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The Protection of Human Rights in African Criminal Proceedings

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edited by M. Cherif Bassiouni and Ziyad Motala.

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The Protection of Nigerian Citizens from Arbitrary Arrest

The constitution guarantees no man (sic) against arrest. It only guarantees Fair Hearing and Impartial trial. It provides him with an appellate court to correct error of Inferior Court and with this, he must be content.¹

INTRODUCTION

An essential function of Law is that it should elevate man's moral stature.² The Constitution of the Federal Republic of Nigeria 1979 guarantees Freedom for every Nigerian by stating in the preamble

WE THE PEOPLE OF THE FEDERAL REPUBLIC OF NIGERIA, HAVING firmly and solemnly resolved: ...

TO PROVIDE for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of freedom ...³

The preamble above is also enshrined in the 1989 Constitution of the Federal Republic of Nigeria which was expected to come into force on the 1st of October 1992, but will now come into force hopefully early in 1993.

Right to liberty is one of the rights guaranteed to every Nigerian by the Nigerian Constitution. This Right which is cherished by every individual in any democratic society has been frequently abused in Nigeria

Though there has been declared commitment to human rights by present and past governments through public statements and ratification of human right charters, there still exists a wide gulf between the declared commitment to human rights and the abuses perpetrated by the federal government especially in the area of arrest.

THE LEGAL FRAMEWORK OF ARREST

Arrest is the first step in the ordinary course of the Criminal Procedure under the Criminal Justice System. It is the first contact that a person has with the police or investigator which may lead to a Criminal proceeding.

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The word "Arrest" is derived from the French work "arrete" which means to stop, or to hinder or to detain or to obstruct. Alexander defines arrest as the detaining of a person, the obtaining of the actual physical control and custody of him, and retaining it against his will and his consent under some real or assumed authority for the purpose of preventing him from committing a crime, or of causing him to be brought before a competent public legal tribunal to answer a charge of committing or attempting to commit a crime or as a protective measure or otherwise aiding in the administration of justice.⁴ Arrest which involves actual restraint of the person arrested occurs at the point where a person's freedom of movement is curtailed. The questioning of persons and the right to stop and question a person by the police does not amount to an arrest as the police have a right to investigate prior to arrest.

The legislation regulating the procedure of lawful arrest in Nigeria apart from the Constitution are the Criminal Procedure Act⁵ 5 (CPA) applicable in the Southern States of Nigeria and the Criminal Procedure (Northern States) Act⁶ (CPNA) applicable in the Northern States.

In Southern Nigeria, both a criminal and a non-criminal can be arrested lawfully. Persons suspected of having committed an offence or suspected of concealing his presence with a view to committing an offence can be lawfully arrested by the police.⁷

The saying that "No man is above the Law," and the statement that "The Constitution guarantees no man protection against arrest." is not applicable in Nigeria, though this statement is applicable in the United States of America, in Nigeria, certain classes of people have immunity from arrest. This immunity, which has constitutional backing, protects persons holding the Office of President, Vice President of Nigeria, the Governors and the Deputy Governors during the period which the person holding such office is required to perform the function of the Office.⁸

In the United States of America, no immunity is granted to the President explicitly by the Constitution and it is said that any concession of it would amount to placing him above the Constitution and this would be a violation of the cornerstone of American constitutionalism that the government is one of Laws and not of men.⁹

The majority of lawful arrests are made by the police, Judges or Magistrates and private persons can lawfully arrest, subject to the provisions of the law.¹⁰ The law provides that any person arrested should be taken with all reasonable dispatch to a police station or other places for the reception of arrested persons and without delay be informed of the charge against him. The procedure to be followed for a lawful arrest is further strengthened by the Constitutional provision that such a person shall be informed in writing within twenty-four hours and in a language that he understands of the facts and grounds for his arrest. Any person arrested for the purpose of bringing him before a court of law should be brought before the court within a reasonable time, and if not brought within a particular period as specified by the Constitution, yet he is in custody and not entitled to bail, he shall be released either unconditionally or

upon conditions reasonable to ensure that he appears for trial at a later date. A person unlawfully arrested does not suffer in vain as the constitution provides that he is entitled to compensation and a public apology from the appropriate authority.¹¹ A lawful arrest can be made at any time of the day or night. The maxim that "A man's house is his castle" is not applicable to the law on arrest in Nigeria. Though it is clear from the provisions of the Constitution, that a Nigerian Citizen has a Right to private family life,¹² this provision is subject to an exception that where higher interest requires, intrusion can be made into a person's private family life.

In Nigeria, there are no cities of refuge, no sanctuary to which any criminal may flee or escape. Lawful arrest can be made anywhere. The only exception being that an arrest cannot be made within a court room in which the court is sitting.¹³

The dignity to the human person is recognised in the process of arrest. A person arrested is protected from unnecessary restraint and the law provides that such a person shall not be handcuffed, bound or subjected to unnecessary restraint except by order of the court or if there is reasonable apprehension of danger or attempt to escape or the restraint is necessary for the safety of the person:

The Constitution however provides that there can be a derogation from the Right to personal liberty as provided therein in the interest of public order, public safety, national defence, public morality, public health protection or right and interest of other persons and in the period of emergency.¹⁴

NIGERIAN CITIZENS AND THEIR RIGHT OF LIBERTY

The Right to personal Liberty is entrenched in the Constitution. This personal Right¹⁵ also categorized as a civil and political Right¹⁶ is one of the basic Rights and fundamental Human Right under Chapter IV, Section 32 of the 1979 Constitution. Derogation from the Right must be in accordance with the law and this will include the order of the court, lawful arrest in pursuance of health laws dealing with persons suffering from infectious disease and mental illness and in pursuance of immigration and extradition laws. Lawful arrest, is therefore in consonance with the Constitution, if it follows laid down procedures of law.

Nigeria is one of the several countries of Africa that has duly adopted and ratified the African Charter on Human and Peoples Rights. The Charter adopted unanimously by the Organisation of Africa Unity in 1981, came into force on 21st October 1986 after 50 member states had adhered to the Charter which was adopted by the United Nations¹⁷ in 1987. Nigeria ratified the charter in 1983 by The African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.¹⁸ The Charter will, amongst other things, promote and protect human and peoples rights, promote international cooperation having regard to the Charter of United Nations and the universal

Declaration of Human Rights, and adhere to the principles of human and peoples rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organisation of African Unity, the Movement of Non-Aligned Countries and the United Nations.¹⁹

Nigeria being a member state of the Organisation of African Unity is bound to recognise and observe the rights, duties and freedom in the Charter and every individual is entitled to enjoy such rights and freedom without distinction of any kind.²⁰ The Charter provides in Article 6 that every individual shall have the right to liberty and to the security of his person and that no one may be deprived of his freedom except for reasons and conditions previously laid down by law. The Article further went on to provide that "In particular, no one may be arbitrarily arrested or detained." The above provision, coupled with the constitutional provision and the laid down procedure under the various legislation safeguarding lawful arrest should have cemented and faith a Nigerian has concerning his right to liberty but this has not been the case.

FARCICAL PROTECTION OF NIGERIANS FROM ARBITRARY ARREST

In spite of the various provisions already highlighted, the political authorities in Nigeria are yet to convince Nigerians that they are entitled to the right to personal liberty. This fact is a manifested truth because of the great number of the anti-human-rights Decrees that have been enacted.

The first of such Decrees is the Constitution (Suspension and Modification) Act No. 1 of 1984.²¹ This Decree, as the title seems to depict, did not entirely suspend the Nigerian Constitution of 1979 rather, only the provisions mentioned in schedule 1 of the Decree were suspended. One of such provisions suspended is Section 32 – subsections 3–7 of the Constitution which relate to the Right to personal liberty particularly the right of the accused not to be detained for longer than 24 hours without being informed of the grounds for his arrest and the right of any person unlawfully arrested to be entitled to compensation. A mockery is made of the entire provision guaranteeing the right to personal liberty²² to a Nigerian by the provision in the Decree that the validity of the Decree or any other Decree cannot be challenged in any court of law ousting the courts jurisdiction in this matter.²³

The State Security (Detention of Persons) Act No. 2 of 1984²⁴ popularly known as Decree 2 is an obnoxious legislation which abrogated the written provision of the right to personal liberty. This Decree which has been subject to several amendments²⁵ empowers the military authorities to detain without trial, any person(s) considered to constitute a threat to national security. The right of a Nigerian citizen to liberty is further violated by Section 4.(2) of this Decree which suspended the whole of the fundamental Human right provisions in Chapter IV of the 1979 Constitution and ousted the jurisdiction of the court from hearing any suit relating to such matters in the Decree. The simple interpretation of the section is that no court in Nigeria, has the power

to insist on the enforcement of a citizen's right to personal liberty when such a person is arrested under the Decree.

The Monstrous Decree No. 2 1984 which was backdated from 9th of February 1985 – the date it was published – to 31st of December 1984 still retains its evils in spite of the several amendments to cure it. The main Decree itself increased the category of those that can engage in arrest by giving authority to members of the armed forces to arrest the person to whom an order relates.²⁶ With the approach of the Civilian administration in Nigeria in October 1992, the nations number two office' which was that of the Chief of General staff has been changed to the Civilian post of Vice-President. With the change, there was need to amend the Decree to transfer the power of arrest and Detention from the Chief of General Staff to the Vice-President.

The power given to the authority in Decree 2 in the totality has been indiscriminately used and abused and has virtually taken away the right to personal liberty guaranteed to every Nigerian.²⁷ Several Nigerians have been arbitrarily arrested and detained under this Decree with absolute disregard to any laid-down procedure of law and provisions on lawful arrest have been put into abeyance. The spate of arbitrary arrest of innocent citizens in Nigeria continues on a daily basis on bogus allegations, without being charged for any offence for a scandalously long duration. It is unfortunate however to note that in many cases of unlawful arrest when the victim is eventually released without being charged the authorities have bluntly refused to pay the compensation awarded to the victim. This act of executive lawlessness by the authorities have clearly been denounced by the court of appeal and the supreme court in many decisions.²⁸

In *NOAH & 7 others vs the Attorney-General of the Federation*, detainees unlawfully held under Decree 2 of 1984 were awarded damages in the sum of N40,500. Though the court made the order that they should be released, the men were not immediately released as ordered and eventually when they were freed after about one month after the court order it was alleged that the government refused to pay the compensation.²⁹ The refusal of the Federal Government to produce Dr. Tunji Braithwaite, a Lagos based Attorney, ordered by the court because he was a Decree 2 detainee showed the extent to which the government has disrespected court order in Nigeria.

The clutches of arbitrary arrest in Nigeria have not been limited to a class of people. They have touched on Lecturers in Nigerian Universities, Students in institutions or higher learning and people of different sex and age groups.

Dr. Idowu Awopetu and Professor Toyé Olorode, Lecturers from the Obafemi Awolowo University, Ile-Ife, Nigeria were arrested on May 2, 1990 and held without charge at the state security services headquarters in Lagos until August 1, 1990 when they were released. Similarly Professor Obaro Ikime of the University of Ibadan Nigeria who solicited prayers for the stability of Nigeria after the aborted military coup on April 22, 1990 was arrested on April 28, 1990 under the obnoxious Decree 2 and was not released until August 1, 1990.³⁰

Students of higher institutions in Nigeria have often been restrained from exercising their right to freedom of speech. This right to freedom of expression includes the right to hold opinions and impact ideas and information without interference. Statements made by students or student bodies on economic policies of the government have led to their arrest. Between May and June 1989, hundreds of students in Nigeria were arrested during the nationwide demonstrations and riots against the government economic policies. Some of the student leaders like Salihu Mohammed Lukman, then president of the National Association of Nigerian Students was arrested and detained without charge and was released after the High Court ordered the State Security Services to justify his detention. Kunle Oni and Demola Laosebikan, both students of the Obafemi Awolowo University Ile-Ife, Nigeria were arrested on April 23, 1990 and held without charge and were later released.³¹

Several pathetic cases of innocent Nigerians arrested without the procedure laid down by law being followed gives one the impression that the authorities do not quite grasp the meaning of the provision in Chapter IV of the 1979 Nigerian Constitution. The case of Joseph Odogu is one of such cases. He was arrested in 1979 and did not regain his freedom until 1988, nine years after his arrest when he was granted unconditional release from custody for want of sufficient evidence.³²

PROPOSALS FOR REFORMS

Violation of many of the fundamental rights of Nigerians has been the concern of many Nigerians who are potential victims, many international and local organisations like the Civil Liberties Organisation and the Nigerian Bar Association. The rights which are as old as human society³³ have been badly trampled upon by the authority, and though the provision on human rights is verbose in our legislation, the state of human right in Nigeria is fragile. Mere declarations without the means to make them effect are useless. In a democratic society like ours, the government should ensure that the Constitution of Nigeria should bind every citizen of the Nation. No officer should be placed above the restraining authority and the greatest officer should not be exempted from its powers. In the case of *State of Ohio v Salmon P. Chase* (Governor), Chief Justice Marshall of the United States Supreme Court in an application for a *subpoena duces tecum* against President Jefferson held

all officers of the United States were subordinate to the law and must obey its mandate³⁴

The message in the above statement should be embraced by any Nation that is not tyrannical.

It is essential that the rule of the law be respected in Nigeria as she loudly proclaims to follow it and the authority should subject themselves to the law and should not elevate themselves above it by promulgating Decrees which

The Nigerian Courts must rise to protect the liberty of the citizens. Though the enormous number of Decrees by the authority seems to have plugged all loop holes for the courts intervention in this infraction of the law, the court still owes a duty to Nigerian citizens to protect them from arbitrary arrest and to dispense justice. The Nigerian courts have recorded an achievement on the part played in dispensing justice to victims of Decree No. 2. The courts should be commended for the courage displayed in the proper interpretation of the provisions of Decree No 2 of 1984 as amended and the subsequent release of victims of the obnoxious Decree. In *Maxwell Okudoh v Commissioner of Police Lagos*³⁵ Mr. Justice Oguntade held that the detention order which read that Okudoh was being detained for "acts prejudicial to public order" was not in accordance with the provision of Decree 2 of 1984 which provides that a person can be detained for "acts prejudicial to state security" and therefore Section 4 of Decree 2 that provides that no suit or other legal proceeding shall lie against any person for anything done or intended to be done in pursuance of the Decree will not be applicable to nullify the application of Okudoh.

While some courts have risen to the task, there is still need for some members of the judiciary to change their apathetic attitude and perform creditably their role of dispensing justice to all.³⁶ As rightly put by Lord Denning "If there is any rule of law which impairs the doing of justice, then it is the province of the judge to do all he legitimately can do to avoid the rule or even to change it – so as to do justice in the instance case before him"³⁷

There are International treaties and monitoring bodies created through the United Nations Economic, Social and Cultural Organisation (UNESCO), the International Labour Organisation and other bodies, with the authority to deal with complaints about human rights violations in individual member countries. Nigerian citizens have to be aware that they have the right to correspond freely with such bodies when they believe their human rights have been violated.³⁸

The Nigerian government should be commended for ratifying some International Human Right treaties. There are still many that are yet to be ratified by the government. As a country that has unyieldingly proclaimed the interest of her citizens, the authority should without delay ratify and adopt these conventions. Such instruments as the International covenant on Civil and Political Rights; Optional Protocol on the International Covenant on Civil and Political Rights; Convention against torture and other cruel, inhuman or degrading treatment amongst others have not been ratified in Nigeria.³⁹

The work embarked upon by the Civil liberties Organisation Amnesty International, the Nigerian Bar Association and other Organisations are commendable. These bodies should not relent in their effort in putting politely to the government without polemical confrontations issues not complying with the universally acknowledged standards of Human Rights.

CONCLUSION

The Right to personal liberty through conspicuous in the Nigerian Constitution has been reduced to a mere declaration in the statute by the various Decrees enacted by the military authorities. The Human Right and Fundamental Freedoms, constitute the cornerstone of the Constitution. The government should therefore remain irrevocably committed in every aspect of the Nations life to the principle of holding, preserving and defending the individual rights and personal freedom of Nigerian Citizens within the framework of the existing laws. This should be the focus of every government because a stable government is impossible anywhere in the world, if the governed are denied their rights to liberty and they have no where else to seek redress.

Arbitrary arrest of innocent Nigerian citizens under the facade of some Obnoxious Decrees and laws cannot continue without serious harm and losses.

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