



NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
INTERNATIONAL LAW PROGRAM

**INTERNATIONAL HUMAN RIGHT PROVISIONS AND FAILURES OF STATE
(NIGERIA) COMPLIANCE: PROBLEMS WITH THE AFRICAN UNION (AU) SYSTEM.**

LILIAN YORTAN OGUOYIBO

MASTER'S THESIS

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THESIS SUPERVISOR
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2021

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DECLARATION

I Lilian Yortan Oguoyibo, hereby declare that this dissertation entitled 'International Human Right Provisions and Failures of State (Nigeria) Compliance: Problems with the African Union (AU) System, has been prepared by myself under the guidance and supervision of 'Prof. Dr. Tutku Tugyan in partial fulfilment of the Near East University, Graduate School of Social Sciences regulations and does not to the best of my knowledge breach and Law of Copyrights and has been tested for plagiarism and a copy of the result can be found in the Thesis.

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DEDICATION

This dissertation is dedicated to the Almighty God, Thank you God for the guidance, strength, power of mind, protection and skills.

ACKNOWLEDGEMENT

I would like to express my special thanks of gratitude to my Lecturer “Prof. Dr. Tutku Tugyan” who gave me the golden opportunity to do this wonderful project on the topic “International human rights provision and Failures of State(Nigeria) Compliance: A Review on the Formation of Nigeria’s Legal Framework and the Role of African system”

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I am beyond grateful to God who have helped me put these ideas, well above the level of simplicity and into something concrete.

Lilian Yortan Oguoyibo

Class of 2021

ABSTRACT

INTERNATIONAL HUMAN RIGHT PROVISIONS AND FAILURES OF STATE (NIGERIA) COMPLIANCE: PROBLEMS WITH THE AFRICAN UNION (AU) SYSTEM

Despite the positive developments of Human Rights Treaties by the United Nations, European Court of Human Rights and the African Charter on Human and People's Right to ensure effective application of fundamental human rights in a democratic society. ¹ Human rights laws have been far from adequate in a lot of unsustainable nation-states², but for the sake of this paper our research focus will be on the federal republic of Nigeria. With that said the 1999 constitution of Nigeria enacted some fundamental human rights. For instance, in section 31, the right to life is prescribed, and this section goes further to add that no one shall be deprived intentionally of the entitlement to live³.

However, Nigeria has been declared a partly free country due to reports from the UN special rapporteur. This description has been the same until now due to the increased number of civilian complaints. These complaints report random killings, arbitrary arrest, police brutality, forced detention, and torture without substantial evidence or any procedural hearings. Despite having ratified international conventions, violations are still taking place in Nigeria. That is why this study's objective is to evaluate state compliance, and the role of the African Union. This dissertation will review limitations that make states prone to violence hindering human rights application in countries⁴.

Nevertheless, this research aims not to propose totally new structural recommendations but rather to extensively review the human rights violations and critically analyse the Nigerian legal commitments to international treaties or its 1999 constitution. And lastly, this research will attempt to examine; the extent to which the principle of right to life afford protection to individuals against State violations? and how effective has the African Court on Human and People's Right been in ensuring justice is served?

Keywords : Human Right, Police brutality, Torture, Unsustainable Nation-state, International Treaties, African Court, International conventions, Nigerian Constitution.

¹ Council of Europe, 'Legal protection of Human Rights, (2017) retrieved from "<https://www.coe.int/en/web/compass/legal-protection-of-human-rights>".

² Office of the High Commissioner concerning Human Rights, health and poverty reduction strategies, (2008)., p-5-7 accessed on (December 12, 2020) p-5-7.

³ Urhobo historical society, Constitution of the Federal Republic of Nigeria 1999 Chapter IV of Fundamental Rights'. Retrieved from [http://www.waado.org/nigerdelta/ConstitutionalMatters/1999 Constitution/Chapter four.html](http://www.waado.org/nigerdelta/ConstitutionalMatters/1999%20Constitution/Chapter%20four.html)

⁴ Hafner E. & Tsutsui, K, 'Justice lost the failures of International Human Rights Law to matter where needed the most, (2007) pp-405-425.

TABLE OF CONTENT

ACCEPTANCE/APPROVAL	
DECLARATION	
DEDICATION.....	
ACKNOWLEDGEMENT	iii
ABSTRACT	iv
ABBREVIATIONS.....	vii
INTRODUCTION.....	1
Research Questions.....	2
Research Methodology	2
Significance of The Study.....	4
CHAPTER 1	5
1.1 An Introduction to Human Rights Law	5
1.2 Obligatory Nature of the Human Right under International Law System	6
1.3 Evolution of Human Rights Developments in Nigeria.....	8
1.4 Nigeria Role in Realizing Human Right	11
CHAPTER 2.....	13
2.1 International Declarations as a landmark for Human rights law.....	13
2.2 The Case of Police Brutality in a State: Nigeria.....	14
2.3 Nigeria’s National Legal Frame Work to International Obligation.....	18
2.4 The Critical Analysis of the Limitations on Human Rights in Nigeria.	19
CHAPTER 3.....	22
3.1 The African Charter Interpretation of the Right to Life	22

3.2 Correlation between the African Commission and the African Court of Human Rights.....	25
3.3 Analysis of African Commission and the African court.	26
3.4 Review on the Normative Flaws of the African Charter	28
CHAPTER 4.....	30
4.1 Establishing State Responsibility & Complicity for Human Rights Violations... ..	30
4.2 Case Law Illustrating State Obligation to Protect within its Territory.	32
4.3 Defining the Wrongful Act of a State	33
4.4 National Compliance with International Human Right Treaties	36
4.5 The Institutional Mechanisms Protecting Human Right Laws in Nigeria	38
CHAPTER 5.....	41
5.1 Fundamental Issues, Theoretical and Practical.....	41
5.2 Context of State Compliance.....	41
5.3 Justification of Gaps in State Compliance.....	42
5.4 Review and Discussion of Findings for the Study	43
5.5 Implication for Practice.....	45
Recommendations for Research.....	46
CONCLUSION	47
BIBLIOGRAPHY	
PLAGIARISM REPORT	
ETHICS COMMITTEE APPROVAL	

ABBREVIATIONS

ECTHR	EUROPEAN COURT OF HUMAN RIGHT.
AU	AFRICAN UNION.
UN	UNITED NATIONS.
SARS	SPECIAL ANTI-ROBBERY SQUAD.
ACHPR	AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS.
UNCAT	CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.
NGO	NON-GOVERNMENTAL ORGANIZATION.
IACHTR	THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS.
OHCHR	OFFICE OF HIGH COMMISSIONER FOR HUMAN RIGHTS.
UDHR	UNIVERSAL DECLARATION OF HUMAN RIGHT.
CPED	INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSON FROM ENFORCED DISAPPEARANCE.
CRC	CONVENTION ON THE RIGHT OF THE CHILD.
CEDAW	THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN.
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.
ICESCR	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS.
NOPRIN	POLICE REFORM NETWORK IN NIGERIA.
O.A.U	ORGANIZATION OF AFRICAN UNITY.

INTRODUCTION

Over time, human rights became generally recognized as rights belonging to all individuals due to the very fact of their existence to humanity⁵. The fundamental concept of these Human rights is notably morality, human dignity, equality, and non-discrimination. Coupled with the historical evidence in the existence of natural law⁶. To put it another way, human rights are deemed universally inherent and are as old as humankind. In light of historical and constitutional developments, the 1215 Magna Carta laws and Bill of Rights (1791) have been well-codified into the system of human rights in the constitution of most nation's states. Alongside with modern-day universal declaration of human rights development and international human rights treaties⁷. However, we are witnessing a new era of challenges to human rights goals were violations of human rights tend to occur within the domestic realm of a state (intra-state violations) as opposed to the time of world War 1 and 2. In this new Era, Current violations mostly stem from state agents and non-state actors, and these violations include arbitrary killings, illegal detention, ill-treatment, and enforced disappearance.⁸ Although some countries have recorded high compliance mechanisms under the monitoring of international and regional commission bodies, others have recorded low levels of compliance with human rights obligations resulting in more of the violations mentioned above. Violations occur in every part of the world under different circumstances⁹. Nevertheless, by contrast, European states tend to have higher compliance levels than African states; this will be discussed extensively in chapter 2 and also in chapter 3 and the research question below will be reviewed and answered.

⁵ See work by Dundes R.A, On the concept of Human Rights; *Anthropos*, Vol.4 [1988] pp, 343-364.

⁶ Alexander Orakhelashvili, *Research handbook on theory and history of international law*, Edwards Elgar publishing, pp, 61-92[2011].

⁷ *Ibid*, page 66

⁸ Wolfgang Kaleck, Miriam Saage-Maaß, *Corporate Accountability for Human Rights Violations Amounting to International Crimes: The Status Quo and its Challenges*, *Journal of International Criminal Justice*, Volume 8, Issue 3, July 2010, Pages 699–724, <https://doi.org/10.1093/jicj/mqq043>

⁹ Marta S. Dionis, *Bridging the Gap between Commitment and Compliance: State capacity and Human Rights in Guatemala*, [2013] Retrieved from https://www.ibei.org/ibei_studentpaper11_71914.pdf

Research Question: To what extent does the principle 'right to life' afford protection to individuals against state violations through the judicial role of the African court on human and people's rights?

This question is indeed very relevant to the international law field and all of Human rights bodies at large; consequences of such negative behaviours by the State might further hinder human rights application and set human rights laws' achievements aback. With this in mind, international human rights bodies rely profoundly on regional human rights systems for state implementation. Hence, regional human rights systems are viewed more critically when aiding the implementation of human rights developments. Illustrations of cases will be discussed later on in chapter 4, through the European Commission's contributions and European Court of Human rights on violations carried out by the State and its agent.

METHODOLOGY

For this body of work, historical research methodology will be used to structure the dissertation, after which the research topic and problem are identified for further understanding. Our study is based on international human rights law. Therefore, cases with primary sources such as statutes, statutory instruments, and law reports helped with data collection. Specifically, relevant articles from international conventions, covenants, and declarations help apply international law regulations. Only NGOs' reports were used to provide experts' opinions and views on the challenging circumstances occurring in the country of study. Secondary source like legal books and online articles were used for my secondary sources. Other books and articles are essential for a complete dissertation, obtained via the library of the Near East University, Google scholar, Taylor and Francis, Sci-hub, and African journals online to approach a wide scale of authors' writings on international human rights issues. The mixed model research and typology, a technique of research that combines quantitative and qualitative research methods, can be useful for the study purpose. All updated and relevant data will be collected to provide the literature review, and this data collection will be carried out through a qualitative research

method. The qualitative research methods include samplings applied for data collections with the help of several approaches. These approaches include in-depth inquiries into case studies, a careful review of documents, reports, and evaluating interviews, including direct quoting, paraphrases, authors, NGO's officials, and reports such as Amnesty international, freedom house, and human right watch. The inductive analysis will also be applied in the research method by exploring and confirming the new conditions and violations caused by the special anti-robbery squad in Nigeria while approaching with context sensitivity. For the data analysis procedures, the qualitative research method is useful to explain & analyse this research topic related to police brutality and Nigerian prison system violations while approaching a topic area with context sensitivity. Additionally, both the Qualitative and quantitative research method is useful for analysing the research topic. Since it requires a particular population of interest, investigation, and understanding of the problem in the concerned area regarding law and politics, all secondary and primary sources will be collected and assessed in depth. The collected data on treaty provisions for Human Rights Laws describes rules on the formation of rights to life, freedom of torture & arbitrary arrests, specifically on states where violations occur and states which are party members to these treaty provisions.

SIGNIFICANCE AND OBJECTIVE OF STUDY

The aim and objective of this dissertation are to illustrate the circumstantial limitations of applying human rights laws by reviewing various literature reviews. This dissertation is sectioned into five chapters besides the introduction. The following sections start by introducing the theoretical concept of Human rights law under International law and its instruments, in conjunction with defining its obligatory nature and evolution of human rights developments in Nigeria. Chapter 2 of this work begins with a literature review and case studies on fundamental human rights instruments concerned with the violations. Under this second chapter, questions are discussed to gain further insight into the topic and analyse important legal frameworks to combat these violations to guide this research. Chapter three contains an in-depth study of the research question surrounding regional measures' efficiency in solving these violations. To clarify, we took a look at the framework of the African system to protect human rights laws and normative flaws of the African Charter, following with the criticisms associated with the relationship and functioning roles of both the African Commission and court. Chapter four starts by establishing state responsibility and compliance with human rights violations of Nigeria. This research further analyses Nigeria's national compliance policy and progress, ratifying the topic related instruments. While Chapter five provides an overall summary and a conclusion to findings throughout this research to complete this dissertation.

CHAPTER 1

1.1 AN INTRODUCTION TO HUMAN RIGHTS LAW

To assess a nation's failure to comply with human rights treaties, we must first uncover what the international instruments are and the particular instruments signed or ratified by the country of our case study. "According to OHCHR, Human rights instruments serve as a legal source for protecting human rights of citizens all around the world once signed or ratified by a state"¹⁰. Most conventions could be either regional or global principles, as a global instrument, membership is open to all recognized states, but as regional instruments, membership rights only apply to states in a particular region of the world that share geographical proximity. These human rights instruments are drafted as either a declaration that is not so legally binding (soft law) but may often be politically authoritative and respected. To clarify, the Universal Declaration of Human Rights represents an example of soft law¹¹.

On the other hand, there are legally binding human rights instruments, and some of these human rights instruments are either international protocols, covenants, or convention, and some of the covenant or convention may have an optional protocol. For example, we have the International Covenant on Civil and Political Rights alongside its optional protocol or CAT with its optional protocol and last but not the least; CEDAW. Simultaneously, the three regional human rights principles include the African Charter on people's rights. "The American Convention and the European Convention on Human Rights". All of which solely depends on state promises and responsibility to ratify and carry out the implementation in their domestic courts and corporations.

Nevertheless, in some instances, treaties or conventions with relatively little political authority or legal means may be ignored or only signed by member states but not ratified or given accession to and vice versa. On the other hand, there can be conventions that are multi-party treaties designed to become legally binding. Such a document has precise

¹⁰ See the provisions in 'International Convention on the Elimination on all forms of Racial Discrimination, 1965'.

¹¹ See Universal Declaration of Human Rights, 1948.

and prescriptive language in its drafting and usually requires ratification by each state's legislature.

1.2 OBLIGATORY NATURE OF THE HUMAN RIGHT UNDER INTERNATIONAL LAW SYSTEM

A General idea of the state's obligation to fulfilling any human rights laws or any international origin comes from the principle of Pacta Sund Sevanda, which means promises must be kept in good faith¹². Historically, Nation states abided by the treaty obligations only to save their credibility. Later on, the principle of Pacta Sund Sevanda was reaffirmed by the Vienna Convention of 1969, which establishes that every internationally signed treaty in force binds the parties to it. It must perform in good faith¹³. It is thereby establishing the obligatory nature of international agreements amongst states. Nevertheless, from a political standpoint, it is not easy to have access to a general category of states' obligations under international human rights laws strictly because of the broad array of human rights catalog. The legal implementation of human rights obligations rests on the three principles: respect, protect, and fulfill.¹⁴

Firstly, the obligation for the principle of respect reflects individuals as the right holders and state authorities as to the duty bearers in ensuring citizens enjoyed rights in a democratic society, this principle calls for the state to refrain from interfering with or curtailing the enjoyment of citizen's human rights.¹⁵ Nevertheless, the author Bayefsky, explains that ratification of the human rights treaty is the desirable goal, but often, ratification is merged with radical reservations and failure to comply by states¹⁶. However,

¹² Christina Binder, 'Summary on the limits of Pacta Sund Sevanda in International Law,' [2013], pp-672-675 retrieved from <https://www.mpil.de/files/pdf3/beitr2452.pdf>

¹³ 'United Nations Conference on the Law of Treaties 2nd session, Summary Records of the Twelfth Plenary Meetings and the Meeting s of the Committee as a whole' [1968] vol.2 pp,44-48. Retrieved from https://legal.un.org/diplomaticconferences/1968_lot/docs/english/sess_2/a_conf39_sr12.pdf

¹⁴ See 'The Human Rights Literature, these are referred to in the Maastricht Guidelines, which define the scope of State obligations in relation to Economic, Social and Cultural Rights, but are equally relevant to Civil and Political Rights. See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (Maastricht, Netherlands, 22–26 January 1997)

¹⁵ 'The Human Rights literature, these are referred to in the Maastricht Guidelines, which define the scope of State obligations concerning Economic, Social and Cultural Rights, but are equally relevant to Civil and Political Rights. See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (Maastricht, Netherlands, 22–26 January 1997.

¹⁶ Bayafsky F. Anne, 'Enforcing Human Rights Laws,' [1998] pp, 183-199.

lack of compliance seems to hinder achieving a better human rights implementation, and this lack of compliance is often seen as a definite outcome of poorly developed countries. Due to this reason there may always be a correlation between the political cost of compliance and international reputation (Adam Ellsworth,2018); lack of economic means to provide basic human needs and sustainability may be the reason for this failed compliance. However, the state might comply only to save its reputation. At the peak of globalization gains, countries are most likely to comply to keep up a reputation that attracts better economic ties.

Secondly, the principle to protect under the implementation of human rights obligation clearly requires the state to protect its citizens, and minority groups against human rights abuses¹⁷. Nevertheless human right stability or achievements are not been recorded in Nigeria since 2011, a lot of the atrocities of human right abuses are alleged to have been caused by the very security institutions of Nigeria, which were mainly created to protect the Nigerian citizens, and the government is yet to issue a drastic degree of change to stop these gross violations.¹⁸

Thirdly, the obligation to fulfill, which is urging the state to set up institutional measures that will help and safeguard this fulfillment of rights for its masses. In April of 2017, the Lagos state controller of prison stated that 32 inmates died in 2016 and in a single Lagos prison due to lack of adequate access to medical care. A lot of human rights abuses take place within the prison system; poor conditions in detention centers. Some of these prisons are up to 70+ years old and have a low capacity to contain the ever-increasing numbers of inmates¹⁹. The press report released in December of 2017 reported that the Agodi minimum security prison in Oyo state held up to 1,104 inmates' despite its maximum capacity of 390 inmates.

¹⁷ Human Rights Committee General Comment No. 31 (2004) Addaney, Michael. "Enhancing the Protective Space for Refugees in Kenya and Uganda." 2015, p. 71.

¹⁸ Human Right Watch, 'Rest in pieces' Police Torture and deaths in custody in Nigeria', July 27th,2005.

¹⁹ Nigeria: 'Despite Reform, police Routinely practice torture',2015> Retrieved from <https://www.hrw.org/report/2005/07/27/rest-pieces/police-torture-and-deaths-custody-nigeria>

1.3 EVOLUTION OF HUMAN RIGHTS DEVELOPMENTS IN NIGERIA

i. Pre-Colonial Era

Visible traces of human rights practices and violations are said to have existed before colonial rule during the reign of the Benin empire, Nri civilization (Igbo tribe), and the Nok civilization (Northern tribe) in 11, 00 BC, 500 BC, and 200 AD²⁰. During the Bronze Age of the 19th century, basic fundamental human rights were freedom of movement, thought, belief, and association, which was preconceived²¹. Although these rights were not drafted like the modern human rights laws, values such as the right to family, kin, clan, membership and the ability to be a part of the local ruler's council or acquire societal status were heavily prioritized²². During this era, sharia laws governed and had a strong influence on Islamic religion and these laws were practiced in all northern parts of Nigeria.²³

ii. Colonial Era

This socially constructed community later on evolved when the colonial masters arrived in 1914. Contrarily to the mind-set that human rights violations were initiated at introducing military practices in politics, human rights problems can be traced to the pre-colonial era²⁴. It was alleged that the British merchant was first met with a dump of dead bodies some of which had beheaded for religious sacrifices ordered by local rulers in the Benin kingdom and other parts of Nigeria. However, many believed that the prehistorical violations of human rights laws were not uncounted by the British administration²⁵. Consequently, the British colonial masters' priority was to amass substantial economic gains regardless of what affected the people within its colonies. According to the Author Batten T. R, the British crown consul in Nigeria introduced gunboat diplomacy where locals were compelled by violent means to conduct British economic interest²⁶. According

²⁰ 'Nigeria History' retrieved from <https://www.studycountry.com/guide/NG-history.htm>

²¹ American Historical Association, The colonial and Pre- Colonial Eras in Nigeria, 2020

²² Benedict Anderson, 'Imagined Communities' 1983.

²³ History of Nigerian explained and retrieved from <https://www.youtube.com/watch?v=fMmkmHUAAO0>

²⁴ <http://www.historyworld.net/wrldhis/plaintexthistories.asp?historyid=ad41>

²⁵ Sunny N. Nwachukwu, 'An Account of Human Right violations in Nigeria' (Pre-British, British and Post British), European Scientific Journal, Vol 10 [2014]. Retrieved from <https://core.ac.uk/download/pdf/236405584.pdf>

²⁶ Ibid, page 232

to (Eso, 2008), p.17) even after the declaration of human right laws in 1948, traces of racism, segregation and human right abuse still existed. He explains that there was a Bristol hotel incident where Mr. Keith and Ivor Cunning had been refused entry since it accommodated only the white race.

iii. Post-Colonial Era

"After Nigeria's independence from Great Britain in 1960, Nigeria became one of many commonwealth nations that adopted the British standard law systems, legal legacy and privileges of the 1215 Magna Carta into its judicial system"²⁷. Nevertheless, the political sector became a bloodbath due to power struggles within the dominant different ethnic groups, despite the guaranteed fundamental rights in the 1960 constitution. A series of military coup d'état took place from 1966 to 1983 by different military Generals. This military coup d'état recorded a high number of lives lost. More human rights violations affecting both political and civil Rights, particularly the freedom of press, speech, and thoughts, were highly restricted during these military regimes, and media or anyone, if found, were sent to jail²⁸. Human Rights record in Nigeria, specifically in the military era from 1985 -1998 under the regime of General Ibrahim Badamosi Babangida and Sani Abacha, was when civilians witnessed the highest level of human rights abuses.²⁹ However, it was not until the Era of the fifth republic's in 1999 that the European convention inspired the current constitution. Finally, human rights issues as of then received legal backings with statutory provisions made in s (33) to (43) specifically covered fundamental human rights that the government and citizens acknowledged and guaranteed to protect. During this era, many human rights treaties were signed, ratified, or given accession status as Nigeria embraced the new democratic system³⁰.

i. Rights ranging from ICCPR & ICESCR was signed in 1993,

²⁷ Nonoil, O. 1978, 'Groundwork on Military Rule in Nigeria', [1980], Journal of Modern African Studies Vol.18, No.4 pp, 707-709.

²⁸ Emmanuel Osayande, 'A Tortuous Trajectory: Nigerian Foreign Policy under Military Rule,' 1985-1999, vol.14, No.1 [2020].

²⁹ 'Dr. Niyi Adegoke Noun, CSS 432 Human Rights provision in Nigeria', [2017] pp, 30-31, Retrieved from <https://nou.edu.ng/sites/default/files/2017-03/CSS%20432%20Human%20Rights%20Provision%20in%20Nigeria.pdf>

³⁰ 'Amnesty International Nigeria, Nigeria: Human Rights Agenda,' [2019]. And the list https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC_NGA_UPR_S4_2009anx_RatifiedHumanRightsInstruments.pdf

- ii. International convention on the Elimination of all forms of Discrimination was also signed as early as 1967,
- iii. Africa charter on Human and Peoples right (1983),
- iv. Convention on the Elimination of all forms of Discrimination Against women CEDAW was signed on the 23rd of April 1984,
- v. UN Convention against transnational organized crime signed in 2001,
- vi. Convention on the Right of a Child (CRC) was signed in 1991,
- vii. Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) was signed in 2001, and
- viii. Protocol to African Charter on the Right of Women in Africa was also signed in 2003. Although economically and socially, Nigeria has not achieved sustainable standards to implement these principles thoroughly, the rights of women and children against human rights violations gain prominence in the year 2000s. Also, since Nigeria's independence and an end to military rules, civilian leaders have proven to be unaccountable to its citizens and have abused their positions in power. The corruption they engage in fuels more political violence, financial embezzlement, and lack of proper allocation of funds to the police sector. In turn, it led to an even more significant increase in unwarranted police brutality, harassment, false arrest, and killings because most police forces earn more living through bribery and bail funds³¹. Many Nigeria leaders obtain leadership positions through corruption and violence that prevail on election grounds that are in no way considered free and fair. Nevertheless, the republic of Nigeria claims to practice a democratic system of government. Sadly, the impunity enjoyed by those

³¹ Souleymane, 'Corruption on Trial: The Record of Nigeria's Economic and Financial Crimes Commission by Human Rights Watch,' [2011]. Retrieved from <https://www.scribd.com/document/151916614/63100646-Corruption-on-Trial-The-Record-of-Nigeria-s-Economic-and-Financial-Crimes-Commission-by-Human-Rights-Watch-August-20-2011>.

responsible for denying justices to victims of police brutality hinders any hope of reforms.

1.4 NIGERIA ROLE IN REALIZING HUMAN RIGHT

In determining our topic, we shall see if Nigeria has signed or ratified other human rights instruments or conventions against the violations happening within its boundary. Nigeria is a full member of the United Nations since 1960 after it gained its independence from Great Britain. According to the UN charter, Nigeria is expected to adopt most of the United Nations' treaties and any enacted laws prescribed in the universal declaration of human rights³². I will like to note that the Convention on prevention and punishment against the crime of Genocide was introduced in 1948. Until now, this Convention hasn't been signed by Nigeria, Although the Convention has been given an accession status given the increasing dominance of the Boko Haram set. And this has been the same attitude and outcome to the civil and political right optional protocol concerning the abolition death penalty and other optional protocols of human rights³³.

Another important Role to remember is, Nigeria joined the OAU in 1963, which has protecting human rights as one of its Objectives. Contrary to this membership existing as far back as 1963, societal and religious norms were limiting factors to women's rights.³⁴ For decades' girls have been made to marry as early as 15 years old to men even old enough to be her father. Most violation of women and children right still occurs in the northern part of Nigeria, where religious sharia law is practiced. Nevertheless, this ordeal has decreased drastically due to increase awareness and criticism of international institutional bodies but such practice still very much exists³⁵.

Moreover, the convention on eliminating discrimination against women was signed in 1984 and ratified in 1985, while the optional protocol was signed in 2000 and ratified in

³² 'The United Nations Conference for Law of Treaties 2nd session, Summary Records of the Twelfth Plenary Meetings and the Meeting s of the Committee as a whole' [1968] vol.2 pp,44-48. Retrieved from https://legal.un.org/diplomaticconferences/1968_lot/docs/english/sess_2/a_conf39_sr12.pdf

³³ Olaitan Olusegun & Oyeniyi Ajigboye, 'Realizing the Right to development in Nigeria: An Examination of Legal Barriers and Challenges, Vol.6, No.1 [2015] pp-156.

³⁴Human Rights Watch Human Rights in Nigeria', [2000]. Retrieved from hrw.org

³⁵ Key developments of 2019 > <https://freedomhouse.org/country/nigeria/freedom-world/2020>

2004. Another "International Convention on the protection of persons from enforced disappearance" was signed in 2009 by Nigeria without any accession clause. 'Also, the Nigerian government signed the UNCAT in 1988 but waited till 2001 to ratify the Convention. In 2002, former President Olusegun Obasanjo appointed the Oputa panel commission to investigate the rulings of the mysterious deaths and assassins by military regimes between 1966 and 1998³⁶. This action brought back faith to the Nigerian criminal justice system, but no publicly known military personnel were persecuted for the atrocities committed until now. It can be concluded that, Nigeria may be called upon in severe crimes since it has joined the international criminal court.

SUMMARY

Since Nigeria is an active member of the United Nations and the African Union. The Nigerian government has also ratified many UN Human Rights Conventions and must maintain the standards laid down in these documents. According to UN International Human Rights Standards for Law Enforcement; 'everyone has certain inherent rights' so therefore the government of Nigeria must be apt to ensure such standards are met inclusive of the excessive use of force by police officers, is explicitly prohibited. The UN has called out the Nigerian government for not abiding by the treaty order that says that; 'law enforcement officials shall respect and protect human dignity, and shall maintain and uphold the human rights of all persons. 'Amnesty International (AI) laid guidelines on the use of force by law enforcement which limit police and other security forces around the world to improve their policing policies and practices.

³⁶ Dr. Jacob Abiodun Dada, 'Human Rights protection in Nigeria: The past, The present, and Goals for role Actors for the Future,' Vol.14, [2013]. ISSN 2224-3259 (Online).

CHAPTER 2

2.1 INTERNATIONAL DECLARATIONS AS A LANDMARK FOR HUMAN RIGHTS LAW.

In this research, the overall study aims to apply the literature reviews of the relevant case law regarding abuses such as torture, extra judicial killings, false arrest, and ill treatment during detention in Nigeria. The main legal problem of the international human rights courts, and monitor bodies is how to solve human rights violations within a nation's jurisprudence. As the main discussions concern fundamental human rights.

The discussion starting point revolves around the core human rights laws enacted under the declaration of human rights and other United Nations covenants and conventions relevant to the violations concerned with this topic. In light of modern-day human rights developments,³⁷ the UDHR has been celebrated worldwide for the achievements it has brought to the field of human rights. By being an inspirational document and a landmark for referrals of other human rights instruments worldwide. More importantly, to this topic, the universal declaration principles were thus the first and crucial step towards a progressively increased protection of human rights, which includes the Right to Life within the united nations charter and in documents like International Covenant on Civil and Political Rights. However, views on the relevance of the UDHR have been questioned by several authors one of which is from the Author Aristoteles Constantinides³⁸.

Furthermore, the author Aristoteles debates create the discussions for a review on the African system about our research question. In reviewing the American declaration which proclaims the equality of all men and that their creator endows them with an absolute inalienable right such as the right to life and liberty pursuit of happiness from birth"³⁹. However, this declaration has been overlooked and neglected according to the recent reports of violations in Nigeria. Amnesty International has been and is still very vocal

³⁷ Gudmundur Alfredsson & Asbjørn E., *The Universal Declaration of Human Rights – A Common Standard of Achievement*, Kluwer, The Hague, 1999.

³⁸ Aristoteles Constantinides, *Questioning the Universal Relevance of the Universal Declaration of Human Rights* (2008) pp. 49-63.

³⁹ Retrieved <https://philpapers.org/rec/KARTPO-5> pages 35-51>accessed on October 14, 2020.

about the complete failure of Nigerian political and judicial authorities to end the recent gross violations of various human rights provisions by the special anti-robbery squad (SARS). Recent Amnesty research specify several reports contrarily to what the American declaration represents. The recent violation report suggest that the police routinely use their governmental status to intimidate, harass citizens and apply torture or other ill-treatment methods to extract information and confessions from detainees.

2.2 THE CASE OF POLICE BRUTALITY IN A STATE: NIGERIA

Police brutality has been a global problem over the years, not just in Nigeria alone. For example, there have been many cases and outcry for the end of excessive use of force by the police, especially on the black community in the United States. Firstly, in 1971 a student named Kunle Adepeju was shot dead in Lagos at the University of Ibadan Nigeria while in protest against the standard of catering services at the university. The police opened fire on about 3,000 peaceful protesters and demonstrators which took a quick turn and became even more chaotic. The demonstrators burnt down police stations and went viciously after police officers which fled for their life⁴⁰. Secondly, in 1978 a student by name Akintunde Ojo was shot dead at the University of Lagos by the police during a protest over an increase in daily meal. This led to a national crisis, at least eight students were murdered before universities nationwide were shut down. In fact, that day was declared a black night in Nigeria, the then customs headquarter in Lagos Nigeria was not only attacked, it was sunk down by angry youths. Thirdly, in 1986 about 8 students were killed in Ahmadu Bello University, Zaria (ABU) during a student demonstration. Decades later in 2020, there has been a massacre by the members of the Nigerian military, of innocent protesters waving the Nigerian flag and singing the national anthem.

DIFFERENT FACTORS PROMPTING POLICE BRUTALITY:

- i. Politically instigated in order to suppress citizens
- ii. Racially instigated as argued to be in the US

⁴⁰ Scheiber, J. David., "How Police Unions Became Such Powerful Opponents to Reform Efforts,2020.

- iii. Lack of proper training (both ethical and legal) of police or any security force
- iv. Poor management (including low salary) of the police sector. Studies by Minaar & Mistry (2006) revealed that use of unnecessary excessive force by the police is mostly related to officer's wellbeing.⁴¹
- v. Militarization of the police (creating a warrior mentality especially during training). As noted by Rosa Brooks, "many police recruits enter the academy as idealists, but this kind of training turns them into cynics."⁴²

Police brutality or excessive use of force can be defined as a civil rights violation, where law enforcement agents use excessive or unnecessary force against their subject. There have been a lot of cover-ups for the many atrocities caused by the Nigerian security agencies. As mentioned in the introduction, Nigeria has gone through many waves of violation of their basic human rights by the Special anti- robbery Squad (SARS). This particular notorious unit of the police called SARS was formed in 1992 for special cases of robbery, fraud and to deal with cult groups. Unfortunately, SARS became the very thing it was created to fight against as members of this unit occasionally harass, beat, kill and extort money from innocent civilians for no justifiable reason. This unit has posed a threat to the country for many years but shockingly the Nigerian government has acted oblivious to this issue.

Human rights activists such as Aisha Yesufu, have organized strong protest against the government for its inability to reduce killings, excessive corruption, and silence in severe humanitarian cases. Besides, the Nigerian authorities display an apparent lack of political will to adhere to most human rights obligations. A lack of compliance remains a gap in the existing literature. In a general sense, political analyst Johnson U. Ofoegbu established that democracy is designed to protect citizens' rights, preserve order, and

⁴¹ Minaar & Mistry, Police Brutality and its effect on Society Criminology, (2006). Retrieved from <https://www.ukessays.com/essays/criminology/police-brutality-and-its-effects-on-society-criminology-essay.php>>accessed on October 4, 2020.

⁴² Scheiber, J. David (June 6, 2020). "How Police Unions Became Such Powerful Opponents to Reform Efforts"

limit the government's powers⁴³. Unfortunately, this seems to be the opposite case in Nigeria. Although the author relied on political discourse to analyze the failures of human rights law. After reviewing his work, there is no sound legal source to understand the correlation between abuse and state domestic court responsibility. Moreover, the most recent case of police brutality in Nigeria that shook the world is the Lekki Massacre which took place in Lagos at the Lekki Tollgate on 20/10/2020. On the night of that day, thousands of protesters were gathered in front of the Lekki tollgate protesting against the same brutality suffered by citizens in the hand of their supposed protectors. It was said that, government sent in officials to turn off cameras at the gate and ordered military men to open fire on innocent protesters waving the Nigerian flag and singing the national anthem. A number of deaths were recorded, casualties kept rising as International community condemned such horrific action. It was indeed the most outrageous act done by the Nigerian government to its citizens. One thing is for sure, the carnage is inscribed in the memories of generations.

WHY ARE THERE CONSTANT GROSS VIOLATIONS IN A PARTICULAR NATION-STATE?

Firstly, to fully understand such violations, we have to look critically at the legal composition, political and domestic hindrance of State to comply and apply international human rights laws. Particularly in countries experiencing some internal conflicts. That is why the author Johnson U. Ofoegbu explained "that in countries where Rule of Law stand neglected, human rights laws will hardly be respected ," This seems to be the exact case of Nigeria⁴⁴. After World War two, the practice and understanding in the direction of Human Rights laws have developed into several forms in international law via global and regional institutions. Additionally, this human rights practices have become more politically dependent on the State to carry out these obligatory provisions. Specific organizations such as religion, and governmental institutions have a considerable

⁴³ Ofoegbu U. J., "The Place of Human Rights in Nigeria& Democracy", Published via Journal of African Studies Vol 10 (2013) pp 70-71.

⁴⁴ School of arts and social science, Human Rights provision, Pub- National Open University of Nigeria [2017] Retrieved from <https://nou.edu.ng/sites/default/files/2017-03/CSS%20432%20Human%20Rights%20Provision%20in%20Nigeria.pdf> > accessed on December 11, 2020.

influence on the context of crimes within a state. Although gross violations tend to exist in regions where extreme religious beliefs are, for instance, Nigeria's northern part still practiced sharia laws that permit child marriages a violation of the (CRC) convention.⁴⁵

Secondly, the rising popularity of concepts such as statehood, sovereignty, and global insecurity (terrorism) led to many human rights development milestones. With the current happenings of world, a new wave of human rights violations or Lack of strict accountability panels to pass on judgment on states is all due to the concept of sovereignty. According to the author Jürgen Brohmer, the concept of sovereignty is defined as the right of the State and its organ to not be held responsible for their actions by other judicial organs of other states. (*Al-Adsani v the United Kingdom*)⁴⁶. However, he goes further to say that this immunity does not say anything regarding the State's international legal responsibility. And that is why the *Ozdan S*, reiterated that international limitations put on State by the international law called *Jus Cogen*, which has become evidence of the international system's ever-changing nature, requires states to modify the concept of state immunity always. Nevertheless, cases of violations occurring trans-border are more handled either by the International Criminal Court to persecute individuals, or International court of justice to hear disputes between nations. Regional persecutions in Europe are carried out by the European court of human rights for cases of violations. The domestic court handles cases within state jurisdiction, and these cases often met with a warning or critics from the international human rights monitoring bodies or committees. Nigeria's National Legal Frame Work to International Obligation.

Thirdly, in a politically sustainable society, such domestic violation is often solved with remedies highlighted according to a publishing by the council of Europe director-general for human right laws. Rarely do violations within a country or violations committed by a country's authority get international attention, unlike cross-border violations. Due to this fact, gross violations go on without any monitor body strongly penalizing and ensuring

⁴⁵ IKE Oraegbunam, *Sharia Criminal Law, Islam and Democracy in Nigeria Today*, Vol.8 [2011]

⁴⁶ Jürgen Brohmer, *State Immunity, and the Violation of Human Right*, (2019). Vol 12, Pp.361.

justice to victims. The Lack of an effective monitor body to hold Nigeria's government accountable is the very reason why violations have gone on for so long.

2.3 NIGERIA'S NATIONAL LEGAL FRAME WORK TO INTERNATIONAL OBLIGATION.

Concerning international treaties, Nigeria operates with a dualist legal system for the application of treaties.⁴⁷ This dualist legal system enables the Nigerian legislature to apply treaty provisions before its national courts. At the same time, specific implementing by legislation exists for the Africa charter and the Nigerian constitution. No corresponding national act exists yet for UNCAT. Nevertheless, with regards to the protection of persons against Torture and inhuman treatment, the fourth part of the Nigerian constitution makes available these protections. Additionally, due to the range of international and regional human rights instruments signed by Nigeria, the implications of an International legal framework for combating human rights violations, and identifying key shortcomings of Nigeria obligations exist in the provisions of binding international instruments is essential⁴⁸. In addition to these instruments, Nigeria ratified the regional instrument prescribing Torture, such as the African Charter. Generally, it is said that the nature of the Right against Torture remains an absolute Non-Derogatory prohibition. State are restricted from placing any limitations or reservation to this prohibition of Torture despite any circumstances.

Therefore, State is essentially expected to criminalization any form of Torture in its domestic laws. The Torture Act and Article 4 of UNCAT provide that each state party should ensure that all acts of Torture are offensive under the State's domestic criminal law. Each state party is expected to make such offenses punishable by appropriate penalties that consider their grave nature⁴⁹. One of the many Obligations of State by the UNCAT is that the state is expected to be specific in its definition of Torture as a separate crime from other petty crimes in its national legislation laws. Although, the criminalization

⁴⁷ Ojigbo, O. J. (2005), 'Evaluating the Application, Implementation and Enforcement of International Human Rights Instruments and norms in Nigeria. Commonwealth Law Bulletin', 31(2), pp-110.

⁴⁸ <https://www.ohchr.org/Documents/Publications/FactSheet11rev.1en.pdf>

⁴⁹ <https://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf> >accessed on 13 November 2020.

of Torture and other inhumane treatments is still pending since the draft of the 2017 anti-torture act by the Nigerian legislature. Violations such as homicide, inhumane treatments or assault on females, violations involving excessive use of force, and all other crimes prohibited in the UNCAT are applicable to the penal code act in the southern region of Nigeria.⁵⁰ If found guilty by the Penal code act, punishment such as life imprisonment could be the case for rape. According to the provisions of the Penal Acts, punishment for an ordinary crime of assault could potentially result in one-year imprisonment or more depending on the perpetrator's Intent. While for manslaughter or homicide sentence from the penal act suggests life imprisonment or even the death penalty. Another key fact to remember is that since there is no definite provision for torture or penal code provided on the African charter, African states are required to guarantee acts that fall within the definition of Torture in an international document postulated by Robben Island Guidelines. For example, Penal Code Acts can be found in "Article 1 of the UN Convention against Torture which defined Acts of Torture as offenses within States national legal systems."

2.4 THE CRITICAL ANALYSIS OF THE LIMITATIONS ON HUMAN RIGHTS IN NIGERIA.

i. Economic Limitation

The nature of Nigeria's political system reflects the role of security forces, the tension between the government and the Boko haram insurgency, all of which has been an indicator of human rights laws' continued violence.⁵¹ Significantly, In the Handbook for Monitoring and documenting human rights violations in Africa written via Ukweli, the Historical context and influence on the role of violations of human rights in Nigeria are explained. To gain further understanding, he explained the Economic indicators such as unemployment rate, growth rate, economic policies, and how this reflects the system at which such oppression, extortion, and bribery prevails. All which are resulting from government lack of efficient mechanisms and sufficient political will to investigate and

⁵⁰ <https://www.refworld.org/pdfid/58bd6bb44.pdf> >pp-10 accessed on 13 November 2020.

⁵¹ The Ukweli Handbook, Monitoring and documenting Human Rights violations in Africa, Amnesty International Netherlands and CODESIRA, (2000) 2nd Edn. 2014.

punish most security force violations and atrocities. Police remained inclined to corruptions and human rights violations through illegal detention of suspects operated with widespread impunity.

In September, the Public Complaint and Rapid Response Unit reported a recovered amount of 1.1 million naira's (\$3,038) in bribery payments. These discoveries led to the dismissal of at least ten officers in the past two years and a reflection of the poor income system suffered by the Nigerian institution for policing. As a result, most police officers earn more funds through false detention and Bail than actual state salary. The official united nation's publication for human rights indicator on guilds to implement report (2012)⁵² and These publication expressed significant concerns for human rights assessment since there is no significant body of work in the existing literature or practices that use a consistent and coherent framework to identify and develop specific human right indicators. And this is why the traditional way of indicators are used. Traditional considerations for indicators usually lies within the normative content of these rights claims and duties provided in already existing human rights instruments. For this reason, any outcome that violates the treaty provision related to the human right can be used to monitor the implementation of that right.

ii. Legal Limitations

According to Legal researchers, the limitations of Legal considerations for human rights indicators usually rest within the normative framework of duties provided in existing human rights instruments. For instance, the writer Amos O. Journal critically explained section 33 of the Nigeria constitution by examining how its interpretation could influence the outcome of the violations affecting the Right to Life's.

In our study, this pattern of limitation becomes our first legal limitation to human rights. The author adds that section 33 of subsection 1 of the Nigerian constitution affirms that no citizen shall be exempted from the right to life or be deprived of that right "intentionally," and this applies in respect of a criminal offense. Well, from this provision, he explains two

⁵² The Office United Nation High Commissioner for Human Right Indicator Guild to Implement Report, (2012) pp16-24.

core elements that could be understood. Firstly, the Right to Life interprets that "Every person has the right to life", and secondly, "No one shall be deprived intentionally of his life". However, this statement affected how this provision is interpreted and applied. Most of the violations carried out in this paper instigated by the Nigerian police sub-division force called the special anti-robbery squad (SARS). Who claimed that they thought most victims, both deceased and alive, were criminals and this deprivation of life was not international⁵³.

The second legal limitation lies in Nigeria's judicial branch of government with records and complaints indicating susceptible pressure from the general public. According to freedom house report, Nigerian political leaders may be believed to influence the judicial decisions on Police violations, particularly at the state and municipal levels. Specifically, the issue of underfunding, inefficiency, and corruption may suggest to prevent the judiciary from functioning adequately⁵⁴. Some judges fail to appear in courts for trials. Citizens encountered long delays and received a request for bribes from judges. "Despite the reforms made to incorporate requirement of education and length of services for judges at the federal and state level". There are still no strict monitor's bodies existing for judges at the local (municipal) level, contributing to unaccounted corruption and miscarriage of justice. For this reason, any outcome of violation towards treaty provision related to the human right is an indicator to monitor the implementation of that right within the jurisdiction of the State.

According to Human Right Watch Report, lack of cooperation from other personnel or authorities to help with a truthful statement for these violation cases remains an ongoing problem. Under the UDHR provision, article two for the right to life affirms that nobody, including the government, can try to end a life and that if the family member dies in a circumstance that involves the State, a person may have the right to an investigation.

⁵³<https://www.amnesty.org/download/Documents/afr4448682016english.pdf>.> accessed on November 19, 2020.

⁵⁴ ' Ethiopia OGN v 10.0 May 2011. <https://www.refworld.org/pdfid/4de36c572.pdf>"Freedom House, Freedom in the World Report, (2014).

However, similar this is to Nigeria's 1999 constitution in section thirty-three. It is interpreted differently from the UDHR Article 2⁵⁵

SUMMARY

The summary of the whole limitations on the obligation of State authorities, including police, to respect and protect the right to life is that short comings on internal apparatus within the state may remain a factor hindering the protection of fundamental human right laws. Also the government of every country is advised with the decree to ensure the citizens and all those living in the country have their human right protected. Nevertheless, The Nigerian government has been accused of failing in this responsibility, not just that but actually sponsoring the killings of its own citizens for selfish political ambitions. Activists and the larger public has also criticized international communities and powerful countries such as the US and UK for doing little or nothing towards the incessant disruption in Nigeria but have actively participated in massive extortion of her natural resources. The government must be held accountable for all the humanitarian crimes committed, genocide, and theft, high level of corruption and neglect of their duty.

CHAPTER 3

3.1 THE AFRICAN CHARTER INTERPRETATION OF THE RIGHT TO LIFE

The first distinctive feature of the African Charter is that it recognizes human's rights, by emphasizing 'people rights,' particularly the Right to self-determination, the Right of people to cultivate and freely manage their natural resources. However, all these mentioned rights can only be achieved when the rights to life are protected. Hence, why the superiority of the right to life is highly defined in the African charter of Article 4

⁵⁵Amos O. Enabulele, *Journal of Sustainable Development Law and Policy* (2014), Afe Babalola University.

provision.⁵⁶ Evidently, the Right to Life is recognized as Jus Cogens norms both by several documents drafted as the regional and international instruments.

The core purpose of this provision is to ensure there is no reservation for the right to life.⁵⁷ Using the (McCann and the United Kingdom, §146) case to understand the core importance of the principle of Right to Life. Although, the concept "Right to life" may have a variety of outlook on its meaning and issues ranging from alleged medical negligence, the death penalty, issues relating to euthanasia or abortion. For the sake of our research, we are focusing on a more specific context to the definition of the Right to Life. Typically, one can say the Right to life is affected by the specific use of arrest techniques or death in custody, extrajudicial killings, military operations resulting in enforced disappearance, and the state's responsibility to protect the right of life. But the issues and factors affecting the provision of Right to Life enshrined in several influential and relevant legal documents globally are by no means what they used to be in the 90s and 2010s⁵⁸.

Under NO 3 of the African Charter general comment, the right to life cannot be enjoyed by people whose lives are threatened, and the state must protect each and every one of its citizens lives at the hands of a third party, including private companies and state agents⁵⁹. Article 2 from the African Charter requires all member states, parties to the O.A.U. are required to recognize and adopt in their legislation the duties and rights prescribed the charter to its full effect. As a consequence of this reason, the charter is frequently referred to as a treaty.

Furthermore, the right to life and personal dignity is guaranteed in the fourth part of the article. Not only but also, the charter prohibits torture and all forms of degrading treatment in article 5, meaning there are no circumstances where police brutality is justifiable. Also,

⁵⁶ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986

⁵⁷ All Answers Ltd. (November 2018). McCann and Others v U.K. [1995] ECHR 18984/91. Retrieved from <https://www.lawteacher.net/cases/mccann-and-others-v-uk.php?vref=1> > accessed on November 21, 2020

⁵⁸ Brill Nijhoff, International Human Rights Law Review. Vol 7, ISS 1[2020] Retrieved from https://brill.com/view/journals/hrlr/7/1/article-p1_1.xml?language=en > accessed on November 21, 2020.

⁵⁹ "U.N. Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations" (Art. 2, Para. 1, of the Covenant), December 14, 1990, E/1991/23, available at <https://www.refworld.org/docid/4538838e10.html> [accessed November 22, 2020]

the Charter, in broad terms, guarantees freedom of liberty for every African by way of granting security under the charter's Article 6. Also, with regards to limiting arbitrary arrest or detention and ensuring due process is achieved, an arrest does happen. Again, Article 22(2) asserts that the state should have the duty to individually or collectively ensure the exercise of the rights to economic, social, or cultural developments. Consequently, the charter places a duty on the state to ensure minimal to no life deprivation by implementing legal and practical frameworks to ensure maximum protection of human and people right under their jurisdiction.

THE REALIZATION OF THE AFRICAN CHARTER.

The African charter draft was promptly created by the African Union organization (O.A.U.) in 1981. The African system is the most recent judicial or quasi-judicial regional body added to the African Union and the African Court of human and peoples right.⁶⁰ The African system's goal is to guide and facilitate human rights protection through a complementary role in Africa.⁶¹ The first part of the African charter addresses the legal framework and background lay down to protect rights violated by highlighting human rights situations that need to be protected or reformed in Africa.⁶² To clarify, the Africa Court of Human and People's Rights can only address state where the violation occurs only when the state has made necessary declarations to all these complaints in article 34 of the Banjul protocol. According to the African charter, the right to life is recognized as the foundational right, without the right to life all other rights cannot be implemented. States must take a bold step to ensure deprivation of life or factors causing such deprivation is avoided through conducting thorough, impartial, and prompt examination whenever such deprivation may occur. This measures are to ensure that those responsible are persecuted and those violated are given remedies where appropriate. Under this African system, the African commission is responsible for overseeing the

⁶⁰ Solomon T. Deborah, Towards a positive application of complementarity in African Human Right system: issues of function and Relations. *European Journal of International Law*, 22(3), 663-688.

⁶¹ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986: [excerpts] . . .

⁶²Brill Nijhoff, *International Human Rights Law review*. Vol 7, I.S.S. 1[2020]

charter's implementation through monitoring programs and reports⁶³. However, the commission can be overlooked because it is not a judicial body. Therefore, the African Court of Human and Peoples right adoption in 1998 protocol by the O.A.U members at Burkina Faso becomes vital in safeguarding human rights for Africa.

3.2 CORRELATION BETWEEN THE AFRICAN COMMISSION AND THE AFRICAN COURT OF HUMAN RIGHTS.

Before reviewing the relationship between both the African Court and Commission, we must note that the African court of human and people's rights and the protocol of the African Charter also makes provisions for Human Rights laws to only signatory members. Hence, the jurisdiction of the Charter relates only to states that have signed and ratified the protocol of 1988. International law inspired the formation of the African Charter on human and people's rights, in cases where the state fails to fulfil the obligation of Article 2 found in the African Charter. For instance, when State agents carry out unlawful threatens and killings, or where it has forcefully cursed a disappearance among other violations of rights, a violation of life occurs. According to the African Charter, member states can be held liable for investigation by Human Rights Bodies.

Nevertheless, not all human rights organizations in Africa are supposed to serve as judicial bodies with the competence to try criminal offenses like the international criminal court (ICC). In an article written by Solomon A. Desso, the African Commission adopted a resolution on the ICC151 to execute some judgment to its investigative functions⁶⁴. The African commission is charged with multiple functions, one of which is to commission every violation reported in any African state through special rapporteur and advisers.⁶⁵ The second part of Article 45 and its sub-sections of the Charter negates functions to the African Commission.⁶⁶

⁶³ Christof Heyns, *The African Regional Human Rights System: The African charter* [2003-2004] pp679-695.

⁶⁴ Solomon A. Derso, *The role of African Human Rights Institutions and the African Commission's relationship with other vital entities*, monograph No145, June 2008.

⁶⁵ Rules of procedures of the African Commission, (n 104), rule 98> retrieved from https://www.achpr.org/public/Document/file/English/rules_of_procedure_2010_en.pdf

⁶⁶ 'African Charter on human and people's rights', 1981, Art 45.

However, in light of analyzing these core links between the operations of both the African Court and Commission, we can note that the African Court and Commission have a co-dependent relationship.⁶⁷ For example, if complaints are made on a particular state that has accepted the Africa Court's jurisprudence and exhausted Local remedies, then the African Commission can refer such a state to the African Court. In other words, The African Commission is tasked with interpreting and monitoring rights enshrined in the Charter. The African commission is also charged with the responsibility to receive considering individual complaints of violations across Africa. A more précised function is that they are responsible for monitoring state implementation of such laws in their domestic jurisdiction. Although both have similar functions, the difference in their operations is that the African court's jurisprudence is very much limited to pass judgment. Moreover, only member states who ratified the African court of human and peoples right 1988 protocol and had a violation case claim against them were transferred to the African Commission for a full review.⁶⁸

3.3 ANALYSIS OF AFRICAN COMMISSION AND THE AFRICAN COURT.

Limitations on the operation by the African Court and commission have been subjected to open dialogue and critics regarding jurisdiction⁶⁹. These criticism becomes the starting point to our study Research Question: To what extent does the source right to life afford protection to individuals against state violations through the judicial role of the African court on human and people's rights? Particularly with issues of Pending argumentative and recommended cases. one of the criticism and debates surrounding the functionality of the African Court was that direct cases of violation could not be submitted directly to the African only to the Commission as the 1998 protocol did not permit individual direct access to the court. However, lack of direct access can only change when the state during the ratification process make a reservation or declaration under article 34 sub-section 6

⁶⁷ AJ Ali, The admissibility of Sub-Regional Court's decision before the African Commission or African Court, vol.6 No 2[2012] pp-256-262 DOI: 10.4314/mlr.v6i2.3 >accessed on November 24, 2020.

⁶⁸ Article 46A bis, Statute of the African Court of Justice and Human Rights, Annex, Malabo Protocol.pp-33 >retrieved from <https://www.refworld.org/pdfid/56a9ddcf4.pdf>.

⁶⁹M. Ssenyonjo,' Direct access to the African Court on Human and Peoples Right by Individuals and Non-Governmental Organizations: An overview of the African court's emerging jurisprudence 2008-2012.

of the African charter.⁷⁰ Nevertheless, several African countries, whose protest specified how violations reported to the commission were overlooked, have questioned the African Commission's integrity. This criticism might be valid since the African commission depends on the African union members to allocate funds for its operations. While the African Charter provides that the Commission submits periodical reports on member state compliance, Yet the issues of insufficient funding by Commission and a financial dependency from member State budget can impede the commission capacity to develop effective follow-up mechanism that could afford the protection of people rights. The African Commission has recommended states which are found in violation of the Charter to pay compensation for the rehabilitation of any psychological trauma. However, Most state ignore and overlooked this provision provided in the general comment No.3.without any consequences.⁷¹ Regardless of the codification from Human Rights principles in the Charter and legal systems of African states. Evidently, both reports and underreports of arbitrary detention, extrajudicial killings, and enforced disappearances illustrates continuous massacres carried out with total impunity.⁷² However, this outcome and critical issues is because the African commission allows the domestic legal order first to address such report of violations and offer remedy when the need arises because the African charter article 56 subsection (4) and (5) only permit commission jurisprudence to such matter only when there is an exhaustion of domestic remedies.⁷³

3.4 REVIEW ON THE NORMATIVE FLAWS OF THE AFRICAN CHARTER

On the contrary, the normative flaws of the African Charter start with the nature of its characterization. According to one of the founding fathers for the African Charter, Senegalese Judge Keba M'baye who participated in drafting the Charter stated that, African leaders sacrificed the freedom and growth of fundamental human rights all for the

⁷⁰ Sarkin, J. A Critique of the African Commission's decision on Human and Peoples Right permitting the demolition of the SADC tribunal: Politics versus Economics and Human Rights. "African Journal of International and Comparative Law", 24(2),216-223

⁷¹<https://www.aljazeera.com/news/2020/10/26/judicial-inquiry-begin-in-lagos-to-probe-police-brutality>.>accesed on November 24, 2020.

⁷²ACHPR, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, (2014)

⁷³Frans Viljoen & Lirette Louw, State Compliance with the African Commission's Recommendations on Human and People's Rights, vol.101, No1. [2007] pp1-34.

sake of political gains⁷⁴. Having said this, with regards to the daily reports on human rights abuse across Africa by local news violations continue to go unaddressed, and it is evident that our African leaders are less willing to condemn human rights violations due to national economic gains and image.⁷⁵ Even though the mechanism established to protect and ensure human rights is actualized to a full effect by the African Charter, reservations and claw-back clauses allowing states, in an almost unbounded discretion to escape treaty obligation remain a hindrance to this goal.

For instance, article 8 of the African Charter affirms the freedom of conscience and freedom to practice any religion. This provision prescribes that No one subjected to this decree shall be restricted from exercising these freedoms. This particular provision has consolidated human abuse resulting from religion in Africa, such as child marriage and women's rights violations. Also, this provision was drafted to maintain the status quo of Africa leader preferences. In addition to that, the African Charter does not contain a derogatory clause, one that permits states to temporarily abstain from their obligations during an emergency.⁷⁶

Moreover, articles 58 and 59 provide the commission's functions concerning the monitoring of violations across Africa. In terms of functions, one of its primary duty by the assembly of heads of state is that they are responsible for the monitoring and scrutiny of the commission's work⁷⁷. But these functions and aims have been a total struggle to accomplish as a result of the disproportionate interaction between The Commission and Assembly of the African Union because of who represents this assembly. Article 59(1), provides diplomatic protection by ensuring all measures taken within the provisions of the Charter shall remain confidential within and when the Assembly of Heads of states governments decides. Also, Give the above, article 59 of (2) talks about how its chairman

⁷⁴ Lepetit juriste, The African Charter on Human and People's Rights how effective is this Legal Instrument in shaping- a Continental Human Rights Culture in African? 2014, retrieved from https://www.lepetitjuriste.fr/the-African-Charter-on-Human-and-People's-Right-how-effective-is-this-Legal-Instrument-in-shaping-a-continental-human-rights-culture-in-africa/#_ftn34

⁷⁵ <https://apnews.com/article/police-violence-police-brutality-lagos-nigeria-98ee3550fb576d561d84b372a65cc95f>

⁷⁶ Pierre. D. V. A new beginning starts with the Enforcement of Social, Economic, and Cultural Rights under the African Charter on human and people's rights", (2009) pp- 6.

⁷⁷ African Charter on human and people's rights" 1981, Art 58 and 59.

shall publish the reports of the commission's activities after the heads of state and government have considered it.⁷⁸

SUMMARY

The third chapter can be summarized and concluded that the dynamic between the African Court, Commission and the Assembly should be reviewed and questioned. Ultimately, if an African governments and its law enforcement agents are perpetrators of gross violations like in the case of Nigerian we must question the competence of the assembly which consists of heads of states from African nations, the possibilities of publicizing a report or information that will harm the general image of them and their counterparts are unlikely. The fact that some of the perpetrators of human rights in African have authority over the commission undermines the legality for the African Charter and Human Rights system at large.⁷⁹ African states over the creation of these human rights laws and obligations have asserted that their sovereignty permits individual national law to supersede the Charter and international human rights instruments.

⁷⁸<https://www.aa.com.tr/en/africa/nigeria-15-killed-since-start-of-police-abuse-protests/2012138>

⁷⁹Saro Wiwa V. Nigeria. AHRLR 212(ACHPR 1998); COMMUNICATIONS 137/94, 139/94, 154/96 and 161/97.

CHAPTER 4

4.1 ESTABLISHING STATE RESPONSIBILITY AND COMPLICITY FOR HUMAN RIGHTS VIOLATIONS

Human rights have become universally recognized in today's world as a concept that all humans should possess a certain level of civil, social, and political rights that cannot be taken away. However, we must acknowledge that a progressive change must come with territorial circumstances such as conflicts and structural challenges while accepting the ever-present phenomena of cultural relativism. As a result, of this claim, we must combine the two institutional characteristics of state strength and regime type to evaluate its compliance mechanism using cases from the Federal Republic of Nigeria and previous case rulings by the European court of human rights as case studies. During the investigative process of the Nigerian police force, it is reported by the Nigerian human rights organization called Access to Justice, described that Torture was used as a general routine practice.⁸⁰ And later on, these practices of torture by the Nigerian police institutions were also confirmed via the UN Special Rapporteur to Nigeria.⁸¹ In one of the reports, the Special rapporteur emphasized that "Torture is an intrinsic part of how the police operate within Nigeria. Even so, a wide range of Torture methods was mentioned by the UN Special Rapporteur, and these methods were said to include beatings, shootings of minor body parts, nail or teeth extractions, and rape and other sexual violence. Furthermore, degrading and inhuman treatment such as banging victims' heads to the wall, burning skin with a cigarette, hot iron, or any flammable items, ripping or crushing of feet, finger, or toenails were recounted by survivors. According to this report, acts informally conducted in police detention facilities are referred to as "Torture chambers by the police to extort information and reported by the police reform network called (NOPRIN). Additionally, the ongoing violations of human rights sparked concerns from the African commission after its tasking mission to Nigeria.⁸² With that said, Nigeria

⁸⁰ <https://www.hrw.org/report/2010/08/17/everyones-game/corruption-and-human-rights-abuses-nigeria-police-force>>accessed on November 11th, 2020.

⁸¹ AFR 44/005/2014 Under embargo until May 13th STOP TORTURE Country profile: Nigeria Torture in Nigeria>accessed on November 11th, 2020.

⁸² See the National Human Rights Commission (Amendment) Act, 2010.

was recommended to set up an independent investigative body and fastened the adoption process for the Bill on torture by way of the African Commission.⁸³

Four Phases of States Required to Investigate, Prosecute, and Provide Redress

The available evidence of state obligation is found in sources that have been expressed under customary law. According to the author, Nienka Van Der have, the prevention of human rights violations under International law requires States to protect citizen's life from both their agents and non-state actors⁸⁴. General treaty obligations of all states can be found in article 103 of the UN Charter and Article 6 of the Vienna Convention on the law of treaties. Although, within state territory, there are practical obstacles to protecting human rights, such as legal barriers (absence of human rights infrastructure). This is why the author explains that all facets of state obligations are essential to human rights' effectiveness. For instance, the state's obligation to investigate violations is very central in achieving any human rights protection goal. The author Nienka van der Have goes further to argue that the analysis for the scope of state obligation rests under four temporal phases⁸⁵.

1. According to the author, Long term obligation comes into play once the state becomes bound by any relevant obligation under any customary law treaty. A long-term international obligation can only be actualized first through preventives measures, which at this early stage occur in areas of training or education and ensuring proper legal monitoring mechanism and structure.⁸⁶
2. The second phase begins once the risk is known despite the injurious incident that has not occurred yet. Obligation becomes certain once the violation becomes foreseeable. In this phrase, the author indicates that the state must prevent specific violations through operational measures⁸⁷.

⁸³ <http://eie.ng/wpcontent/uploads/2014/02/NHRC-ConsolidatedAmendment-Act.pdf> Accessed on November, 12th 2020.

⁸⁴ Nienka van der Have, *The Prevention of Gross Violations under International Human Right Law* [2018].

⁸⁵ *Ibid*, page 25.

⁸⁶ *Ibid*, page 17.

⁸⁷ *Ibid*

3. While the probability of the third phrase commences after the injurious event starts, the state's obligation is aimed at stopping the on-going violation. Here obligatory measures can range from investigating, persecuting, or punishing violators.⁸⁸
4. The fourth phrase is said to commence after the violation has ended to ensure the violation's recurrence does not occur again. In this phase, the state's obligation would require counteractive measures to prevent the recurrence of such violations. This measure could take a systemic form whereby the state will have to establish a solid legal foundation such as a case law court or supervisory bodies to prevent reoccurrence patterns to violations.⁸⁹

4.2 CASE LAW ILLUSTRATING STATE OBLIGATION TO PROTECT WITHIN ITS TERRITORY.

In this part of our study, case law becomes important in illustrating when states are to protect citizens within its boundary. For example, in the case of *Oneryildiz v. Turkey*, the "European court of human rights decree that States are obligated to establish a legislative and administrative framework capable enough to deter arbitrary killings and regulate dangerous activities that endanger the lives of people within their territory⁹⁰. Notably, the recommended framework must be based on necessity and proportionality. The ECtHR explained that the state should put a legal framework for the use of firearms by law enforcement agents within state territory due to the outcome of the *Makaratzis v. Greece* case⁹¹. Significantly enough, the case of *McCann v. the United Kingdom*, which had a group of U.K. soldiers who fired shots at an alleged terrorist during an operation, which later had to be known that they acted under false information⁹². The U.K. did not believe they had violated the right to life provision because their reason at the time was valid in the sense that they had acted in an honest defense.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ *Oneryildiz v. Turkey* [2004] ECHR 48939/99.

⁹¹ *Makaratzis v. Greece* [2004] ECHR 50385/99.

⁹² *McCann v. the United Kingdom* [1995] ECHR 18984/91.

Notwithstanding the reason, the ECtHR still held the U.K. liable for lack of a margin of error and failure to adhere to the second phase of obligation to prevent foreseeable violations. Another critical thing to remember is that the obligation's scope for state institutions is restricted in certain circumstances.⁹³ With this in mind, IACtHR proclaimed that States should draw up an implementation policy for prison reform. This proclamation will require states to diligently screen detention centers and new arrivals to avoid prisoner on prisoner violation, leading to loss of life⁹⁴. The U.K. was held responsible by Paul Audrey and the United Kingdom, in the case where a man was violently killed by his cellmate⁹⁵. A state failing to investigate a case parting to human abuse is crucial, and states' excuses for carrying a proper investigation are never overlooked. Similar issue with the case of Yasa and Turkey of 1998 No 22495/93, where the ECtHR affirmed the governments are not dismissed of their obligation even in the most challenging and uncooperative circumstances to investigate, punish and provide redress⁹⁶. The convention against torture has stated its obligation of the state to systematically review its interrogation rules for arrested, detained, or interrogated persons under state jurisdiction and abroad.

4.3 DEFINING THE WRONGFUL ACT OF A STATE

In reviewing reports by commission's fifty-third session, an intentionally wrongful act of state is defined under the commentary in article 1 of the session. These definitions include one or more actions or omissions that breaches the international obligations of state conduct to ensure human rights protection⁹⁷. With this in mind, summaries of an internationally wrongful act of the state is a necessity in holding the state internationally responsible. However, this definition of State wrongful act does not include the content of State obligations under international legal elements. Significantly enough, there are

⁹³ Marta S. Dionis, Bridging the Gap between Commitment and Compliance. [2013] pp- 21, retrieved from https://www.ibei.org/ibei_studentpaper11_71914.pdf>accessed on December 5, 2020.

⁹⁴ UN Congress on the Prevention of Crime and Treatment of Offenders [1990] articles 18-20.

⁹⁵ Paul and Audrey v. the United Kingdom [1998] ECHR 46477/99.

⁹⁶ Yasa v. Turkey of [1998] ECHR No. 22495/93.

⁹⁷ UN Commission Commentary on a State's Responsibility for Wrongful Acts [2001]2nd Edn 2008) pp 31-37. Retrieved from https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf >accessed on December 6, 2020.

standards for determining state obligations to prevent continued violations, but first, knowing what conducts is attributed to the state as a subject under international law and deliberating when and where a law is breached under international law. In addition, the use of elements to analyse State wrongdoing is important and that is why Article 2 of the commentary on the wrongful act by State explains the elements of an internationally wrongful act and grouped these elements into two aspects: Wrongful attribute can sometimes be described as the subjective element in analysing the wrongful act. On the other hand, the second element involved the breach (objective element) of such wrongful act by the state⁹⁸. According to article 7 of state commentary on internationally wrongful act, any violation within state territory caused by state agents or institutions is reflected as a wrongful act by the State. In the course of an act, the subjective element, i.e., intentions or knowledge of the particular state organ, will be evaluated by an international or regional court system⁹⁹.

However, article 30 on state responsibility provides the State with its primary customary obligation. If state government agents or institutions are involved in a violation, then the state must cease the wrongful act.¹⁰⁰ Article 9 deals with certain conduct involving governmental authority elements carried out in the absence of official authority. This is why Amnesty International has been calling out Nigeria's government to regulate its security policies. According to the ECtHR in a case involving *Isaak v. Turkey* no 44587/98, police officers beat an unarmed protester and violated the torture or ill-treatment treaty obligation. The ECtHR gave a verdict with the critical evaluation that stated that the officers failed in offering their obligation and professional expertise in reviewing proper evidence before acting on a constructive perception, which led to an arbitrary loss of life¹⁰¹. Developing obligation in areas intended at preventing any type of injuries associated with human rights violations within state territories is the principal purpose of international human rights law.

⁹⁸ Ibid, page 34.

⁹⁹ Ibid, page 45.

¹⁰⁰ Ibid, Reports from the Commission on the Fifty-Third session, page 88.

¹⁰¹ *Isaak v. Turkey* [2008] ECHR no 44587/98

The attribute to state conduct regarding violations is determined under international law by articles and instruments provision and not by the mere recognition of any link to fatal causality. Nonetheless, the internal practice, structures, or functions of the state institutions are independent of international law. What primarily constitutes state domestic responsibility is left to the state and its rule of law to decide how its administration should function.

Instrumental Links Between Human Rights Principles

Firstly, The Nigerian government is obligated by its constitution to guarantee the protection of its citizen's civil and political rights. The constitutional obligation of Nigeria regarding the extent to which the right to life affords protection to its citizens is guaranteed in article 4 and section 33(1)¹⁰². The International obligation of Nigeria to protect the right to life is guided under article 3 of the UDHR. Similar provisions are also guided in article 4 of the African Charter of human and people's rights, and can be seen in the 6th article of the International covenant on Civil and political right.

Secondly, the Nigerian constitution entrenches the protection of rights of both accused and arrested persons to honor each citizen's personal liberty. To illustrate, a citizen arrested has the right to remain silent and be informed of their civic right(s).¹⁰³ Moreover, any person wrongfully detained or arrested has the right to a public apology or compensation from the appropriate parties according to the Nigerian constitution¹⁰⁴. There are similar details of the right to personal liberty under the umbrella of international instruments. These similarities can be found under articles 9&11 of UDHR and articles 6 and 7 of the African Charter. Coincidentally, these similarities can also be found in the 9th, 10th, 14th, and 15th of the international covenant on civil & political rights provisions as well as other relevant international and regional instruments relating to this right.

¹⁰² Smith I.O, The Federal Republic of Nigeria's Constitution Annotated (Eco watch publication 2005) retrieved from <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> >accessed on December 3, 2020.

¹⁰³ *ibid*

¹⁰⁴ Paul O. Azuakor, Human Rights and Leadership in Africa: The Nigerian Connection in Buhari Administration [2016] (UJAH Vol.20 No.3, 2019) pp-153, retrieved from <https://www.ajol.info/index.php/ujah/article/view/201061/189584> >accessed on December 3, 2020.

Thirdly. Article 36 of the constitution provides a way to ensure hearings are accessible and fair by obligating the judicial body across Nigeria to secure impartiality and independent judgment. By doing so, this article expects every citizen to receive his or her civil rights and an equal amount of time during their trial procedures and transparent legal panels consisting of a competent jurist.¹⁰⁵ Also, Article 10 of the UDHR relays international obligations regarding Civic Rights, similar to Nigeria's constitutional provision.¹⁰⁶ While the rules to apply for persecutions can be found in articles of the African Charter and all other relevant articles of ICCPR for the provision of guidelines on the role of the persecutors which is 'adopted in the resolution 40/32 1988 of the UN General Assembly' 'and relevant article of both international and regional instruments to this rights.¹⁰⁷

4.4 NATIONAL COMPLIANCE WITH INTERNATIONAL HUMAN RIGHT TREATIES

Nigerian government's policy draft under its national action plan (NAP) to fulfill international and national obligations.¹⁰⁸:

- i. Ensure the government and its agent's power to take human life in the course of its administration is constrained by the checks and balances and its rule of law.
- ii. Established rules to prevent situations where life may be taken intentionally or not without due process.
- iii. Ensure efficient measures to avoid a breach of national laws.
- iv. In its administrative steps, ensure the appropriate right to a conference of the federation's attorney generals to decide that all Justice Department should set up an Executive committee of Citizens Right within their respective States.

¹⁰⁵ Smith I.O, The Constitution of the Federal Republic of Nigeria explained [2005]> www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm

¹⁰⁶ Carlson Anyangwe, Obligation of State parties to the African Charter on Human and People Right [199] pp-625, retrieved from <https://heinonline.org/HOL/LandingPage?handle=hein.journals/afjincol10&div=43&id=&page=>

¹⁰⁷ General Assembly 40th session [1985-1986]>retrieved from <https://research.un.org/en/docs/ga/quick/regular/40>.

¹⁰⁸Nigeria National Action Plan>retrieved from <https://www.ajol.info/index.php/naujilj/article/view/82393/72548>> page 12-19.>accessed on December 5, 2020.

- v. Implementing and applying human rights principles to the administration of policing and the criminal justice system.
- vi. Upgrading facilities of the Nigerian prison system
- vii. Establish a comprehensive policy and framework that enables the government to address crime in a coordinated way

Nigerian Human Right Organizations

- i. National Human Rights Commission
- ii. Public Complaint Commission
- iii. Ministry of Justice
- iv. Fundamental Right enforcement and procedure rules (1980)
- v. Nigerian Law Reform Commission
- vi. And the Legal Aid Council.
- vii. Presidential committee on prison reforms and rehabilitation.

During the period from 2009 to 2013, reports for the initiative of the national action plan of the Republic of Nigeria to acknowledge that there needs to be some type of educational provisions to achieve human rights goals¹⁰⁹. The conduct of training learned by the police can be of great help to reduce and discourage arbitrary arrest, torture, and many more. Regarding a persons' liberty is respected, the Nigerian police developed a white paper on policing¹¹⁰. What this paper certified was to recommit the police force in complying with the National Human Rights bodies and International Human Rights recommendations. Nevertheless, the 1999 Nigerian Constitution draft did not allocate the functioning powers to human rights bodies or organizations.

¹⁰⁹ Ibid, page 17.

¹¹⁰ Ibid.

However, this remains a challenging reason why this plan failed to be executed for more than ten years. A detained person is often denied access to a legal practitioner. Human rights bodies also overlook public complaints due to lack of statistical evidence of numbers of complaints and lack of government funds to sub-organizations to keep track of violations. Many intentions by the NAP have not been actualized¹¹¹. Although there have been certain policies that were set up to ratify all State municipalities and to ensure justice was interestingly never established. Lack of funds by the National Human Commission and National Crime prevention strategy led to unmonitored violations. Moreover, the government has not been able to pass the bill prohibiting excessive use of force on people during an arrest or in detention.

4.5 THE INSTITUTIONAL MECHANISMS PROTECTING HUMAN RIGHT LAWS IN NIGERIA

In Nigeria, the judicial system is undoubtedly the only source of a significant protection mechanism for human rights with its source of powers and control granted by the Nigerian constitution. Although this makes the court crowded with too many cases given the number of Nigerian populations and the number of gross violations in the last ten years. With that said, the institutional facilities and mechanism for protecting human rights are highly influenced by the initiatives drafted by the national action plan (NAP) and Nigeria's human rights commission to help ease the court work and speed up the justice process. The initiative led to creating a human rights forum to which governing bodies and sub-human rights organizations gather to discuss the mandate of the commission, governmental reports and reach out to a more significant number of people who are violated¹¹². Also, most severe public complaints in Nigeria are referred to or addressed by the national human rights commission under the full supervision of the executive secretary.

¹¹¹ Technical commentary on the Anti-Torture Framework in Nigeria {2017} pp 16 - retrieved from <https://www.refworld.org/pdfid/58bd6bb44.pdf>.

¹¹² Ibid.

According to these procedures, complaints must be submitted either through a written or oral form of a report to the national office of the commission at the zonal offices of the commission¹¹³. Further investigative functions by the commission are prescribed in article 5 of the national commission act for human rights. Nigerian public complaint commission is subordinate to the national assembly and its chief commissioner¹¹⁴. Other organizations or human rights bodies are not given the full capacity to offer redress to victims. However, we need to address some needed reforms to the judicial system because it is expensive. Most times, people do not get the justice they deserve, especially when it concerns complaints against the police force.

In 2012 the amnesty international raised concerns of intimidation by the Nigerian Police. However, some problems hinder the practical functions and operations of both commissions of the national human rights activities and the public complaint in conducting proper investigations and seeking redress¹¹⁵. Some factors affecting the functions of both commissions are:

- It is said that the 1999 constitution made no provision regarding the human rights commission despite at that time the commission was already existing four years before its creation.¹¹⁶
- Also, the functions of the commission are restricted due to the provision of article 5, which prescribes that "any law enacted by other bodies contrarily is considered inconsistent with any law validly made by the federal National assembly, that is to say, that the law made by the national assembly shall prevail.
- Due to the above article, any other law or recommendation is considered void. Hence, the evidence available indicates that the decisions made by both commissions are mere recommendations and have no binding effects.

¹¹³ Public Commission Act of Nigeria, 1975.

¹¹⁴ Section 5(a) of NHRC

¹¹⁵ Amnesty international, Nigeria: End police intimidation of National Human Right Commission, (2012) Retrieved December 11, 2020.

¹¹⁶ S.E., *Fundamental issues in Nigerian constitutional law*, 2002.

- According to the 1999 constitution, the commission does not have powers to investigate matters prescribed in article 6 and its subsections.
- Limited jurisdiction to fully discharge both functions
- Also, both commissions lacked inadequate staff and fundamental technological advancement to track violations.
- The commission also lacks financial autonomy.
- There is also limited time to reviewing the formal exhaustion of other remedies.
- There is a lack of public awareness of the commission's usefulness, and it remains a known challenge.¹¹⁷

Summary -- The 'loud silence' of the Nigerian government and its slow or insufficient measures taken to handle this continuous brutality will also be discussed in the final chapter. So far, this work has examined the institutional mechanisms well-known in Nigeria for human rights protection. By establishing commissions and other various bodies, human rights are said to be protected. Although these institutional mechanisms are not granted judicial enforcement to solve human rights cases by the 1999 constitution. Despite the national human rights commission's mandate to relay duties and function to ensuring human rights are prompted, the commission is urged by the other various international organizations as well. Additionally, we concluded on the concept of a wrongful act of state and its agent while explaining its territorial obligation to protect its citizens from human right violation with several international instruments and court cases.

¹¹⁷ School of arts and social science, Human Rights Provision, Pub- National Open University of Nigeria (2017).

CHAPTER 5

5.1 FUNDAMENTAL ISSUES, THEORETICAL AND PRACTICAL

This dissertation focuses on the legal, territorial, and structural circumstances of why the state failed to comply with international and regional instruments after ratification. While uncovering what these overlooked obligations are, we would also determine how these outcomes become detrimental to people's human rights. Violations affecting the Right to Life are among the challenges African nations have failed to resolve according to information and documentation of human rights violations in African countries by Amnesty International. These violations range from arbitrary arrest, illegal detention, torture, killings, and disappearance executed by government forces and armed opposition groups.¹¹⁸

5.2 CONTEXT OF STATE COMPLIANCE

Human rights laws have been appreciated as a well-codified human rights system in most nations' constitutions across the world together. However, we are witnessing a new era to respect human rights where human rights violations no longer "often" involve state to state combat and warfare¹¹⁹. Current violations mostly stem from state agents and non-state actors. These violations include arbitrary killings, illegal detention, ill-treatment, and enforced disappearance; for example, despite numerous legal instruments prohibiting violations mentioned above, Human rights investigations conducted around mid-2018 and the whole of 2019 found during its interviews with victims the use of torture and stories of disappearance from victim's family after an arrest by the Nigeria police force¹²⁰. Some countries have recorded a high level of compliance under the monitoring of international or regional commissions. In contrast, other governmental commissions have recorded a

¹¹⁸ Amnesty International, Nigeria Human Right Agenda [2019] from https://www.amnesty.lu/wp-content/uploads/webmigrationfiles/Nigeria_Human_Rights_Agenda_2019_EN.PDF

¹¹⁹ Sonia Picado, *The Evolution of Democracy and Human Rights in Latin American: A Ten Year perspective*, Vol.11 [2004] pp.28-31.

¹²⁰ Amnesty International, Nigeria: Security forces must be held accountable for killing of at least 45 peaceful Shi'a protesters, <https://www.amnesty.org/en/latest/news/2018/10/nigeria-security-forces-must-be-held-accountable-for-killing-of-at-least-45-peaceful-shia-protesters/> [Accessed 18, December 2020]

low level of compliance with human rights obligations.¹²¹ Although violations occur in every part of the world under different circumstances. Nevertheless, by contrast, European states tend to have a higher level of compliance over African states. Factors affecting state compliance levels will be discussed extensively in chapter 2 and 3. The key questions are why nations, specifically in Africa, fail to fulfil the Human Rights Laws and adhere to the African Commission? The consequences of such behaviors by the state might slow down the application of Human Right Laws and subsequently set the achievement of human rights laws aback. It can be concluded that international human rights bodies rely profoundly on regional human rights systems for state implementation of human rights. That is why the functionality of the African commissions is rightfully questionable.¹²²

5.3 JUSTIFICATION OF GAPS IN STATE COMPLIANCE

This paper analyses the following phenomenon: International wrongful acts by the state through a review of legal case studies while examining both regional and international frameworks to ensure right to life are safeguarded in states domestic legal jurisdiction, knowing how these instruments apply to these abuse cases, by further establishing state responsibility to comply with specific obligation preventing these core violations, and evaluating national compliance level to achieving these obligations. By Hafner-burton and Tsutsui, qualitative research explains that countries may seem willing to comply with human rights obligations because they are democratic and not autocratic¹²³. However, the reverse might be the case with that said, before the year 2000s, the concept of sovereignty under general international law has, in some ways, shielded democratic states in failures to protect human rights laws. The author Jürgen Brohmer defined sovereignty as the right of the state, and its organs are not to be held liable for their actions by other judicial organs of other states¹²⁴. Alternatively, it could be possible that failures or gaps in state compliance with international law can be due to lack of efficient

¹²¹ Marta S. Dionis, Bridging the Gap between Commitment and Compliance: State Capacity and Human Rights in Guatemala [2013.]

¹²² Michelo H., Towards a more effective African system of Human Rights, (2004).

¹²³ Hafner. B. &Tsutsui, Human Rights in a Globalizing World, (2005), p.1387

¹²⁴ Jürgen Brehmer, State Immunity and Sovereign Bonds, (1997)-page 6.

administration, poverty, coercive or intra-state conflict, or low judicial capabilities¹²⁵. Thus, most legal literature pieces do not include or give attention to domestic or territorial and political factors that may hinder state compliance with international human rights laws, especially in Africa. Most literature associates failures of compliance with lack of governmental willingness.¹²⁶

5.4 REVIEW AND DISCUSSION OF FINDINGS FOR THE STUDY

The International framework is designed to safeguard detained persons' human rights, the right to life against arbitrary killings, and enforced disappearance through core international human rights instruments and their monitoring bodies. However, there seems to be a record of increased violations documented by Amnesty International and freedom house, particularly in West Africa, Nigeria¹²⁷. That is why in chapter 2, we asked the question, why there are constant gross violations in a particular nation-state, and to what extent is the right to life protected under the Africa charter. Well, the context of this analysis leads us to find out that some defaults:

i. Domestic Findings

1. Under the domestic operation of the most legal document of the federal republic of Nigeria, the 1999 constitution.
2. There was no provision made in the fifth republic of the 1999 constitution to grant powers of any sort to national commission and intermediate human rights bodies to carry out a proper investigative function.
3. Due to 5 articles of the Nigerian constitution, any judgment or law that is inconsistent with enacted laws by the House of Assembly is considered invalid.¹²⁸

ii. Regional Findings

1. In reviewing the operations of the African court of human and people's rights, there have been findings that indicate that Cases are typically handled by the African

¹²⁵ Schwarz, R. The paradox of Sovereignty, Regime type, and Human Rights compliance. "The International Journal of Human Rights", 8(2), (2004) 206–219. Retrieved with doi:10.1080/1364298042000240861

¹²⁶ Marta S. Dionis, Bridging the Gap between Commitment and Compliance: State Capacity and Human Rights in Guatemala (2013.), page 2.

¹²⁷ "See the United States Department of State, Nigeria's Reports on Human Rights Practices (2019).

¹²⁸ Nigeria's National action plan retrieved from <https://www.ajol.info/index.php/nauij/article/view/82393/72548>> page 12-19.>accessed on December 19, 2020.

Commission because the protocol does not allow individuals to submit cases directly to the African Court.¹²⁹

2. The consequences of these dynamic could be a lot of cases that are likely to be overlooked.
3. The African Commission is rarely accessible to the common people at the municipal levels.
4. Due to public complaints, the African Commission's credibility is becoming questionable since the commission's funding depends on the African union whose members make up the House of Assembly and are leaders of an African countries where violations frequently occur¹³⁰
5. Ultimately, the African Charter severe flaw concerns the "clawback "clauses that permit African states to a maximum restriction under their domestic law; in other words, permitting the Unwillingness of African states.
6. Unlike most international human rights conventions where individual rights are deemed non-derogatory and derogatory, the African Charter does not contain or permit Derogatory Clauses in its articles, not even in emergency times. So under its provision, the 'rights to life' carry the same substantive respect as other rights. Given the above flaws, the African Charter would need improvements.¹³¹

iii. International Findings

1. According to Sánchez de Tagle G, the nation-state should not only be responsible for human rights violations when there is a victim complaint, but rather state accountability should be based on non-compliance to international human rights obligations¹³².
2. Most victims may not get the justice they seek in a society that lacks public order and systemic regulations like Nigeria.

¹²⁹ See M. Ssenyonjo, 'Direct access to the African Court on Human and Peoples Right by individuals and Non-Governmental Organizations, (2012).

¹³⁰ Michelo H., Towards a more effective African system of Human rights, (2004) Retrieved from these website https://www.biicl.org/files/2309_hansungule_towards_more_effective.pdf

¹³¹ Ibid.

¹³² Sánchez de Tagle G, The Objective International Responsibility of States in the Inter-American, [2015] 115-133.

3. Also, findings show that article 7 of an internationally wrongful act by state provides that any act of violation or abuse caused by state agents or institutions is considered a wrongful act of state.¹³³
4. As a result, A record of 82 ill tortured and extrajudicial executions by the special anti-squad (SARS) despite the anti-torture legislation passed in 2017 was reported through Amnesty International.¹³⁴

It can be concluded that Nigeria has signed and ratified the UNCAT and other International instruments; therefore, International human right bodies and the African court of human rights need to hold Nigeria accountable for domestic actions that breach its human right commitments under international treaties irrespective of whether these norms have been enforced in its legislature.

5.5 IMPLICATION FOR PRACTICE

This study informs international law and international relations professionals that international law principles can only be practical when there is reformed concept of sovereignty. Since most states refuse accountability of Domestic violations within its border due to sovereignty, the role of parliament is to ratify these international human rights Obligations nevertheless as can be seen in Nigeria shortcomings, a treaty becomes a dead letter if it is not applied at the parliaments' domestic level. This dissertation also offers more insights into the concept of sovereignty, Democracy, and state practices as no longer considered mere rules through which political power is exercised. But, rather these mentioned concepts should be seen as a way of promoting and protecting human rights or shielding state actions towards Human Rights. Although the international community is responsible for protecting human rights, the state and its agent are more critical as duty bearers to ensuring these human rights laws are adhered to. This study is also critical because it highlights the dangers to the right of life and human rights principles

¹³³ UN commission commentary on State responsibility for Wrongful Acts [2001]2nd Edn 2008) pp 31-37. Retrieved from https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf >accessed on December 19, 2020.

¹³⁴Amnesty International, Nigeria: Horrific Reign of Impunity by Sars makes a mockery of Anti-Torture law, [2020] Retrieved from <https://www.amnesty.org/en/latest/news/2020/06/nigeria-horrific-reign-of-impunity-by-sars-makes-mockery-of-anti-torture-law/>

at large, especially by the very institution set to protect citizens of the land. This topic brings a whole new awareness into state compliance and factors why this remains a challenge. When analysing state compliance and failures to international obligations, we have to review the provisions enacted in legal instruments and possible domestic hindrances that may affect human rights police protection.

Future Research Therefore, a weak state capacity, both socially and institutionally, may be predominantly a common cause for the failures of compliance with human rights laws by state. For a complete assessment, this should be the starting point for future research by way of incorporating extensive review on social experiments and comparative case studies to shed more light on the patterns of states' attitude in compliance with international human rights laws.

Recommendations for Research: In terms of challenges and limited jurisdiction towards the functioning of the national human rights Commission, and other monitoring bodies for Human rights in Nigeria, it is recommended that the Constitution of the Federal Republic of Nigeria undergo reformation to set guidelines that favour these sub-human rights organizations in working effectively to promote the implementation of core Human Rights principles at the legislature. Also, the Nigerian legislative may need to adopt a new set of Approaches to the institution of police force regarding arrest and detention. To summarise, since reports on Human Rights Practices for 2018 stated that the Nigerian police force are responsible for crimes violating International Human right laws and based on the gaps between International Legal frameworks and state practices across Africa, the resolution of both International and Regional instruments that consolidates the police's comprehensive role in using force should be seriously adopted by the federal republic of Nigeria.

CONCLUSION

The conclusions derived from the findings were based on the purpose, research questions, and study results. This study confirmed that the accessibility of human rights violations and complaints to the African Court of Human Rights remains a serious Challenge. To answer the Research Question, "To a substantial extent the charter and African court does not effectively afford protection to Right to life", since the African Court do not accept complaints directly unless it is from the commission or submitted by the state the claim is against depending on the reservations the state made before signing the protocol. For these reasons, victims of human rights violations may never get the justice they deserve. Also, give the clawback nature of the African Charter and how violations caused by state agents tend to phase out devoid of justice served. This study recommends the Africa charter provisions be reviewed and reformed.

As can be seen, the failures of the State Compliance with International Obligations may indicate the nature of State Insecurity, whether financially, legally, or socially. Without allocated funds, human rights organizations may not conduct a proper investigation and provide remedies to victims. Like wisely, if there is social instability, unaccounted violations will be on the rise. Therefore, generally speaking, each nation-state's national legislators may need to enact strict laws that review its justice system, national policing and grant some autonomy to national human rights commissions to ensure the Right to Life.

Given the above, the need and importance of local human rights bodies and community activists are essential in monitoring and defending Human Rights in Africa. Total reformation and accountability in attitude to international human rights: Obligation is recommended for States to Implement, and report on Human Rights violations in respective areas.

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