

**FUNDAMENTAL HUMAN RIGHTS ENFORCEMENT PROCEDURE IN NIGERIA  
AND ITS CHALLENGES**

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**Abstract**

Fundamental human rights are those rights that go to the core of the human existence, liberty and dignity. In essence, when they are infringed upon, it is the very existence of humans that is threatened. In Nigeria, these rights are entrenched in the whole of Chapter IV of the 1999 Constitution. Considering that the guarantee of fundamental human rights does not translate to its enforcement, enforcement of fundamental human rights are not easy tasks as they ought to be in this present day and time. Many people whose fundamental human rights have been, are being or likely to be infringed have little or no knowledge about these rights, thus are unable to seek redress. Furthermore, when the barricade of knowledge of these rights is shattered, there remains the hurdle of the proper procedure to be surmounted. In the procedure also, there are other challenges that have made the enforcement of fundamental human rights a daunting task in Nigeria. The work seeks to bring perspective to the procedure for enforcing fundamental human rights and the challenges that has plagued same in Nigeria, as well as proffer possible way of the problems.

**Keywords:** Human Rights; Enforcement Procedure; Constitution, Chapter IV

## Introduction

Fundamental rights are regarded as those aspects of human rights which have been entrenched in the Constitution of a country.<sup>1</sup> They are particularly entrenched in the law of a State in order to enhance the liberty of humans and their dignity. The confusion associated with the dichotomy between ‘human rights’ and ‘fundamental rights’ has been eradicated in Nigeria. By virtue of the provision of Order 1 of the Fundamental Rights Enforcement Rules, 2009, fundamental right means any of the rights provided for in Chapter IV of the Constitution, and includes any of the rights stipulated in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act. It goes on to state that human rights include fundamental rights.

Consequently, human rights that are enforceable in law are those rights which the law recognize as Fundamental Rights, as opposed to mere aspirations or ideas of rights that a person might hold. These fundamental rights that are justiciable in Nigeria are now embodied in Chapter IV of the Nigerian Constitution of 1999 (as amended) by virtue of Sections 33 to 43, and the African Charter on Human and People Rights, which was ratified and domesticated as a Municipal Law by the National Assembly on the 17th day of March, 1983.

These fundamental rights as provided by the Constitution are as follows:

- a) The right to life<sup>2</sup>
- b) right to dignity of human person<sup>3</sup>
- c) right to personal liberty<sup>4</sup>
- d) right to fair hearing<sup>5</sup>
- e) right to private and family life<sup>6</sup>
- f) right to freedom of thought, conscience and religion<sup>7</sup>
- g) right to freedom of expression and the Press<sup>8</sup>
- h) right to peaceful assembly and Association<sup>9</sup>

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<sup>1</sup> Uzoukwu v. Ezeonu II Ors. (1991) 6 NWLR (PT. 200) 708 at 761

<sup>2</sup> section 33 of the Constitution of the Federal Republic of Nigeria, 1999 ( as amended)

<sup>3</sup> Section 34 *ibid*

<sup>4</sup> section 35

<sup>5</sup> Section 36

<sup>6</sup> Section 37

<sup>7</sup> Section 38

<sup>8</sup> Section 39

- i) right to freedom of movement<sup>10</sup>
- j) right to freedom from discrimination<sup>11</sup>
- k) right to acquire and own immovable property anywhere in Nigeria.<sup>12</sup>

In a bid to tackle Human Rights abuses which are rampant in the African region, especially in Nigeria, the rights enforcement received a boost with the introduction of the new Fundamental Rights (Enforcement Procedure) Rules, 2009 (hereafter referred to as “FREPRules”).

The new FREPRules came into force on December 1, 2009 after being signed by a former Chief Justice of Nigeria, C J N. Justice Idris Legbo Kutigi. The 2009 FREP Rules replaced the 1979 rules which was in force for about 30 years. It is to be noted that these 2009 FREP Rules have the same force as the Constitution itself, having been made pursuant to section 46(3) of the Constitution.<sup>13</sup>

### **1.0. Application to Enforce Fundamental Rights**

Section 46(1) of the 1999 Constitution (as amended) provides as follows:

Any person who alleges that any of the provisions of this Chapter 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.

Similarly, Order II Rule 1 of the FREP Rules, 2009 makes provision for those who may seek redress, although with an expansion that includes those rights contained in the African Charter on Human and People’s Rights (Ratification and Enforcement) Act. The provision reads:

Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and People’s Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur for redress.

It seems glaring from the above provisions of the Constitution and the FREP rules, 2009 that the persons who can bring an application to enforce their fundamental rights as contained in the

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<sup>9</sup> Section 40

<sup>10</sup> Section 41

<sup>11</sup> Section 42

<sup>12</sup> Section 43

<sup>13</sup> Abia State Univesity, Uturu v. Chima Anyaibe(1996) 1 NWLR (PT. 439) 646 at 660-661

Constitution or the African Charter on Human and People's Rights (Ratification and Enforcement) Act are those whose rights have been, are being, or likely to be contravened.

Commendable is paragraph 3 (e) of the preamble to the FREP rules, 2009, which mandate courts to encourage and welcome public interest litigation in the Human Rights field and that no human rights case may be dismissed or struck out for want of locus standi.<sup>14</sup> Thus, the following persons can now apply to enforce fundamental rights:

1. Anyone acting in his own interest;
2. Anyone acting on behalf of another person;
3. Anyone acting as a member of, or in the interest of a group or class of persons;
4. Anyone acting in the public interest; and
5. Association acting in the interest of its members or other individuals or groups.<sup>15</sup>

There appears however to be a controversy regarding whether or not the preamble to the FREP Rules that extends the category of persons that may apply for the enforcement of fundamental rights overrides section 46(1) of the Constitution? It has been held by the Court of Appeal that the FREP Rules made pursuant to the Constitution have the same force of law as the Constitution itself and overrides the provisions of any other enactment to the contrary.<sup>16</sup> It has also been argued that the provisions of the FREP Rules as made by the Chief Justice of Nigeria, in pursuance of the powers conferred on him by the Constitution is ultra vires to the extent of its inconsistency because it purports to amend the Constitution.<sup>17</sup> Despite this controversy, the provision of the FREP Rules is a welcome development as it would guarantee the interest of the grassroot populace and those without a voice and who are at the danger of fundamental rights violation.

## 2.0. Courts with Jurisdiction

The 1999 Constitution provides that whoever wishes to enforce his fundamental rights may apply to a High Court in the State where the alleged infringement has been, is being or likely to

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<sup>14</sup> Before the advent of the FREP Rules, 2009, the term ‘‘any person’’ under section 42(1) of the 1979 Constitution and section 46(1) of the 1999 Constitution was interpreted by the courts to mean the actual person whose fundamental right had been, was being or likely to have been violated. See *Olusola Oyegbemi v. Attorney-General of the Federation* (1982) 3 NCLR 895; *Alhaji Shugaba Abdulraham Darman v. Min. of Internal Affairs* (1981) NCLR 459.

<sup>15</sup> Paragraph 3(e) of the Preamble to the FREP Rules, 2009

<sup>16</sup> *Abia State University v. Anyaibe* (supra)

<sup>17</sup> Efevwerhan, D. I. 2013. Principles of civil procedure in Nigeria. Snap Press Nig. Ltd.: Enugu. 2<sup>nd</sup> Ed. 466

be perpetrated.<sup>18</sup> This provision is similar to Order II Rule 1 of the FREP Rules, 2009. The FREP Rules go further to define 'Court' to mean 'the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja.'<sup>19</sup> It can therefore be deduced from the foregoing that courts that have been conferred with jurisdiction with regard to the enforcement of fundamental rights are the Federal High Court and High Court of a State or the Federal Capital Territory (FCT), Abuja.

It is worthy of note that both courts can only exercise jurisdiction over fundamental rights enforcement relating to matters of which the Constitution has granted or invested them with jurisdiction.<sup>20</sup> However, where an applicant unknowingly institutes an action for the enforcement of fundamental right in the Federal High Court, the Court is empowered to order a transfer of the matter to a State High Court which is competent to entertain it.<sup>21</sup>

Asides the State High Court and the Federal High Court, the National Industrial Court has equally been empowered by the Constitution to entertain matters relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of the Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association, etc.<sup>22</sup> The implication of this is that infringement of fundamental rights in relation to the above matters can only be enforced before the National Industrial Court.<sup>23</sup>

### **3.1.Procedure for Enforcing Fundamental Rights in Nigeria**

#### **3.1.1. Mode of Commencement**

Under the FREP Rules, 2009, an application for the enforcement of fundamental rights may be made by any originating process that is acceptable by the Court, and which shall subject to the provisions of the Rules lie without leave of the Court.<sup>24</sup> In the regime prior to the 2009 FREP

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<sup>18</sup> Section 46(1)

<sup>19</sup> Order I Rule 2

<sup>20</sup> Section 46(2), 1999 Constitution; *Tukur v. Government of Gongola State*(1989) 4 NWLR (PT. 117) 517 at 541; *Inah v. Ukoi* (2002) 9 NWLR (PT. 773) 563; *D-G, State Security Service v. Ojukwu* (2006) 13 NWLR (PT. 998) 575; *Gafar v. Governor of Kwara State* (2007) 20 WRN 170

<sup>21</sup> See section 22, Federal High Court Act CAP F12 Laws of the Federation (LFN) 2004; *Moleku v. Federal Commissioner for Works and Housing* (1976) 1 NMLR 329

<sup>22</sup> Section 254(C) (1), 1999 Constitution, as amended.

<sup>23</sup> Efevwerhan, D. I. 2013. Principles of civil procedure in Nigeria. Snap Press Nig. Ltd.: Enugu. 2<sup>nd</sup> Ed.. 479.

<sup>24</sup> Order II Rule 2

Rules, leave of the Court was necessary to apply for the enforcement of fundamental rights. Such application for leave was made *ex parte* and supported by an affidavit verifying the facts relied on. But under the FREP Rules, 2009, no such leave is required before applying for the enforcement of fundamental rights.

By the provision of the Rules, the applicant may apply for the enforcement of his fundamental rights by any originating process approved by the Court. Thus, an applicant may employ any of these originating processes:

1. A writ of summons;
2. Originating motion or application;
3. Petition; or
4. Originating summons.

However, in practice the processes that have been described as the most suitable are Originating summons and originating motion or application. As a matter of fact, the Form 1 in the Appendix to Rules is actually an originating motion or application. Other originating processes like writ of summons and petition may not help the applicant secure a fast and efficient determination of the matter as fundamental rights proceedings require, considering their nature and the consequential processes and procedure they are concerned with.<sup>25</sup> Unlike writ of summons and petition, matters commenced by originating summons and originating motion or application are fought based on affidavit evidence. The originating summons and originating motion/application are better used when facts relied on are not contentious or unlikely to be disputed. It is to be noted that once a particular procedure has been chosen, it has to be strictly complied with in line with appropriate rules of the Court.<sup>26</sup>

An application for enforcement must then be supported by:

- a. A statement setting out the name and description of the applicant, the relief(s) sought, the grounds upon which the reliefs are sought; and supported by
- b. An affidavit setting out the facts upon which the application is made.<sup>27</sup>

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<sup>25</sup> Efevwerhan, D. I. 2013. Principles of civil procedure in Nigeria. Snap Press Nig. Ltd.: Enugu. 2<sup>nd</sup> Ed. 481

<sup>26</sup> Falana, F. 2010. Fundamental rights enforcement in Nigeria. Lagos: Legal text publishing Co. Ltd. 2<sup>nd</sup> Ed. 56; *Effiong v. Ebong* (2007) 28 WRN 71 at 83

<sup>27</sup> Order II Rule 3

An application for the enforcement of fundamental rights is materially defective and liable to be struck out if it is not accompanied by a statement.<sup>28</sup>

It is worthy of note that the breach of fundamental right alleged by an applicant must be the crux of the application for enforcement. Where the application for enforcement merely discloses incidental or ancillary violations of fundamental rights to the principal claim or relief, it is improper to constitute the action as one for the enforcement of a fundamental right.<sup>29</sup>

An affidavit shall be made by the applicant, but in a situation where the applicant is in custody or unable or for any reason unable to swear to an affidavit, the affidavit can be made by a person who has personal knowledge of the facts or by a person who has been informed of the facts by the applicant, stating that the applicant is unable to depose to the affidavit personally.<sup>30</sup>

An application for the enforcement of fundamental rights must also be accompanied by a written address which shall be an articulated argument in support of the grounds of the application.<sup>31</sup>

Where the respondent intends to oppose the application, he shall file his written address within 5 days of the service on him of the application and may accompany it with a counter affidavit.<sup>32</sup>

The applicant may respond on points of law to the written address served on him by the respondent within 5 days of being served, and may also accompany it with a further affidavit.<sup>33</sup>

The written address shall contain: the application on which the address is based; a brief statement of facts and reference to exhibits, if any; issues arising for determination and a succinct statement of argument on each issue incorporating the relevance of the authorities referred to, alongside the citation of each of authorities<sup>34</sup>.

### **3.2. Time Limitation for Fundamental Rights Enforcement**

Fundamental rights enforcement under the FREP Rules, 2009 is not limited by any statute whatsoever. Thus, there is no time limit within which an applicant may file an application for the enforcement of his rights. This is a welcome development, unlike under the old FREP Rules,

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<sup>28</sup> Court of Appeal per Omoleye JCA in EFCC v. Ekeocha (2008) 4 NWLR (PT 1106) 161 at 176

<sup>29</sup> Falana, F. 2010. 65; Sea Trucks Nig. Ltd. V. Anigboro(2001) 10 WRN 78. The factors that can assist the court to discover the principal claim in a fundamental rights application include the reliefs sought, the grounds for seeking the reliefs and the supporting affidavit. See Olawoyin v. Obafemi Awolowo University (2004) 2 FHCLR 166

<sup>30</sup> Order II Rule 4

<sup>31</sup> Order II Rule 5

<sup>32</sup> Order II Rule 6

<sup>33</sup> Order II Rule 7

<sup>34</sup> Order XII Rule 4

1979 where an application for enforcement must be brought within 12 months of the occurrence of the violation or acts complaint of.

### **3.2.1. Procedure for Hearing**

By the provision of the rules, the application shall be fixed for hearing within 7 days of filing same. The hearing of the application may be adjourned from time to time where it is extremely expedient to so do, depending on the circumstances and nature of the application.<sup>35</sup>

Hearing of the application shall be on arguments canvassed in the parties' written addresses.<sup>36</sup> Oral arguments of twenty minutes each shall be given to each party by the Court for the canvassing of arguments not contained in their respective addresses, if need be. When all written addresses of parties have been filed and the matter comes up for adoption and either of the parties is absent, the Court shall either on its own motion or on the oral application of the Counsel or party present order that addresses be deemed adopted if the Court is satisfied that all parties had notice of the date for adoption.<sup>37</sup>

### **3.2.2. Ex Parte Applications may be Filed in Certain Situations**

The court may, if satisfied that exceptional hardship may be caused to the applicant before the service of the application for enforcement especially when the life and liberty of the applicant is involved, hear the application ex parte upon such interim reliefs as the justice of the application may demand.<sup>38</sup> The interim reliefs that the Court may grant when an application is made ex parte are as follows:

- a. Grant bail or order release of the applicant forthwith from detention pending the determination of the application;
- b. Order that the respondent against whom the order for the release of the applicant is sought be put on notice and abridge the time for hearing the application;
- c. Order the production of the applicant on the date the matter is fixed for hearing if the applicant alleges wrongful or unlawful detention;

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<sup>35</sup> Order IV Rule 2

<sup>36</sup> Order XII Rule 1

<sup>37</sup> Order XII Rule 3

<sup>38</sup> Falana, F. 2010. 91; Femi Falana v. Legal Practitioners Privileges Committee(unreported) Suit No. ID/312/91

- d. 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;
- e. Any other order as the Court may deem fit to make as the justice of the case may demand.<sup>39</sup>

Where an order is made on a motion *ex parte*, a party affected by it may within seven (7) days of the service of the order, or a further time as the court may allow, apply to the Court by motion to vary or discharge same, and the Court may on notice to the party obtaining the order, either refuse to vary or discharge it with or without imposing terms as to costs or security, or as may seem just.<sup>40</sup>

### **3.2.3. Notice of Preliminary Objection**

A respondent may decide to challenge the jurisdiction of the Court to hear the application by means of preliminary objection. This Notice must be filed alongside the counter affidavit to the main application, unless he willfully decides not to file a counter, in that case he would be deemed by the court to have admitted facts in the main application.<sup>41</sup> The preliminary objection would be heard by the Court alongside the main application, and the court may make the following orders:

- a. striking out the application for want of jurisdiction; or
- b. setting aside the service of the originating process.

Where the court holds that it has jurisdiction to hear the matter, the Court shall go ahead to rule on the substantive application.

### **3.2.4. Service of Application**

Service of originating processes is fundamental to the exercise of jurisdiction of a court. Service of the application for enforcement or order of Court is to be effected by the Sheriff, Deputy Sheriff, Bailiff or other officers of the Court.<sup>42</sup> The service of the application must be effected on all parties personally, unless service on the respondent's agent would amount to personal service on the respondent. Where personal or direct service cannot be effected, substituted means of

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<sup>39</sup> Order IV Rule 4(c)

<sup>40</sup> Order IV Rule 6

<sup>41</sup> Order VIII Rules 1,2 and 3

<sup>42</sup> Order V

service can be employed, but must be with the leave of the Court.<sup>43</sup> Service is to be made within six in the morning and six in the evening, and no service is permitted on Sundays and public holidays except so ordered by the Court.<sup>44</sup>

### **3.2.5. Amendment of Application**

In a situation where new facts arise from the counter affidavit of the respondent, the applicant may be allowed to amend his statement and file further affidavits to reflect the new facts. This requires leave of court.<sup>45</sup>

### **3.2.6. Consolidation of Applications**

The courts are empowered by the Rules to consolidate several applications and determine them jointly and or severally in the consolidated suit in a situation where the applications relate to the infringement of a particular fundamental right in respect of the same matter and on the same grounds, although they may be pending against several persons.<sup>46</sup>

### **3.2.7. Can Non-Natural Persons Enforce their Fundamental Rights**

In law, the word ‘person’ is of an elastic nature as it connotes both natural and artificial beings. Non-natural persons can be conferred with juristic personalities in law. They can sue and be sued in law. So, where rights capable of being enjoyed by non-natural persons are infringed, such persons may be able to enforce such rights under the fundamental rights procedure.<sup>47</sup> In *Onyekwuluje v. Benue State Government & 2 Ors*<sup>48</sup>, the respondents’ Counsel argued that fundamental rights under Chapter IV of the Constitution do not apply to artificial persons. This contention was thrashed by the Court of Appeal and held that although fundamental rights are recognized as belonging to humans, since companies are at common law juristic personalities and act through humans, it will be incorrect to say that fundamental rights do not apply to them.<sup>49</sup>

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<sup>43</sup> Order V Rule 7

<sup>44</sup> Order V Rule 10 and 11

<sup>45</sup> Order VI Rule 2

<sup>46</sup> Order VII Rule 1

<sup>47</sup> Efevwerhan, D. I. 2013. Principles of civil procedure in Nigeria. Snap Press Nig. Ltd.: Enugu. 2<sup>nd</sup> Ed. 493

<sup>48</sup> (2005) 8 NWLR (PT. 928) 614 at 646-647

<sup>49</sup>Concord Press (Nig) Ltd. v. A.G (Fed.) (1994) FHCLR 144

### 3.2.8. Enforcement Proceedings by Infants

Infants are allowed to sue by their next friend or guardian. Similarly, an infant whose right has been infringed can sue by his next friend or guardian for the enforcement of such rights.<sup>50</sup> It must however be properly titled to reflect the name of the infant as the applicant but stated to be suing through his next friend who shall also be named.<sup>51</sup>

### 3.3. Fundamental Rights Enforcement on Behalf of Deceased Persons

The fundamental rights of a deceased person cannot be enforced since he is not alive to enforce it. No person may bring an application for the enforcement of the right of a dead person, as was held by the Court of Appeal in *Ezechukwu v. Maduka*.<sup>52</sup> The Court held that the right to life was only available to a living person and that the right ends once the owner dies.

There is however the possibility of allowing a concerned applicant claiming damages for the unlawful killing of another person to bring an application for on that ground.<sup>53</sup> This is in line with Order 1 Rule 1 of the FREP Rules, 2009 which has defined an applicant to include a party who files an action on behalf of another person.

### 3.4. Can Private Individuals be Held for Infringing Fundamental Rights?

In the history of fundamental rights enforcement in Nigeria, there are host of authorities to the effect that fundamental rights are only enforceable against the government or its agencies.<sup>54</sup> However, the current position of the law is that fundamental rights enforcement proceedings can be taken out against States/governments or their agencies as well as private individuals.<sup>55</sup>

### 3.5. Orders that can be made by the Court

The orders that can be made by the Court are as follows:

1. Prerogative writs and orders like habeas corpus, mandamus, prohibitions, certiorari, etc;
2. Injunctions and declarations;
3. Release;

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<sup>50</sup> *Badejo v. Minister of Education* (1990) 4 NWLR (Pt. 143) 254

<sup>51</sup> Efevwerhan, D. I. 2013. Principles of civil procedure in Nigeria. Snap Press Nig. Ltd.: Enugu. 2<sup>nd</sup> Ed. 493

<sup>52</sup> (1997) 4 NWLR (PT 518) 635

<sup>53</sup> *Bello v. A.G Oyo State* (1986) 5 NWLR (PT. 45) 828

<sup>54</sup> *Minister of Internal Affairs v. Shugaba Darman* (1982) 3 NCLR 915 at 976; *Aderinto v. Omojola* (1998) 1FHCLR 101 at 104

<sup>55</sup> *Uzochukwu v. Ezeonu II* (1991) 6 NWLR (PT. 200) 708 at 763-764, per Nasir PCA; *Theresa Onwo v. Nwafor Oko* (1996) 6 NWLR (PT. 456) 612

4. Production;
5. Access to medication;
6. Damages.<sup>56</sup>; and
7. Public apology.

It is to be noted that disobedience to any order made by the Court in pursuance of an application for the enforcement of fundamental right is punishable with contempt. The appropriate form to be used is Form 4 in the Appendix to the FREP Rules, 2009.

### **3.6. Challenges/Problems of Fundamental Rights Enforcement in Nigeria**

#### **1. The Issue of Principal and Ancillary Relief**

The issue of principal claim or ancillary relief is one of the major headaches by the Litigants or Applicants. The Courts have in some decided cases on Fundamental Human Rights increased restriction on the scope of the applications for the enforcement of Fundamental Human Rights Cases. Indeed, applications alleging serious Human Rights violation are routinely struck out or dismissed on the ground that they were mere ancillary reliefs.<sup>57</sup>

#### **2. Illiteracy**

The inability to read and write constitutes a serious challenge to the enforcement of Fundamental Rights in Nigeria. A good number of the people in Nigeria are illiterate who cannot appreciate or understand what rights they have, let alone pursue their enforcement.

#### **3. Poverty**

Poverty is one of the greatest challenges to the enforcement of Fundamental Rights in Nigeria. The practical actualization of most of the Fundamental Rights cannot be achieved in a Country like ours where millions are living below starvation. Fundamental Rights provision enshrined in the Constitution are nothing but meaningless jargon to people living below or just at starvation level, especially when these victims are unable to afford the services of legal practitioners.<sup>58</sup>

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<sup>56</sup> Efevwerhan, D. I. 2013. Principles of civil procedure in Nigeria. Snap Press Nig. Ltd.: Enugu. 2<sup>nd</sup> Ed. 498 and 499. It is worthy of note that damages can be awarded for infringement of fundamental rights even where it was not expressly provided for as in Section 35 (6) of the Constitution. See Minister of Internal Affairs v. Shugaba Darman( supra)

<sup>57</sup> Sea Trucks Nig. Ltd. v. Anigboro(Supra)

<sup>58</sup> Oputa C. A. 1988. Access to Justice. *Law and Practice* Vol. 1. Cited in Chiroma, M. G. Challenges of enforcement of fundamental human rights under the Constitution of the Federal Republic of Nigeria, 1999. Thesis. Law. Institute of Advance Legal Studies (NIALS). 71

#### **4.0. Attitude of Some State Functionaries and Security Agents/Agencies**

In spite of the existence of Fundamental Rights provisions in the Constitution, the Police and other security agencies still detain suspects for longer periods of time than permitted by law without charging them to Court for trials.<sup>59</sup> Even after charging the suspects to court and the Court grants them bail, these agencies still refuse to comply with the bail order. The case of a Presidential Candidate in the just concluded 2019 general elections- Omoyele Sowore is instructive on this point.<sup>60</sup> He was detained by the State Security Services beyond the allowable time by law even after he was granted bail and he fulfilled the conditions of bail imposed the court. Omoyele Sowore's case seems to be in the news due to his popularity and influence in the society. There are a hundred and one other such cases in Nigeria where security agents have defied or are defying Court orders.

The Attorney- General of Federation and of States, who are supposed to be rule of law compliance officers have been silent in these matters. All these constitute big challenges to the realization of fundamental human rights by citizens.

#### **Conclusion and Recommendations**

This work has been able to establish the fundamental rights guaranteed in our laws as well the procedure for their enforcement through the Courts. It has equally been able to identify the attendant challenges and problems of the enforcement of these rights.

Knowledge, they say is power. It is suggested first of all that a continuous sensitization of the citizenry on their fundamental rights should be carried out by the National Human Rights Commission and non-governmental organizations. This will keep them informed about their rights and how to go about the enforcement of same should the need arise.

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<sup>59</sup> A person arrested is allowed to be detained for a "reasonable time" before being charged to court by virtue of Section 35(5) (a) and (b) of the 1999 Constitution of Nigeria. Where there is a court of competent jurisdiction within a radius of forty kilometres, the time allowed for detention is a maximum period of one day. But in other cases, that is where no court of competent jurisdiction is assessable, then a period of two days or such longer period the court may consider reasonable in the circumstance.

<sup>60</sup><https://www.premiumtimesng.com/news/headlines/361358-again-despite-sowore-meeting-bail-conditions-sss-fails-to-release-him-lawyer.html>

It is also suggested that there should be a synergy between the Bar and Bench in a bid to curb the excesses of security agents/agencies who act in defiance of court orders. The Courts should not hesitate to commit anyone, no matter how highly placed to prison for contempt.

It is further suggested that adherence to technicalities by the Courts in fundamental rights infringement cases should be watered down.

Special courts for fundamental rights enforcements should be established across the States of the Federation. This effort will no doubt help expedite delivery of justice.

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