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AN OVERVIEW AND COMPARATIVE ANALYSIS OF FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE RULES OF 1980 AND 2009*

ABSTRACT

This article takes a critical look at and a comparison of the Fundamental Rights (Enforcement Procedure) Rules 1980 and 2009.

It looks at the role of courts enforcing an individual's right when trampled upon by the government or other authority. If we accept the intrinsic worth of every human being, then justice becomes the minimum debt we owe him, for if we deny him justice we have declared him worthless. The article further argues that courts despite the critical condition in which some of them operate have been able to do justice to the oppressed even under military dictatorship. It will also look at the impetus given by the international community to the issue of the enforcement of human rights. It concludes by making suggestions on the ways forward for better methods to be used in enforcing these rights.

INTRODUCTION

Man has as insatiable longing for liberty and freedom. Deprivation of his liberty or freedom destroys that which is most human in man. Life thrives in an atmosphere of liberty and freedom and life without liberty is slavery. Without freedom a man can be (mere existence) but he cannot become self fulfilled. Detention of persons except as provided for in the Constitution is thus the most violent affront on both human dignity and human rights.[1]

Fundamental rights are inherent in man,[2] not only because he is a being, but also because he is a human. That makes the difference between other beings, like animal world and the human being, with all humanism and humanistic instincts and idiosyncrasies bestowed on by his creator – the Almighty God. Of all creations, God attaches the greatest importance to the human being and so certain natural rights, or better still, God given rights are inherent in him which no other being is expected to take away.[3]

Human rights are not granted by any state or government and therefore legally, they cannot be taken away by any state or government. This principle is expressed by the statement that Fundamental Human Rights are the inalienable rights of man, they are attached

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[1] Oputa (J.S.C)(as he then was); Access to Justice, Law and Practice Journal (NBA) L.P Vol.1 No.1 August 1998 Edition p.7

[2] Note that this also includes woman. May be correct word to use is human being. This is more so because of the more gender environment in which we operate now. It is also because of the Convention on the Elimination of Discrimination against Women.

[3] Tobi (J.C.A) (as he then was), Fundamental Rights Enforcement and Procedure Rules and speedy Trial 1999 Judicial Lectures; Continuing Education for the Judiciary; 1991, MIJ Professional Publishers Ltd Lagos p77. God created the human being with great conduct and instinctive avalanche for speed. Although the degree of speed in the daily life of the human being in the performance of human activities may vary from human being to another, each human has the nature of some speed. He has some automation in him. He is not a locomotive engine, though. The speed in one human being could be fast enough to win an Olympic Medal. The Speed in another human being could be sluggish that he can hardly hit the snail in a track race. But there is nevertheless some element of speed in so far as he is not static. And recognizing the nature of speed in the human being, the law provides for speedy trial in the judicial process since the cynosure of the administration of justice in most cases is the human being.

to man as man because of humanity. It is simple logic that he who gives can also take away. If these rights were conferred on man by the state, then the can also withdraw them or take them away permanently. The founding fathers of the American constitution were at great pains to find the origin of these rights – these inalienable rights. They sought diligently for the basis of these rights. They found it and set it down in the second paragraph of the Declaration of Independence.

These principles and the content of Human Rights were given universal recognition in the United Nations Declaration of Human Rights of 10th December, 1948, and the African Charter on Human and Peoples Rights was ratified in Nigeria.

BRIEF CONSTITUTIONAL HISTORY

It is neither necessary nor desirable to go into pre-independence constitutional development between 157 and 1960, which resulted in setting up of Sir Henry Willink's Commission to examine the problems of the minority groups at independence, rather the constitution history will be briefly taken from the Independence Constitution of 1960.

Following the recommendation of the Sir Henry Willink's Commission, the 1960 Independence Constitution provided for fundamental rights. That was in Chapter III of that Constitution.[4] The provisions were repeated in the Republican Constitution of Nigeria, 1963, with minor amendments, that was also in Chapter III thereof.[5]

Under these two constitutions, before anyone could enforce his right, there must be actual contravention of his right. That was the position until the enactment of the 1979 Constitution. On the issue of jurisdiction of the court and scope of enforceability, that constitution moved a bit further. It states that any person who alleges that any of the provisions of this Chapter[6] has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress. The differences in wordings between sections 31 and 32 of the 1960 and 1963 Constitutions on the one hand, and those of Ss. 42 and 46 of the 1979 and 1999 Constitutions are clear. While both the 1960 and 1963 Constitutions merely provided for institution of action on the part of an aggrieved party only when the right(s) are physically or actually contravened, the 1979 and 1999 Constitutions moved some poles further. This is by the addition of the words "is being or likely to be"

By these provisions in the 1979 and 1999 Constitutions, an aggrieved party need not wait for the brutalization of his person or denial of any of his fundamental rights before he seeks redress in a High Court. That may turn out too late. The Court of Appeal in its Enugu Division had cause to interpret the provisions of this section, in CHIEF UZOKWU & ORS v.

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[4] Ss: 17-31 of the 1960 Independence Constitution.

[5] Ss: 18-32 of the 1960 Republican Constitution. The right of a person to institute an action on the contravention of his fundamental rights was vested in him by S. 31 and 32 of the 1960 and 1963 Constitution respectively in the following terms "Any person who alleges that any of the provisions of this Chapter has been contravened in any territory in relation to him may apply to the High Court of that territory for redress."

[6] The fundamental rights provisions were contained this time around in Chapter IV of 1979 Constitution, so also in the 1999 Constitution. The only difference is that under the 1979 Constitution it was under S. 42, while under the 1999 Constitution it is under S. 46.

IGWE EZEONU[7] the court held that attempt to contravene the right of an individual is actionable.

However, before a plaintiff or applicant invokes the third arm, he must be sure that there are enough acts on the part of the respondent aimed essentially and unequivocally towards the contravention of his rights. A mere speculative conduct on the part of the respondent without more cannot ground an action under the third limb.[8]

Also, the 1979 Constitution of the Federal Republic of Nigeria in Chapter IV thereof provides for fundamental rights.[9] Up till 1979 there existed no provision on the procedure to be adopted in the enforcement of fundamental right. Since the constitutional provisions did not understandly, go to that extent, applicants generally relied on the common law procedure. In 1979 however, the Chief Justice of Nigeria saw the need for such procedural rules, particularly in the light of the 1979 Constitution.[10] Also the 1999 Constitution made a similar provision and directed the Chief Justice of Nigeria to make the rules.[11]

ENFORCEMENT RIGHTS UNDER THE FUNDAMENTAL RIGHT: (ENFORCEMENT AND PROCECDURE) RULES 1979 AND 2009

About four reliefs, three of which are ancillary to the fourth, that is the main claim, are available to a victim for the violation his fundamental rights.[12] A relief is said to be ancillary when it bears a logical relationship to the aggregate core of operative facts which constitute the main claim over which the court has independence jurisdiction.[13] The ancillary reliefs are – (a) bail, (b) production and (c) access to medication; while the main claim is damages. In the absence of a specific prayer by the applicant, the court may suo motu grant any of the ancillary reliefs at the ex parte stages.

(a) Bail: The principle of law here is to the effect that a detainee can be granted bail at ex parte stage pending the determination of the substantive application either by summons or motion on notice for the enforcement of his fundamental rights.[14]

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[7] (1991) 6 NWLR (pt 200) 708. They went further to state that S.42(1) had three major limbs. The major limb is that the fundamental rights in Chapter 4 have been physically contravened. In other words, the act of contravention is completed and the plaintiff goes to court to seek a redress. The second limb is that the fundament right is being contravened. Here, the act of contravention may or may not be completed. But in the case of the latter, there is sufficient over act on the part of the respondent that the process of contravention is physically on the hands of the respondent and the act of the contravention is in existence substantially. In the third limb, there is a likelihood that the respondent will contravene the fundamental right(s) of the plaintiff.

[8] Per Tobi; J.C.A (as he then was) at p.784 para. C-E. This is to stem frivolous and vexations applications before the court. The attempt to contravene a citizen's right must be real and not mere speculative. However, the yardstick to be used depends on the facts of each case.

[9] See Ss. 34-44 of the 1979 Constitution.

[10] S. 46(3) of the 1999 Constitution. However, the present Chief Justice of Nigeria has made another Fundamental Right Enforcement Procedure Rules 2009.

[11] It came into effect in 1st December, 2009 and in its preamble, it stated that the court shall constantly and conscientiously seek to give effect to the overriding objectives of these rules at every stage of human right action, especially whenever it exercises any power given it by these rules or any other law whenever it applies or interprets any rule.

[12] Alili, N. Modern Civil Procecdure Law; Afolayan, Okorie eds. Dec Sage Nigeria Limited, Lagos, Nigeria p.406

[13] Bryan, G.A. *Black's Law Dictionary,* 7th ed; St. Paul, Minn. 1999 p.55

[14] Fawehinmi v. Abacha (unreported), Suit No FHCL/CP/755/95; Ransome Kuti v. State Security Service (unrepoted). Suit No FHCL/L/LP/865/95

(b) Production: This is a mere enactment of the old writ of harbeas corpus. The principle of law here is that the court can order for the production of a detainee by the person(s) holding him while his application for the enforcement of his fundamental rights is pending before the court.[15]

(c) Access to medication: The legal principle here is that, no matter where a detainee is kept, he can be allowed access to his medically prescribed drugs while still in the custody of detaining authority.[16]

(d) Damages: In certain cases, declaratory and/or injunctive reliefs may be available to an applicant seeking redress for the infringement of his fundamental rights. The applicant shall in addition to these ancillary and/or declaratory reliefs be entitle to an award of damages in deserving circumstances. This is so because, in fundamental right cases, the law presumes that damage flow naturally from the injury suffered by the victim as a result of the infraction of his fundamental rights.[17]

The next problem is to make the remedy fit the injury.[18] The usual remedies, certiorari, mandamus and prohibition-the prerogative writs-may not be adequate or enough where there is continuing injury, continuing denial of rights, or continuing exploitation. In India the courts invented new and wide ranging types of remedies for the purpose of giving adequate relief to the poor and disadvantaged. In Nigeria, the 1999 constitution gives the high court special jurisdiction "to hear and determine any application made to it by any person who alleges that any of the fundamental rights guaranteed to him by Chapter IV of the Constitution is being or likely to be contravened and make such orders, issue such writs and give such direction as it may consider appropriate for the purpose of enforcing or securing the enforcement of any light to which the person who makes the application may be entitled under the Chapter.[19]

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[15] Abiola v. Abacha (unreported) Suit No FHC/L/CS548/94

[16] Ray Ekpu v. A.G (unreported) Suit No FHC/L/CS/304/94; Kokori v. Abacha (unreported) Suit No FHC/CS/817/94; Fawehinmi v. Abacha (1996) 5 NWLR (pt. 447) 198, where it was held that the state has a responsibility to ensure that a person in its custody is not put in undue danger of his health and safety. Accordingly, where facts show that the good health of a person in custody of the state depends on his taking special drugs which are not being made available to him, and he wants to have access to them at his own cost, as in the present case, then he is entitled to such drugs through members of his family and personal physicians.

[17] Abiola v. Abacha (1998) IHRLR 447 at 454

[18] Oputa, C; (op. cit) also at p.7.

[19] S. 42(S. 42(2) and S.46(2) of the 1979 and 1999 Constitutions respectively. In this way the court will humanize the law and ensure that Justice is made available and delivered to the common man. See also Nigeria Navy v. Garrick (2006) 4NWLR (pt 969)6. Olutola V. Unilorin (2004) 18 NWLR (PT 905) 416; Ogugu V. I.G.P (1994) 5 NWLR (pt336) 605; Zakari V.I.G.P. 2000 8 NWLR (pt 670) 665, per Oduyemi, J.C.A at p.682 where the learned justice of the Court of Appeal held that section 42 of the Constitution of the Federal Republic of Nigeria 1979 which has been fully quoted in the lead judgment gives to any person who alleges that provisions of Chapter IV of that Constitution which deals with fundamental Right have been, is being contravened in any state in relation to him may apply to the High Court in that state for redress. It also confers on a High Court original jurisdiction to hear and determine any application made to it pursuant to the provisions of the section to make any orders, issue any writ and give such directions as it may consider appropriate for the purpose of seeking the enforcement within that state of any right to which the person who makes the application may be entitled to under the chapter.

COURTS VESTED WITH JURISDICTION OF ENFORCEMENT OF FUNDAMENTAL RIGHTS

The 1979 and 1999 Constitutions of the Federal Republic of Nigeria vested the High Courts with jurisdiction in matters relating to the enforcement of fundamental rights.[20]

As per the 1979 Rules and the 2009 Rules of Fundamental Procedure Rules there are differences in wording.[21] However, it must be noted that the jurisdiction of the Federal High Court in respect of Fundamental Rights Enforcement proceeding is not "general" but special or specific, in the sense that it must be restricted to such matters as provided for under S.251 of the Constitution of Nigeria 1999. Thus in SEA TRUCKS V. ANIGBORO,[22] where the respondent grievance is based on wrongful summary dismissal which can be under the Fundamental Right (Enforcement Procedure) Rules, Achike, J.S.C (as he then was) said:

> "It is manifest that on the facts of the case that the respondent's grievance is based on wrongful summary dismissal and can be redressed by an action at common law. There is no doubt that the respondent's grievance also as it were, wears an elusive colouration that could be redressed as a breach of fundamental right under the rules. The pitfalls in the respondent's claim as in many similar claims including those on chieftaincy matters is the deliberate and disingenuous act of over sighting the restricted frontiers of Chapter IV of the 1979 Constitution and the specified fundamental rights therein which are enforceable under the rules...[23]

The judgment in Grace Jack v. University of Agriculture Markudi[24] should be understood with caution. In the case, learned Justice of the Supreme Court Katsina Alu, (as he then was) (now the Chief Justice of Nigeria), said that both the Federal High Court and the High Court of a State have concurrent jurisdiction in matters of the enforcement of a person's fundamental rights. An application may therefore be made to the judicial division of the Federal High Court in the State in which a breach of fundamental right occurred, is occurring or about to occur.[25]

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[20] Alili, N. (op.cit) at p.398

[21] Order 1 of the Fundamental Rights (Enforcement Procedure) Rules, made pursuant to Chapter IV of the 1979 Constitution States that, Court, means Federal High Court or the High Court of a state. On the other hand, the 2009 Rules states ' any person who alleges that any of the fundamental Rights provided for in the Constitution....And to which he is entitled has been, is being or is likely to be infringed may apply to the court in the state where the infringement occurs or is likely to occur, for redress; provided that where the infringement occurs in a state which has no Division of the Federal High Court, the Division of the Federal High Court administratively responsible for the state shall have jurisdiction. Does it now mean that any court eg Magistrate, Area or Customary Court have jurisdiction, then also there is no mention of a state High Court unlike the 1980 Rules.

[22] (2001) 2 NWLR (pt 696) 159. See also Military Administration of Taraba State v. Jan (2001) 1 NWLR (pt 694) 416, 434; Tukur v. Govt of Gongola State (1989) 4 NWLR (PT.117) 517 AND 546.

[23] At p.182. See also Tukur v. Gongola State (1997) 6 NWLR (pt. 510); Egbonu v. Borno Radio (1997) 1 NWLR 29; Ubi Ujong Inah & 4 others v. Marcus Uko (2002) 9 NWLR pt. 773563

[24] (2004) 5 NWLR (pt 865) 208

[25] At p. 225 of the report. See also Zaria v. I.G.P (2000) 8 NWLR (pt 670) 666, where it was held that both the High Court and the Federal High Court have concurrent and contemporaneous jurisdiction to enforce the fundamental Rights provided for in the Constitution in case of a breach. The learned justice went

It must be noted that the controversy now being resolved by the apex court in this case generated by the enactment of the constitution of Federal Republic of Nigeria (Amendment) Decree No107 of 1993 as reflected in the amendment of Section 230 of the 1979 Constitution. Section 230(1)(s) of the 1979 Constitution has now been incorporated into Section 251(1)(v) of the 1999 Constitution which provides inter alia, that the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil courses and matters arising from any action or proceeding to a declaration or injunction affecting the validity of any executive or administrative action or decision by the federal government or any of its agencies.

This provision is very particular and/or specific in respect of both subjectmatter and the status of the parties over which the Federal High Court shall have and/or exercise jurisdiction. However, this does not implies that State High Court shall have and exercise jurisdiction over fundamental right matters where issues giving rise to the enforcement of such rights fall within the ones specifically provided for under Section 251 of the 1999 Constitution.

PROCEDURE FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS

From the onset, it must be pointed out that the applicable rule for court to follow in fundamental right enforcement proceedings is the Fundamental Right Enforcement (Procedure) Rules 2009, since this new rule has abrogated 1979 Rules.[26] Under the 1979 rules, it is only the rules that is applicable as it was held in Umoh v. Nkan,[27] Where after granting leave for the applicant to enforce his fundamental right, he failed to file the motion on notice within the prescribed 14 days, the Court of Appeal held that Order 22 of the Akwa Ibom State High Court (Civil Procedure) Rules 1981 has no relevance in the procedure relating to proceedings for the redress of infringement or breaches of fundamental rights enshrined in the Constitution of Nigeria.[28]

But now under the 2009 Rules, it is now provided that where in the course of any Human Rights proceedings, any situation arises for which there is or appear to be no adequate provision in these rules, the Civil Procedure Rules of the Court for the time being shall apply.[29] This is a welcome development and it has brought a lot of liberality in the application of these Rules.

It could be seen that the new Rules (2009) as presently constituted aligns with the judgment of the courts while interpreting the old (1979) Rules. A vivid example of this is the

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further to state that looking closely at the provision of S.230(1) (s) of the said Decree 107 of 1993, one will be tempted to agree with the submission that the said provision are ambiguous and equivocal, in that it does not expressly exclude Fundamental Rights.

[26] Order 4 Rule 1 of the 2009 Rules expressly abrogated the 1979 Rules. In fact in Order 4 Rule 2, it states that from the enforcement of 2009, pending Human Right applications commenced under the 1979 Rule shall not be defeated in whole or part, or suffer any judicial censure, or be struck out or prejudiced, or be adjourned or dismissed for failure to comply with these rules, provided the applications are in substantial compliance with the rules. And under Rule 3, it states such pending human right applications may continue to be heard and determined as though they have brought under this rule.

[27] (2001) 3 NWLR (pt 701) p.512

[28] The applicable Rule on Fundamental Right (Enforcement Procedure) Rule is as provided for in Cap 62, Laws of the Federation, 1990, the court further held that it took the respondent sixteen days instead of fourteen days mandatory required by the Rules after leave has been granted for them to file the motion on Notice, which the court said was unacceptable.

[29] Order IV Rule 4 of the 2009 Fundamental Rights (Enforcement Procedure) Rules.

case of Abacha v. Fawehinmi,[30] where the court held that it is now settled that a person whose right has been violated must be free to seek redress for such wrongs in the courts; that the court below was wrong to have held that the respondent approached the court for his redress by a wrong procedure. It is now settled law that a person whose rights have been violated must be free to seek redress for such wrongs in the courts. It is a more technicality to hold it against him that he failed to approach the court properly as in this case. This holding is in complete agreement with Order II Rule 2 of the 2009 Rules.[31]

ABOLITION OF MOTION FOR LEAVE TO APPLY FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHT

By the 2009 Rules, unlike the Old Rules, the requirement of applying for leave to enforce fundamental rights has been abolished.[32] This is good because it now saves time, at least for the applicant.

Even on the subject of enforcement of human rights violation, prior to the promulgation of the 1979 Constitution, the courts liberally approved applications in these matters as brought before it by any processes known to law.[33] By these new Rules, all the earlier decided cases that have been struck out due to one defect or the other, especially in the areas of applying for leave no longer stands.[34]

What is necessary now is that every application shall be accompanied by a written address, which shall be succinct argument in support of the grounds of the application.[35] Also where the respondent intends to oppose the application he shall file his written address within five days of the service on him of such application and may accompany it with a counter affidavit.[36]

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[30] (2000) 6 NWLR (pt 660) 228, also N.A.U v. NIRAFOR 1 NWLR (pt 585) 116 at 133-134, Per Salam J.C.A (as he then was)

[31] It provides that an application for the enforcement of the Fundamental Right may be made by an originating process accepted by the court.... By this, it could be writ of summon, motion or originatin summons. This is in the line with the case of Ransome Kuti v. A.G.F (1985) 2 NWLR (pt 6) 211, where th Supreme Court held that by the equitable principal of "Ubi jus Ibi remedium (where there is a wrong, the is a remedy) which makes an applicant to commence an action whether by a writ or any other procedu known to love.

[32] This is also under Order II Rule 2, which states that an application for the enforcement of Fundament Rights may be made by any originating process accepted by the court which shall, subject to the provisio of these Rules, be without *leave of Court* (emphasis mine). Under Rules 3 and 4, the application shall supported by a statement stating the name of the appellant, the reliefs sought and grounds for the reli Where the applicant is unable to swear to the affidavit either because he is in custody, the affidavit can made by the person who has personal knowledge of the facts or by a person who has been informed of t facts by the applicant.

[33] Fajimi v. Speaker, Western House of Assembly (1962) S.C.N.L.R 300, see also Re: G.M Boyo (19 ALL N.L.R (pt 1) 111

[34] Agbakoba v. Director S.S.S (1998) 1 HRLR 252 Jack v. Unam (2004) 5 NWLR (pt 865) 208 Abia St University v. Anyanbe (1996) 3 NWLR (pt 439) 646. Paul Erokoro v. Government of Cross River St (1991) 1 NWLR (pt 185) 322; Ndoma-Egba v. Government of Cross River State (1991) 4 NWLR (pt 1 779 at 789

[35] Order II Rule 5 of the 2009 Rules

[36] Order II Rule 6 of the 2009 Rules

LIMITATION OF ACTION

In a very clear and plain provision in the new 2009 Rules, an application for the enforcement of fundamental right shall not be affected by any limitation statute whatsoever.[37] This means that time will not run against it. It is however suggested that this clause ought to and should be incorporated into the constitution, because the provision herein, being Rules, may not have the force of the law.

An application shall be fixed for hearing within 7 days from the day the application was filed.[38] In cases, if the court thinks that exceptional hardship may be caused to the applicant before the service of the application especially when life or liberty of the applicant is involved, hear the application ex parte upon such interim reliefs as the justice of the application may demand.[39]

On the application been heard ex parte for interim relief, the court may make any of the following orders: (I) Grant bail or order release of the applicant forthwith from detention pending the determination of the application (II) Order that the Respondent against whom the order for the of the applicant is sought be put on notice and abridged the time for hearing the application (III) Order the production of the date the matter is fixed for hearing if the applicant alleges wrongful or unlawful detention (IV) Grant injunction restraining the respondent from taking further steps in connection with the matter or maintaining status quo or staying all actions pending the determination of the application. (V) Any other order as the court may deem fit to make the justice of the case may demand.[40]

HEARING OF APPLICATION

Hearing of the application shall be on the parties written addresses.[41] The rules went further to state that oral argument of not more than twenty minutes be allowed from each party by the court on matters not contained in their written address provided such matter came to the knowledge of the party after they had filed his written address.[42]

The new Rules further make provision that any person or body who desires to be heard in respect of any human right application and who desires to be heard whether or not the party has been served with any of the relevant process, and whether or not the party has any interest in the matter. Also Amicus Curia (friend of the court) may be encouraged in human rights applications and may be heard at any time if the courts business allows it.

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[37] Order III Rule 1, Fundamental Rights (Enforcement Procedure) Rules 2009. This is in contradistinction with the 1979 Rules that state in Order I Rule 3(1), leave shall not be granted to apply for an order under these Rules unless the application is made within 12 months from the date of the happening of the event, matter or act complained of, or such other period as may be described by any enactment or except where a period is so prescribed, the delay is accounted for to the satisfaction of the court or Judge to whom the application for leave is made. This means that, where a wrong was thirty years ago and the victim just realizes it, he can as well litigate on it against any authority or agency.

[38] Order IV Rule 1, Fundamental Rights (Enforcement Procedure) Rules 2009

[39] Order III Rule 3, Fundamental Rights (Enforcement Procedure) Rules 2009

[40] Order IV Rule 4, (C), (I)-(V)

[41] Order XII Rule 1, Order III Rule 1, Fundamental Rights (Enforce Procedure) Rules 2009. Written addresses to accompany application is in tandem with Civil Procedure Rules in most jurisdiction in this country. See for example, Adeyeye J.A, "An Overview of the Kwara State High Court (Civil Procedure) Rules 2005; Journal of Law and International Security 2007, Vol. 1 No3, Dept. of Public Law, Ambrose Alli University Ekpoma, Nigeria p. 132-145

[42] Order XII Rule 2 of the Fundamental Right (Enforcement Procedure) Rules 2009

And in order to cater for an unseen circumstance, the Rules provides that where in the course of any human rights proceeding, any situation arises which there is or appears to be no adequate provision in these Rules, the Civil Procedure Rules of the court for the time being in force shall apply. This is to remove all bottlenecks that an applicant who wants to enforce his rights may encounter.

APPLICATION OF AFRICAN CHARTER ON HUMAN RIGHTS IN NIGERIA

The new rules in compliance with the judgment of the Supreme Court in ABACHA v. FAWEHINMI have now finally given force to the decision in the case. Where the respondent/applicant, legal practitioner, author and human rights activist was able to enforce his rights as provided for under Article 5, 6 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 10 Law of the Federation 1990, when the military administration in Nigeria has suspended Chapter IV of the 1979 Constitution that deals with the enforcement of fundamental rights. These new rules adequately cater for the decisions of the court in the quest for unfettered enforcement of fundamental rights, and it is a welcome development.

CONCLUSION

In this paper, a brief history of history of the constitution as it relates to fundamental rights has been traced, the enforceable rights under the law discussed. The 2009 and 1980 Rules on fundamental rights have been compared in line with the applicable judgment of our courts. As Barrack Obama, the President of the United States points out, that "no law is ever final, no battle truly finished, there is always the opportunity to strengthen or weaken what appears to be done, to water down a regulation or block its implementation...," so is it for the 2009 Fundamental Rights (Enforcement Procedure) Rules. The 1980 Rule has become obsolete, so also since the nation is now experimenting with the 1999 Constitution and the old Rules (1980) was under the 1979 Constitution, the change to the new Rules is a welcome development. It is however re-amended that the period of fixing the date for hearing of an application be reduced from seven to five days from the date it was filed.