice or any other person is consulted. It recognises the right of a suspect to make, endorse or write any statement or answer question after his arrest upon consultation with a legal practitioner of his own choice.⁶⁵ Ironically, the reverse is the case in Nigeria. Officers of the Nigeria Police indirectly deny suspects the right of consulting a legal practitioner of their choice.

The ACJA provides for the respect of human dignity and directs every police officer to accord humane treatment to every suspect and also frowns at the subjection of a suspect to any form of cruel, torture, inhuman or degrading treatment.⁶⁶ In fact, most police officers see the presence of a legal practitioner at the police station as a threat, disregard the presence of legal practitioner or even annoy the legal practitioner in order to make him or her leave so that the suspect can be treated the way that pleases the police officer. Unfortunately, police officers adopt the style of maltreating suspects accused of committing offence as a method of obtaining confessional statement from them. The environment of the police cell is not neat or properly taken care of.

National Human Right Commission Act, 2010

The National Human Right Commission Act (NHRCA) was enacted for the establishment of the National Human Right Commission saddled with the protection of the freedoms, dignity and human rights of all.⁶⁷ Generally, it was enacted in 1995 and formed part of the laws codified in 2004 hence, in Cap N46, Laws of the Federation of Nigeria, 2004. The NHRCA was amended in 2010. One of the reasons that led to the enactment of the NHRCA was the fact that the United Nations Charter (UN) and many provisions of the CFRN 1999 (as amended) are based on the principles of the equality as well as dignity of every human being and also seek the respect for and promotion of human rights and the fundamental freedoms for all among other fundamental objectives, without distinction as a result of difference in race, sex, language or religion.⁶⁸

The NHRCA was enacted as a way of facilitating the implementation of several treaty obligations of Nigeria, including, the Universal Declaration on Human Rights 1948 (UDHR), the International Convention on the Elimination of all forms of Racial Discrimination 1965 (ICERD), and the African Charter on Human and Peoples' Rights 1981 (ACHPR);⁶⁹ and as a way of demonstrating the willingness of the Federal Government of Nigeria to creating an enabling environment for the extra-judicial promotion, recognition as well as enforcement of all the rights that are recognised and protected in the CFRN, including those recognised and protected under other laws in the country;⁷⁰ and in an endeavour to provide a medium for public dialogue and enlightenment on human rights and to limit confrontation and controversy over allegations bordering on the violation of human rights by public agencies and officers and as a reaffirmation of the sacrosanct and inviolable nature of human being as well as other fundamental rights.⁷¹ The National Human Rights Commission (NHRC) was

⁶³ ACJA 2015, s 1(1).

⁶⁴ *Ibid*, s 1 (2).

⁶⁵ *Ibid*, s 6 (2) (a) and (b).

⁶⁶ *Ibid*, s 7 (1).

⁶⁷ National Human Rights Commission Act 2010, pream., para 1.

⁶⁸ *Ibid*, para 2.

⁶⁹ *Ibid*, para 3.

⁷⁰ (n67), para 4.

⁷¹ *Ibid*, para 5.

established,⁷² as a special body saddled with the responsibility of ensuring the implementation of all provisions of the NHRCA.

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 2004

This is a major human rights instrument in Africa adopted at Banjul, the Gambia on 27/6/1981. The African Charter on Human and Peoples' Rights (ACHPR) was domesticated as part of Nigeria's body of laws on the 17th March 1983 hence, it has the force of law in the country. It is now African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 2004 (ACHPRREA). One of the major reasons for the adoption of the instrument is the recognition of the right to life of everyone. This right is to be respected by everyone, authority and institution,⁷³ this includes the law enforcement agents in the administration of criminal justice of States Parties. It also recognises the integrity of a person and prohibits the taking away of this right arbitrarily.⁷⁴

The ACHPRREA recognises the right of everyone to the respect of the dignity of their person. The Charter sees this as an inherent one hence, no one is to be denied its enjoyment. It describes torture, cruel, inhuman and degrading treatment and punishment as forms of exploitation which ought to be prohibited.⁷⁵ As a way of strengthening the duties of the police, the ACHPRREA recognises the need for a person under investigation of criminal trial to be arraigned in court of competent jurisdiction for trial within a reasonable time,⁷⁶ allowed to consult a legal practitioner of his choice for his defence,⁷⁷ and not to be found guilty before trial.⁷⁸

The ACHPRREA is part of Nigerian *corpus juris* having been domesticated and made part of her law.⁷⁹ It is enforceable in Nigerian courts.⁸⁰ It is a statute with international flavour which takes pre-eminence over every other statute in respect of the various rights provided in it and only inferior to the provisions of the Constitution of Nigeria.⁸¹

Appraisal of the Institutional Framework on Rights of a Detainee and the Duties of the Police under the Police Act 2020

The Nigeria Police

The NPF is saddled with the responsibility of preventing and detecting crimes, as well as the protection of the freedoms and rights of everyone in Nigeria as guaranteed in the CFRN, ACHPR and any other relevant law.⁸² The NPF maintains law, order and public safety in Nigeria, and protects the lives and property of everyone in the country.⁸³ It has the responsibility of collaborating with other relevant agencies of government in Nigeria in the discharge of its responsibilities.⁸⁴

The Judiciary

The courts are one of the primary institutional frameworks for ensuring the respect and protection of human rights by law police in the Nigeria. The judicial powers of both the Nigerian Federation

⁷²*Ibid*, s 1(1).

⁷³ ACHPRREA 2004, art 4.

⁷⁴ *Ibid*.

⁷⁵ *Ibid*, art 5.

⁷⁶ *Ibid*, art 7 (1) (d).

⁷⁷ *Ibid*, art 7 (1) (c).

⁷⁸ *Ibid*, art 7 (1) (b).

⁷⁹ *Ogugu v State* (1994) 9 NWLR (pt 366) 1.

⁸⁰ *African Reinsurance Corporation v Fantaye* (1986)1 NWLR (pt 14) 113.

⁸¹ *Fawehinmi v Abacha* (2000) 4 SCNJ 401; (2000) 2 SCNQR 489.

⁸² (n53), s 4(a).

⁸³ (n53), s 4(b); *I.C.P & Ors v Umolo & Anor* (2022) LPELR 57715 (CA).

⁸⁴ (n53), s 4(f).

and the federating States are vested in the courts. The CFRN 1999 specifically establish the courts of records⁸⁵ and gives the National Assembly or any State Houses of Assembly the right to establish more courts as it may desire and cloth the established courts with jurisdiction.⁸⁶ We also have inferior courts⁸⁷ of record that are established by the appropriate legislative bodies.⁸⁸

These Courts are saddled with the responsibility to adjudicate upon matters between persons, or between government or authority and any person in Nigeria; for the determination of any question as to the civil rights and obligations of that person. Thus, it can be said that access to court is a constitutional right in Nigeria⁸⁹ and that issues bordering on the enforcement of human rights in general are determined by the courts. By virtue of this constitutional and statutory function, the court is created to protect the rights of Nigerians even if such individual is a suspected offender or detainee. The court does that by interpreting the constitution and the laws of the land in any matter brought before it without fear or favour.⁹⁰

The heads of the various courts in exercise of the powers conferred upon them by the constitution and the enabling Acts/Laws also make rules and issue practice directions for the courts to guarantee better operation. These rules of court are mechanisms designed to govern, regulate and direct the conduct of trial in civil causes. It was in exercise of this power that the Fundamental Rights (Enforcement Procedure) Rules, 2009 was made by the Chief Justice of Nigeria pursuant to the provision of section 46 (3) of the CFRN 1999 as a special procedure for the enforcement of fundamental rights.

National Human Rights Commission

The establishment of the National Human Rights Commission (NHRC) came as a result of the resolution of the UN enjoining Member States to ensure the establishment of institutions for the promotion and protection of human rights. The Commission has the mandate to deal with all matters relating to the protection of the human rights recognised in the Constitution of Nigeria, the UN Charter, UDHR and other international human rights instrument so long as Nigeria is a State Party to such treaties.⁹¹ NHRC has the mandate to undertake studies on matters relating to human rights and render necessary assistance to the Federal Government of Nigeria in the formulation of appropriate policies for the proper promotion and protection of human rights.⁹² The NHRC is expected to formulate policies for the respect and promotion of the right of people facing criminal investigation or trial by law enforcement officials in Nigeria.

Non-governmental Organisations

Exposure of human rights violation is one of the core functions of all human rights Non-governmental Organisations (NGOs) in which all available resources, through campaign, research, documentation, litigation, and so on are involved. Many NGOs, especially advocacy NGOs, focus on exposing human rights violations and holding abusers accountable. Amnesty International (AI) is a good illustration. Using data from 60 countries in 2020, the AI proved cases where law enforcement agencies, including the police committed mortal rights abuses under the guise of

⁸⁵(n24), s 6 (3); N Tobi, *The Nigerian Judge* (A and T Publishers 1992) 19.

⁸⁶ (n24), s 6(4).

⁸⁷ N Tobi, 'Law Justice and Nigerian Democracy, Law Justice and Nigerian Society' in I A Ayua (ed), *Law, Justice and the Nigerian Society: Essays in Honour of Hon. Justice Muhammaed Bello* (Nigerian Institute of Advanced Legal Studies 1995) 1.

⁸⁸ (n24), s 6 (5) (j) (k).

⁸⁹ *Ibid*, s 6(6) (b) and 36(1).

⁹⁰ Tobi (n87) 130.

⁹¹ (n67), s 5(a).

⁹² *Ibid*.

controlling complaint. The briefing stressed a series of abuses, similar as killings and beatings, demarcation, detention and arbitrary apprehensions, and restrictions on peaceful assembly.⁹³

United Nations Committee on Human Rights

The United Nations Committee on Human Rights (UNCHR) a treaty body of the UN established under the ICCPR 1966.⁹⁴ It consists of eighteen members.⁹⁵ The UNCHR is composed of nationals of the different States Parties to the present ICCPR who must be persons of high moral character and recognised competence, especially in the field of human rights.⁹⁶

The UNCHR has the power to study the reports previously taken by State already submitted by the States Parties to the Covenant bordering on the proactive steps or on the measures adopted by State Parties which give effect to the rights as recognised in the ICCPR and on the progress that they have made in the enjoyment of those rights, and make general comments that may be considered appropriate for transmission to the States Parties.⁹⁷ It is empowered to receive and consider communications from a State Party claiming that another State Party is not fulfilling any of its obligations as required under the ICCPR.⁹⁸ Thus, it is submitted that the UNCHR promotes equal enjoyment of human rights by everyone including the rights of detainees.

African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights (ACHPR) serves as an important institution for the enforcement and implementation of human rights in the African region established to complement as well as reinforce the functions of the African Commission on Human and Peoples' Rights.⁹⁹ This suggests that the African Commission may refer a matter to the African Court on Human and Peoples' Rights in case it is not making progress with regard to a matter referred to it. The Court is more or less an appellate stage from the African Commission. The Court's role is expressly stated as a means to avoid "any overlap" between the two institutions.¹⁰⁰

The reason for the establishment of the ACHPR is broad.¹⁰¹ It extends to all cases and disputes submitted to it pertaining to the interpretation and application of the ACHPR, the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights and any other relevant human rights instrument ratified by the State Parties.¹⁰² It is submitted that this provision gives the ACHPR has the liberty to invoke international and regional human rights instruments in the determination of cases before it.

African Commission on Human and Peoples' Rights

⁹³ 'Human Rights Careers' <<https://www.humanrightscarers.com/issues/what-role-do-ngos-play-in-protecting-human-rights/>> accessed 18 January 2025.

⁹⁴ International Covenant on Civil and Political Rights 1966, art 28(1).

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*, art 28(2).

⁹⁷ *Ibid.*, art 40(1).

⁹⁸ *Ibid.*, art 41(1).

⁹⁹ Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights 1997, preamble; N Kirsch, 'The Establishment of an African Court on Human and Peoples' Rights' [1998] (58) *Heidelberg Journal of International Law*;713.

¹⁰⁰ Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights 1997, art 11; F Viljoen, *International Human Rights Law in Africa* (Oxford: Oxford University Press 2007) 418.

¹⁰¹ I Osterdahl, 'The Jurisdiction *Ratione Materiae* of the African Court of Human and Peoples' Rights: A Comparative Critique' [1998] (8) *Review of the African Commission on Human and Peoples' Rights*;132.

¹⁰² Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights 1997, arts 3 and 7.

The African Charter on Human and Peoples' Rights of 1981 established the African Commission on Human and Peoples' Rights under article 30 thereof,¹⁰³ with headquarters in Banjul, Gambia. The Commission was established in 1987. It consists of eleven independent experts to be elected by the African Union Assembly of Heads of State and Government to serve for a six year terms subject one re-election.¹⁰⁴ The Commission is charged with the responsibility of monitoring the effective implementation and protection of the rights recognised in the African Charter on Human and Peoples' Rights.

The core function of the Commission is the promotion of human and peoples' rights especially by way of collecting documents, undertaking researches and studies on problems in the area of human and peoples' rights in Africa, organising seminars, conferences and symposia, disseminating information, encouraging local and national institutions concerned with human and peoples' rights, and giving its views or making recommendations to Governments when such need arises. It also carries out the function of formulating and laying down, rules and principles meant to help in resolving legal problems concerning human and peoples' rights as well as fundamental freedom upon which the Governments of Africa may base their legislation; co-operating with other institutions concerned with promotion and protection of human rights both at the African and international level; ensuring the protection of these rights under conditions that are laid down by the ACHPR; and interpreting all the provisions of the ACHPR where such request is made by a State Party, any institution of the AU or an organisation in Africa that is recognised by the AU, and performing any other tasks that the Assembly of Heads of State and Government may entrusted to it.¹⁰⁵ Its jurisdiction to entertain a matter is invoked by way of communication coming from a State Party to the African Charter on Human and Peoples' Rights where such State Party has good reasons to believe that the provisions of the ACHPR has been violated by another State Party.¹⁰⁶ Local remedies must have been exhausted for such application to be successful, unless it is clear to it that the procedure of achieving the remedies would be unduly prolonged.¹⁰⁷

Conclusion

It is established in this article that protection and promotion of human rights is at the very core of policing. The enforcement of laws and maintenance of peace and order in the society are about protecting the rights of citizens, and therefore the role of police personnel in protecting and respecting the rights of every individual is fundamental. Detainees are entitled to the enjoyment of these rights and the police are to promote and protect these rights more so as the present PA 2020 supports this position under the provision of section 5.¹⁰⁸ However, because the police is always responding to diverse issues and problems of law enforce circumstances, issues of rule of law and human rights are cast around police intervention, including interrogation of detainees. Moreover, how the police take control of such circumstances especially through the level of force they use, is also a matter concerning the human rights and rule of law.¹⁰⁹

Recommendations

The following recommendations have been made in this article:

¹⁰³ ACHPR 1981, art 30.

¹⁰⁴ *Ibid*, arts 31 and 36.

¹⁰⁵ *Ibid*, art 45.

¹⁰⁶ *Ibid*, art 47.

¹⁰⁷ *Ibid*, art 50.

¹⁰⁸ PA 2020, s 5.

¹⁰⁹ N J Madubuike-Ekwe and O K Obayemi, 'Assessment of the Role of the Nigerian Police Force in the Promotion and Protection of Human Rights in Nigeria' [2019] (23) (1) *Annual Survey of International & Comparative Law*;22.

- i. The Constitution of the Federal Republic of Nigeria 1999 should be amended for inclusion of a specific provision on the right of detainees as is the case in South Africa under its Constitution.
- ii. There is need for seminars, lectures and workshops for the reorientation of police officers to be organised at force headquarters, state and divisional command levels, as a way of ensuring proper orientation for policing as needed in a democratic society.
- iii. Training should be provided for the police in Nigeria, particularly on respect of human rights of detainees. This ought to form an integral part of their training manuals.
- iv. The Nigeria Police Force should revise recruiting and vetting processes to ensure that only persons with good character, clean criminal records, adequate experience and/or preparation and are emotionally stable are recruited as police officers.
- v. There should be a good monitoring system in place to ensure that the functions of the police are appropriately carried out.