



THE EFFECTIVENESS OF NIGERIAN NATIONAL  
HUMAN RIGHTS COMMISSION IN HUMAN  
RIGHTS PROTECTION

BY

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## ABSTRACT

National Human Rights Commissions are institutions established by nations across the world to protect and promote human rights. Due to constraints in domestic judicial system and ineffectual international mechanisms for the protection and promotion of human rights, nations were encouraged by the United Nations to consider the possibility of establishing independent NHRC to advance the protection and promotion of human rights standards at the domestic level. As such, the Nigerian NHRC is established for similar purpose. This thesis aims at assessing the effectiveness of the Nigerian National Human Rights Commission. It seeks to discover whether the Commission has met up with the protection and promotion of human rights as the sole purpose for which it was created. To achieve this, the thesis examines the activities of the Commission over a period of fifteen years. It establishes that the Nigerian NHRC was set up by a military administration at a time when human rights violation in Nigeria was at its peak. Thus, the circumstances under which it was created were susceptible to different interpretations. Based on this premise, this thesis seeks to examine the general performance of the Commissions from inception till August 2010. In examining the effectiveness of the Nigerian National Human Rights Commission, this thesis explores available concepts like dominant and holistic concepts. Although, it agrees with these concepts, the thesis develops Standard Basic Theory as additional yardstick upon which the Commission is assessed. Thus, the thesis assesses the legal framework of the Commission. The research-work finds that the enabling Act under which the Commission was established is weak and inadequate, thus it has undermined the performance of the Commission. This thesis scrutinises the appointment procedure of the Commission's members. The thesis concludes that the independence of the Commission is not guaranteed as the appointing body is the executive who can terminate membership when it's will is not carried out. In assessing the performance of the Commission, the thesis examines its complaints procedure, funding, accessibility and its collaboration with NGO community as key factors which can have significant impact on the effectiveness of National Human Rights Commission. This thesis finds that all these are inadequate and insufficient for the Commission to perform maximally. As a result of these findings, the thesis recommends some legislative amendments in order to strengthen the legal framework of the Commission. It also recommends some far-reaching measures to both the government and the Commission in order to enhance the Commission's performance and enable it to meet international standards of protecting and promoting human rights.

## خلاصة البحث

فإن المنظمات الوطنية لحقوق الإنسان مؤسسة منشأة في أنحاء العالم لحماية لحقوق الإنسان وتعزيزاً لها. ونظراً للتضييق في النظام القضائي المحلي والآليات الدولية غير فعالة لحماية حقوق الإنسان وتعزيزها، فقد شجعت الأمم المتحدة الدول الأعضاء على النظر في ضرورة إنشاء المنظمة الوطنية المستقلة لتطوير وتعزيز معايير حماية حقوق الإنسان على المستوى المحلي. وعلى أساس ذلك تم إنشاء المنظمة الوطنية النيجيرية لحقوق الإنسان. وعليه، فإن هذه الرسالة تهدف إلى دراسة العيوب المتأصلة في المنظمة الوطنية النيجيرية لحقوق الإنسان. كما أنها تسعى إلى اكتشاف ما إذا كانت هذه المنظمة قد حققت هدفها الوحيد الذي من أجلها أنشئت وهو حماية حقوق الإنسان. وتحقيقاً لهذا الهدف، فإن الرسالة قد فحصت أنشطة المنظمة عبر خمسة عشر عاماً. وتوصلت إلى أن المنظمة الوطنية النيجيرية لحقوق الإنسان إنما تم تأسيسها من قبل الحكومة العسكرية، وذلك في الوقت الذي بلغ انتهاك حقوق الإنسان في نيجيريا ذروته. وبالتالي، فإن الظروف التي تم إنشاء هذه المنظمة فيها تخضع لتأويلات مختلفة، وبناءً على هذا، فإن الرسالة تسعى إلى دراسة أداء المنظمة عموماً، وذلك، من فترة تأسيسها حتى شهر أغسطس 2010. وفي أثناء الفحص عن فعالية المنظمة، فإن الرسالة قامت بدراسة أولية للمفاهيم المتاحة مثل مفهومي السيطرة والشمولية، وبالرغم من موافقة هذه الرسالة لهذين المفهومين فإنها قد اخترعت النظرية المعيارية الأساسية كالمقياس الإضافي الذي على أساسه يتم تقييم المنظمة. علاوةً على ذلك، فإن الرسالة قامت بتقييم الإطار القانوني للمنظمة، واكتشفت بضعف القانون الذي تم بموجبه إنشاء المنظمة وعدم كفاءته، وبالتالي فإنه قد عرف أداء مهمة المنظمة. وتتنظر الرسالة كذلك في عملية تعيين أعضاء المنظمة، وتوصلت إلى عدم وجود الضمان التام لاستقلالية المنظمة، وذلك لأن تعيين أعضائها ما زالت تحت سيطرة المجلس التنفيذي الوطني، الذي من شأنه أن يتصرف في عزل أعضائها متى شاءت إذا لم تقم المنظمة بتحقيق رغبات هذا المجلس. وفي أثناء تقييم المنظمة من حيث أدائها لمهمتها، فإن الرسالة فحصت إجراءات رفع الشكاوى أمامها، وتمويل المنظمة، وسهولة الوصول إليها، وتعاونها مع المنظمات غير الحكومية، على أنها هي العوامل الرئيسية التي يمكن أن يكون لها تأثير كبير على فعالية المنظمة الوطنية النيجيرية لحقوق الإنسان. فيرى الباحث أن كل هذه العوامل غير كافية لإتاحة المنظمة فرصة أداء مهمتها على وجهها. ونتيجة لهذه الاكتشافات، فإن الباحث يوصي بضرورة تعديلات بعض القوانين لتقوية الإطار القانوني للمنظمة. ويوصي كذلك بإيجاد بعض تدابير بعيدة المدى لكل من الحكومة والمنظمة حتى ينتهي للمنظمة تعزيز دورها من حيث أدائها لمهمتها، وليمكنها من تلبية المعايير الدولية لحماية حقوق الإنسان.

## APPROVAL PAGE

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## DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degree at IIUM or other institutions.

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Signature .....

Date

.....

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This thesis is dedicated to my parents, Hajji Salman Ayinla Arowolo and Hajja Mariam Ibronke Salman for inculcating in me the virtue of hard-work, love and belief in God.

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## LIST OF ABBREVIATIONS

AC	Appeal Court / Appeal Case
ACHPR	African Charter on Human and Peoples' Rights
ADR	Alternative Dispute Resolution
A-G	Attorney-General
AG	Action Group
AICHR	ASEAN Inter-governmental Commission on Human Rights
AIT	African Independent Television
All N.L.R	All Nigerian Law Report
Anor	Another
ASEAN	South East Asian
AU	African Union
BOCODEP	Bro Bono Coalition for Democracy and Development
BOR	Bill of Rights
BST	Basic Standard Theory
CASS	Centre for Advanced Social Sciences
CDHR	Committee for the Defence of Human Rights
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CIDA	Canadian Agency for International Development
CJN	Chief Justice of Nigeria
CLEEN	Centre for Law Enforcement Education in Nigeria
CLO	Civil Liberties Organisation
CMC	Complaints Management Committee
CO	Colonial Office
CRIB	Child Rights Brigade International
CRP	Constitutional Rights Project
ECOSOC	Economic and Social Council
ed. / eds.	Editor/ editors
EHRR	European Human Rights Report
ESR	Economic and Social Rights
etc.	( <i>et cetera</i> ): and so forth
EU	European Union
FSC	Federal Supreme Court
HRA	Human Rights Africa
HRM	Human Rights Monitor
HRW	Human Rights Watch
HURILAWS	Human Rights Law Services



ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHRHL	Institute of Human Rights and Humanitarian Law
JCA	Justice Court of Appeal
JSC	Justice of Supreme Court
LADAP	Legal Development and Assistance Project
LFN	Laws of the Federation of Nigeria
LLR	Lagos Law Report
LRC	Legal Resources Consortium
LRRDC	Legal Research and Resource Development Centre
MOSOP	Movement for the Survival of the Ogoni People
N.N.L.R	Northern Nigerian Law Report
N.W.L.R	Nigerian Weekly Law Report
NADL	National Association of Democratic Lawyers
NBA	Nigerian Bar Association
NCLR	Nigerian Constitutional Law Report
NCNC	National Council of Nigeria and Cameroons
NGOs	Non-Governmental Organisations
NHRCs	National Human Rights Commissions
NHRIs	National Human Rights Institutions
NLR	Nigerian Law Report
NNHRC	Nigerian National Human Rights Commission
No.	Number
NOPRIN	Network on Police Reform in Nigeria
NPC	National Congress Party
OAS	Organisation of American States
OAU	Organisation of African Unity
OIC	Organisation of Islamic Conference
Ors	Others
p. / pp.	Page/Pages
Para	Paragraph/s
PDP	Peoples' Democratic Party
PRAWA	Prisoners Rehabilitation and Welfare Action
Pt.	Part
SAW	<i>Salla Allahu 'alayhi wa-sallam</i> (Blessings and Peace of Allah be upon him)
SC	Supreme Court
SCNJ	Supreme Court of Nigeria Judgment
SDP	Social Democratic Party

SERAC	Economic Rights Action Centre
SERAC	Social and Economic Rights Action
SSS	State Security service
TOR	Terms of Reference
U.S.	United States
UDHR	Universal Declaration of Human Rights
UIDHR	Universal Islamic Declaration of Human Rights
UILR	University of Ife Law Report
UN	United Nations
UNESCO	United Nations Education, Science and Cultural Organisation
UNHRC	United Nations Human Rights Commission
UNICEF	United Nations Children's Fund
Vol.	Volume / Volumes
WACOL	Women Aid Collective
WCAR	World Against Racism
WIN	Women in Nigeria

# CHAPTER ONE

## INTRODUCTION

### 1.1 BACKGROUND

Nigerian National Human Rights Commission is a human rights institution saddled with the responsibilities of, among other things, protecting and promoting human rights in Nigeria. Basically, one major way of protecting and promoting human rights is to uphold, nurture and sustain human rights institutions. It is not in doubt that Nigeria has many human rights institutions which can protect and promote human rights. What is lacking, however, is the ability of the government to uphold and nurture these institutions in order to allow them to function to the expected level. One of such institutions in Nigeria is the Nigerian National Human Rights Commission (NNHRC). The Nigerian National Human Rights Commission<sup>1</sup> was established by the military junta of Sanni Abacha in 1995 in line with UN directives.

The establishment and strengthening of National Human Rights Institutions emerged in mid twentieth century. Its emergence started with the campaign and discussions by United Nations (UN) in 1946<sup>2</sup> at about the time

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<sup>1</sup> It is created under Decree No. 22 of 1995 now National Human Rights Commission Act, Cap. N46 LFN 2004

<sup>2</sup> United Nations Centre for Human Rights, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Protection and*

when the Universal Declaration of Human Rights (UDHR) was being proposed and discussed.<sup>3</sup> The discussion was precipitated on the basis that a mechanism must be put in place to implement and protect the UDHR provisions. It was a good beginning because the discussion triggered further seminars, workshops and most importantly the establishment of strong institution and mechanism which seek to promote and protect human rights. New issues on National Human Rights Commissions meant to implement the increasing volume of new human rights instruments were raised at seminars, in UN bodies such as the Commission on Human Rights, and in the General Assembly.

In 1991 the First International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris.<sup>4</sup> The outcome of this workshop was a set of principles guiding the work and structure of national institutions.<sup>5</sup> These guidelines were endorsed by the UN Commission on Human Rights and each nation was enjoined to establish its Human Right Commission. Thus, it has become a highly fashionable step by most nations' governments to

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*Promotion of Human Rights Professional Training Series No. 4* (New York: New York Centre for Human Rights, 1995) at 4 [Hereinafter referred to as UN Handbook] The ECOSOC, in its Resolution 2/9 June 1946 called on member states to "...consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights....." Article 2 of the Resolution

<sup>3</sup> Canadian Human Rights Foundation and Philippine Commission on Human Rights, *National Human Rights Institutions at Work: The Role of National Human Rights Commissions in the Promotion and Protection of Economic, Social, and Cultural Right* (Montreal: Canadian Human Rights Foundation, 1999) at 13

<sup>4</sup> Morten Kjaerum, *National Human Rights Institutions: Implementing Human Rights* (Denmark: Martinus Nijhoff Publishers, 2003) at 6

<sup>5</sup> United Nations Commission on Human Rights Resolution 1992/54

establish National Human Rights Institutions (NHRIs). As expected, in the last two decades National Human Rights Institutions spring up across the globe and are today intrinsic part of domestic institutional landscape.<sup>6</sup> Nations with different social and political backgrounds have moved to set up these institutions with encouragement and supports from international actors.<sup>7</sup> Hence, 1980s and 1990s have witnessed a rapid growth in what has come to be known as “National Institutions for the Protection of Human Rights,” especially in Africa, Australia, Asia and Central and Eastern Europe.<sup>8</sup>

Although such institutions go under a variety of names, there is a certain degree of uniformity in their structure, functions, and powers. Nearly all are established and funded by government, though composed of members of civil society rather than politicians or bureaucrats. Their functions usually include things like investigating alleged violations of human rights, assisting litigants before national courts or tribunals, promoting public knowledge of human rights, and conducting research. Many have the task of adjudicating on complaints of

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<sup>6</sup> United Nations Center for Human Rights, *National Institutions for the Protection and Promotion of Human Rights: Fact Sheet No. 19* (New York: New York: Center for Human Rights, 1993) at 2 [Hereinafter referred to as Fact Sheet].

<sup>7</sup> United Nations Centre for Human Rights, n. 2 at 4

<sup>8</sup> See for example, the Australian Human Rights Commission and Equal Opportunity Commission Act 1986; the South African Human Rights Commission Act 1994; Ghana’s Commission on Human Rights and Administrative Justice Act, 1993; and Article 159 of the Constitution of the Republic of Slovenia

human rights violations submitted to them, while some are empowered to conduct visits to prisons and other places of detention.<sup>9</sup>

However, some human rights activists and scholars are suspicious and sceptical about the establishment and operation of National Human Rights Commissions in Africa.<sup>10</sup> For example Human Rights Watch (HRW) argues in one of its reports in 2001 that most of the commissions in Africa are designed not to address human rights abuses but rather to assuage international community's criticism of human rights abuses.<sup>11</sup> An example that readily comes to mind is the creation of the Nigerian National Human Rights Commission by the dictatorial Abacha regime which was believed to have been established to hoodwink the international community.

The beginning of violation of human rights provisions in Nigeria started when Nigeria was first in direct contact with the modern concepts and norms of human rights. That was when it attained its independence in 1960 with its new Independence Constitution which entrenched human rights provisions. The guarantee of human rights in the Independent Constitution 1960 "has its genesis

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<sup>9</sup> Stephen Livingstone, "The Northern Ireland Human Rights Commission", *Fordham International Law Journal*, Vol. 22, No. 1465, (April 1999) at 2

<sup>10</sup> Chinedu E. Idike, *Deflectionist Institutions or Beacons of Hope? A Study of National Human Rights Commissions in Anglophone Africa* (Ph. D Dissertation, York University, Ontario, Toronto, Canada, 2006) at 7 The same suspicion and scepticism were expressed when the Malaysian National Human Rights Commission (Suhakam) was established in 2000 by some Human Rights Activists. See for example, Amanda Whiting, "Situating Suhakam: Human Rights Debate and Malaysia's National Human Rights Commission" *Stanford Journal of International Law* 39, 59, (Winter 2003), at 7

<sup>11</sup> Human Rights Watch "Africa: Human Rights Commissions Have Little Effect" (New York, 2001) available at <<http://www.hrw.org/press/2001/02/hrc022201hmt>> (Accessed on 22 June 2009)

in the attempt to allay the fears of minority ethnic groups”<sup>12</sup> who expressed concern that majority groups in their regions would dominate them after Nigeria became independent from Britain. As a result, the British government, in 1956, appointed the minority commission otherwise known as the Willink Commission<sup>13</sup> to look into these fears and recommend means of allaying them.<sup>14</sup> The Commission recommended the entrenchment of fundamental rights in the country’s Constitution to allay those fears.<sup>15</sup> The result was the insertion of fundamental rights provisions in the country's 1960 Constitution.

Entrenched in the Constitution were provisions for the fundamental human rights of its citizens.<sup>16</sup> The 1960 Nigeria Constitution guarded certain rights of Nigerians. But before then, particularly from the inception of colonial rule in Nigeria through the first Clifford Constitution in 1922 and subsequent Constitutions, the British (the drafter of those Constitutions) did not recognise individual rights or collective rights in Nigeria.

However, that does not mean that human rights did not exist in the pre-colonial Nigeria. Recognition and protection of human rights certainly existed in

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<sup>12</sup> Ekwueme Okoli, “Toward a Human Rights Framework in Nigeria” in Peter Schwab & Adamantia Pollis (eds.) *Toward a Human Rights Framework* (Westport CT: Greenwood Press, 1982) at 203

<sup>13</sup> It is christened “Henry Willink Commission 1958”, it is named after its chairman Sir Henry Willink

<sup>14</sup> Report of the Commission Appointed to Inquire into the Fears of the Minorities and Means of Allaying Them Cmd 505 HMSO. London, 1958 (Electronic copy on file with the author)

<sup>15</sup> Philip C. Aka, “Prospect for Igbo Human Rights in Nigeria in the New Century” *Howard Law Journal* 165, 48, (Fall 2004) at 3

<sup>16</sup> Babatunde, A. “The Concept and Practice of Individual Rights in Nigeria, 1950-1966: How Relevant is the American Constitutional Experience?” *American Studies International*, Vol. 29 Issue 2, 1991 at 1

the pre-colonial period in Nigeria similar to all other African countries. However, the meaning of human rights differed in key respect from those prevalent in the West today. In the pre-colonial Nigerian society, the context of family, clan, and ethnic solidarity provided the frameworks within which individuals exercised their economic, political, and social liberties and duties.<sup>17</sup> Then, society was recognised as organic entity. Each social, political and economic institution has its integrative role, with each contributing to the stability and welfare of the polity which was paramount. Society recognised the family and its political, social and economic rights, but certain “virtues such as wisdom, knowledge, piety, bravery and good neighbourliness could be achieved by the individual only in a community.”<sup>18</sup>

Many pre-colonial Nigerian societies had clearly defined laws but many acts of behaviour were governed by traditions and taboos that were effective. Therefore, in Nigerian traditional society, the state was an organic concept. In contrast to the situation in the West where individualism prevails, that individual could not subsist without the state because it has the individual. States with centralised political institutions in Nigeria were ruled by an aristocracy that ensured that the individual conformed to the mores of the society. The ruler or king symbolised these mores and, supported by the priests or chiefs, was the

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<sup>17</sup> Claude E. Welch, JR. “Human Rights as a Problem in Contemporary Africa” in Claude E. Welch Jr., & Ronald I. Meltzer (eds.) *Human Rights and Development in Africa*, (USA: State University of New York Press, 1984) at 11

<sup>18</sup> Coleman, J. S. “Nigeria: Background to Nationalism ” (Benin City: n.p. 1986) at 14