



A LEGAL APPRAISAL OF CIVIL AND POLITICAL RIGHTS' VIOLATIONS DURING ELECTIONS IN NIGERIA

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Abstract

Human rights violations, especially those related to civil and political rights, are common in many African nations, including Nigeria. In a democratic setting, elections are only meaningful to the majority of people because they allow the majority to choose the decision makers. This paper investigates whether Nigeria satisfies its commitments by using Nigeria as a case study to comprehend State party implementation of the civil and political rights sections of the African Charter. Its main goal is to evaluate the legality of civil and political rights violations that occurred during the Nigerian elections. The paper adopts the doctrinal research method wherein primary and secondary sources of information were relied upon. The core findings of this paper revealed that civil and political rights violations take on several forms; it ranges from procedural violations of electoral law (that may or may not intend to distort results) to the outright use of violence against voters. The paper consequently recommended for the re-orientation of politicians on their conducts during elections and also committing them to taking responsibility for their actions by signing legal documents that they must accept electoral results peacefully or take just legal actions if they are not satisfied.

Keywords: Civil and Political Rights, Human Rights, Violations, Elections.

1.0 Introduction

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees civil and political rights, including human dignity,¹ freedom of association², freedom of movement³ and so on. According to a Political Bureau study, after the amalgamation of Northern and Southern protectorates in 1914, Nigeria had three elections before gaining independence in 1960.⁴ The first election was held in September 1923 in Lagos and Calabar after the Clifford Constitution of 1922 was introduced. The Nigeria National Democratic Party, led by Herbert Macaulay, won three seats on the Lagos Legislative Council in the election, while the Calabar Improvement League took home the lone seat for Calabar. Sir Arthur Richards' 1946 Constitution served as the basis for the indirect system used during the second election. After Sir John Macpherson's 1959 Constitution, the third election was considered the general election. With 312 single member seats across the country, the election marked the beginning of Nigeria's political independence. The general elections in 1964 were the first elections following independence in 1960. One could argue that specific election marked the beginning of Nigeria's blatant electoral malpractices.⁵ Since the NPC controls the central government, it has an impact on the arbitrary detention, arrest, intimidation, and abduction of opponents. UPGA presented the president with proof of this and demanded that the elections be postponed, but the government turned them down. The Nigeria National Democratic Party (NNDP),

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¹Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 34.

²*Ibid*, s 40.

³*Ibid*, s 42.

⁴ E L Ekka, 'Electoral Malpractices in Nigeria: Civic Education as an Antidote' [2019] (6)(8) *International Journal of Research and Scientific Innovation*, 193.

⁵ Ekka (n 4)



without the opposition's involvement, declared victory in the West and steadfastly stayed in the thick of the crisis after perfecting its election rigging tactics, despite UPGA's boycott of the elections.⁶

The September 1978 elections were similar to previous ones in that they featured regional politics, unpleasant rivalry between political parties, and ethnic party affiliation. The results of the 1983 elections show that the National Party of Nigeria (NPN) had become a 'super power', as other parties' claimed the election was heavily manipulated and that NPN candidate (Shehu Shagari) had won again. The election held on June 12, 1993, was a pledge to banish the political, religious, and ethnic intolerance that had long plagued Nigerian politics. Nigeria's supposedly freest and fairest election was deemed inconclusive, with Social Democratic Party's (SDP) candidate M.K.O. Abiola named the victor. With three political parties - Alliance for Democracy (AD), All People's Party (APP), and Peoples Democratic Party (PDP), the 1999 general elections marked a more significant shift from military rule to civilian governance. The PDP's victory in 21 States nationwide showed that it had a wider national reach.

However, the international world characterized the general elections in 2003 and 2007 as having the highest record of electoral malpractices, which sparked new concerns and launched a new chapter in Nigeria's electoral fraud history.⁷ Growing concerns about winning by financial inducement, a practice known nationwide as 'Ghana-Must-Go' politics, plagued the 2003 elections.⁸ Human rights abuses and electoral fraud have been documented to be on the rise in recent years. For example, Nigeria's 2019 general election was tainted by varying degrees of violence and violations of human rights in numerous federation States, resulting in numerous fatalities, injuries, and destructions of property. A damning assessment on the 2019 general election that put President Muhammadu Buhari back in power was released by Human Rights Watch (HRW)⁹ claiming that 629 people were killed and that it was tainted by widespread violence. According to the group, there have been 4,000 fatalities since the elections in 2015 and 2019, including 3,641 fatal skirmishes between farmers and ranchers since 2015 and at least 262 bandit deaths since the start of 2019 in Zamfara State alone. The group called on President Buhari to guarantee accountability for violations of human rights and take decisive action to curb the escalating political violence. They went on to say that troops and police were involved in the majority of the human rights abuses committed by political thugs working for politicians. Human dignity benefits from civil and political rights both intrinsically and instrumentally. While the instrumental value of civil and political rights focuses on their realization as a way to improve equality and human dignity, the inherent value of civil and political rights emphasizes their legitimacy, which states that no one will be denied them on the basis of race, colour, sex, religion, national origin, or disability.¹⁰ In many African nations, abuses of human rights, particularly civil and political rights, continue unabated. The African continent continues to be dominated by complaints against arbitrary killing, torture, cruel, inhuman, or degrading treatment, repression of press freedom, restrictions on movement and expression, severe discrimination, and the killing of unarmed protesters, as demonstrated by the case law jurisprudence at the African Court and the African Commission.¹¹

⁶ A Y Gboyega and Y Aliyu, *Nigeria Since Independence: The First 25 Years Public Administration* (Ibadan: Heineman Educational Books (Nig) Ltd. 1989) 20.

⁷ S I Ebirim, 'Assessment of the Performance of Independent National Electoral Commission (INEC) in the 2011 Gubernatorial Elections in South Eastern Nigeria' [2013] (1)(2) *Global Journal of Political Science and Administration: European Centre for Research, Training and Development (ECRTD)*, 2.

⁸ I E Samuel, 'The Effect of Electoral Malpractices on Nigeria Democratic Consolidation (1999-2013)' [2014] (4)(2) *International Journal of Public Policy and Administration Research*, 19.

⁹ Nigeria: 4,000 killed since 2015 – 2019 Pools, Human Right Watch Alleges <<http://allafrica.com/stories/201906110053.html>> accessed 23 October 2024.

¹⁰ ICCPR 1966, preamble, paras. 1 and 3.

¹¹ BBC News, 'Sudan Crisis: Official Admits to 46 Protest Deaths' <<https://www.bbc.co.uk/news/world-africa-48535165>> accessed 23 October 2024.



2.0 Legal Analysis of Civil and Political Rights' Violations during Elections in Nigeria

2.1 Analysis of Civil and Political Rights in the Context of Election

The foundation of democratic administrations founded on popular will is the right to participate in the management of public affairs, including the ability to vote and to run for offices. An atmosphere that defends and advances human rights must include free and fair elections as a basic and essential element. Legal enforcement of fundamental rights, namely, civil and political rights, is permitted by Nigeria's Constitution. The Supreme Court of Nigeria has re-affirmed this stance on the application of human rights in Nigeria in *Federal Republic of Nigeria v Ifegwu*¹² when it was decided that, despite the fact that fundamental rights are a subset of human rights, the trend in contemporary society, when the rule of law is in place, is to defend basic rights in order to improve human liberty and dignity. According to this legal theory, human right cannot be considered essential if it is not recognized by the Constitution. Furthermore, in *Mustapha v Governor of Lagos State*,¹³ in a similar vein, the Nigerian Supreme Court stated that human rights must apply to all people and must be clearly separated from civil rights, political rights, economic rights, and so forth.

In Nigeria, 'fundamental rights' refers to any of the rights outlined in the *African Charter on Human and Peoples Rights (Ratification and Enforcement) Act of 1983* as well as rights covered under Chapter IV of the CFRN.¹⁴ According to *section 12 of the Constitution*, which deals with treaties and their implementation, Nigeria ratified the African Charter in 1983. It is a trite principle of international law that no State would be bound by a treaty to which it has not consented before being ordered to institute domestic means for implementation. Consequently, the Supreme Court in *Sani Abacha v Gani Fawehinmi*¹⁵ decided that, in accordance with *section 12 of the CFRN*, the re-enactment of international treaties into domestic law is known as the 'domestication' idea. This provision therefore suggests that all rights recognized in the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act are enforceable in Nigeria as a result of ratification of the African Charter, thereby broadening the range of human rights that Nigerian courts can uphold.

However, Nigeria's basic constitutional concerns have been brought up by the domestication of the African Charter. To be clear, the Constitution is the highest law of the land and the foundational standard.¹⁶ First, unlike the African Charter, the Constitution eventually distinguishes between rights that are justiceable and those that are not. When the *African Charter on Human and Peoples Rights (Ratification and Enforcement) Act of 1983* and the constitution clashes, it impacts the domestication and enjoyment of the African Charter rights. Therefore, in *Sani Abacha v Gani Fawehinmi*, the Supreme Court categorically ruled that, to the degree of such discrepancy, the constitution has precedence over both international law and other national laws in the case of a disagreement due to its supremacy. The court's stance in favoring Nigeria's constitution over domestic laws is unambiguous. As a result, basic rights continue to fall under the purview of domestic law and include those protected by the nation's fundamental legislation, or the constitution.¹⁷ Because of these rulings, it is argued that *section 6(6) of the CFRN* no longer permits the enforcement of the socio-economic rights outlined in the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act. A meaningful electoral process depends on the enjoyment of several other human rights, all of which are inextricably related to the right to vote and to be elected in legitimate, regular elections. Among these necessary rights are:

2.1.1 Right to Life

Every person has the fundamental right to life. This implies that no one, not even the government, should have their life taken. Essentially, governments are required to enact laws that protect people's

¹² (2003) FWLR (Pt 167) 703

¹³ (1987) 2 NWLR (Pt 58) 539

¹⁴ *El-Rufia v Senate of the National Assembly* (2016) 1 NWLR (Pt 1464) 506

¹⁵ (2000) 4 NILR 28; *Ohakosin v Commissioner of Police* (2009) 15 NWLR (Pt 1164) 22

¹⁶ J Dada, 'Impediments to Human Rights Protection in Nigeria' [2012] (18)(6) *Annual Survey of International and Comparative Law*, 67

¹⁷ *Uzoukwu and Ors v Ezeonu II* (1991) 6 NWLR (Pt 200) 708



lives on their soil. As a result, several national and international human rights' accords appropriately highlight this right.¹⁸ The *Constitution of the Federal Republic of Nigeria, 1999 (as amended)* is based on the values of justice, equality, and freedom. Even though Chapter II of the Constitution's provisions address matters pertaining to the core goals and guiding principles of State policy, there are not subject to the courts,¹⁹ if any of the rights listed in Chapter Four as fundamental rights are impacted by the provisions of its sections, there may be subject to judicial review. The 'people's safety and wellbeing should be the main goals of government'. In support of the social order, *section 17(2)(b) of the Constitution* acknowledges the sanctity and dignity of every human being. Once more, the health, safety, and welfare of every employee are guaranteed under *section 17(3)(c) of the Constitution*. The right to life is the most important of the Fundamental Human Rights chapter in the Constitution, which also includes the clauses in sections 14 and 17. The right to life is expressly protected under section 33 as follows:

- (1) Every individual has the right to life, and no one may be purposefully deprived of it, with the exception of carrying out a court order related to a crime for which they have been proven guilty in Nigeria.
- (2) If someone dies as a result of using force that is reasonably required or to the extent and under the conditions allowed by law, it will not be considered that they have been deprived of their life in violation of this provision -
 - (a) For the protection of property or for the protection of any individual from illegal violence;
 - (b) In order to make a valid arrest or stop someone who is legally arrested from escaping; or
 - (c) In order to put an end to a riot, rebellion, or mutiny.

Since the phrase 'to the degree and under the conditions allowed by law or by the force that is deemed reasonably required' in *section 33(2)* refers to providing the police or whoever is making the arrest or preventing escape from lawful custody with legal clothing, it is argued that *section 33(2)(b) of the Constitution* is superfluous. It is up to the court to decide whether 'situations as allowed by law and as much force as is deemed practically required' apply. The police or any other arresting officer has no right to use a pistol or anything similar to make that decision. *Section 33(2)(b)* is argued to be a problematic constitutional clause since it places the arrester, the prosecutor, the court, and the executioner on the same page, at the expense of the suspect's right to a fair trial and, most importantly, his right to life.

In contrast, under the European system, the right to life is unassailable.²⁰ State parties are not permitted to deviate from this right under the European system, not even as a form of punishment for the most serious offense.²¹ However, if a public authority employs necessary force to prevent unlawful violence, make a lawful arrest, put an end to a riot or insurrection, or stop someone from fleeing from lawful detention, this right would not be violated. Although the African Charter acknowledges the inviolability of the right to life, it makes no mention of what might be considered an arbitrary denial of that right. As a result, several AU State constitutions identify limitations to the right to life's absolute enjoyment. The death penalty, extrajudicial, summary and arbitrary killings whether committed during a violent suppression of non-violent protests, in lawful imprisonment due to unfavorable conditions and mistreatment, or while attending an unlawful political rally are further acts that violate the right to life.²² The Nigerian Supreme Court in *Okoro v State*²³ and *Kalu v State*²⁴

¹⁸ European Convention on Human Rights 1950, art 2; American Convention on Human Rights 1969, art 4; Universal Declaration of Human Rights 1948, art 3; International Covenant on Civil and Political Rights 1966, art 6.

¹⁹ *Badejo v Federal Minister of Education* (1996) 8 NWLR (Pt. 464) 15

²⁰ European Convention on Human Rights 1950, art 15

²¹ ECHR Protocol 13

²² *Kevin Mgwanga Gunme, 'et al'. v Cameroon* Communication 266/03 para 100-112.

²³ (1998) 12 SC 84.

²⁴ SC 24/1996; *Odunlami v Nigeria Navy* (2013) 12 NWLR (Pt 1367) 20.



maintained that when a person is facing the death penalty, they cannot rely on their constitutional right to life. This ruling maintains the death penalty as a component of Nigeri's domestic legal penalties for capital offenses. Therefore, when granted by a competent court of justice, it serves as one of the grounds for deprivation of the right to life.

2.1.2 Right to Dignity of Human Person

Concerns about human rights and dignity are no longer limited to the world. It has sparked a great deal of interest in defending and advancing universal observance of human rights and dignity.²⁵ The 1948 UDHR is an example of the UN's audacious endeavor to define and authoritatively articulate the concept of human rights as stated in the UN treaties.²⁶ The creation of the National Human Rights Commission, which was tasked with the main duties of advancing and defending the human rights of every Nigerian as guaranteed by the CFRN 1999 and other national and international laws, was a daring step toward the actual defense and advancement of human rights in Nigeria at the national level. The right to human dignity is proclaimed in Chapter 2 of the CFRN 1999 as one of the social objectives. While acknowledging that the principles of justice, equality, and freedom form the basis of the Nigerian State's social structure,²⁷ it states that human dignity must be preserved and upheld in order to promote social order and acknowledge the sanctity of every human being.²⁸ It placed a serious duty on all government officials, including those in charge of the legislative, executive, and judicial branches, to adhere to, uphold, and implement the CFRN 1999.²⁹ The CFRN 1999 further forbids government inhumane acts as a result of its supremacy.³⁰

The fundamental rights recognized and upheld by Nigerian law are outlined in Chapter 4 of the CFRN 1999. To emphasize how important human dignity is, among the other guaranteed rights, the right to human dignity is ranked second only to the right to life. The prohibition of any type of torture and cruel or humiliating treatment, that is, any unjustifiable and unlawful treatment of a person that causes them to suffer physical or psychological harm is a key part of the right to human dignity. Chinwo has made the argument,³¹ because the CFRN 1999 forbids what the US Constitution's Eighth Amendment defines as cruel and unusual punishment,³² when the definition of human rights gained prominence and the US Supreme Court's perspective,³³ in *Prop v Dulles*,³⁴ adopted by Kayode Eso, JSC when he said: 'the definition of inhuman treatment must be derived from the changing moral norms that indicate a society's development'. Akande opines that 'torture or degrading treatment can take many different forms, some of which may not be unlawful but may necessitate legal help.³⁵ Treatment that is unacceptable to rational members of human society is referred to as inhuman or humiliating treatment.³⁶ In order to prevent attempts to defend dehumanizing actions against members of a certain community in the country under the guise of culture, it appears that this must be evaluated using objective criteria.³⁷

It is evident from the afore-mentioned clauses that Nigeria recognizes and upholds each person's right to dignity. However, it seems that Nigeria has not gone far enough in ensuring the protection

²⁵ J Haleem, 'Domestic Application of International Human Rights Norms' [1988] (1) *Australian Law Journal*, 1-7

²⁶ B D Schafer, *Forty Years of the Universal Declaration of Human Rights* (New York: UN Bulletin 1988) 92.

²⁷ CFRN 1999 (as amended) s 17(1).

²⁸ *Ibid*, s 17 (2) (b).

²⁹ *Ibid*, s 34(1).

³⁰ CFRN 1999, s 17 (2) (c).

³¹ C A J Chinwo, *Principles and Practice of Constitutional Law in Nigeria* (Vol II, Port Harcourt: Davis Printing & Packaging Co. Ltd. 2007) 169.

³² CFRN 1999, s 34(1)

³³ J Akande, 'A Search for Decency and Human Dignity' (Being Paper Delivered at the Annual Conference of the Nigerian Bar Association in August 2004) 67.

³⁴ 356 US 86 (1958)

³⁵ *Ransome-Kuti v Attorney-General of the Federation* (1985) 2 NWLR (Pt 6) 211

³⁶ *Uzoukwu v Ezeonu* [1991] 6 NWLR (Pt. 200) 708, 764-65; *Ezeadukwa v Maduka* [1997] 8 NWLR (Pt 518) 635

³⁷ Chinwo (n 31) 170.



of human dignity when it comes to practical enforcement. This is made worse during elections because political players would do whatever it takes to scare or even disfigure voters against their preferred candidate. This has happened repeatedly throughout Nigeria's electoral history. According to reports, the National Human Rights Commission received 450 complaints over violations of human dignity during Nigeria's recently concluded general election in 2023³⁸ when a number of voters, and occasionally, party candidates are accused of experiencing varying degrees of violence, assault, battery, and other cruel and degrading behavior.

2.1.3 Right to Personal Liberty

Section 35(1) of the 1999 Constitution guarantees the right to personal liberty which may be deprived in certain lawful circumstances. The court interpreted what personal liberty meant in *Adewole v Jakande*. In this case, the court ruled that the Lagos State government's shutdown of private schools violates parents' personal freedom to educate their children whenever and however they see right. Specifically, the court declared that:

Personal liberty means privileges, immunities, or rights enjoyed by prescription or by grant. It denotes not merely freedom from bodily restraint, but rights to contact, to have an occupation, to acquire knowledge, to marry, have a home, children, to worship, enjoy and have privileges recognized at law for happiness of free men.

Additionally, the court upheld the notion of personal liberty in US cases, ruling that it also includes the following: '...the freedom or ability to move, to alter circumstances or relocate to any location one's own desires may dictate, without being imprisoned or subject to restrictions until required by law'.³⁹ Under Nigerian law, foreigners as well as citizens have the right to personal liberty.⁴⁰ But the right is not unqualified. Any statute that complies with the constitution may deprive it under certain conditions.⁴¹ In *Egenokwu v A.G. Federation & Anor*,⁴² where the applicant requested a declaration that the officers of the second respondent had unlawfully arrested and detained him for a total of four (4) days at Karimu Police Station, Police Command Area 11, and Police Force CID Area 10. This was a serious violation of the applicant's fundamental right to liberty, which is protected by section 35 of the CFRN 1999 and Article 6 of the African Charter on Human and Peoples Right (Ratification & Enforcement) Act 1983. The court held that:

The arrest and detention of the applicant by the 2nd respondent's officers for a total period of four days at Karimu police station and later at police command area 11, Abuja is unreasonable, unconstitutional and a grave violation of the applicant's fundamental right to liberty as guaranteed under section 35 of the 1999 Constitution and Article 6 of the African Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9, LFN 2004.

Section 35 of the CFRN states that the following circumstances may restrict an individual's right to personal liberty: a) in carrying out the court's ruling or punishment on a crime for which he has been found guilty; b) either as a result of his noncompliance with a court order or to ensure that any legal obligations are fulfilled; c) for the purpose of taking him before a court in order to carry out a court order, when there is a reasonable suspicion that he has committed a crime, or to the degree that it may be legitimately required to stop him from committing a crime; d) For the sake of his education or welfare, in the case of an individual who has not reached the age of eighteen; e) for the care or treatment of individuals with infectious or contagious diseases, those who are mentally ill, those who are drug or alcohol addicts, or vagrants, or for the community's safety; or f) in order to stop someone

³⁸ National Human Right Commission Nigeria: Violation of Human Dignity During Election <<https://punchng.com/450-right-violation-cases-recorded-during-elections-nhrc/>> accessed 23 October 2024.

³⁹ *Civil Rights Cases* 109 U.S 3 SC 42, L.Ed 835

⁴⁰ *Enahoro v IGP* [1976] 7 CCHCJ 1879

⁴¹ *Ogunwunmi v Federal A.G.* [1973] CCHC II 4/75 52 HC Lagos; B O Nwabueze, *Nigeria's Presidential Constitution 1979-83: The Second Experiment in Constitutional Democracy* (London: Longman 1985) 421

⁴² Suit No. FCT/HCM/5094/11 delivered on 2/4/2013



from entering Nigeria illegally, to expel, extradite, or remove someone from Nigeria legally, or to initiate legal action against someone for doing so. This clause gives the courts the authority to send people to prison for offenses.

2.1.4 Right to Freedom of Thoughts, Conscience and Religion

The CFRN 1999 successfully protects the right to freedom of thought, conscience, and religion.⁴³ According to section 38, everyone has the right to freedom of thought, conscience, and religion, which includes the freedom to change one's religion or beliefs as well as the freedom to express and spread one's religion or beliefs through worship, instruction, practice, and observance, either alone or in groups, and in public or privately. No student at any educational institution shall be obliged to participate in or attend a religious ceremony or observance, or to receive religious instruction, if the ceremony or observance is related to a religion other than his own or one that his parents or guardians have not accepted. Nothing in this section will grant anyone the right to create, participate in, or be a member of a secret society. No religious community or denomination will be prohibited from offering religious instruction to its students in any school that is entirely run by that community or denomination.

The following is implied in this section: (a) The freedom to practice one's faith without fear or discrimination is known as the right to freedom of religion. One's parents, spouse, or society at large should not force their faith on them. Everyone should be allowed to practice whatever religion they feel most comfortable with. (b) The freedom to exercise one's religion in a society, in organizations, or on an individual basis is comparable to the freedom of association and assembly. Some people are prohibited from practicing their religion in groups in some countries, including Nigeria. (c) The right to publicly exercise one's religion is a continuation of the right mentioned above and goes hand in hand with it. The freedom to publicly practice one's faith should be guaranteed.

The Constitution also makes it clear that there will be vigorous promotion of national integration. Thus, Nigeria's national ethics include discipline, integrity, dignity of labor, social justice, religious tolerance, self-reliance, and patriotism; discrimination on the basis of place of origin, sex, religion, status, ethnicity, or language ties is forbidden. Additionally, all citizens are eligible to join political parties, regardless of their ethnicity, religion, sex, location of origin, or circumstances of birth. The purpose of the legal provisions is to guarantee citizens' freedom of religion and to prevent the government or State from favoring or allying with any one religion.⁴⁴ In a multi-religious culture like Nigeria, the politicization of religion is an inevitable consequence. The only way to prevent this is to stop the circumstances that lead to it. Religion has been a delicate consideration in the selection of key officials at the two National Assembly levels in later political regimes. These examples demonstrate how administrations and political parties acknowledged the role of religion in governance.⁴⁵ The fact that campaigns and voting are sometimes motivated by religious sentiment is another problem. In this situation, religion might be utilized to either encourage or discourage voters from supporting a particular candidate. Some Christians will not back Muslim candidates because of this, and vice versa.

This problem emerged in the run-up to the recently held general elections in 2023, when the ruling All Progressives Congress (APC) selected two Muslim candidates namely; Bola Ahmed Tinubu for president and Kashim Shettima for vice president who are both from the South and the North, respectively. However, there is no known rule in Nigeria that prohibits a Christian-Christian or Muslim-Muslim ticket from running in such an election. However, the APC's selection of candidates was met with a maze of disdain for minimizing Nigeria's religious sensitivities in a pluralistic nation split along religious lines.

⁴³ *Awoniyi v Reg. Trustees of Amorc* (1990) 6 NWLR (Pt.154) 42

⁴⁴ B J Takaya, 'Religion, Politics and Peace: Resolving the Nigerian Dilemma' in J K Olupoma (ed.), *Religion and Peace in Multi-Faith Nigeria* (Ile-Ife: Obafemi Awolowo University 1992) 111-112.

⁴⁵ P E Nmah, 'Religion and politics in Africa: A Paradox' [2007] (1) *Journal of Religion and Human Relations* Unizik, 119-127.



'The situation in the country is not suitable for a Muslim-Muslim ticket,' said the Christian Association of Nigeria (CAN), an umbrella organization for Christians in Nigeria, and urged Nigerians to 'accept or reject' it. The Sokoto Diocese's Catholic Bishop, Mathew Kukah, said that the APC's decision 'is totally reprehensible and not acceptable'. Some northern Christians who demonstrated in Abuja sometime in 2023, called the decision an insult, while Northern Nigerian APC officials argued that 'Nigeria is not... a theocracy' and called it 'a show of blatant disregard for the complexity of contemporary Nigeria and the Church as a whole.'⁴⁶ Even Atiku, the PDP's presidential candidate, concurs that the APC's selection is inappropriate for a nation like Nigeria. However, the APC contended that their choice prioritizes performance, competence, and pragmatism over identity politics.⁴⁷ However, the APC fervently pursues religious balance in its campaigns, even as it downplays religion in the selection of its candidates. For example, Christian groups were further incensed when Tinubu, the APC's presidential candidate, allegedly employed bogus men of God during an event to introduce his deputy.⁴⁸

2.1.5 Right to Freedom of Expression and the Press

The CFRN provides the following guarantees and protections for the right to freedom of expression, *to wit*: (i) Everyone has the right to freedom of speech, which includes the ability to express one's thoughts and beliefs as well as the freedom to freely receive and share information. (ii) Without limiting the scope of this section's subsection (1), anybody has the right to own, create, and run any media for the spread of knowledge, concepts, and viewpoints, as long as no one aside from the federal government or State government, or whatever other individual or organization that has been given permission by the president after meeting a requirement set forth in a National Assembly Act is permitted to own, start, or run a television or wireless broadcasting station for whatever reason.⁴⁹ Furthermore, the ability to freely express oneself and obtain knowledge is crucial for the development of personal opinions.⁵⁰

The 2023 Presidential and National Assembly elections were tainted by violence and attacks on both journalists and members of the public, despite the constitutional clause that protects freedom of the press and of expression. During the elections, journalists were subjected to a variety of attacks, such as harassment, detentions, and physical assaults. A variety of players, including members of the public, security forces, and political party supporters, carried out these attacks. Journalists have occasionally been singled out for covering delicate subjects including claims of vote fraud or violations of human rights.⁵¹ By keeping an eye on and covering the procedures to guarantee their transparency, the media plays a crucial part in elections. They moderate debates on the different issues at hand and provide fora for the candidates to promote their manifestos. They are unable to carry out this duty efficiently when they are harassed, threatened, or attacked.⁵² The election process may be abused, leading to potentially contentious results, if this important media watchdog function is compromised.

⁴⁶ S Elusoji, 'APC's Muslim-Muslim Ticket is 'Totally Reprehensible'- Kukah' *Channels TV* (12 August 2022) <<https://www.channelstv.com/2022/08/12/apcs-muslim-muslim-ticket-is-totally-reprehensible-kukahChannels%20Television's%20Politics%20Today>> accessed 23 October 2024.

⁴⁷ Q Iroanusi, '2023: Atiku Slams APC over Muslim-Muslim Ticket' *Premium Times* (22 July 2022) <<https://www.premiumtimesng.com/news/top-news/544324-2023-atiku-slams-apc-over-muslim-muslim-ticket.html?tztc=1>> accessed 23 October 2024.

⁴⁸ A Abiola, 'We Need Competent Leadership to Develop Nigeria – Arise' <<https://leadership.ng/we-need-competent-leadership-to-develop-nigeria-arise/>> accessed 23 October 2024.

⁴⁹ CFRN 1999 (as amended) s 39

⁵⁰ V Nmeihelle, *The African Human Rights System: Its Laws, Practices and Institutions* (Martinus Nijhoff Publishers 2001) 107; G Maliverni, 'Freedom of Information in the European Convention on Human Rights and in the International Covenant on Civil and Political Rights' [1983] (4) *Human Rights Journal*, 446.

⁵¹ Article 19, 'Nigeria: New Administration Must Prioritise Journalists' Safety' *Article 19* (9 March 2023) <<https://www.article19.org/resources/nigeria-new-administration-must-prioritise-journalists-safety/>> accessed 23 October 2024.

⁵² Media Foundation of West Africa, 'Nigeria 2023 Elections: Media Coverage under Serial Suppression' <<https://www.mfwa.org/nigeria-2023-elections-media-coverage-under-serial-suppression/>> accessed 23 October 2024.



2.1.6 Right to Peaceful Assembly and Association

According to section 40 of the CFRN 1999, people have the freedom to establish political parties or group. Elections may pose a threat to the freedom to peaceful assembly and association. From Lagos to Kaduna, Imo to Plateau, Delta to Benue, and throughout the nation, opposition parties encountered significant difficulties rallying support for their candidates in the run-up to the general elections in 2023, which infringes upon their right to peaceful assembly and association. Nyesom Wike, the former governor of Rivers State, for example, outlawed the use of residential areas in both urban and rural towns as campaign offices by political parties and politicians. Prior to this, the last governor had made it illegal for political parties to run political campaigns in public schools without the State Ministry of Education's consent. In Executive Orders 21 and 22, Wike imposed the restriction order.⁵³ Additionally, the PDP Presidential Campaign Organization's authorization to utilize the state-owned Adokiye Amasiaemeka Stadium in Ikwerre L.G.A of Rivers State for its campaign was revoked by the Rivers State Government. According to the Rivers State Government, the Executive Order is a legislative tool that requires political parties to meet specific requirements prior to starting campaigns in different regions of the State. State governments are not allowed to stop any political party from campaigning during election season. The Electoral Act of 2022 explicitly states that no political party or candidate may use governmental machinery, including the media, to their advantage or detriment during an election.⁵⁴

2.1.7 Right to Freedom of Movement

The idea that humans have an innate drive to move around is as old as creation itself. The basic right evolved from the basic necessity. Therefore, one of the most coveted rights considered to be the hallmark of citizenship in every nation is the freedom of movement, which is a significant expansion of the right to personal liberty.⁵⁵ General guidelines on restrictions on the freedom of movement and other fundamental rights are also included in *section 45(1) of the CFRN 1999*. Notwithstanding the CFRN, the Nigerian government frequently declares 'no movement' on election days, and people who are caught moving are occasionally detained, harassed, threatened, and beaten by State security forces for 'loitering'. This should never happen. Movement restrictions on election day are illegal, unconstitutional, and a violation of citizens' fundamental right to free movement, as stated in *section 41 of the CFRN* and *article 12(1) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983*.

In the case of *Mallam Nasir Ahmad El-Rufai v State Security Service (SSS) & the Attorney General of the Federation*,⁵⁶ the Federal High Court in Awka ruled that neither the government nor its security forces have the authority or jurisdiction to impose restrictions on a citizen's freedom of movement. It is completely illegal and unconstitutional for the government or its security forces to impose restrictions on citizens' freedom of movement just because it is election day. In the afore-mentioned instance, Mallam Nasir Ahmad El-Rufai, a former governor of Kaduna State and an APC figure, was dispatched by his party to Anambra State in November 2013 to oversee the governorship elections and provide input to his party. When he arrived in Anambra State, the State Security Service informed him that he was not permitted to leave his hotel room, citing a mandate from 'above' that prohibited any citizen from moving about the State; moving around is only allowed while a person is walking to their polling place to cast their ballot; any other motion is strictly forbidden.⁵⁷ Following the incident, Mallan Nasir Ahmad El-Rufai felt wronged and made the decision to exercise his fundamental human right to travel, as guaranteed by section 41 of the Constitution. The court granted him damages, emphasizing that it is illegal and unconstitutional to restrict citizens' freedom of movement based solely on the basis of the election.

⁵³ S Akhaine *et al*, '2023 Elections: How Ruling Parties Frustrate Opposition Campaigns in States Activities' *The Guardian* (16 February 2023) <<https://guardian.ng/features/2023-elections-how-ruling-parties-frustrate-opposition-campaigns-in-states-activities/>> accessed 23 October 2024.

⁵⁴ Electoral Act 2022, s 95(2)

⁵⁵ K M Mowoe, *Constitutional Law in Nigeria* (Malthouse Press Limited 2008) 487

⁵⁶ (2018) LCN/11994(CA)

⁵⁷ S Alieke, 'No Movement on Election Day in Nigeria is Unlawful and Unconstitutional' <<https://www.tekedia.com/no-movement-on-election-day-in-nigeria-is-unlawful-and-unconstitutional/>> accessed 23 October 2024.



2.1.8 Right to Freedom from Discrimination

Numerous provisions of the CFRN 1999, guarantee citizens equality and protect them from discriminatory practices. However, non-indigenous people are not allowed to vote in the majority of Nigerian States. They are reminded that they need to vote in their home State. For instance, even though we are all citizens of the same nation, non-indigenous people are not permitted to vote for any political office in another State. Discrimination based denial of political rights, however, deprives people of the chance to advance society and get access to improved means of subsistence.⁵⁸ In Nigeria, it appears to be the rule that if a person is not an indigenous member of a community, they are typically not able to obtain political posts until they make a significant contribution to the community and are thus acknowledged. The same is true for elections for the office of governor and chairman of local government council.

The fact that non-indigenous people won elections in Lagos during the 2015 elections greatly irritated some people. The Peoples' Democratic Party (PDP) secured six House of Representatives seats in the National Assembly elections. Three of those went to people who were not Yorubas. Oba Rilwan Akilu of Lagos threatened that Igbos would be sent to the Lagos Lagoon in seven days if they did not vote for his preferred candidate, Akinwunmi Ambode.⁵⁹ Unfortunately, a similar situation occurred during the recently concluded 2023 presidential election as well. Despite the presence of security officials, there were reports of voter intimidation and ethnic discrimination in certain polling units, especially throughout Lagos State, by some individuals who support the ruling All Progressives Congress (APC).⁶⁰ Videos surfaced of pro-APC activists demanding that certain polling units only allow one party or tribe to cast ballots. Musiliu Akinsanya, also known as MC Oluomo, the leader of the Lagos State chapter of the National Union of Road Transport Workers, was heard threatening to stop any Igbo from voting in one of the recordings that were made public online.⁶¹ In the presence of security personnel, political thugs loyal to the ruling party also interfered with the election process by distributing ballot boxes and disrupting voting in the Lagos State neighborhoods of Oba Yekini, Elegushi Street, Ikate, Lekki, and Akinyele Street.⁶² Every adult citizen's right to vote in elections without discrimination was undermined by the Lagos episode.

2.1.9 Right to Vote and be Voted For

Generally speaking, one of the most fundamental requirements for an election to be regarded as democratic is universal suffrage.⁶³ *Section 65 of the CFRN 1999*, for instance, states that an individual would be eligible to be elected to: (a) the Senate if he is a Nigerian citizen and has reached the age of 35, and (b) the House of Representatives if he is a Nigerian citizen and has reached the age of 30. It is concerning to learn that voting rights in Nigeria are not protected by Chapter IV of the CFRN, which outlines the fundamental rights that all Nigerian citizens are entitled to, even though the right to vote has been given a high status on the international stage and Nigeria has ratified these international instruments.

The significance of the voter's role in the electoral process is acknowledged by Nigerian electoral law. It requires that the electoral process be free, fair, and trustworthy and gives eligible voters the opportunity to choose their representatives. The secret ballot method, which enables voters

⁵⁸ N Njoku, 'Effects of Non Indigene Discrimination on Contemporary Nigerian Society: Christian Religious Knowledge Perspective' [2015] (6)(15) *Journal of Education and Practice*, 140.

⁵⁹ The Citizen, 'Threat to Ndigbo: Ohanaeze Leaders Meet Oba of Lagos' <<https://thecitizenng.com/threat-to-ndigbo-ohanaeze-leaders-meet-oba-of-lagos/>> accessed 23 October 2024.

⁶⁰ O Uchechukwu, 'MC Oluomo Caught on Camera Intimidating, Discriminating Against Non-Indigenes of Lagos' (International Centre for Investigative Reporting 2023) <<https://www.icirnigeria.org/mc-oluomo-caught-on-camera-intimidating-discriminating-against-non-indigenes-of-lagos/>> accessed 23 October 2024.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ A Blais *et al.*, 'Deciding Who has the Right to Vote: A Comparative Analysis of Election Laws' [2001] (20) *Electoral Studies*, 41.



to cast ballots without fear, is one of the tenets that guarantee a genuine election. A fundamental tenet of democratic elections is ballot confidentiality, which forbids force or intimidation and safeguards the privacy of the electorate. One crucial premise is that elections must be conducted in secret, and breaking this rule is punishable by law. The Electoral Act states that ‘everyone present at a polling station or at the collation center, as the case may be, including the officer in charge of conducting the election and his or her staff, as well as the polling agent and candidates, is required to uphold and assist in maintaining the voting’s confidentiality’.⁶⁴ The law further provides that ‘any individual who violates this section’s rules is guilty of an offense and faces a maximum fine of ₦100,000, three months in jail, or both.’⁶⁵ Anyone who interferes with the secret ballot system’s upkeep or tries to disclose a voter’s identity or voting behavior during an election is breaking the law. Notwithstanding the aforementioned clause, a suspected political thug was shown on camera intimidating voters in Lagos during the general elections of 2023. Voters in line were forewarned by the man to vote for the All Progressives Congress or else suffer the repercussions. In order to verify who the residents had voted for, the supporter promised to look over their ballots.⁶⁶ Voter profiling has occurred in several States, particularly during the Gubernatorial and House of Assembly elections, when voters were barred from casting ballots because they appeared to belong to a particular tribe. Nigerian democracy will always learn from elections and grow as a result.

3.0 Effects of Civil and Political Rights Violations on Nigeria’s Democracy

Chapter IV of the 1999 CFRN on Fundamental Rights outlines the various categories of human rights that its citizens are entitled to under the following headings. ‘rights to life; human dignity; personal liberty; fair trial; private and family life; freedom of thought, conscience, and religion; freedom of expression and the press; freedom of peaceful assembly and association; freedom of movement; freedom from discrimination; right to purchase and own real estate; compulsory purchase of real estate; limitations on and deviations from fundamental human rights; special jurisdiction of the High Court, and legal aid’.⁶⁷ Many people, especially academics and philosophers, believe that democracy is the most effective form of government. This implies some element of truth because, as a minimum standard, it guarantees the fundamental human rights of all law-abiding citizens and some guidelines for good governance, in addition to giving all eligible citizens a chance to participate in the political process.

A number of academics have tried to define democracy. Diamond and Morlino,⁶⁸ described democracy as a system that ensures the rule of law, where laws and regulations are applied equally to all citizens, the active participation of citizens in politics and civic life, and the selection and transfer of governmental power through free and fair elections. Voting and freedom of expression are inextricably linked to the concept of democracy. Human rights are fundamental to any democracy. However, in order to fulfill some human rights, a people-centered form of governance, a government dedicated to advancing the interests of its constituents is necessary.⁶⁹

Violations of human rights, particularly by governments, have the power to erode public confidence in the nation’s democracy. Certain negative thoughts hold sway if citizens perceive that their leaders’ are guided by their whims and caprices, rather than the Constitution. Self-help and jungle justice may therefore become the order of the day. Loss of interest in holding the government accountable through evaluation of its policies and programs is the second adverse consequence of violations of people’s rights. In both rich and developing nations, it is a fact that governments willfully

⁶⁴ Electoral Act 2022, s 122

⁶⁵ *Ibid*, s 122(4)

⁶⁶ W Odunsi, ‘Vote APC or Face Trouble – Man Threatens Lagos Voters’ <<https://dailypost.ng/2023/02/25/vote-apc-or-face-trouble-man-threatens-lagos-voters-video/>> accessed 23 October 2024.

⁶⁷ CFRN 1999 (as amended) ss 33 to 46

⁶⁸ L J Diamond and L Morlino, ‘An Overview’ [2004] (15)(4) *Journal of Democracy*, 20-31.

⁶⁹ C J Kabange, ‘The Challenges for the Advancement of Human Rights and Democracy in Africa in the 21st Century’ [2012] (2)(1) *Sacha Journal of Human Rights*, 15-32.



fail to uphold the social contracts they have made with their constituents once they are not under pressure. Nigeria is a worst case situation due to its institutional instability and lack of political consciousness.⁷⁰

The third consequence is the potential for the military or popular uprisings to overturn the government and the political system entirely. People can only tolerate so much blatant abuse of power by their government in many ways. Nigeria's entire democratic enterprise will come to an end and all of its accomplishments will be lost if any of these things occur.⁷¹

The economic sphere is the site of the fourth consequence. In political environments where the rule of law is an unwavering principle, foreign investors conduct business. They take these actions because established legal mechanisms will quickly resolve trade disputes. Many international businesses have now withdrawn their funds from Nigeria due to the government's apparent unwillingness to uphold the legal system. Due to their partners' fear of their disregard for judicial rulings, local businesses that collaborate with foreign companies are also facing multifaceted impediments. Hundreds of local and international businesses have had to close as a result.⁷²

Democratic governance is supposed to guarantee the preservation and protection of the rights of minorities, the poor, and people with disabilities in the distribution and allocation of resources, as well as an equal opportunity to engage and participate in the democratic space without undue interference, as stated in the International Covenant on Economic, Social, and Cultural Rights.⁷³ However, the essence and fundamental tenets of international human rights law are also compromised when these universal ideas and principles are not upheld and recognized by pertinent State institutions. This has a detrimental effect on both the ideals of democracy and democratic administration.⁷⁴ The fundamental principles of democracy, which are based on the universality of the rule of law principle, that is, that every person is equal before the law and that the law provides opportunities for everyone in the State are completely undermined by breaches of human rights. However, upholding and defending the rights of every citizen is difficult and always threatens democracy's core principles when there are inadequate institutions and mechanisms, as is the case in Nigeria.

Nigeria's democracy has been withering away in the shadow of government committee panels as long as abuses and impunity continue. Therefore, there is a compelling and urgent need to address the human rights' issues in Nigeria. It is commonly believed that everyone has the fundamental freedom and rights to which all people are entitled, including the freedom of opinion and expression, freedom from slavery and torture, equality, liberty, and life. Many documents that are intended to safeguard people and their surroundings are derived from the concept of legal rights. All of these rights are being directly or indirectly infringed in Nigeria, a democratic country.⁷⁵ Instead of improving the lot of the people, the Nigerian government and the so-called leaders who were chosen by the impoverished masses to be properly represented are seen to be enriching and lavishing themselves and their unborn children. Nigeria's democratic viability is in jeopardy because of the State's incapacity to prevent rights violations.

⁷⁰ J Danfulani, 'Negative Implications of Human Rights Violations in Nigeria's Democratic System' *Sahara Reporters* <<https://saharareporters.com/2017/01/20/negative-implications-human-rights-violations-nigerias-democratic-system-john-danfulani>> accessed 23 October 2024.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ B Saul and Others, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (OUP Oxford 2014) 101.

⁷⁴ J L Cohen, 'Rethinking Human Rights, Democracy, and Sovereignty in the Age of Globalization' [2008] (36)(4) *Political Theory*, 578-606; C Turner, 'Delivering Lasting Peace, Democracy and Human Rights in Times of Transition: The Role of International Law' [2008] (2)(2) *The International Journal of Transitional Justice*, 126-151.

⁷⁵ L Sagaris, 'Learning Democratic Citizenship: Neighbourhoods as Key Places for Practicing Participatory Democracy' in E Pinnington and S Daniel (eds), *Learning Citizenship by Practicing Democracy: International Initiatives and Perspectives* (UK: Cambridge Scholars 2010) 12.



Many of the positive actions required to advance economic, social, and cultural rights are also necessary to guarantee civil and political rights in Nigeria's democratic framework. The provision of resources for training police and military forces, as well as the establishment of institutions and technical assistance to establish an independent and impartial judiciary and a competent and honest civil service, raise questions about both willingness and capacity to fulfill international obligations. The often stated contrast between official action to advance economic, social, and cultural rights and State abstention to attain civil and political rights is blurred as a result of the positive steps needed. Instead of attempting to define any new rights in this context, it could be more suitable to re-state the indivisibility of all rights. However, the issue of capacity means that, in terms of implementation, the task of guaranteeing civil and political rights may necessitate international assistance rather than condemnation with regard to those nations that possess the will but lack the capacity to establish democratic institutions that uphold human rights without international assistance. Therefore, in order to fully realize the rights that are protected, one must 'take steps, individually and through international assistance and cooperation, especially economic and technical,' as stated in article 2 of the International Covenant on Economic, Social, and Cultural Rights 1966.⁷⁶

4.0 Conclusion

The fight for the acknowledgment of human rights has changed with global events and revolutions. For example, the Universal Declaration of Human Rights (UDHR), which was adopted in 1948 under the United Nations' (UN) auspices, is the source of the current worldwide conversation on human rights protection. The UN also passed the International Covenant on Civil and Political Rights 1966 (ICCPR) as a separate document covering other human rights categories in addition to the UDHR on a global scale. Certain constitutionally protected rights are outlined in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); nevertheless, these rights are subject to certain restrictions.

It is anticipated that elections will serve as a vehicle for the advancement and celebration of fundamental human rights, particularly civil and political rights; political competition that is marked by political pluralism, confidence, transparency, and accountability; and that gives voters the opportunity to make an informed decision between a variety of political options; observance of the rule of law; access to effective remedies; freedom to form political parties and run for public office on an equal basis; non discrimination and equal rights for all citizens; respect for the fundamental freedoms of expression, information, association, assembly, and movement; freedom from coercion and threats; as well as a number of other essential freedoms and human rights that governments have pledged to uphold and advance within their borders.

5.0 Recommendations

The ambit of permissible constitutional derogations must be severely limited. As a result, the CFRN's numerous provisions that impose broad and occasionally unclear restrictions on certain rights, including sections 33 and 45, need to be amended. The Nigerian government should restrict the situations and outline the processes in which derogation can be lawfully invoked. It should also identify and declare certain fundamental civil and political rights such as the right to life, the right to personal liberty, or the right to vote and be voted for as completely non-derogable.

Any official or other person implicated in civil and political rights violations should be named, shamed, and punished through punitive measures. Violence that is provoked and fueled by politics should not be supported in any way in the nation, especially during elections. Fair play for both parties (opposition and ruling party) should be permitted by political players, free from excessive abuses and intimidation. Overall, since one enhances the other, both a responsive, accountable, and committed government and decent citizens are required.

⁷⁶ ICESCR 1966, art. 2