



Fundamental Human Rights in Nigeria

INTRODUCTION

Human rights are the basic rights and freedom that belong to every human being right from birth till death. The Universal Declaration of Human Rights proclaimed by the United Nations General Assembly, in Paris on December 10, 1948, sets out fundamental human rights to be universally protected and it has been translated into over 500 languages. Diverse nations have taken a step further by ensuring that these human rights are protected by local laws.

In Nigeria, fundamental human rights are given legislative protection under the Constitution of the Federal Republic of Nigeria (Constitution). Particular analysis is given below to the provisions of Chapter IV of the Constitution (Fundamental Rights) which comprises of Sections 33-46. This article also highlights salient provisions of the new Nigerian Police Force (Establishment) Act 2020 which buttress the protection of fundamental rights.

Justice

Dignity

Cooperatio

Equality

FUNDAMENTAL RIGHTS UNDER NIGERIAN CONSTITUTION

Right to Life

Section 33 of the Nigerian Constitution provides the bedrock of the right to life and stipulates that every person has a right to life and no one shall be deprived intentionally of his/her life, save in execution of a court sentence for a criminal offence of which such person is found guilty in Nigeria.

This is clear to the effect that a person should not be killed intentionally except when a death sentence by the courts is being complied with. This provision also provides other exceptions, such as, death resulting from: self - defence or defence of property, lawful arrest or prevention of the escape of a lawfully detained person or suppression of a riot, insurrection or mutiny.

Right to Dignity

The dignity of every person is to be respected and no one should be subjected to torture or inhuman or degrading treatment; slavery or servitude and forced or compulsory labour. This is protected under Section 34 of the Constitution.

Right to Liberty

The right of every person to liberty (freedom) is stated in Section 35 of the Constitution. The permitted deprivation of liberty is exhaustive to include the execution of a court order or sentence on a convict, non-compliance of a court order or obligation imposed by law, arraignment of a suspect or compelling a witness to court, prevention of a criminal offence, education or welfare of a minor, community protection, care or treatment of persons with infectious disease, mentally sick or persons addicted to drugs, alcohol or vagrants, expulsion, extradition or lawful removal of persons.

With utmost importance is the provision in Section 35 of the Constitution which prohibits the detention of an awaiting trial suspect beyond a period longer than the maximum period of imprisonment prescribed for the offence.

Right to Remain Silent during Arrest/Detention

It is important to note Section 35 (2) of the Constitution which gives a detained or arrested person the right to remain silent or avoid answering any question until after a consultation with a legal practitioner or any other person so chosen.

Right to Written Information on Facts and Grounds of Arrest/Detention

An arrested or detained person must be informed in writing within 24 hours (and in a language that the detained person understands) of the facts and grounds for the arrest or detention. This is so provided in Section 35 (3) of the Constitution.

Right to Bail, Arraignment and Trial

The combined reading of Section 35 (4) and (5) of the Constitution is to the effect that an arrested/detained person must be charged and brought before a court within 1 day of arrest (if a court with competent jurisdiction is within a 40km radius) or within 2 days or a reasonable time in other cases.

In addition, if the detained suspect is not tried within 2 months from date of arrest/detention or if the suspect is released on bail but not tried within 3 months from date of arrest/detention, such suspect must be released either unconditionally or upon such conditions as are reasonably necessary to ensure that the suspect appears for trial at a later date.

Right to Compensation and Public Apology for Unlawful Arrest/Detention

Any person that is unlawfully arrested or detained is entitled to compensation and public apology from the appropriate authority or person specified by law. See Section 35 (6) of the Constitution.

Presumption of Innocence until Proved Guilty

Section 36 (5) of the Constitution provides the legal presumption that every person who is charged with a criminal offence is presumed to be innocent until proved guilty. This presumption does not however invalidate any law that imposes the burden of proving particular facts on the person charged.

Rights of an Accused Person

Every person charged with a criminal offence is entitled to:

- Be informed promptly in the language that he understands and in detail of the nature of the offence;
- Be given adequate time and facilities for the preparation of his defence;
- Defend himself in person or by legal practitioners of his own choice;
- Examine, in person or by his legal practitioners, the witnesses called by the prosecution before

any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and

- Have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

Right to Privacy

Every Nigerian citizen has the right to privacy and this includes the privacy of their homes, correspondence, telephone conversations and telegraphic communications. This is provided in Section 37 of the Constitution.

Freedom of Expression

Every person is entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. This is entrenched in Section 39 of the Constitution.

In addition, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions. Provided that only the Federal Government, State

Government or any Person authorised by the President on fulfilment of conditions by an Act of the National Assembly can own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

Freedom of Assembly and Association

Section 40 of the Constitution clearly states that every person is entitled to assemble freely and associate with other persons, and in particular such person may form or belong to any political party, trade union or any other association for the protection of his/her interests:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission (INEC) with respect to political parties to which that Commission does not accord recognition.

Right to Seek Redress for Contravention of Fundamental Rights

Section 46 of the Constitution grants everyone the right to seek redress, for any alleged past, current or likely contravention in any State of the fundamental rights in the Constitution, by making an application to the High Court in that State.

RIGHTS UNDER THE NIGERIAN POLICE FORCE (ESTABLISHMENT) ACT 2020

The new Nigerian Police Force (Establishment) Act 2020 (Act) provides for certain conditions that must be met prior to the exercise of prescribed powers of the Nigerian Police.

Conditions for the Power to Search

Section 50 of the Act is instructive to note as it stipulates actions that must be taken before any police officer can exercise the power to search.

Section 50 (1) of the Act provides that before a police officer can carry out the search, such police officer must question the person about his behaviour or his presence in circumstances which gave rise to the suspicion.

Section 50 (2) of the Act makes clear that if the person to be searched has a satisfactory explanation which makes a search unnecessary or there are other circumstances which comes to the attention of the police officer and makes the search unnecessary, then no search may take place.

In addition, any police officer that seeks to exercise the power to stop and search must be in police uniform or wear a valid Police Identity Card.

Information to be Provided Before A Search

It is important to note that before any search of a detained person or vehicle may take place, the police officer must give the person to be searched or in charge of the vehicle:

- His name and the name of the police station to which he is attached;
- The object of the search; and
- His grounds or authorisation for undertaking the search.

This is as provided for in Section 50 (3) of the Act.

Conduct of Searches

Section 51 of the Act provides that reasonable effort must be taken to minimise the embarrassment that a person or the person whose property is being searched may experience.

In addition, searches in public must be restricted to superficial examination of outer clothing and if a more thorough search is required then this must be done out of public view, by an officer of the same sex with the person being searched and in the absence of any person of the opposite sex unless so requested for by the person searched.

Reasonable Suspicion

Section 54 of the Act stipulates that the following shall not be grounds for reasonable suspicions:

- Personal attributes, including a person's colour, age, hairstyle or manner of dress;
- Previous conviction for possession of an unlawful article; or
- Stereotyped images of certain persons or groups as more likely to be committing offences.

Rallies, Public Safety and Public Order.

Section 83(1) of the Act charges the Nigerian Police Force with the responsibility of maintaining and securing public safety and public order.

In carrying out its responsibilities, the Police Force must:

- Uphold the provisions of the Nigerian Constitution and other laws;
- Uphold and protect the fundamental rights of all persons in Nigeria; and
- Be fair to all persons in Nigeria notwithstanding their economic status or religious, ethnic or political beliefs and affiliations.

This is as provided in Section 83 (2) of the Act.

The overarching authority with the responsibility of maintaining security, public safety and public order within a state is the Commissioner of Police of such State.

Finally, where a person or organisation notifies the police of the intention to hold a public meeting, rally or procession on a public highway, or such meetings in a place where the public has access to, the police officer responsible for the area where the meeting, rally or procession will take place, must mobilise personnel to provide security cover for the meeting, rally or procession.

CONCLUSION

In sum, the Nigerian Police is the first point of call for maintaining security, public safety and public order and must uphold the fundamental rights of all persons while carrying out their civic duties. The protection of fundamental human rights is sacrosanct.

Justice

Dignity

Cooperation

Equality