



UNIVERSITY OF IBADAN
JOURNAL
OF
PRIVATE AND BUSINESS LAW

U.I.J.P.B.L.

VOL. 6, 2011

The Potentials and Limitations of Mediating Business Disputes in Nigeria .	<i>Alero Akeredolu (Mrs.)</i>	1 - 19
Personal Jurisdiction in Internet Transactions	<i>-Araromi, M. A.</i>	20 - 35
Enforcement and Execution of Judgement in Nigerian Courts	<i>-Elijah Adewale Taiwo</i>	36 - 67
A Critical Examination of Legal Remedies for the Tort of Passing off and Unfair Competition under Nigeria Law	<i>-Fagbemi Sunday Akinlolu</i>	68 -95
The Role of the Nigerian Police and the Protection of Citizens' Rights to Life and Human Dignity in Nigeria	<i>-Jadesola O. Lokulo-Sodipe</i>	96 -110
Crisis and Conflict in International Law: Bridging the Gap between the Developed and Developing Nations	<i>-Lifu, P. O.</i>	111 -126
Privity of Contract: A Limitation to the Enforcement of Third Parties Rights to a Contract?	<i>-Olusegun Onakoya</i>	127-145
.Polygyny: A Legal Debate	<i>-Omolade Olomola</i>	146-161
Understanding Local Government Council's Legislative Standing Orders	<i>-Orifowomo, O. A.</i>	162-175

Published by:
Department of Private and Business Law
Faculty of Law, University of Ibadan,
Ibadan, Nigeria.

UNIVERSITY OF IBADAN
DEPARTMENT OF
PRIVATE AND BUSINESS LAW

SSN. 15952495

All Right Reserved

2012

All Correspondence should be directed to

The Editor-in Chief,
Journal of Private and Business Law,
Faculty of Law,
University of Ibadan.

Printed by:

DATOB'S PRESS

47, Liberty Stadium Road,
Oke-Ado, Ibadan.

Tel: 08056148162, 08025165156, 08188466868.

CONTENT

The Potentials and Limitations of Mediating Business Disputes in Nigeria.	<i>Alero Akeredolu (Mrs.)</i>	1 - 19
Personal Jurisdiction in Internet Transactions	<i>-Araromi, M. A.</i>	20 - 35
Enforcement and Execution of Judgement in Nigerian Courts	<i>-Elijah Adewale Taiwo</i>	36 - 67
A Critical Examination of Legal Remedies for the Tort of Passing off and Unfair Competition under Nigeria Law	<i>-Fagbemi Sunday Akinlolu</i>	68 - 95
The Role of the Nigerian Police and the Protection of Citizens' Rights to Life and Human Dignity in Nigeria	<i>-Jadesola O. Lokulo-Sodipe</i>	96 - 110
Crisis and Conflict in International Law: Bridging the Gap between the Developed and Developing Nations	<i>-Lifu, P. O.</i>	111 -126
Polygyny: A Legal Debate	<i>-Omolade Olomola</i>	127-145
Privity of Contract: A Limitation to the Enforcement of Third Parties Rights to a Contract?	<i>-Olusegun Onakoya</i>	146-161
Understanding Local Government Council's Legislative Standing Orders	<i>-Orifowomo, O. A.</i>	162-175

THE ROLE OF THE NIGERIAN POLICE IN THE PROTECTION OF CITIZENS' RIGHTS TO LIFE AND HUMAN DIGNITY IN NIGERIA

ABSTRACT

Government has responsibility to protect lives, liberties and properties of its citizens, and the exercise of power by government must be conditioned by that purpose. The police is, inherently, the most visible symbol of any government's power and authority and the primary enforcer of its laws; an institution of social control in the hands of those who are managers of the State. The issue of human rights has received global attention. The Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR), 1966 and the other human rights instruments set the standard and norms for State Parties to observe when protecting and promoting human rights in their territories. The African Union (AU) on its part sets up mechanisms to protect human rights. The Constitution of the Federal Republic of Nigeria (CFRN), 1999 also guarantees fundamental human rights such as the rights to life and dignity in its provisions. However, these important human rights are often violated by the Nigerian Police and this paper shall seek to examine these issues among others.

KEYWORDS: Nigerian Police, Human Right, Life, Dignity, Protection.

1. INTRODUCTION

Government has responsibility to protect lives, liberties and properties of its citizens, and the exercise of power by government must be conditioned on that purpose. Society through its law gives its government wide powers for the purpose of efficient and effective preservation of law and order, and protection of its citizens from suffering, fear loss of life and property consequence of crime and violence. The police is, inherently, the most visible symbol of any government's power and authority and the primary enforcer of its laws; an institution of social control in the hands of those who are managers of the State.¹ The Nigeria Police is one of the institutions introduced into Nigeria during the colonial era to protect life and maintain law and order. Today, it is an institution recognized in the Constitution with its activities impacting greatly on the rights of the entire citizens.

The issue of human rights has received global attention especially, after the Second World War and with the adoption of the Universal Declaration of

*JADESOLA O. LOKULO-SODIPE, B.A., (Hons) (Maiduguri), LL.B, LL.M (London), BL, Lecturer, Faculty of Law, University of Ibadan, Ibadan, Nigeria.

¹ See Ogaga A. Obaro, "The Historical Role and Functions of the Nigeria Police" In *The Nigeria Police And the Crisis of Law And order* V.T. Jike (ed.) NISS Publication, Lagos, 2003, p. 62.

Human Rights in 1948. Also, the International Covenant on Civil and Political Rights, 1966 emphasizes the protection of civil and political rights across the globe. Human rights are paramount and their protection is a major international concern. The International Bill of Rights and other human rights instruments set the standard and norms for State Parties to observe when protecting and promoting human rights in their territories.² Member States of the United Nations are obliged to take legislative, executive and judicial measures to ensure that its laws, policies, actions, decisions and programmes conform to the United Nations' human rights norms and standard. Similarly, the African Union (AU) sets up human rights treaties and mechanisms to ensure effective promotion and respect for human rights in Africa. This is further recognized at the National level with the Constitution of the Federal Republic of Nigeria (CFRN) 1999 guaranteeing fundamental human rights in its provisions.³

In terms of the 1999 Nigerian Constitution, the right to life and the right to human dignity are sacrosanct and are protected.⁴ However, these two important human rights are often violated by the Nigerian Police and this paper shall seek to examine these issues among others. The paper is divided into four parts. Following this introduction is part two which examines the legal framework for the protection of the rights to life and human dignity in Nigeria. Part three examines the various cases of abuse committed by the Nigerian Police in violation of the citizens' human rights. Part four is the conclusion.

2. LEGAL FRAMEWORK FOR THE PROTECTION OF THE RIGHTS TO LIFE AND DIGNITY

2.1. The Right to Human Dignity and Freedom from Torture.

The right to life and the right to human dignity are given protection at the global, regional and national levels. These instruments outlaw any act which amounts to violation of these important rights. Article 5 of the UDHR, for instance provides: '*[n]o one shall be subjected to torture or to cruel, in-*

² In addition to the International Bill of Rights, at the global level, a number of other human rights instruments have been adopted which include, the Conventions to Prevent and Prohibit Specific Abuses like torture and genocide, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, etc. Of direct relevance to this work is the Convention Against Torture and other Cruel, In-human or Degrading Treatment or Punishment.

³ See Chapter IV of the Constitution.

⁴ See sections 33 (1) & 34 (1) (a) of the CFRN, 1999 on the right to life and dignity of human person.

human or degrading treatment or punishment.' Similarly, article 7 of the ICCPR, states: '[n]o one shall be subjected to torture or cruel, in-human or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.' Article 10(1) thereof provides further that '[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'

Further in this regard is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which provides:

- 2 (1) "Each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction;
- (2) No exceptional circumstances whatsoever, whether a state of war or a threat of war ... or any other public emergency, may be invoked as a justification for torture.
- (3) An order from a superior officer or a public authority may not be invoked as a justification of torture."
- (4) (1) "Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture;
- (2) Each state party shall make these offences punishable by appropriate penalties which take into account their grave nature."

CAT provides further that '[e]ach state party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.'⁶ Also, the instrument obliges each State Party to include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.⁶ Similarly, the Constitution of the Federal Republic of Nigeria (CFRN), 1999 prohibiting torture provides: "[e]very individual is entitled to respect for the dignity of his person, and

⁵Art 10(1).

⁶Art 10(2).

accordingly – (a) no person shall be subjected to torture or to in-human or degrading treatment...⁷

In terms of the Convention against Torture (CAT), torture is defined thus:

“For the purpose of this convention, the term ‘torture’ means any act of which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act which he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the investigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁸

Similarly, in *Uzoukwu v Ezeonu II*,⁹ the Nigerian Court of Appeal defined torture to include mental harassment as well as physical brutalization, while in-human treatment characterizes any act without feeling for the suffering of others. Degrading treatment means the element of lowering the societal status, character, value or position of a person.¹⁰ Torture means causing severe suffering, torturing, infliction of severe bodily or mental suffering.¹¹ In-human treatment means cruelty, unfeeling, not humane; without pity.¹² Degrading also means to reduce in rank or status; to cause somebody to be less moral or less deserving of respect,¹³ while cruelty means readiness to give pain or cause suffering to others.¹⁴

2.2. The Right to Life

The right to life of every human being is recognized and protected in the various international human rights instruments and in all the national

⁷ Sec 34(1) of the Constitution of the Federal Republic of Nigeria 1999.

⁸ Sec 1.

⁹ [1991] 6 NWLR (pt 200) 708

¹⁰ See Guide to Human Rights Litigation in Nigeria, published by the Constitutional Rights Project, June, 1994, p.8.

¹¹ A. S. Honby, Oxford Advanced Learner's Dictionary, 3rd ed., p.931.

¹² Ibid, p. 445

¹³ Ibid, p. 229

¹⁴ Ibid, p. 209

constitutions throughout the world. In fact, human life is sacrosanct. For this reason, many provisions were put in place preserving and safeguarding the right to life. The UDHR for instance, provides that "[e]veryone has the right to life, liberty and security of persons."¹⁵ Similarly, the ICCPR states that "[e]very human being has inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."¹⁶

At the African regional level as well as under the Nigerian Constitution, the right to life is recognized and preserved. Article 4 of the African Charter on Human and Peoples' Rights states: "...every human being shall be entitled to respect for his life and the integrity of his person. No one shall be denied of this right." In Nigeria, the right to life is regarded as fundamental and thus the Constitution provides that "[e]very person has a right to life and no one shall be deprived intentionally of his life save in execution of the sentence of a Court in respect of a criminal offence of which he has been found guilty in Nigeria."¹⁷ The right to life is, however, not absolute, it is subject to some exceptions or qualifications. In the first place, under international law there are instances where it may be deprived of an individual especially where such individual has committed international crimes such as terrorism, genocide etc. Under the municipal law, this right may be deprived if death occurs in circumstances that are not excused or permitted by law.¹⁸

3. THE NIGERIAN POLICE AND THE CASES OF ABUSE OF HUMAN RIGHTS IN NIGERIA

The starting point in this regard is the provision of the Police Act.¹⁹ Police is a department of government, body of men and women concerned with the keeping of public order.²⁰ The Police's responsibilities include the maintenance of peace and order, investigating breaches of the law, promotion of public safety, detection of crimes and punishment of offenders. Section 4 of the Police Act²¹ vests power in the Nigerian Police in the following words:

¹⁵ Art 3.

¹⁶ Art 6(1).

¹⁷ Section 33(1)

¹⁸ See Adekoya, C. O. 'The Right to Life', J.A. Sokefun (ed.), Issues in Constitutional Law and Practice in Nigeria, (Olabisi Onabanjo University, Ago-Iwoye, Nigeria, (2002) 342-343.

¹⁹ Cap P19, Laws of the Federation of Nigeria (LFN) 2004.

²⁰ A. S. Honby, Oxford Advanced Learner's Dictionary, op. cit. p. 656.

²¹ Cap P19 LFN 2004

"The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required by them, or under the authority of this or any other Act."

The functioning of the criminal justice system rests essentially upon the due enforcement of law by the police²². The powers of Nigerian police officers range from power to arrest suspects with or without warrant, to search of premises and persons and to seize property suspected to be stolen. Thus, the police is a vital instrument of government and it wields great powers in the administration of justice to the extent of infringing and or totally eroding the fundamental rights of the citizen if unchecked.²³

All over the world, the police are synonymous with the government of the day and police service has nearly lost the public service flavour of protection and defence of humanity.²⁴ In every government of the world, whether military or civilian, incidents of police brutality, corruption, violence, murder and abuse of power punctuated almost every decade of police history. Though, policing provides some benefits, it, however, causes the imposition of global impression of policing as a government force and not a public service.²⁵ The incidents of police brutality in Nigeria and the effects it has on the right to human dignity and right to life shall be discussed shortly. The Nigerian police are empowered by section 10 (1) of the Nigerian Criminal Procedure Act,²⁶ to arrest persons upon reasonable suspicion of committing criminal offences. It is common knowledge in Nigeria that the police grossly abuse these powers. Police in the course of carrying out the duties imposed by law resorts to illegal practices such as handcuffing, torture, beating, maiming and, a times, killing the suspects in defiance of the citizen's constitutional

²² See A. A. Adeyemi, 'Police and Criminal Justice Administration in Nigeria' (1995) Nigerian Current Law Review, 1.

²³ Oyelade, O. S, 'Police Powers And Human Rights in Nigeria' Journal of Private and Business Law, University of Ibadan, vol. 3, 2002, p. 176

²⁴ Ibid, p. 177

²⁵ See Rob Mawby 'Policing Across the World' cited in Awake Magazine of July 8, 2002, p. 6

²⁶ Cap C41, LFN, 2004.

right to dignity and right to life. In search of suspects, the police had in many instances with total disregard to law, arrested relatives of suspects where they could not find the suspect in question. The practice of arresting friends, relatives and associates and even neighbours of suspects in order to compel the suspect to show up occurs regularly in Nigeria. This practice is a serious abuse of fundamental rights and it amounts to illegal arrest.

Both the Nigerian Constitution²⁷ and the Evidence Act²⁸ prohibit coercion of suspects during interrogation. Notwithstanding, the Nigerian police indulge in the use of torture for the extraction of 'confessions' during interrogation of suspects. Most statements or confessions made by suspect during police interrogation are not usually voluntary but are rather obtained through torture and duress. Instances of police abuses are replete in Nigerian history as exemplified below. In the case of *R v Ebhomien & Ors.*²⁹ for instance, some police officers investigating a case of alleged murder took a large number of men, women and children away from their village and detained them. The police inspector later told the elders of the village to come forward to confess so that those innocent among them might be released. Thereafter, the accused persons made the confessions. It was held by the court that the confession made was not voluntary, and therefore, inadmissible. This case illustrates the ways in which the police try to influence suspects' confessions.

The Nigerian police in extracting confessional statement from suspects routinely use various methods of torture including hanging and suspension of suspects in the air with the aid of ropes tied to ceiling fan hooks; shooting the suspect in the limbs; cigarette burns on the suspects; insertion of broom sticks or pins into the genitals of male suspects; beating with horsewhips, electric cables and batons; electric shocks; mock executions; removal of victims finger nails and cuticles with pliers; denial of food and medical attention and many more.³⁰ The use of each of the foregoing torture methods is not mutually exclusive. In the course of interrogation of suspects, some police personnel often apply a combination of them to achieve desired result. Sometimes, the victims do not survive the ordeal thus leading to extra judicial killing.

Most police extra judicial killings in Nigeria occur while the suspect is in

²⁷Sec. 34 of the 1999 Constitution.

²⁸Sec 28 of the Evidence Act, Cap E14 LFN 2004.

²⁹[1963]All NLR 865

³⁰See Zekeri, V. S. O., 'A Review of How Fundamental Human Rights Has Fared in Nigeria.' A long Essay (unpublished) in partial fulfillment of LL.B Degree, Faculty of Law, University of Ibadan, Nigeria March 2004, pp 47-48.

police custody, at the police check - point and during civil protest. Many cases exemplified this. In *Indemudia v The State*,³¹ a bus conveying church members to a church graduation ceremony was stopped at a checkpoint in *Onu Imo Etti-Umuahi Road* in Imo State of Nigeria and demanded for money. An argument ensued between the driver and the policeman, which led to the policeman shooting randomly into the bus and in the process, killed a girl and injured others. Happily enough, however, the court convicted the accused police officer. There are very few cases like this that get to court because the police always cover up such killings alleging self defence and saying that the victims are armed robbers trying to escape arrest or from custody.

In *Paul Yabugbe v. Commissioner of Police*³² the appellant at the material time, an Assistant Superintendent of Police (ASP) was arraigned as the third accused person along with other two police officers before a Magistrates Court, Oyo town in Oyo State of Nigeria on a charge of unlawfully assaulting one Olayiwola Afolabi who drove his car to Akesan Market, Oyo. The appellant alleged that he was causing obstruction. He then ordered the 1st and 2nd accused to arrest him, beat him up and put him in the cell. The 1st and 2nd accused persons who were junior police officers carried out this order zealously. The victim was kicked and dragged to the police station. He was beaten to a state of semi-coma. His clothes and pants were torn leaving him half-naked. The identity of the victim was later revealed as a senior magistrate. The accused persons were convicted and sentenced to a term of twelve months imprisonment without option of a fine by the trial magistrate. On further appeal to the Supreme Court by Yabugbe, the sentence was replaced with an option of fine. This case, nevertheless, revealed the brutality of Nigerian police. Many cases of such brutality have gone unnoticed in Nigeria.

The Police have sent many people to their early grave at checkpoints in the

³¹ [1999] 7 NWLR (pt 610) 210

³² [1992] 4 NWLR (pt 234) 152.

most reckless manners and The Guardian Newspaper gave account of some of the brutality of Nigerian Police. In 1992, for instance, Colonel Israel Rindam was killed at a checkpoint. Also a policeman who did not realize his identity killed Alhaji Harunna Umar, a Commissioner of Police who was off duty in 1986 in Lagos at a checkpoint. Similarly, a Nigerian athlete based in the United States, Dele Udoh was shot dead at a police checkpoint in Lagos in 1981. Also in the month of June, 2002, a 17 year old school girl, Oluwatosin Adelugba, was shot dead at a police checkpoint in Agege, Lagos while the policeman was extorting money from the driver of the commercial bus in which Adelugba was. It was gathered that the bus driver refused to yield to their demands, and was moving away while one of the policemen cocked his rifle and shot at the bus. The shot fired tore through the back windscreen and killed Oluwatosin.³³

Another gory story was the heinous crime perpetrated by the police sometime in the year 2001 in Kogi State Nigeria. The Police mounted an illegal roadblock at which they awaited a commercial vehicle, which by prior information had traders/passengers loaded with cash. It was reported that the police stopped the bus, robbed the commuters, shot them and set the bus ablaze with the passengers still inside. Miraculously, one of the passengers survived and the whole thing blew out. The long arm of the law, however, caught up with the policemen who perpetrated the crime as they were sentenced to death by the Kogi State High Court.³⁴ The list is indeed endless and those mentioned are just a few example. It is in fact a double tragedy for all citizenry and an irony of fate that the police who are constitutionally charged with the duty of protecting live and property are instead the ones

³³ See The Guardian, Tuesday June 25, 2002, pp. 19& 22.

³⁴ See Adekoya, C. O., op. cit, pp 353-354.

mowing the populace down.³⁵

In terms of section 33 of the 1999 Nigerian Constitution, every person has a right to life, and no one shall be deprived intentionally of his life, save in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty. The right to life is fundamental to the enjoyment of other human rights and as such cannot be derogated from except in accordance with the strict observance of the laid down provisions. Although, the Nigerian Constitution recognized the punishment of the death penalty, but such punishment is reserved for capital offences. The Criminal Procedure Code also restricts its applicability to persons above the age of seventeen and no pregnant woman can be executed under the law. It is lawful to execute a

³⁵ The TELL Magazine of August 2005 gave a detail excerpts of extra judicial killing by the Nigerian Police. The account runs thus: On January 22, 2004, Chief Samuel Ekpelle and his son, Stanley Ekpelle, were shot and killed by the police in Owerri, Imo State. The police claimed they were robbers; on Saturday, June 13, 2004, an armed police officer killed a lorry driver Sylvester Okeke, at a checkpoint in Agwu, Enugu State over the deceased's refusal to give a N20 bribe; on Sunday, June 4, 2004, Sylvester Okeke, a native of Umuhu village in Agwu town of Enugu State, was hit with a gun by a policeman for refusing to part with a bribe. He collapsed and died; on Thursday, November 18, 2004, a 16years old Kelechi Obichukwu, a Junior Secondary School Student, was shot and killed by a policeman in Okija, Anambra State. The boy was arrested after an attempted failure to arrest the father over a 419 case; on November 14, 2002, policemen manning a roadblock killed four and injured eight Christian worshippers returning from vigil at Enugu. The incident happened at Ogbunike toll gate, when the driver refused to part with N60 bribe but gave N20 instead. The infuriated policeman subsequently opened fire at close range, killing the driver and three passengers instantly; on Tuesday, March 9, 2004, 17 people including a woman and a child were killed as combined team of police and soldiers of "Operation Restore Hope" engaged militant youths believed to be Ijaw indigenes in Warri, Delta State, in a gun battle; on June 3, 2004, Kehinde Adeniji (driver) and Bolanle Bamidele (passenger) were killed by a policeman at a roadblock mounted by the policemen between Ita-Odo and Aramoko. They were traveling from Ikole-Ekiti to Ibadan when they were stopped and asked to pay N20, which the driver declined; on Monday, July 12, 2004, Corporal Adejare Apata shot and killed Saheed Aborishade in front of the Nigeria Police Post, Orogun in Oyo State as a result of his refusal to part with N100 bribe; on Saturday, July 24, 2004, Muyiwa Popoola, an engineer, was shot dead by a policeman on the street of Ado-Ekiti. The police claimed that he was a robbery suspect but later apologized and said the killing was in error; on Monday, July 5, 2004, Yahuza Maimai, a native of Gumel in Jigawa State, died as a result of injuries he sustained from severe beatings from a group of policemen who arrested him earlier that day; on Saturday, October 2, 2004, a farmer, Huseini Beli, from Beli, Rogo Local Government area of Kano State, was arrested and tortured to death by policemen for allegedly practising witchcraft; on Tuesday, September 14, 2004, Chummy Oyibo, a barber, was shot by a policeman in Jaji Street, Kubwa, Abuja over the deceased's alleged romance with the policeman's girlfriend; on October 31, 2004, Chidiere Chidieme was tortured to death by policemen in Karimo Police Station, Abuja, over an alleged undisclosed criminal offence; on Thursday, September 9, 2004, 40-year-old Sunday Edo was beaten to death by two policemen Constables Mohammed and Mohammed Kibu – in Jigawa State for his inability to repair their compact disc CD; in October 2002, a police inspector, shot and killed Lawan Kyari, a Shuwa businessman and his son over the former's refusal to part with bribe in Mabosho village in Mafia Local Government area of Borno State; on May 18, 2004, policemen from the Kaduna State Command arrived at Tudun Wada Cemetery, Bachama Road, on the outskirts of Kaduna, North-central of Nigeria, with truckload of corpses of 15 suspected robbers for burial. It was later discovered that the bodies were those of protesters who were arrested during the Nigerian Labour Congress organised protest, on May 11, 2004. The above were culled from The TELL, Nigeria's Independent Weekly Magazine, (August 1, 2005) 28-29

person under the sentence of capital punishment; however, such execution can only be carried out having exhausted the entire avenue for appeals.

In the case of the use of force as covered by section 33(2) (a) (b) and (c) of the Constitution, the provisions of Section 298 of the Criminal Code and Sections 62 and 63 of the Penal Code on the excessive use of force to wit; the proportionality rule is the main guide. Also there is the need to establish that the person against whom violence is directed is the assailant. In *Alo Chukwu v The State*,³⁷ the defence of self defence failed where a police officer shot and killed a polling officer in response to an attack by some villagers because it was not established that the deceased was the assailant.

In *Uzoukwu v Ezeonu II*,³⁸ the Court of Appeal defined torture to include mental harassment as well as physical brutalization while inhuman treatment means any act without feeling for the suffering of others. Degrading treatment was also explained as the element of lowering the societal status, character, value or position of a person.

In the case of *Alhaja Abibatu Mogaji & Ors v Board of Customs and Excise*,³⁹ the plaintiffs, market women instituted an action against the Board of Customs and Excise and its Director claiming that they were maltreated by officers of the Board aided by the police officers and soldiers. The defendants raided the plaintiffs' shops with the use of guns, firing same indiscriminately and used horsewhips and tear-gas on the plaintiffs. It was held that the defendants had violated the rights of the market women as contained in section 31 of the 1979 Constitution and that the defendant's action amounted to inhuman and degrading treatment. In another case where the applicant was beaten up, pushed around and had her head inserted in a pool of water in an apparent bid to drown her, it was held that the first respondent was in violation of Section 31 of the 1979 Constitution.⁴⁰

Though section 34 is violated on a daily basis by Nigerian security forces, there is no legal basis for it and the prohibition against torture, cruel, inhuman and degrading treatment is a non derogable right both under Nigerian law and

³⁶ Section 270; see also, sections 270-272 of the Criminal Procedure Code & Section 368 of the Criminal Procedure Act.

³⁷ [1992] 1 SCNJ 57; see also the *Duru v The State* [1993] 3 SCNJ 3 where the accused shot the deceased with a gun in response to a slap. The plea of self defence failed.

³⁸ *Supra*.

³⁹ [1982] 3 NCLR 552

⁴⁰ *Miss Erebi Alabor v Tumbo Boyes & Anor* [1984] 3 NCLR 830.

the ICCPR. The Human Rights Committee observed as follows:

*"Complaints about ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible, and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation. Among the safeguards which may make control effective are provisions against detention incommunicado, granting without prejudice to the investigation, persons such as doctors, lawyers and family members access to the detainees, provisions requiring that the detainees should be held in places that are publicly recognized and that their names and places of detention should be entered in a central register available to persons concerned, such as relatives; provisions making confessions or other evidence obtained through torture or other treatment contrary to article 7 inadmissible in court; and measures of training and instruction of law enforcement officials not to apply such treatment."*⁴¹

In *State v Ncube & Ors*⁴², it was held that corporal punishment is illegal and is a violation of the right to human dignity. In the same vein, hand or foot cuffing has been held prima facie unconstitutional and can be better described as resort to zoological practice.⁴³

The Nigerian case of *Amakiri v Iwowari*,⁴⁴ further reveals the brutality of the law enforcement agents in Nigeria. In that case, the plaintiff who was the Port-Harcourt correspondent of the Nigerian observer, a daily Newspaper, instituted an action against the defendant who was at the material time of the case, the A.D.C to the Military Governor of Rivers State and an Assistant Superintendent of Police. He sought a declaration that his detention by the defendant was illegal and unconstitutional. The plaintiff contended that the defendant queried him on a certain Nigerian observer's publication and was

⁴¹ Committee on Human Rights General Comment No 7, para

⁴² (1987) 2 Z.L.R 246, 269-72 (Zimbabwe).

⁴³ *Khedal Mazdoor Chetna Sangath v State of M. P & Ors*,

⁴⁴ [1996] 1 Commonwealth Human Rights Law Digest, 31 (India). [1986] 1 NLTR 145.

detained at government house on 30th July, 1973 after the whole of the hair on his head was shaved off and the plaintiff was struck on his body by cudgels. He thereby claimed damages.

In condemning this acts the court, Allagoa, Ag Chief Judge held as follows:

"I have been asked to make a declaration that the detention of the plaintiff by the defendant is illegal and unconstitutional and contrary to Section 21 of the constitution. In the circumstances of this case and having regard to the prevailing atmosphere of arbitrariness in Port-Harcourt which I believe was responsible for this uncivilized conduct of the defendant, it might serve as a reminder to all concerned that although there is military government in power and some democratic provisions of the constitution was consequently suspended, the fundamental rights touching personal liberty, freedom of movement, right to property, freedom of conscience are still provided in the constitution."

Also, in *Salawu Ajao v. Karimu Ajao & 3 Ors.*⁴⁵ Nigerian Supreme Court, per Taslim Olawale Elias, CJN stated as follows:

"It cannot be over-emphasised to both high and low that every person resident in this country has a right to go about his or her lawful business unmolested by anyone else, be it a Government functionary or private individual. The courts will frown upon any manifestation of arbitrary power assumed by anyone over the life or property of another even if that other is suspected of having breached some law or regulation. People must not take the law into their hands by attempting to enforce what they consider to be their right or entitlement... police officers must, therefore, by way of being unveiled into a situation in which they find themselves becoming partisan agents of wrong-doers in the pursuit of a private vendetta. This kind of a show of power which is becoming too frequent in our society today must be discouraged by all..."

Similarly, in *Chief Agbaje v Commissioner of Police*,⁴⁶ Aguda J (as he then was) condemned the detention of the applicant and allowed a writ of Habeas Corpus to go to the Inspector General of Police purporting to act under section 3 of Decree No 14 of 1967 detaining the applicant, a lawyer, without an order

⁴⁵(1973) 11 SC 23 at 37-38.

⁴⁶[1969]NMLR 138

of detention. In the English case of *Benson v Sir Fredric Bart*,⁴⁷ Lord Mansfield confirmed the decision against the defendant, that a Colonel of the Middle-Sex Militia should pay £150 for giving a man in the street 20 strokes of cane.⁴⁸

The Nigerian Police do not have unlimited power. They must exercise their power within the law and they must equally respect the Constitution and other international human rights instruments such as the ICCPR and ACHPR for examples which guarantee the rights and freedom of individual. Writing on the British Police, Wade asserts as follows:

*"The police have had remarkable success in avoiding challenges in the courts of law, even though they often stretch their powers and risk action for trespass. Yet the law does not give them wide discretionary powers: they, must, for example, depose as to facts on oath before they can obtain a warrant for arrest; and in the cases where they may arrest a man without a warrant, they must be prepared to prove at least reasonable ground for suspicion. If they seize documents without legal warrant, the court will order them to be restored. Like all other governmental agencies, they must show legal authority for what they do."*⁴⁹

4. CONCLUSION

Infringement of human rights weakens the very basis of democracy as there can be no good governance without the respect of fundamental rights. The response of Nigerian government to the glaring cases of human rights abuses by the police as pointed out has been very disappointing. Government attitude has been to give a blind eye to these activities thereby condoning it. The federal government should take more effective steps to ensure that it respects and implements constitutional and legal safeguards of human rights in line with international standards. The duty of government under a democratic dispensation is to ensure that people do not infringe on the rights of others in the process of enforcing the law of the land.

⁴⁷ 97 E. R. 1130

⁴⁸ See also the English case of *Flynn v. Houston* [1841] 2 Mac. & G. 337 in vol. 1, English & Empire Digest, p. 700, where the defendant, the Lt. Governor of Gibraltar was held liable for ordering soldiers to surround plaintiff house and prevent him from moving out.

⁴⁹ H.W.R Wade, Administrative Law, 6th ed., (Oxford University Press. 1988) 149.

It is suggested that Nigerian government should be committed to respecting and protecting human rights in its territory. Nigerian government should abide by the international standard on the human right enforcement. Torture and inhuman treatment including medical neglect of suspects and prisoners should be eradicated totally. Attention should be devoted to reforming and improving the Nigerian police to enable it to carry out its duties effectively. Studies on human rights should be made compulsory as part of training programme or curriculum in the Nigerian Police College for all ranks and file of police officers in Nigeria.

In addition, an independent body such as Nigerian Police Complaints Board should be established to receive complaints of police abuses throughout the country. The body should also be charged with the power to punish erring police officers accused of perpetrating human rights abuses. Furthermore, the National Human Rights Commission should be invigorated and be given necessary supports in promoting human rights in the country. This arrangement will make Nigeria a country that respect human rights of its citizens as provided for in the Constitution.