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Towards a Systems Theory Approach to Managing Human Rights Violations in Nigeria

Stanley C. Igwe[a],*; Obari, Alale Osaro[b]

[a]Department of Political Science, Nigeria Police Academy, Wudil, Kano, Nigeria.
[b]Department of Political Science, University of Port Harcourt, Nigeria.
*Corresponding author.

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Abstract

This paper attempted a documentary assessment of human rights violations in Nigeria in the last two decades (1999-2020) given that the period constitutes the lengthiest uninterrupted democratic era since the country's independence in 1960. The study found that human rights violations still persist in both covert and overt forms in the present than as in the past. The paper further attempted gauging these violations within the premises of the presence and absence of functional systems approach to governance within the country and subsumes that a close knit network between the machinery of governance with particular reference to its security operatives and active human rights and civil society groups will go a long way to minimizing cases of human rights abuses in the country.

Key words: Nigeria; Human rights; Human Rights Abuses; Human Rights Defenders, Dispute Resolution Mechanisms, Systems Approach; human rights-based approach (HRBA).

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INTRODUCTION

While it is easier for individuals and households to increase their security in ways that do not threaten others; for example, by erecting burglary proofs or simply by avoiding high crime rate areas; states within the international arena on the other hand, according to Robert Jervis rarely have such options available to them. Rather they are embroiled in a *security dilemma* (1978) or what Thomas Schelling (1958) describes as *reciprocal fear of surprise attack*, otherwise what Herz, (1950) describes as *tragic implication* all of which explains that uncertainty and dread of the intentions of other states may occasion war even when all sides are desperate for peace.

To this end, only a functional collective security system is capable of making the security dilemma more or less acute because within such a premise a state would feel less threatened irrespective of whether a neighbour's arms increases or decreases (Rourke and Boyer, 1998; Jervis, 1976, 1978).

Under conditions of anarchy, the use of force is rarely a remote possibility because each actor attempts to ensure that he has enough capabilities to meet possible threats including seeking alliances and in such a self-help system one cannot simultaneously improve one's own security without reducing that of others (Rourke and Boyer, 1998; Jervis, 1978).

Decades preceding World War I bore much evidence of anarchy and the run-up to the war created incentives for spiralling arms races, and when the war seemed inevitable, all sides had a strong temptation to act pre-emptively (Keith, 2011).

World security dilemma became all the more obvious with the catastrophic levels of destruction brought about by World War I. As a consequence the so called victorious nations sought to institutionalise a system of collective security leading to the formation of the League of Nations. The achievement of this *collective security* would be based on the principle that an attack on one is an attack on all. Any state contemplating aggression would face the sure prospect of struggle not simply with the prospective victim, but with all other members of the system, who would make any necessary sacrifice to save the state attacked (Jervis, 1976, 1978).

The League of Nations however could not account for the anticipated collective security. For example, Palmer and Perkins found that the League of Nations was a complete failure as an instrument for enforcement of collective security. The major reason for the failure is attributed to the American approach to the organization. United States of America failed to join the League from the start itself. This was combined with the growth of Soviet Union outside the League as one of the major powers (1985).

Still according to Palmer and Perkins *the open defiance of Japan, Italy and Germany combined to destroy any hopes that the League would-be effective in major international crisis* (1985).

For example following invasion by Italy, Abyssinia in December 1934 appealed to the League, referring to Article 11 the aggression was clear, placing at stake the League's credibility among other crisis situations which betrayed the League's incapacity to serve as a reliable platform for ensuring collective security.

Japan also occupied part of China. After the invasion, members of the League passed a resolution calling for Japan to withdraw or face severe penalties. Given that every nation on the League's Council had veto power, Japan promptly vetoed the resolution, severely limiting the League's ability to respond. After two years of deliberation, the League passed a resolution condemning the invasion without committing the League's members to any action against the act. Japan however replied by quitting the League.

On the Abyssinia case sanctions were passed, but Italy would have vetoed any stronger resolution. Additionally, Britain and France sought to court Italy's government as a potential deterrent to Hitler.[1] Thus, neither of these countries enforced any serious sanctions against the Italian government.

These and other associated factors led to the early demise of the League which also was incapable of stalling the World War II that kicked off in 1939.

Mankind eventually faced what has been widely rated the largest economic and human catastrophes in human history following World War II as it brought millions to sudden death while millions more were homeless or starving. Nations around the world were consigned with no option than to see the values of peaceful coexistence and to dream of a better, non-violent world.

Hence, following from the April 1945 San Francisco Conference victorious allied forces along with some other states around the world all numbering 51 ratified a Charter for a new international organization that would build on the failures of the League of Nations with a view to eradicating every symptom that could lead to the possibility of war. The new association was called *United Nations Organization* (UNO).

The ideals of the organization were stated in the preamble to its proposed charter which came into effect on October 24, 1945:

> We the peoples of the United Nations are determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind.

Borrowing from the failures of League, the UNO arranged for much more extensive and far reaching provisions for the enforcement of collective security. To this end, several lines within the UN's Charter captured the expediency of collective action but above and perhaps most crucial for maintaining relative peace within the International system was the limitations of veto powers to the 5 permanent representatives of the UN Security Council otherwise the 5 Superpowers.

The UN was further equipped with valuable instruments that its predecessor lacked, in the likes of several programs intended to reduce, as much as possible, all factors that may contribute to the outbreaks of conflict. Hence, economic and social programmes were initiated at global levels, especially with a view to protecting human rights and bring an end to world poverty and hunger all of which directly or indirectly contribute to the prevention of conflict.

To borrow from Shiman, (1993) the idea of human rights (HRs) rose in prominence after World War II. The extermination by Nazi Germany of over six million Jews, Sinti and Romani (gypsies), and persons with disabilities horrified the world. Trials were held in Nuremberg and Tokyo after World War II, and officials from the defeated countries were punished for committing war crimes.

Member states of the United Nations pledged to promote respect for the human rights of all. To advance this goal, the UN established a Commission on Human Rights and charged it with the task of drafting a document spelling out the meaning of the fundamental rights and freedoms proclaimed in the Charter.

On December 10, 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the 56 members of the United Nations. The vote was unanimous, although eight nations chose to abstain.

The UDHR, commonly referred to as the international *Magna Carta*, extended the revolution in international law ushered in by the United Nations Charter – namely, that how a government treats its own citizens is now a matter of legitimate international concern, and not simply a domestic issue. It further espouses that all rights are interdependent and indivisible.

Article 1 of its Preamble eloquently proclaims the inherent rights of all human beings adding that:

[1] Italy was seen as a key component of any alliance to balance the growing threat from Nazi Germany. Consequently, the League was perceived to be a failure, and Italy became the ally of Nazi Germany. Britain and France had neither enforced collective security nor ensured a balance of power.

> Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people… All human beings are born free and equal in dignity and rights

The influence of the UDHR has been substantial. Its principles have been incorporated into the constitutions of most of the more than 185 nations now in the UN. Although a declaration is not a legally binding document, the Universal Declaration has achieved the status of customary international law because people regard it *as a common standard of achievement for all people and all nations* (Shiman, 1993).

In addition 9 essential human rights conventions called the *Nine Core Human Rights Conventions*

> are widely recognized these include:
> The International Convention on the Elimination of All Forms of Racial Discrimination (1965)
> The International Covenant on Civil and Political Rights (1966)
> The International Covenant on Economic, Social and Cultural Rights (1966)
> The Convention on the Elimination of All Forms of Discrimination against Women (1979)
> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
> The Convention on the Rights of the Child (1989)
> The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
> The International Convention for the Protection of All Persons from Enforced Disappearance (2006)
> The Convention on the Rights of Persons with Disabilities (2006)
> (Danish Ministry of Foreign Affairs, (2013, p. 14).

Also notable within international human rights law, are *non-derogable* [2]rights of which states under all circumstances, must adhere. For instance, states can never derogate from the guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment; medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not to be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion (Danish Ministry of Foreign Affairs, (2013, p. 15).

Again, the UN has set up a number of organs to monitor and study the prevalence of HRs within states under the leadership of the UN High Commissioner for Human Rights (HCHR).

To this end, there are numerous regional agreements and organizations governing human rights including the African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights and the Inter-American Court of Human Rights not excluding the European Court of Human Rights - the only international court with jurisdiction to deal with cases brought by individuals (not states).

Some contributors assume that the United Nations' ever-growing body of human rights agreements stand as proof that HRs exist universally and therefore have to be respected by everyone (Heard, 1997).

In addition the high level importance of HRs may be captured from the fact that excluding United Nations Human Rights Council in Geneva there are hundreds of HRs organizations with no less than 25 globally recognized as dedicated principally to HRs protection (see Human Rights Careers n.d).

Somewhat more proactive among these groups is the Amnesty International (a global movement of more than seven million people who are independent of any type of political ideology, religion or economic interest and who take injustice personally).

The latter is considered more proactive among other organizations because it employs experts who do accurate and facts-based research into HRs violations by governments and other actors. This analysis is then used to influence and press governments and decision-makers to undertake the necessary steps to stop or prevent human rights violations. The organization also employs the methods of campaigns and advocacy through petitions, letters and protests to call for action while covering a broad range of human rights abuses all of which forges reasons why their submissions and reports are taken seriously around the world (Human Rights Careers, n.d).

Also taken seriously are the Universal Periodic Reviews (UPR) of the United Nations Human Rights Council.

In Nigeria, UPR reports are drawn from the joint report of a coalition of Human rights organizations on UPR called Coalition of Nigerian Human Rights CSOS on UPR (NIGERIANHRCSOS-UPR) comprising a coalition of professional HRs groups located within the six geopolitical zones of the country and these are assumed to be actively functional since the inception of the first UPR review of 2009 (NIGERIANHRCSOS-UPR, 2018).

Besides the over 50 HRs groups a NIGERIANHRCSOS-UPR above, Devatop Centre for Africa Development also a prominent HRs group identifies a yet-to-be-updated list of 335 HRs groups all functional in Nigeria as at 2016.

Within this premise varying number of organizations are assumed to serve as domestic oversight mechanisms on human rights violations within the country. These include: the National Human Rights Commission; the Directorate for Citizen's Rights; Human Rights Desks at police stations; the Police Service Commission and the Public Complaints Commission.

[2] These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation.

The Public Complaints Commission was established by the Public Complaints Commission Act of 1975 with extensive powers to inquire into complaints by members of the public concerning the administrative action of any public authority or their officials and other matters ancillary thereto.

The National Human Rights Commission was established by the National Human Rights Commission Act, 1995 in line with the resolution of the United Nations which required all member states to establish Human Rights Institutions for the promotion and protection of human rights; and not excluding the Truth and Reconciliation Commission initially inaugurated as a Judicial Commission known as Human Rights Violations Investigation Panel on 7th June, 1999 and heralded as *Oputa Panel* (Nnamani, Ogbu, 2006).

Meanwhile, Nigeria has ratified several human rights instruments including the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol on individual communications; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, and the Convention on the Rights of the Child (Letjolane, Nawaigo, Rocca, Reculeau and O' Neil, 2010).

Nigeria is also party to the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the African Charter on the Rights of Women in Africa (Letjolane, et al. 2010).

Nigeria is also the only country in Africa that has domesticated the African Charter on Human and People's Rights. However, the constitutional provision declaring economic, social and cultural rights that are not justiciable contradicts the Charter. Therefore, Nigeria cannot be held accountable by domestic courts for the lack of enforcement of basic rights including the right to health, potable water, social assistance, education and food (Letjolane, et al. 2010).

The problem however is that despite the presence of this large network of HRs protection organizations HRs abuses still persists in the country even under what is accordingly assumed to be civil democratic system governance with reference to the period under review.

1. STATEMENT OF THE PROBLEM

In the last quarter of the year 1999 (which ushered in the fourth republic) in what may be tagged a jungle justice kind of reaction code named *Operation Hakuri II*, Nigerian soldiers moved into the Odi community of Bayelsa state engaged in exchange of fire with some people alleged to be responsible for the deaths of twelve policemen, and proceeded to raze the town to the ground. First, taking out every moving object and proceeding to demolish every building. The matter was later lodged in the law court following from which the federal government was compelled to pay billions of naira in damages to the remnants of the community (see Human Rights Watch, 2000).

Two years later on Monday 22 October, 2001 what happened at Odi in 1999 summarily repeated at Zaki Biam town of Benue state (see Human Rights Watch, 2001).

By early May 2020 when the Covid-19 lockdown loomed large the world over, Nigeria like virtually all other countries initiated lockdown especially at the inter-state level. Within 2 to 3 weeks of the lockdown it was considered plausible to initiate some kind of palliative to cushion possible widespread hunger. The nature of palliatives offered within the period ranged from 1 to 3 sachets of noodles to 2 cups of rice most of which could rarely account for a meal. Meanwhile the so called palliative had no schema by which to capture every one. Making the donation more an insult on people's economic and social rights on one hand and on the other providing insight on what may happen in worse case scenarios in a country with no safety nets like social security funds for the unemployed.

Several outcomes besides the Odi Case and the Covid-19 case in Nigeria showcase a yawning gap between the ruling class and the ruled in Nigeria.

That notwithstanding within the period under review violations of HRs further included torture, suppression of freedoms of association and expression, detention without trials, abuse of rule of law and due process, excessive lawlessness, extra-judicial executions, expulsion from school and dismissal from work without a fair hearing, joblessness, unpaid salaries, pensions and gratuities for years, corruption, violations of women's rights, misappropriation of public resources, and more have grown to become norm in lieu of weak and inefficient oversight mechanisms besides absence of an ideological portfolio by which governance may be concretely guided all leading observers to query the difference erstwhile military regimes and civil administration (Iwe, 1986; Onwu, 1992; Nmah, 2012; Amunnadi, 2021).

Among them Oru highlighting economic abuses raises the following question:

> Which country should be richer, for instance like Nigeria where a government agency is alleged to have not accounted or remitted to the public treasury oil revenue worth six trillion naira just from 2009 to 2012; a country where public servants loot billions of dollars indiscriminately without the country knowing it… yet the same country has no adequate road and those it has are simply death traps (2014, p.4).

Letjolane et al. corroborate further that widespread corruption in Nigeria is central to the violation of socio-

economic rights, with emerging facts proving that over 80% of the annual budgets of the three tiers of Governments in Nigeria (Federal, State and Local) went into private pockets (2010).

While the above report emerging from Letjolane et al may not have been fully corroborated, it is not contestable that human rights (HRs) range among ideals hoped for than already realized in Nigeria. This follows from the fact that the country's track record for HRs protection remains questionable particularly within the period under review.

For example, a 19 page report by the Network on Police Reform in Nigeria (NOPRIN) which monitored over 400 police stations in 13 states of Nigeria concluded that:

> The Nigerian Police Force is now a danger to public safety and conduct of its personnel could be the cause of a major public health and mortality emergency on a national scale… (Nzarga, 2014).

Ultimately, the role of human rights and civil society groups as well as professional bodies are widely recognized with reference to enabling the emergence of the 1999 constitution given the great roles they played in attracting international attention to human rights violations in country particularly during the Babangida and Abacha military regimes yet many of these groups became virtually inactive following the arrival of civilian administration.

In the present, most of the human rights and civil society groups other than meaningfully engage the government as to ways and means to preserving and guarding against human rights violations end up as whistle blowers with a view to receiving patronage from foreign donors while spiting their home government for insensitivity towards human rights violations.

Where the government might have much on its desk it becomes incumbent on human rights and civil society groups as the fourth tier of government to run interface on behalf of the government to enable operational effectiveness of the input/output mechanism of governance.

Human rights violations in Nigeria is thus heightened by absence of synergy between government and civil society groups and absence of effective peaceful resolution mechanisms.

2. PROCESS SCHEME

The study adopts an interpretive approach within which documentary evidence was widely employed. The term "document," according to Merriam describes printed public records relevant to a study, including physical artifacts (1998, p.70). Documentary evidence like details deriving from observations, are discreet sources of data that augment the chosen perspective of a given study also framing the context within which interpretations may be promptly made.

Within this range an extensive literature review was conducted on documents such as the Nigerian Constitution, human rights organizations reports and related aspects. Alongside some search engines were employed using relevant key words for direction.

Again, evidence was sought from reports and reviews from both local and majorly foreign organizations in lieu of the fact that how a government treats its own citizens is now a matter of legitimate international concern, (UDHR, 1948) and also with a view to minimizing biased assessment.

3. REVIEW OF SOME THEORETICAL INSIGHTS ON HUMAN RIGHTS STUDIES

Human rights (HRs) derive in the present from a very long struggle against oppression and exploitation which from the earliest times of human existence was contextualized in slavery.

According to Shiman, (1993) the belief that everyone, by virtue of her or his humanity, is entitled to certain human rights is fairly new. Its roots, however, lie in earlier tradition and documents of many cultures; it took the catalyst of World War II to propel human rights onto the global stage and into the global conscience.

Still according to Shiman, throughout much of history, people acquired rights and responsibilities through their membership in a group – a family, indigenous nation, religion, class, community, or state. Most societies have had traditions similar to the "golden rule" of "Do unto others as you would have them do unto you." The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius are five of the oldest written sources which address questions of people's duties, rights, and responsibilities (1993).

According to Youth for Human Rights in 539 BC, Cyrus the Great, after conquering the city of Babylon, did something totally unexpected—he freed all slaves to return home. Moreover, he declared people should choose their own religion. *The Cyrus Cylinder*, a clay tablet containing his statements, is the first human rights declaration in history (2002).

Documents asserting individual rights, such the *Magna Carta* (1215) which gave people new rights and made the king subject to the law, the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789) states that all citizens are equal under the law and the US Constitution and Bill of Rights (1791) are the written precursors to many of today's human rights documents.

The latest or most current is the 1948 Universal Declaration of Human Rights—the first document listing

the 30 rights to which everyone is entitled. Yet many of these documents, when originally translated into policy, excluded women, people of color, and members of certain social, religious, economic, and political groups. Nevertheless, oppressed people throughout the world have drawn on the principles these documents express to support revolutions to justify the right to self-determination (Youth for Human Rights, 2002)

3.1 Classification of Rights

In November 1977, Karel Vasak, UNESCOs legal advisor and human rights scholar, wrote an article for the UNESCO Courier, introducing the idea of three generations of human rights.

The classifications comprise:

a. civil and political rights;

b. economic, social and cultural rights; and

c. collective or solidarity rights (Vašák, 1977).

The First generation rights are fundamentally political, focuses on expanding access to freedoms for all people, and were captured in the International Covenant on Civil and Political Rights (ICCPR). Political and civil rights have long been part of the human rights discourse, and can divided into two broad categories: rights and freedoms *from* government abuse, and rights and freedoms *to* participation (in political and civic life). These rights are expressed as individual freedom from government oppression and harm and participation in politics and in civic life is a bedrock for preserving and promoting other human rights (Hipsher 1996; Dancy and Michel 2016),

Second generation rights expanded to include the social and economic, focusing on quality of life, as well as just a right to it; these were captured in the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Economic rights focus on the individual's right to employment and to be free from slavery and servitude. Economic rights are closely tied to social rights, and frequently framed as freedom from poverty more broadly.

Poverty carries with it many economic and social ills that violate the human condition (Sen, 2001; Rukooko, 2010).

Social rights encompass the right to an acceptable standard of living. Though closely tied to economic rights, they go beyond just making an income to include such things as health care, clean air and water, and religious participation. Fights for social rights typically are conducted by those who traditionally have been excluded from social participation. The women's rights movement is frequently associated with social rights (Donno and Russett 2004) aligned with traditional "women's issues" (Joachim 2003). In addition to women's groups, ethnic minorities, religious minorities, and sexual minorities have been involved in the fight for social rights.

Third generation rights include the rights of groups and cultural norms—for example *solidarity rights* such as the right to a clean environment and a right to peace (Wellman 2000).

Cultural rights move human rights from the individual to the collective level. Although they too are individual rights, since they involve an individual's right *to participate in cultural life and to share in and benefit from scientific advancement* (OHCHR 2016, p2). These rights also involve the rights of groups to practice their culture and religion freely. The OHCHR has further identified cultural rights as the right to collectively benefit from human advancement, and to participate in those aspects of humanity that *directly impact the common good or common advancement* (OHCHR 2016). Advancements in technology have greatly spurred the advancement of cultural rights, as they have expanded the definition of *public* (Hashemi-Najafabadi 2010) and created outlets for cultural expression.

Of these classifications the third generation is the most debated and lacks both legal and political recognition. This follows from the fact that rights activists discredit these divisions *by* claiming that rights are interconnected; for example, basic education is necessary for the exercise of the right of political participation.

3.2 Human Rights-Based Approach (HRBA)

In line with UN General Assembly on the Universal Declaration of Human Rights adopted on 10 December 1948, HRs consist of civil and political rights, such as the right to life, equality before the law, and freedom of expression; economic, social and cultural rights, such as the rights to work, social security, and education; and collective rights, such as the right to development and self-determination among others.

Within this realm states have three levels of obligation:

a. To respect a right means refraining from interfering with the enjoyment of the right.

b. To protect the right means enacting laws that create mechanisms to prevent violation of the right by state authorities or by non-state actors. This protection is to be granted equally to all. The obligation to protect requires measures by the State to ensure that third parties (individuals, armed groups, enterprises, etc.) do not deprive right-holders of their access to their right.

c. To fulfill the right means to take active steps to put in place institutions and procedures, including the allocation of resources to enable people to enjoy the right.

Following from the foregoing, rights-based approaches support mechanisms that ensure that rights of human beings are realized and safeguarded in a sort of reciprocal relationship as captured in figure 3.1 following:

Source: https://europa.eu/capacity4dev/sites/default/files/learning/Child-rights/3.7.html

Fiugre 1
Human Rights-Based Approach: Relationship between Accountability and Empowerment processes

As deductible from above rights holders need to be supported to voice their interests, claim their rights and hold duty bearers to account for rights realization; while duty bearers need capacity strengthening to listen to rights holders, to enable the latter participate meaningfully in decision-making that affects them, while ensuring that rights are respected, protected and fulfilled.

Thus, humans as right-holders can claim their rights and demand from duty-bearers the fulfillment of these rights. Within international human rights law, the State as the main duty-bearer, bears both the moral and legal obligation to respect, protect, facilitate, and fulfill HRs. The State also bears the obligation to prevent loss of lives, including losses of economic and social assets, and to prevent other human rights violations, whether caused by human or natural forces (Costa and Pospieszna, 2015).

To this end, every individual is a **rights-holder** entitled to the same rights without distinction based on race, colour, sex, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status, such as sexual orientation and marriage status. Every rights-holder has the responsibility to respect the rights of others. Rights-holders must have the capacity to: (i) exercise rights; (ii) formulate claims and hold duty-bearers accountable; and (iii) seek redress (Danish Ministry of Foreign Affairs, 2013, p. 7)

On a similar count there are **duty-bearers** comprising fundamentally all *state actors*. This includes all the organs of the state such as parliaments, ministries, local authorities, judges and justice authorities, police, teachers or extension workers. All these are legal duty-bearers. A HRBA focuses on the capacity of the state at all levels to meet its duties to respect, protect and fulfil human rights.

Although states are the principal duty-bearers, there are other non-state entities that bear similar responsibilities and in some quarters are called **moral duty-bearers**. These may comprise community organizations, aid agencies, multilateral donors and private sector organizations etcetera. Religious leaders or elders can be seen as duty-bearers in certain situations such as for instance having a responsibility to protect the rights of children and thus speak out against violation of children's rights in their communities. (Danish Ministry of Foreign Affairs, 2013, p. 7)

The merit associated with employing the terms right-holders and duty bearers is that they bring clarity to the issue of who is entitled to what vis-à-vis whom (Kälin, 2011). Thereby clarifying the character of both obligation and accountability inherent in the process. This suggests that people should have knowledge and information regarding their human rights; that they should be able to individually or collectively take actions to fully realize their potential; and that they should also be able to communicate effectively, both among themselves, and with duty-bearers.

3.3 Dembour's Perspectives on Human Rights

In recent times, scholars have attempted to explore the complexities associated with the diverse perspectives of viewing human rights (HRs).

Among them Marie-Bénédicte Dembour locates HRs approaches within the premises of 4 schools of thought within HRs literature in her consideration that we do not all conceive of HRs in the same way.

These perspectives include: natural scholars, deliberative scholars, protest scholars and discourse scholars (Dembour, 2010).

a. Natural Scholars

Some considered as natural scholars consider HRs as given [in other words natural scholars trail the path of universal reason and the tradition of natural law; HRs entitlements are theologically given on a universal scale owing to their natural character and their meaning is consequently self-evident and constant across all climes and contexts]. Drawing from Heard, (1997) we may add that HRs are viewed among these scholars as arising essentially from the nature of humankind itself and all humans possess these rights simply by existing and that these rights cannot be taken away.

b. Deliberative Scholars

Some others hold HRs as deriving from agreement otherwise *agreed upon* (deliberative scholars).

According to Dembour adds that scholars from the natural and deliberative schools rely on principles of law to define human rights and to address the possession paradox; the natural school looks to positive law and the deliberative school to constitutional law (2010).

c. Protest Scholars

Protest scholars assume that HRs are *fought for* not given as propagated by natural scholars.

d. Discourse scholars

Discourse scholars on their part believe HRs are nonexistent but are merely *talked about* in lieu of [for example the imperialist and neoliberal nature of HRs all of which tilts to the supposition that HRs may be better described as the prerogative of the privileged in society

and to borrow from Heard (1997), to legitimize their operation as universal standards of behaviour HRs must have a universally acceptable basis of practise in order for there to be any substantial measure of compliance] (Dembour, 2010).

The contention however with Dembour's typology is that they are rarely fixed categories but serve as identifications of connections and intersections among broad orientations to the understanding of emergent views on HRs.

To explore a historical linkage to Dembour's typology we borrow from Heard's assessment of the submissions of some notable early precursors of HRs theory.

3.4 Appraisal of the Submissions of Early Human Rights Theorists

According to Heard (1997), the earliest direct precursor to HRs might be found in the notions of `natural right' evolved by classical Greek philosophers, such as Aristotle, but this concept was more fully developed by Thomas Aquinas in his *Summa Theologica* that: there were goods or behaviours that were naturally right (or wrong) because God ordained it so and what was naturally right could be ascertained by humans by `right reason'…

In 1625, the Dutch statesman Hugo Grotius further expanded on this notion in *De jure belli et paci* (On the Law of War and Peace) where he propounded the immutability of what is naturally right and wrong:

> Now the Law of Nature is so unalterable, that it cannot be changed. ...as two and two must make four, nor is it possible otherwise;... nor, again, can what is really evil not be evil (Grotius, 1625).

Following however from the wave of the Enlightenment era ecclesiastical authority was challenged by rationalism, political philosophers argued for new bases of natural right and within this realm Thomas Hobbes in his *Leviathan* reinterpreted the divine basis of natural right by describing a State of Nature in which natural right derived chiefly from self-preservation.

In what seems like a reaction to Hobbes, Immanuel Kant's writing later viewed the assemblage of humans into a state-structured society as resulting from a rational need for protection from each other's violence that would be found in a state of nature. However, the fundamental requirements of morality required that each treat another according to universal principles that a state had to be organized through the imposition of, and obedience to, laws that applied universally; which respects the equality, freedom, and autonomy of citizens. In this way Kant, prescribed that basic rights were necessary for civil society; noting further *that the rights of man must be held sacred, however great a sacrifice the ruling power must make* (Kant, 1795).

John Locke was to enter with a strong defence of natural rights in the late 17th century with the publication of his *Two Treatises on Government*, which had a lasting influence on political discourse that was reflected in both the *American Declaration of Independence* and France's *Declaration of the Rights of Man and the Citizen*, passed by the Republican Assembly after the 1789 revolution. The French declaration proclaimed 17 rights as *the natural, inalienable and sacred rights of man*.

The French Declaration of Rights stimulated political writers in England and provoking alongside two critiques on the notion of natural rights. Jeremy Bentham's clause-by-clause criticism of the Declaration, entitled *Anarchical Fallacies*, argued vehemently that there can be no natural rights, since rights are created by the law of a society:

> *Right*, the substantive *right*, is the child of law: from *real* laws come *real* rights; but from laws of nature, fancied and invented by poets, rhetoriticians, and dealers in moral and intellectual poisons come *imaginary* rights, a bastard brood of monsters,… *natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense,… (Bentham, 1824).

Jean-Jacques Rousseau on his part argues that people agree to live in common if society protects them; since the purpose of the state is to protect those rights that individuals cannot defend on their own. In other terms rights are products of a particular society and its legal system; rights do not exist independently of human endeavour; they can only be created by human action.

Rousseau dismantled attempts to tie religion to the foundations of political order and also distinguished the rights of a society from natural rights. In Rousseau's view, the rights in a civil society are hallowed:

> But the social order is a scared right which serves as a basis for other rights. And as it is not a natural right, it must be one founded on covenants (Rousseau, 1762).

Seemingly drawing from Rousseau Thomas Paine wrote a defence of the conception of natural rights distinguishing between *natural rights* and *civil rights* in his *The Rights of Man*, (1791, 1792):

> Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. Civil rights are those which appertain to man in right of being a member of society. Every civil right has for its foundation, some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection (1791).

Heard submits that the origin and nature of human rights pose significant challenges to their operation as universal standards of behaviour. Fundamentally diverging foundations for human rights may be given, that ultimately must rely upon either divine revelation, human reason extrapolating from nature, or deliberate human invention and agreement. Even if a satisfactory basis for human rights can be constructed, further fundamental challenges emerge to both the `human' and `rights'

dimensions of human rights. It is not self-evident what it is about humans that generates the moral entitlement to certain benefits, neither is the status clear of those humans who do not share these qualities. A particular problem is posed by the manner in which these benefits are asserted to be `rights', since this concept can operate in practical circumstances as a liberty, power, immunity, or claim-right. Consequently human rights must be examined more closely, because they are at once so important and yet so vulnerable to probing questions about their origin, foundation, substance, and operation (Heard, 1997).

4. LITERATURE REVIEW

Human rights are assumed to represent the legal expression of life without which there can be no rights. In other terms, HRs are part of the very nature of human beings just as much as do the human's arms and legs. This means that modern statutes like constitutions and their like do not provisionally create human rights rather they simply aim at preserving them. Hence, HRs are identified as gifts of nature which when withdrawn makes a person less human. They cannot be withdrawn or granted just as constitutions and other codes do not create HRs but declare and preserve them. This also means that HRs are inalienable, imprescriptible or irrevocable properties of every human irrespective of status, colour or race; and if a right is inalienable, it must be taken away even by the human himself just as it cannot be bestowed by another human (for example, it is illegal to commit suicide or sell self into slavery); and the aim of safeguarding HRs is to ensure the possibility of every human living to the fullest in dignified freedom (See Donnelly, 2008, p1, USAID 2016, Ogbu, 1999, p.2; Nnamani, 2011; Ezejiofor, 1999, p.23; Igwe, 2002, p.1).

Aduba adds elsewhere that:

> Human Rights as those rights that are in the very nature of human persons. They are inalienable; they are neither be taken away nor given up and they are indivisible, there is no hierarchy among rights and no right can be suppressed in order to promote another right. They define and affirm humanity, they exist to ensure that human rights remain sacred and guarantee that inhumanity and injustice are prevented or redressed when violated (2012).

The idea of human rights bear linkage to the idea of democratic or egalitarian governance of which a former President of America – Abraham Lincoln, identifies as a form of governance of the people, by the people and for the people themselves. In other terms it is a form of governance scheme in which power flows from the citizens to the rulers and back to the people in a systematic fashion.

Within this range HRs are assumed to capture variables certified within international statutes as ranging the values captured in fig. 4.1 following:

Source: https://nigerianinfopedia.com.ng/human-right-organizations-in-nigeria/

Figure 2
HRs Typology

Although the human rights discourse certainly has expanded in the past 20 years, many groups have rejected some of its components as a form of Western cultural imperialism (see Baer and Gerlack, 2015; Chenoweth, Hunter, Moore, Olsen, and Pinkney, 2017).

For example, Claude Ake observes that:

> Some of the rights important in the West are of no interest and no value to most Africans. For instance, freedom of speech and freedom of the press do not mean much for a largely illiterate rural community completely absorbed in the daily rigors of the struggle for survival ... if a Bill of Rights is to make sense, it must include, among others, a right to work and to a living wage, a right to shelter, to health, to education. That is the least we can strive for if we are ever going to have a society which realizes basic human rights ... in Africa, if liberal rights are to be meaningful in the context of a people struggling to stay afloat under very adverse economic and political conditions, they have to be concrete. Concrete in the sense that their practical import is visible and relevant to the conditions of existence of the people to whom they apply. And most importantly, concrete in the sense that they can be realized by their beneficiaries (1987).

That notwithstanding it might be proper to attempt a brief yet incisive assessment of the uses and relevance rights.

4.1 Rights and Their Uses

Borrowing from Heard (1997) we garner that HRs are rights particular to human beings and the basis of the claim to rights distinguish humans from other animals.

Yet the adjectival use of the word 'right', which means good or proper, differs from the substantive - 'a right' which is a special, possessable benefit.

Again, not everything which is right (good) is a right, although many people mistakenly inflate the concept of a right by asserting benefits they believe are `right' to be `rights'. This confusion has become evident in the assertion of what are known as `second-generation human rights' - such as the right to economic development and prosperity - and `third generation human rights' - which cover the rights to world peace and a clean environment. While some human rights advocates accept the inclusion

of these benefits as rights, others argue that prosperity and peace are `right' but not substantive rights (Heard, 1997).

These uses of rights also involve a confusion between making a claim and having a right. One does not hold a right simply because one claims so, neither is it necessary to make claims in order to possess rights. It is not the act of claiming that creates rights. Thus, the claim to a right to prosperity or world peace does not establish that those benefits exist as rights. Neither does the fact that someone satisfies another's claim confirm a right's existence; a beggar may claim a right to some money from a businessman, who may give the money, but that does not establish the beggar's right to it (Heard, 1997)..

It is important also to note that one may benefit from another's duty, without having a right to that benefit. Christians may believe that they have a duty to give money to charity, but that does not mean that charities have a right to Christians' money.

These different notions of `right' are important to bear in mind when discussing human rights. The most common interpretation given to the `right' in human rights is that of claim-rights. There is a defined benefit to which individuals are entitled, and there is a correlative duty on others in relation to that benefit. This tendency may be partly due to the increasing codification of human rights into legal documents. It is far more efficacious if human rights are conceived of as claim-rights, because those who are deprived of their rights may argue that others (usually their government) must be compelled to fulfill a duty to provide the benefit. Since much human rights activism centres on the respect for rights contained in international agreements, it is natural for attention to centre on governments as duty-holders (otherwise duty bearers) since they are the entities directly bound by the human rights documents (Heard, 1997).

4.2 Appraisal of Human Rights situation in Nigeria

The gloomy character of HRs situation in Nigeria may be derived from the Executive Summary of *the Bureau of Democracy, Human Rights, and Labor* of the US Department of State on Nigeria for the year 2020 published in 2021 further abridged as follows:

a. Arbitrary Deprivation of Life and other Unlawful or Politically Motivated Killings: There were reports that the government or its agents committed arbitrary, unlawful, or extrajudicial killings. The police, military, or other security force personnel were found accountable for the use of excessive or deadly force or for the deaths of persons in custody, but impunity in such cases remained a significant problem. State and federal panels of inquiry investigating suspicious deaths did not always make their findings public.

On October 20, members of the security forces enforced curfew by firing shots into the air to disperse protesters, who had gathered at the Lekki Toll Gate in Lagos to protest abusive practices by the Nigerian Police Force's Special Anti-Robbery Squad (SARS). Accurate information on fatalities resulting from the shooting was not available at year's end. Amnesty International reported 10 persons died during the event, but the government disputed Amnesty's report, and no other organization was able to verify the claim.

Criminal gangs also killed numerous persons during the year. On January 25, criminals abducted Bola Ataga, the wife of a prominent doctor, and her two children from their residence in the Jaji community of Kaduna State. The criminals demanded a ransom of $320,000 in exchange for their return. They killed Ataga several days later after the family was unable to pay the ransom.

b. **Widespread disappearance/kidnap-for-ransom cases**: Criminal groups abducted civilians in the Niger Delta, the Southeast, and the Northwest, often to collect ransom payments. For example, on the evening of December 11, criminals on motorbikes stormed the Government Science Secondary School in Kankara, Katsina State, abducting 344 schoolboys and killing one security guard. On December 17, the Katsina State government, in conjunction with federal government authorities, secured the release of the boys.

Maritime kidnappings remained common as militants turned to piracy and related crimes to support themselves. For example, in July, Nigerian pirates attacked a Floating Production Storage and Offloading vessel near Rivers State, kidnapping 11 crew members.

Other parts of the country also experienced a significant number of abductions. Prominent and wealthy figures were often targets of abduction, as were religious leaders, regional government leaders, police officers, students, and laborers, amongst others. In January the Emir of Potiskum, Alhaji Umaru Bubaram, and his convoy were attacked on the Kaduna-Zaria Highway. The emir was abducted, and several of his bodyguards were killed.

c. **Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**: SARS units sometimes used torture to extract confessions later used to try suspects. President Buhari disbanded SARS units in October following nationwide #EndSARS protests against police brutality. Of the states, 28 and the FCT established judicial panels of inquiry to investigate allegations of human rights violations carried out by the Nigerian Police Force and the disbanded SARS units.

In June, Amnesty International issued a report documenting 82 cases of torture by the SARS from 2017 to May.

In Oyo State, two Nigeria Police Force officers were arrested after reportedly mistreating subjects they arrested in July. In September the Nigeria Police Force dismissed 11 officers and filed criminal charges against an additional 19 for misconduct.

Impunity remained a significant problem in the security forces, including in the police, military, and the Department of State Services (DSS). The DSS, police, and military reported to civilian authorities but periodically acted outside civilian control.

In response to nationwide protests against police brutality, the government on October 11 abolished SARS units. The DSS also reportedly committed human rights abuses. In some cases private citizens or the government brought charges against perpetrators of human rights abuses, but most cases lingered in court or went unresolved after an initial investigation.

The army had a human rights desk to investigate complaints of human rights abuses brought by civilians, and a standing general court-martial in Maiduguri. The human rights desk in Maiduguri coordinated with the Nigerian Human Rights Commission (NHRC) and Nigerian Bar Association to receive and investigate complaints, although their capacity and ability to investigate complaints outside major population centers remained limited. The court-martial in Maiduguri convicted soldiers for rape, murder, and abduction of civilians. Many credible accusations of abuses remained uninvestigated. The military continued its efforts to train personnel to apply international humanitarian law and international human rights law in operational settings.

d. Prison and Detention Center Conditions

Prison and detention center conditions remained harsh and life threatening. Prisoners and detainees reportedly were subjected to gross overcrowding, inadequate medical care, food and water shortages, and other abuses; some of these conditions resulted in deaths. The government sometimes detained suspected militants outside the formal prison system.

The law provides that the chief judge of each state, or any magistrate designated by the chief judge, shall conduct monthly inspections of police stations and other places of detention within the magistrate's jurisdiction, other than prisons, and may inspect records of arrests, direct the arraignment of suspects, and grant bail if previously refused but appropriate.

While prison authorities allowed visitors within a scheduled timeframe, in general few visits occurred, largely due to lack of family resources and travel distances. Prison employees sometimes requested bribes to allow access for visitors.

Physical Conditions at the prisons: Overcrowding was a significant problem. Although the total designed capacity of the country's prisons was 50,153 inmates, as of October prison facilities held 64,817 prisoners. Approximately 74 percent of inmates were in pretrial detention or remanded. As of October there were 1,282 female inmates. Authorities sometimes held female and male prisoners together, especially in rural areas. Prison authorities sometimes held juvenile suspects with adults.

Many of the 240 prisons were 70 to 80 years old and lacked basic facilities. Lack of potable water, inadequate sewage facilities, and overcrowding sometimes resulted in dangerous and unsanitary conditions. For example, in December 2019, according to press reports, five inmates awaiting trial at Ikoyi Prisons were accidentally electrocuted in their cell, which held approximately 140 inmates despite a maximum capacity of 35.

Disease remained pervasive in cramped, poorly ventilated prison facilities, which had chronic shortages of medical supplies. Inadequate medical treatment caused some prisoners to die from treatable illnesses, such as HIV/AIDS, malaria, and tuberculosis. This situation was exacerbated with the arrival of COVID-19. In July the government released 7,813 prisoners, including some older than 60 or with health conditions, and others awaiting trial, in response to COVID-19. Although authorities attempted to isolate persons with communicable diseases, facilities often lacked adequate space, and inmates with these illnesses lived with the general prison population. There were no reliable statistics on the total number of prison deaths during the year.

Prisoners and detainees were reportedly subjected to torture, overcrowding, food and water shortages, inadequate medical treatment, exposure to heat and sun, and infrastructure deficiencies that led to inadequate sanitary conditions that could result in death. Guards and prison employees reportedly extorted inmates or levied fees on them to pay for food, prison maintenance, transport to routine court appointments, and release from prison. Female inmates in some cases faced the threat of rape.

Only prisoners with money or support from their families had sufficient food. Prison employees sometimes stole money provided for prisoners' food. Poor inmates sometimes relied on handouts from others to survive. Prison employees, police, and other security force personnel sometimes denied inmates food and medical treatment to punish them or extort money.

Some prisons had no facilities to care for pregnant women or nursing mothers. Although the law prohibits the imprisonment of children, minors–some of whom were born in prison–lived in the prisons.

e. Unofficial military detention

Several unofficial military detention facilities continued to operate, including the Giwa Barracks facility in Maiduguri, Borno State. Although conditions in the Giwa Barracks detention facility reportedly improved, detainees were not always given due process and were subjected to arbitrary and indefinite detention. There were no reports of accountability for past deaths in custody, nor for past reports from Amnesty International alleging that an estimated 20,000 persons were arbitrarily detained between 2009 and 2015, with as many as 7,000 dying in custody.

f. Arbitrary Arrest or Detention: The law also provides for the right of any person to challenge the

lawfulness of his or her arrest or detention in court, but detainees found such protections ineffective, largely due to lengthy court delays. According to numerous reports, the military arbitrarily arrested and detained-often in unmonitored military detention facilities-thousands of persons in the context of the fight against Boko Haram in the Northeast. In their prosecution of corruption cases, law enforcement and intelligence agencies did not always follow due process, arresting suspects without appropriate arrest and search warrants.

Security personnel reportedly arbitrarily arrested numerous persons including journalists and demonstrators during the year, although the number remained unknown.

g. Denial of Fair Public Trial: Although the constitution and law provide for an independent judiciary, the judicial branch remained susceptible to pressure from the executive and legislative branches. Political leaders influenced the judiciary, particularly at the state and local levels. Understaffing, inefficiency, and corruption prevented the judiciary from functioning adequately. There are no continuing education requirements for attorneys, and police officers were often assigned to serve as prosecutors. Judges frequently failed to appear for trials. In addition the salaries of court officials were low, and officials often lacked proper equipment and training.

74 percent of the prison population consisted of detainees awaiting trial, often for years. The shortage of trial judges, trial backlogs, endemic corruption, bureaucratic inertia, and undue political influence seriously hampered the judicial system. Court backlogs grew due to COVID-related shutdowns and delays. In many cases multiple adjournments resulted in years-long delays. Some detainees had their cases adjourned because the NPF and the NCS did not have vehicles to transport them to court. Some persons remained in detention because authorities lost their case files. Prison employees did not have effective prison case file management processes, including databases or cataloguing systems. In general the courts were plagued with inadequate, antiquated systems and procedures.

h. Trial Procedures

Pursuant to constitutional or statutory provisions, defendants are presumed innocent and enjoy the rights to: be informed promptly and in detail of charges (with free interpretation as necessary from the moment charged through all appeals); receive a fair and public trial without undue delay; be present at their trial; communicate with an attorney of choice (or have one provided at public expense); have adequate time and facilities to prepare a defense; confront witnesses against them and present witnesses and evidence; not be compelled to testify or confess guilt; and appeal.

Authorities did not always respect these rights, most frequently due to a lack of capacity. Insufficient numbers of judges and courtrooms, together with growing caseloads, often resulted in pretrial, trial, and appellate delays that could extend a trial for as many as 10 years. Although accused persons are entitled to counsel of their choice, there were reportedly some cases where defense counsel was absent from required court appearances so regularly that a court might proceed with a routine hearing in the absence of counsel, except for certain offenses for which conviction carries the death penalty. Authorities held defendants in prison awaiting trial for periods well beyond the terms allowed by law (US Department of State, 2021).

There also existed widespread public perception that judges were easily bribed, and litigants could not rely on the courts to render impartial judgments. Many citizens encountered long delays and reported receiving requests from judicial officials for bribes to expedite cases or obtain favorable rulings.

4.3 Appraisal of Reports on Human Rights Defenders in Nigeria

This report assessment is based on a 2008 report by the Observatory for the Protection of Human Rights Defenders, a joint programme of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), and Front Line carried out an international fact-finding mission to Abuja and Lagos, Nigeria, from November 7 to 12, 2008 (Letjolane et al. 2010).

The mission coincided with the 44th session of the African Commission on Human and Peoples' Rights (ACHPR), held in Abuja, Nigeria, from November 10 to 24, 2008. The Observatory and Front Line then decided to take this opportunity to investigate the situation of human rights defenders in Nigeria. It is also worth mentioning that the State report of the Federal Republic of Nigeria was considered during this session (Letjolane et al. 2010).

The objectives of the mission were to assess the situation of Nigerian human rights defenders, through:

a panorama of the main actors of the civil society operating in the country (both defenders of civil and political rights and of economic, social and cultural rights);

the investigation on the patterns of persecution of human rights defenders and identification of the perpetrators of these violations;

the collection of first-hand information and testimonies on the situation of human rights defenders, and the risks they face, with a focus on the rights to freedom of association, freedom of expression, peaceful assembly and the right to a fair trial/effective legal remedies as enjoyed by human rights activists such as members of non-governmental organisations (NGOs), trade-unionists, independent journalists and students activists;

the investigation on the capacity or willingness (or lack thereof) of Nigerian institutions to offer effective protection to human rights defenders. Letjolane et al. 2010).

First, the 1999 elections that brought President Olusegun Obasanjo to power were marred by widespread

fraud. The 2003 elections were more pervasively and openly rigged than the flawed 1999 polls, and far more bloody. More than 100 people died in the two weeks surrounding the voting itself, many in political clashes spawned by politicians' efforts to employ and arm criminal gangs to defend their interests and attack their opponents (Letjolane et al. 2010).

When the country was finally ushered into a democratic State in 1999, the new leadership under Chief Olusegun Obasanjo announced a determination to root out corruption and a culture of violation of human rights.

There were however government intolerance of defenders working on certain supposedly sensitive issues like democratic governance, elections, corruption and economic rights.

More severe challenges were faced by defenders working in certain areas of the country. The Niger Delta, in particular, with a high level of militarisation and insecurity, is perhaps the region where defenders were most at risk. The Niger Delta question remains indeed the key human rights concern in the country with conflicts going on in Bayelsa, Delta and River States over claims by the local population of unfair distribution of income and inadequate infrastructure in the oil-rich Niger Delta. Fighters took up arms in 2006, demanding a more equal distribution of the country's oil wealth (Letjolane et al. 2010).

Within the period, the Government intensified efforts to end the Niger Delta crisis, offering unconditional amnesty to thousands of militants. The Government also committed to invest 10 percent of the money it makes from Niger Delta oil back into the region. On November 20, 2009, the European Commission signed a 677 million Euro deal to help Nigeria tackle challenges in its restive oil-producing region, promoting peace, good governance and trade.

There however existed a general lack of awareness of the concept of *human rights defender*, the international framework for their protection, the defenders' entitlement to specific protection measures in relation to their particular exposure inherent to human rights work and the corresponding State's obligations to protect defenders and ensure a favourable environment (Letjolane et al. 2010).

4.4 Appraisal of Reports on Human Rights Defenders in Nigeria

4.4.1 Reports on Human Rights Defenders operating in the Niger Delta

The heavy presence of the military, in particular, severely affects the work of human rights defenders. The military and the police are in many cases involved in human rights violations against the population, including extrajudicial killings. It is reported that the military and the police extort money at roadblocks and there have been cases where they have reacted to refusals to pay by killing. Many of these cases have then been "mounted up" as robbery.

The work of defenders in monitoring and denouncing these violations makes them often a target of retaliation and violence. Due to the current conflict, increasing militarisation and human rights violations taking place in the Niger Delta, it is almost impossible for defenders to report on the situation without being perceived as political activists. In addition, many human rights defenders face increased insecurity and were sometimes forced to flee the region.

Defenders intervening in such cases have been arbitrarily arrested and on several occasions have had their documents confiscated. Among several examples, at the end of October 2008, Mr. Patrick Chiekwe, President of Save Earth Nigeria (SEN), was blocked by the military police and had his camera's memory stick confiscated after he took pictures in relation to the killing of two children in Port Harcourt. In November 2008, Mr. Isine Ibanga, a journalist with the Punch Newspaper and member of CLO, was attacked and injured by police officials on patrol while walking to his residence in Port Harcourt, Rivers State. This attack coincided with recent threats against Mr. Ibanga and the Punch Newspaper by the Abonnema Local Government Area Chairman following a news story he reported concerning victims of rape by gun-carrying young men, against female members of the National Youth Service Corp, serving in the area.[3]

On June 5, 2008, the SSS arrested Mr. **Samuel Allison** and Mr. **Henry Jumbo**, youth activists in Bonny Island, Rivers State. They were detained for three days, ill-treated and threatened that trumped-up charges of armed robbery would be brought against them. A few days before their arrest, they had started a campaign against the reportedly arbitrary dismissal by a local company of some of its employees.

In February 2008, Mr. **Chris Ekiyor**, President of the Ijaw Youth Council (IYC) in Southern Ijaw Local Government Area, Bayelsa State, was assaulted by soldiers of the Joint Task Force (JTF).

Mr. Chris Ekiyor was on his way to IYC elections in the Oporoma community when the soldiers accosted the group and attacked them with no reason.

On September 2, 2008, heavily armed soldiers surrounded and arrested twenty people in Iwhrekan community, Ughelli South Local Government Area, Delta State, including human rights defenders **Comrade Che Ibegwara**, 74 years old community leader and former trade unionist, **Chima Williams**, member of Environmental Rights Action (ERA), journalist **Felix Opute** and **Celestine Akpobari**. ERA had organised a visit to Iwhrekan community to raise awareness about environmental rights and educate residents on non-violent actions. They were later released following strong local mobilisation.

[3] See Annual Report 2009 of the Observatory for the Protection of Human Rights Defenders.

Likewise, on April 12, 2008, Mr. **Joel Bisina Dimiyen**, founder and Director of the Niger Delta Professional for Development (NIDPRODEV), was arrested at Oghara, in the Niger Delta, by about 25 uniformed soldiers and plain-cloth SSS personnel. Arrested along with four US filmmakers, Ms. **Sandy Cioffi**, Mr. **Cliff Worsham**, Mr. **Sean Porter** and Mr. **Tammi Sims**, while making a documentary about the region's petroleum industry and its impact on the life, economic and environment of the people of the Niger Delta, they were accused of travelling without military authorisation although no law in Nigeria says such a permit is necessary. They were questioned for six hours in Warri until Brig. Gen. Rimtiip Wuyep, the local military commander, ordered their transfer to the headquarters of the State Security Service in Abuja. Their lawyer was not allowed to see them. While in detention, Mr. Bisina Dimiyen was subjected to ill-treatment. They were all released on April 16, 2008 without charge. Although no formal investigation was carried out from the Government, Mr. Bisina Dimiyen decided to take a court action against the Federal Government and the JTF and, on November 28, 2008, the Federal High Court of Nigeria decided to award Mr. Bisina Dimiyen five million Naira (about 23,671Euros) as damages for his detention. However, as of the end of 2009, the Government and the JTF had not respected the order of the Court.

4.4.2 Reports on Human Rights Defenders Working on Corruption and Good Governance

In the past years, State hostility towards public criticism of Government policies in certain sensitive areas has been growing. Corruption and good governance are such sensitive issues and there have been instances of defenders and journalists reporting on those issues being targeted and harassed.

A case that received significant media attention involved two members of the Economic and Financial Crimes Commission (EFCC), the body established to fight against corruption. In August 2008, Mr. Ibrahim Magu, former EFCC official, was arrested in connection with documents in his possession which it is believed were related to the EFCC's investigations into corruption at various levels of Government. When this fact-finding mission took place, Mr. Ibrahim Magu was still in detention and no charges were brought against him. On the same day, Mr. Mallam Nuhu Ribadu, EFCC Chairperson, who was investigating acts of corruption by top Government officials, was demoted from the post of Assistant Inspector-General of Police to Deputy Commissioner of Police as a way of intimidating him from releasing the facts and evidence about acts of corruption. In both cases, domestic and international anti-corruption groups reported that the arrest of Mr. Magu and the demotion of Mr. Ribadu were motivated by their work at EFCC.

On October 18, 2008, Mr. Jonathan Elende, a US-based Nigerian journalist publishing in the online news website Elendu Reports, was arrested at the airport upon his arrival in Nigeria

His arrest followed the publication of articles on Government corruption and the situation on the Niger Delta. He was released on October 28, 2008, without charges.

4.4.3 Reports on Media Practitioners

On several occasions journalists have been attacked for reporting on human rights issues that the authorities did not want to be in the public domain.

A journalist who had gone to cover an all stakeholder meeting organised by the Ondo State Oil Producing Area Development Commission, the intervention agency established by the State Government to take care of the human and physical development needs of the oil-bearing communities, was assaulted by four Naval officers at the forward operation base of the Nigerian Navy in Ondo State. They descended on the journalist, slapped him, kicked him, dragged him to the ground and tore his shirt into shreds. They dealt him blows on his face, leaving him with a black eye and swollen lips while his spectacles were damaged. It took the intervention of the Governor Olusengu Agagu to rescue the reporter from the hands of the naval officers.[4]

4.4.4 Reports on Union Activists

Students were also repressed for claiming the right to unionise in 2008, when a conflict that had started the year before at the University of Obafemi Awollowo continued. In 2007, ten student activists including the Students' Union President, Mr. **Saburi Akinola**, the Speaker of the Students' Parliament, Mr. **Andrew Ogumah**, and the Public Relations Officer, Mr. **Olatunde Dairo**, had been arrested, detained and expelled from the university for their struggle for better welfare conditions and respect for students' right to unionise and association. They were detained for over seven months at Oshogbo Prison in Osun State. They were released on bail in February 2008 due to local and international protest in particular from the Students' Union, labour, civil society activists as well as the international campaigns led by the Committee for a Workers International (CWI), who also called for their reinstatement. In a public statement posted on campus on December 31, 2008, the university authorities announced the recall of three of the targeted student activists. Conditions for their reinstatement included a letter of apology/undertaking and withdrawal of cases instituted against the university from courts.

Ultimately, in lieu of the widespread character of human rights violations in the country some contributors to HRs violations literature in Nigeria attribute the persistence of the jeopardy to a failure of the state since

[4] See Media Alert (West Africa 2006-2007) Annual State of the Media Report.

the latter owns the prerogative of employing, training and retraining the security operatives through whom most of the deplorable acts are perpetrated (see Symonides, 2003; Amunnadi, 2016; Nzarga, 2014).

4.5 Factors Inhibiting Access to Justice in Nigeria

Access to justice refers to the substantive and procedural mechanisms existing in any particular society designed to ensure that citizens have the opportunity of seeking redress for the violation of their legal rights within the legal system. It focuses on the existing rules and procedures to be used by citizens to approach the courts for the determination of their civil rights and obligations (Okogbule, 2005).

According to Angwe, the United Nations Development Programme (UNDP) has described access to justice as the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievances in accordance with human rights principles and standard (2017).

Again, *Article 26* of the African Commission on Human and Peoples' Rights (African Charter) according to gives States party to the Charter the duty to guarantee the independence of the Courts and to allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed in the Charter.

Again, Section 17(2) (e) of the Constitution of the Federal Republic of Nigeria, 1999 (amended), provides for the independence, impartiality and integrity of courts of law and for easy accessibility to be secured and maintained. All these according to Angwe, point to the fact that access to justice is itself a human right and a denial of this is a denial of the basic tenets of human rights principles (2017).

Still according to Angwe, access to justice comprise four (4) facets:

a. A proper adjudicatory mechanism- it is a necessity to have a strong and proper adjudicatory mechanism, be it a court, tribunal, commission, etcetera, where an aggrieved citizen can go seek redress and justice for a wrong done to him or any violation of his fundamental rights. It is also necessary that such mechanism is just, fair and objective in order to be effective and in line with the principles of natural justice.

b. Such adjudicatory mechanism should be assessable to all citizens- this could be in terms of distance, time and other factors. The court or tribunal or other constituted authority so provided must, having regard to the hierarchy of courts/tribunals, be reasonably accessible in terms of distance for access to justice as so much depends on the ability of the aggrieved person to bring his/her grievance before that competent authority to grant the needed relief.

c. The process of getting justice must equally be affordable- if such adjudicatory mechanisms are expensive so much so that indigent citizens cannot afford the payments, then the purpose of attaining justice is defeated. The constitution places an obligation on states to make provision for free legal services, that is Legal Aid for underprivileged citizens to have full access to courts and have their matters heard without money. Other lawyers also provide pro-bono services to support this aspect.

d. Speedy process- Access to justice as a constitutional value will be a mere illusion if justice is not speedy. Justice delayed, as famously said is justice denied. If the process of administration of justice is so time consuming, laborious, indolent and frustrating for those who seek justice that it dissuades or deters them from even considering resort to that process as an option, it is tantamount to denial of not only access to justice but justice itself. Also, where the trial of a citizen goes on endlessly, his right to life itself is violated. Again, there should be jurisprudentially no qualitative difference between denial of speedy trial in a criminal case or a civil suit, because civil disputes can at times have an equally, if not, more severe impact on a citizen's life or the quality of it (Angwe, 2017).

Access to Justice would, therefore, be a constitutional value of any significance and utility only if the delivery of justice to the citizen is speedy, otherwise, the right to access to justice is no more than a hollow slogan which is of no use or inspiration for the citizen.

Over the years, the number of courts established in the country has increased considerably. However, the increase in literacy, awareness, prosperity and proliferation of laws has made the process of adjudication slow and time consuming primarily on account of the over worked and under staffed judicial system, which is crying for creation of additional courts with requisite human resources and infrastructure to effectively deal with an ever increasing number of cases being filed in the courts… access to justice remains a big question mark due to delays in the completion of the process of adjudication on account of poor judge population and judge case ratio in comparison to other countries (Angwe, 2017).

On a similar terrain Okogbule admits that a varying number of obstacles conspire against access to justice in Nigeria. While some of these obstacles are substantive in nature, others are procedural and yet others have their roots in the present political and economic system in the country (Okogbule, 2005).

These according to Okogbule include:

a. **Delay in the administration of justice**

That there is inordinate delay in the administration of justice in Nigeria is a pedestrian statement. What is however difficult to understand is how Nigerians have been able to live with this phenomenon for several decades without proffering a lasting solution to it. Very

often, we see ordinary cases of unlawful termination of employment or even those for the enforcement of fundamental rights lasting between three to five years or even more. A number of circumstances could give rise to this delay: lawyers writing letters of adjournment of cases, inability of judges and magistrates to deliver judgments on time, failure of the police or prison authorities to produce accused persons in court for trial, the rule that once a magistrate or judge is transferred and a new one takes over a case, it has to start *de novo*, etcetera.

There is no doubt that such delays not only erode public confidence in the judicial process but also undermine the very existence of the courts. This is in spite of the fact that speedy trial is guaranteed by Article 36 (paragraph 1) of the 1999 Constitution which provides that:

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

b. Cost of litigation

The cost of litigation in the country is so high that the ordinary Nigerian can hardly afford adequate legal representation when he has a legal matter to pursue.

This is all the more so if one considers that the vast majority of Nigerians are constantly preoccupied with how best to make a living for themselves and their extended family.

Perhaps in order to enhance their own economic standing, legal practitioners in Nigeria have devised the method of collecting not only their professional fees but also transportation fees each time they go to court, thus invariably adding to the financial burden of the litigants. When this is considered against the background that a particular case could last up to four or five years, then the enormity of the financial burden on litigants can better be appreciated.

Some either abandon their legal causes when the fees become unbearable thus allowing violators go scot-free or resort to other unlawful measures (Angwe, 2017).

Again, Nigerians, especially those from the Niger Delta region who are the usual victims of oil spillages, pollution and other environmental hazards, find it extremely difficult to exercise their legal rights when these petroleum-related activities adversely affect their normal activities.

Under the current Rules of the Federal High Court,[5] for a claim of ten million naira, the litigant must pay a filing fee of over fifty thousand naira and this must be paid before the filing of the suit. Moreover, for matters requiring survey plans and valuation reports, the Nigerian citizen, rich or poor alike, is required to ensure that these are already attached to the Statement of Claim at the time of filing, even when it is known that the payment of these professionals could very well be beyond the financial capability of the litigants (Okogbule, 2005).

4.6 A Systems Theory Model to Safeguarding Human Rights in Nigeria

The word *system* is widely used to identify interdependencies or interrelationships between parts, components, or processes that showcase discernible regularities in relationship.

All living creatures have been variously found to constitute systems in the light of their characterizations to processes of interchange (for example, humans breath in and breath out, etcetera).

Beyond naturally given systems, the latter are also built by humans, for example some engineers are concerned with systems as functionally related aggregates of technological devices; just as the functioning of particular types of systems can be interpreted by specialists in the given areas for example, physiologists interpret functionally related portions of living organisms (circulatory, digestive, nervous systems); as also social scientific scholars interpret economic and political systems; philosophers, discuss systems of thought and more.

Yet, the solar system is not more qualified to be described as a system than a language. In the former, the entities are the sun and the planets; the relationships among them are specifiable as position and velocity vectors and forces of gravitational attraction etcetera (for example, Kepler's laws of planetary motion).

In a language, there are also identifiable entities - phonemes, morphemes, sentences, and the like - and relations between these are given in terms of syntactic rules, etcetera.

According Kaplan, systems theory as a tool was developed in the area of neurology by scientists interested in brain behaviour. For example, Grey Walter designed a machine with a motor and headlights that was capable of plugging itself into a wall socket to recharge its battery when its headlights began to wear down (Kaplan, 1968, p.30). By employing analogues of this kind David Easton conceived of the political system as integrating all activities through which social policy is formulated and executed (*The Political System*, 1953, 1957, 1965a, 1965b).

According to Ashby the modern use of the concept of system as a distinctive method of analysis has the following characteristics:

a. the system to be investigated is explicitly distinguished from its environment;

b. the internal elements of the system are explicitly stated;

c. there are relationships between the elements of the system and between the system and its environment that are explicitly stated;

[5] Order 53 (1) and Appendix 2 of the Federal High Court (Civil Procedure Rules), 2000.

d. where these relationships involve deductions, the canons of logical or of mathematical reasoning are employed; and

e. assertions concerning the relationships between the system and the real world are confirmed in line with the canons of scientific method (1952).

The political system exists like other existing systems, but what makes the former exceptional is the *authoritative allocation of values* and resolutions binding for all.

Easton is not content with description of *political activity* merely as *direction of man by man* (de Jouvenel, 1952), or as *relation between influencer and the influenced* (Lasswell, 1958). It is also not adequate to see politics subsumed to authority, power, government and rule (Dahl, 1957).

For Easton political phenomena is characterised by a *system of interrelated and reciprocally regulated patterns of actions and orientations* and no less by diverse values such as interests, objectives, desires, etcetera and these must be authoritatively allocated or distributed in a conflict situation (scarcity versus incompatible goals) all encapsulated within four major premises:

a. System;

b. Environment;

c. Response; and

d. Feedback.

The ideal political system is characterised by widespread interactions identified as a *set of interactions.*

Exchanges take place between a political system and its environment which comprises of many systems and their subsystems and more; all of which make up the conditions under which members of a political system act and react within the environment.

Conflicts, strains, and changes emerging from the environment may prove either useful or dysfunctional to the political system.

In other words, the political system is exposed to demands and supports.

People as 'actors' make demands upon the political system to which they belong. These may take the form of:

a. demands for improved provision of vital public utilities, power supply, housing, medical facilities, job opportunities etcetera .

b. demands for participation in the political system such as right to seek election, to hold office to organize protests, to raise petitions public officials etcetera.

Supports may range from:

a. Material supports, such as the payment of taxes or other levies, and the provisions of services such as labour for public works or military service, etcetera.

b. Obedience to laws and regulations;

c. Participatory support, such as voting, political discussion, and other forms of political activities;

The capacity of a political system to adapt over time depends on feedback - a dynamic process through which information about impacts of outputs on the environment is communicated to the system which may result in subsequent change or modification of some output.

Ultimately, feedback depends on issues like responsiveness of the constituent authorities, time, and availability of information-resources, etcetera.

On a general scale outcomes may generate new demands or supports kicking off the cycle all over again, forging a never ending cycle.

In a word, Easton's organic view of politics aimed at evolving a set of basic principles that could apply to any political system around the world with high potency for reward for countries that that make the most use of the approach.

Ultimately, leadership insensitivity was key to the #EndSARS protests in Nigeria during which several lives were lost in 2020. This will rarely be the case where a political system is managed to the extent that state actors as duty-bearers adhere to the smooth operation of the input/output character of state governance knowing when and how to react within the political system and working in close synergy with effective dispute resolution mechanisms that aim to diffuse tensions before they escalate to unmanageable proportions.

5. RECOMMENDATIONS

There exists no active levels of communication within the inputs-output mechanism as the citizenry are rarely involved in producing inputs to the conversion chamber due especially from the dim character of their political exposure and the absence of active mechanisms through which their concerns and inputs may be effectively channelled to the conversion chamber.

The state legislative assemblies that are expected to bridge the gap of governance as dictated by constitutional provisions are nowhere close to ordinary citizens and this all the more stretches the distance between the ruled and the rulers.

This dismal account shows the country may require extra statutory parliamentary mechanisms much closer to the mass population and such groups supposedly HRs or affiliate non-governmental organizations (NGOs) will be required to ensure balance within the inputs-outputs machinery as applicable within the systems theoretic model.

Adopting a *human rights based approach* to such an evolution will mean that human rights principles will also be employed to ensure the legitimacy of such a process since such will provide a strengthened platform for political dialogue, advocacy and social mobilization at the grassroots level.

That notwithstanding, such arbitration organs must be recognized by the state and must be capable of effectively obtaining concrete inputs from the streets for onward transmission to the upper stratum of governance.

Arbitration organs going by varying nomenclatures may serve varying purposes beyond serving as extra titular peoples' parliament to enable the operational effectiveness of the input/output system.

Some may serve as arbitration panels located within police stations to check mate violation and preservation of HRs. Such a group may also be empowered to authorize arrests; and freely release suspects on bail etcetera. Where a magistrate is attached to an arbitration panel (attached to a police station) the process of justice is sped up as against the case witnessed in the present where suspects stand awaiting trial for weeks and months.

Working hand in hand with the judiciary such a framework would also serve as dispute resolution framework for persons involved in cases with no formal or written agreement for example, cases between persons who verbally agree but did not put agreement on paper; family disputes resulting from absence of written wills by deceased owner of property among several such cases where manifest evidence are either entirely absent or missing; etcetera.

The justice system may refer some cases that require peaceful resolution to such arbitration panels as *alternative dispute resolution mechanisms*.

Within this realm Okogbule explains that such arbitration mechanisms are more cost-effective, and also largely in tandem with the traditional method of dispute settlement, which had served African societies so well before the imposition of colonial system of adjudication (see Okogbule, 2005; Obilade, 1991; Chukwuemerie, 2002; Nwakoby, 2004).

6. CONCLUSION

The idea of pursuit and protection of human rights is a welcome development. It is also significant to highlight it is chiefly a Western led process occasioned especially by the desolation brought about by the gory outcomes of both the first and second world wars (WW I and II). The West however did not make this consideration while it plundered the South end of the global divide through centuries of slavery and colonialism that followed.

The visible reign of Western led neoliberal agenda and its continued pauperization of the South to date append so many question marks on the realization of genuine economic freedom for the South end especially, Nigeria

O'Neill's submissions that rights without determinate obligations are simply undefined hence null and void (2005) makes it imperative for the country under review to showcase how HRs would be safeguarded based on human rights based approach in lieu of glaring evidence of violations of HRs within the period under review.

The character of HRs violations in Nigeria showcase a resounding gap between the ruled and the rulers and a subtle reason for the continued prevalence of HRs abuses in the country. It is recommended that bridging this gap via evolution of varying typologies of statutorily established arbitration groups would go a long way towards diffusing strains brought about by insecurity while enhancing the prospects of speedy justice delivery and enabling simultaneously a functional input-output mechanism within the Nigeria political system.

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