





**GUIDE TO  
HUMAN RIGHTS  
AND PUBLIC INTEREST LITIGATION  
IN NIGERIA**

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# Table of Contents

**Acknowledgement**

**i  
vii**

**Executive Summary**

---

<b>Chapter 1</b>	» <b>INTRODUCTION</b>	<b>1</b>
	» How to Use the Manual	3
	» Why Human Rights Litigation Matters in Nigeria	4

---

<b>Chapter 2</b>	» <b>LEGAL AND INSTITUTIONAL FRAMEWORK FOR HUMAN RIGHTS PROTECTION IN NIGERIA</b>	<b>5</b>
	» The Constitutional Framework	5
	» Directive Principles of State Policy	6
	» Regional and International Human Rights Law	7
	» Statutory Framework Supporting Human Rights	11
	» Institutional Framework	12

---

<b>Chapter 3</b>	» <b>SECTION 33: RIGHT TO LIFE</b>	<b>15</b>
	» Constitutional Protection of Life	15
	» Deaths in Custody	16
	» Who Can Bring a Right to Life Claim	17
	» Remedies for Violations of the Right to Life	18

---

<b>Chapter 4</b>	» <b>SECTION 34: RIGHT TO DIGNITY OF THE HUMAN PERSON</b>	<b>21</b>
	» Constitutional Protection of Human Dignity	21
	» Torture and Degrading Treatment	22
	» Violations by Private Actors	23
	» Dignity in the Digital Age	23
	» Dignity after Death	24

<b>Chapter 5</b>	» <b>SECTION 35: RIGHT TO PERSONAL LIBERTY</b>	<b>27</b>
	» Constitutional Protection of Personal Liberty	27
	» Procedural Safeguards for Arrest and Detention	28
	» Common Violations of Personal Liberty	28
	» Constitutional Presumption of Liberty	30
<b>Chapter 6</b>	» <b>SECTION 36: RIGHT TO FAIR HEARING</b>	<b>33</b>
	» Constitutional Protection of Fair Hearing	33
	» Core Principles of Fair Hearing	33
	» Consequences of Breach of Fair Hearing	35
<b>Chapter 7</b>	» <b>SECTION 37: RIGHT PRIVATE AND FAMILY LIFE</b>	<b>39</b>
	» Constitutional Protection of Privacy	39
	» Privacy of Vote	40
	» Privacy and Family Life	40
	» Digital Privacy and Data Protection	41
	» Violations by Private Actors	42
<b>Chapter 8</b>	» <b>SECTION 38: RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION</b>	<b>45</b>
	» Constitutional Protection of Religious Freedom	45
	» Religious Autonomy and State Neutrality	46
	» Religious Discrimination	47
<b>Chapter 9</b>	» <b>SECTION 39: RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS</b>	<b>49</b>
	» Constitutional Protection of Freedom of Expression	49
	» Freedom of the Press	49
	» Freedom of Expression in the Digital Age	50
	» Protection of Journalists and Media Workers	51

## **Chapter 10**

- » **SECTION 40: RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION** **55**
- » Constitutional Protection of Assembly and Association 55
- » Freedom of Peaceful Assembly 55
- » Freedom of Association 56
- » Responsibilities of Protest Organisers 57

## **Chapter 11**

- » **SECTION 41: RIGHT TO FREEDOM OF MOVEMENT** **61**
- » Constitutional Protection of Freedom of Movement 61
- » Right to Leave and Return to Nigeria 62
- » Movement Restrictions During Emergencies 62
- » Movement Restrictions and Security Operations 62

## **Chapter 12**

- » **SECTION 42: RIGHT TO FREEDOM FROM DISCRIMINATION** **65**
- » Constitutional Protection Against Discrimination 65
- » Gender Discrimination 66
- » Religious and Ethnic Discrimination 66
- » Relationship with International Human Rights Law 67

## **Chapter 13**

- » **SECTION 43 AND 44: RIGHT TO ACQUIRE AND OWN PROPERTY** **71**
- » Constitutional Protection of Property Rights 71
- » Compulsory Acquisition of Property 72
- » Compensation for Acquired Property 72
- » Government Demolition and Property Rights 73

<b>Chapter 14</b>	» <b>SECTION 45: RESTRICTIONS ON AND DEROGATION FROM FUNDAMENTAL RIGHTS</b>	<b>77</b>
	» Constitutional Framework for Limiting Rights	77
	» Protection of the Rights of Others	78
	» Derogation During a State of Emergency	79
	» Judicial Oversight of Restrictions	79
<b>Chapter 15</b>	» <b>IDENTIFYING AND PREPARING HUMAN CASES</b>	<b>83</b>
	» Identifying a Human Rights Violation	84
	» Gathering Preliminary Information	84
	» Accessing Legal Viability	84
	» Strategic Considerations	85
<b>Chapter 16</b>	» <b>CHAPTER SIXTEEN – COMMENCING HUMAN RIGHTS LITIGATION</b>	<b>87</b>
	» Legal Basis for Enforcement	87
	» Locus Standi or Standing (Who can Sue)	87
	» Who May Bring a Human Rights Case	88
	» Required Court Documents	89
<b>Chapter 17</b>	» <b>CONDUCT OF HUMAN RIGHTS PROCEEDINGS</b>	<b>91</b>
	» Court Hearings	91
	» Role of Affidavit Evidence	91
	» Interim Relief	91
	» Judicial Remedies	91
<b>Chapter 18</b>	» <b>CHAPTER EIGHTEEN</b>	<b>93</b>
	» Enforcement Procedures	93
	» Monitoring Compliance	93
	» Strategic Use of Judgements	93
<b>Human Rights Litigation Process In Nigeria</b>		<b>96</b>
<b>Appendices</b>		<b>99</b>

# Executive Summary

## Guide to Human Rights and Public Interest Litigation in Nigeria

This Human Rights Litigation Manual was developed as a practical and strategic guide for the enforcement of human rights in Nigeria. Although Nigeria has an extensive legal framework for the protection of human rights, including constitutional guarantees, statutory protections, and regional and international human rights obligations, the existence of legal rights does not always translate into effective remedies in practice. Barriers such as limited legal awareness, procedural complexity, cost of litigation, delays in the justice system, and institutional constraints continue to hinder access to justice for many victims of human rights violation. This Manual is intended to help bridge the gap between legal rights and their practical enforcement.

Human rights protection is a fundamental pillar of democratic governance. In Nigeria, the Constitution guarantees a wide range of fundamental rights, including the rights to life, dignity, personal liberty, fair hearing, privacy, and freedoms of expression and association. These rights are legally enforceable through the courts, particularly under the **Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules)**.

Despite this legal framework, many Nigerians continue to face significant challenges in accessing justice. Violations such as unlawful detention, excessive use of force, suppression of peaceful protest, and denial of fair hearing remain prevalent. At the same time, barriers such as limited access to legal representation, high litigation costs, delays in the justice system, and lack of awareness prevent many victims from seeking redress.

As a result, numerous violations—particularly those affecting poor and marginalised communities—go unchallenged, weakening accountability and allowing impunity to persist.

## Purpose of the Guide

The Guide to Human Rights and Public Interest Litigation in Nigeria, developed by the **Policy and Legal Advocacy Centre (PLAC)**, is designed to address these challenges by providing a practical, user-friendly resource for initiating and pursuing human rights litigation.

The Guide is not only a legal reference document but also a practical litigation handbook. It equips users with the knowledge and tools required to:

- Identify human rights violations
- Understand the legal framework for enforcing rights
- Prepare and file cases under the FREP Rules
- Develop effective litigation strategies
- Secure remedies and enforce court judgments

It also highlights the role of **public interest and strategic litigation** in promoting broader institutional reform and strengthening democratic accountability.

### Target Audience

The Guide is intended for a wide range of users, including:

- Lawyers and legal practitioners
- Civil society organisations and human rights defenders
- Community advocates and grassroots organisations
- Victims of human rights violations
- Students, researchers, and policy actors

By combining legal analysis with practical guidance, the Guide is designed to be accessible to both legal and non-legal audiences.

### Legal and Institutional Framework

Human rights protection in Nigeria is grounded in a multi-layered legal framework, including:

- The **Constitution of the Federal Republic of Nigeria 1999 (as amended)**
- The **Fundamental Rights (Enforcement Procedure) Rules 2009**
- National legislation such as the Anti-Torture Act, Administration of Criminal Justice Act, and Violence Against Persons (Prohibition) Act
- Regional instruments such as the **African Charter on Human and Peoples' Rights**, which is domesticated in Nigerian law
- International human rights treaties to which Nigeria is a party

Human rights enforcement is carried out through a range of institutions, including the courts, the National Human Rights Commission, law enforcement agencies, and civil society organisations.

## Human Rights Litigation in Practice

The Guide adopts a **step-by-step, practitioner-oriented approach** to human rights litigation. It outlines the key stages involved in bringing a case:

1. Identifying the violation
2. Documenting the facts and gathering evidence
3. Determining the appropriate parties and jurisdiction
4. Preparing and filing the application under the FREP Rules
5. Conducting court proceedings
6. Obtaining judgment
7. Enforcing court orders and monitoring compliance

In addition to explaining these steps, the Guide provides practical tools such as:

- Litigation checklists
- Guidance on evidence collection
- Summaries of key legal principles
- References to leading judicial decisions

## Key Areas of Rights Protection

The Guide provides detailed analysis and practical guidance on enforcing fundamental rights under Chapter IV of the Constitution, including:

- Right to Life – addressing extra-judicial killings, deaths in custody, and the State’s duty to protect life
- Right to Dignity of the Human Person – covering torture, inhuman or degrading treatment, and detention conditions
- Right to Personal Liberty – focusing on unlawful arrest, detention, and abuse of police powers
- Right to Fair Hearing – ensuring due process in judicial and administrative proceedings
- Right to Privacy and Family Life – including unlawful searches, surveillance, and data protection concerns
- Right to Freedom of movement
- Right to Free Assembly
- Right to Freedom of Religion
- Right to non-Discrimination
- Right to Own Property, etc

Each rights chapter is structured to support practical use and includes:

- Explanation of the right
- Common forms of violations
- Litigation strategies
- Evidentiary considerations
- Available remedies
- Relevant case law

## **Public Interest and Strategic Litigation**

A key feature of the Guide is its emphasis on **public interest and strategic litigation**.

Human rights litigation is not limited to individual claims. It can also be used to:

- Challenge unconstitutional laws and policies
- Address systemic abuses
- Promote institutional reform
- Expand the interpretation of constitutional rights

The Guide highlights how carefully selected cases can produce broader social impact by shaping legal precedent and influencing public policy.

## **Enforcement and Impact**

Obtaining a court judgment is only one part of the litigation process. Ensuring that judgments are implemented is equally important.

The Guide therefore emphasises:

- Enforcement mechanisms
- Monitoring compliance with court orders
- The role of civil society in ensuring accountability
- The importance of combining litigation with advocacy and public engagement

Effective enforcement ensures that litigation leads to real protection for victims and meaningful institutional change.

## **Contribution of the Guide**

This Guide represents an important contribution to strengthening access to justice and human rights protection in Nigeria.

By providing a clear and practical framework for human rights litigation, it aims to:

- Empower lawyers and advocates to pursue cases more effectively
- Support victims in seeking justice
- Promote accountability among public institutions
- Strengthen the role of the judiciary in protecting constitutional rights

Ultimately, the Guide seeks to bridge the gap between constitutional guarantees and lived realities, ensuring that human rights protections are not only recognised in law but realised in practice.

## **Conclusion**

Human rights litigation remains one of the most powerful tools for advancing justice, accountability, and democratic governance in Nigeria.

Through this Guide, PLAC seeks to equip practitioners, civil society actors, and citizens with the tools needed to use the law effectively to protect rights, challenge abuses, and promote a more just and accountable society.



## INTRODUCTION

Policy and Legal Advocacy Centre (PLAC) developed this Guide to Human Rights and Public Interest Litigation in Nigeria as part of its commitment to strengthening democratic governance, promoting accountability, and advancing the protection of human rights through law and policy reform.

Nigeria operates under a constitutional democracy that provides legal guarantees for the protection of fundamental rights. **Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** guarantees these rights, while the **Fundamental Rights (Enforcement Procedure) Rules 2009** provide procedures for individuals to seek redress when their rights are violated.

Before the return to democratic rule in 1999, Nigeria experienced prolonged periods of military governance marked by widespread human rights violations, including arbitrary detention, restrictions on press freedom, and abuse of state power. During that era, a number of courageous lawyers and human rights activists and organisations represented victims of such violations, often without payment and motivated by a strong commitment to justice and constitutionalism.

The return to civilian rule in 1999 marked a major constitutional turning point. Democratic governance expanded civic space and strengthened institutions responsible for protecting rights. However, the transition did not eliminate human rights violations. In many instances, abuses have persisted in new forms. Reports by civil society organisations such as Policy and Legal Advocacy Centre (PLAC), Amnesty International, and the Socio-Economic Rights and Accountability Project (SERAP) continue to document serious concerns, including:

- Unlawful detention and prolonged pre-trial incarceration
- Excessive use of force during protests and security operations
- Violations of freedom of expression and peaceful assembly
- Conflict-related abuses in insurgency-affected areas

Data from Nigeria's correctional facilities show that **more than half of all persons in custody are awaiting trial**. This raises significant concerns about the rights to personal liberty and fair hearing and highlights deeper challenges within the criminal justice system.

Public reports following major civic protests have also documented allegations of excessive use of force and restrictions on peaceful assembly. These developments reflect the continuing gap between constitutional guarantees and the lived experiences of many Nigerians.

Recognising the increasing pressure on the justice system, efforts have been made in recent years to expand judicial capacity. Between 2021 and 2026, the National Judicial Council approved the appointment of additional judicial officers across several superior courts of record. The Supreme Court, for example, now sits at its full complement of twenty-one (21) Justices.

Despite these improvements, judicial capacity remains limited relative to Nigeria's population of over 200 million people and the growing number of legal disputes requiring resolution. Furthermore, structural barriers, including litigation costs, procedural delays, limited access to legal representation, and lack of awareness, prevent many victims from seeking justice.

As a result, numerous violations, particularly those affecting poor or marginalised communities, often go unchallenged. Since courts can only adjudicate matters brought before them, these unchallenged violations weaken accountability and allow impunity to persist. It is against this background that PLAC developed this Manual as both a **practical guide and a strategic intervention**.

Specifically, the Manual provides:

1. An explanation of the fundamental rights guaranteed under **Chapter IV of the Constitution**.
2. Practical guidance on the use of the **Fundamental Rights (Enforcement Procedure) Rules 2009**.
3. An introduction to **public interest litigation and strategic impact litigation**.
4. References to **regional and international human rights instruments**, including the **African Charter on Human and Peoples' Rights**.
5. Discussion of **important judicial decisions shaping Nigeria's human rights jurisprudence**.

Human rights litigation can take different forms. This Manual therefore distinguishes between:

- Individual rights enforcement, where a person seeks remedies for violations of their own rights
- Public interest litigation, aimed at protecting the rights of a broader group or community
- Strategic litigation, designed to produce wider legal or policy reforms

The Manual also provides practical guidance on key litigation steps, including case assessment, evidence gathering, choice of parties and jurisdiction, litigation strategy, evidentiary standards, and enforcement of court judgments. Sample templates and reference materials are included to assist users.

## HOW TO USE THIS MANUAL

This Manual is designed as a **practical resource** for a wide range of users, including:

- Lawyers and legal practitioners
- Civil society organisations
- Human rights defenders and activists
- Community leaders and advocates
- Victims of human rights violations
- Students, researchers, and law teachers

Different readers may use the Manual in different ways:

### **For Lawyers and Legal Practitioners**

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The Manual provides guidance on legal frameworks, procedural rules, case strategy, and relevant judicial precedents that may assist in preparing and pursuing human rights litigation.

### **For Civil Society Organisations and Advocates**

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The Manual offers tools for identifying potential cases, supporting victims, documenting violations, and using litigation as part of broader advocacy strategies.

## **For Victims and Members of the Public**

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The Manual explains, in simple terms, what human rights are, how violations can be challenged in court, and what steps individuals can take to seek justice.

Each chapter builds on the previous one, but readers may also consult individual sections depending on their needs. Templates, case references, and practical guidance are included to make the Manual easy to use in real-world situations.

### **WHY HUMAN RIGHTS LITIGATION MATTERS IN NIGERIA**

Human rights litigation plays an important role in strengthening democracy and the rule of law. When individuals or organisations challenge violations of rights in court, they do more than seek justice for a single victim. Successful cases can:

- Clarify the meaning of constitutional rights
- Hold public authorities accountable for abuse of power
- Influence public policy and institutional reform
- Strengthen public confidence in the justice system
- Protect vulnerable or marginalised communities

Many of Nigeria's most important human rights protections have emerged through court decisions brought by determined lawyers, activists, and ordinary citizens. Human rights litigation, therefore, serves as a powerful tool for transforming constitutional promises into real protections for the people.



# LEGAL AND INSTITUTIONAL FRAMEWORK FOR HUMAN RIGHTS PROTECTION IN NIGERIA

Human rights protection in Nigeria is based on a combination of **constitutional guarantees, statutory laws, regional and international human rights instruments, and institutions responsible for enforcement**. At the centre of this framework is the **Constitution of the Federal Republic of Nigeria 1999 (as amended)**, which is the supreme law of the country.

Under **Sections 1(1) and 1(3)** of the Constitution, the Constitution is binding on all authorities and persons in Nigeria. Any law, policy, or government action inconsistent with the Constitution is void to the extent of that inconsistency. For this reason, most human rights litigation in Nigeria ultimately derives its authority from the Constitution.

## THE CONSTITUTIONAL FRAMEWORK

### Chapter IV: Fundamental Rights

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Chapter IV of the Constitution guarantees a range of **civil and political rights** that can be enforced before Nigerian courts. These rights are contained in **Sections 33 – 44** of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

These rights closely reflect protections recognised in international and regional human rights law. Importantly, they are **justiciable**, meaning individuals may approach the courts when they are violated.

## Constitutional Limitations on Rights

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Although fundamental rights are strongly protected, they are not always absolute. **Section 45 of the Constitution** allows certain rights to be restricted by laws that are **reasonably justifiable in a democratic society**, particularly in the interests of national defence, public safety, public order, public morality, public health, and protection of the rights of others.

When courts examine such restrictions, they usually apply the three key principles of legality, necessity, and proportionality. These principles help courts determine whether government actions limiting rights are constitutionally valid.

## Enforcement of Fundamental Rights

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**Section 46 of the Constitution** empowers the Federal and State High Courts to hear and determine cases involving violations of fundamental rights. This jurisdiction is exercised under the **Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules)**. The FREP Rules encourage courts to:

- Prioritise substantive justice over technicalities
- Adopt a liberal approach to standing (*locus standi*)
- Allow public interest litigation
- Rely on regional and international human rights instruments where appropriate

## DIRECTIVE PRINCIPLES OF STATE POLICY

The Constitution also contains provisions aimed at promoting social and economic justice. **Chapter II** of the Constitution outlines the **Fundamental Objectives and Directive Principles of State Policy**, which address areas such as social welfare, economic development, education, public health, and social justice.

However, under **Section 6(6)(c)** of the Constitution, these provisions are generally **non-justiciable**. This means they cannot ordinarily be enforced directly in court. Despite this limitation, courts sometimes use Chapter II provisions as **interpretative guides**, particularly when determining the scope of rights in Chapter IV of the Constitution.

In practice, some socio-economic issues have entered human rights litigation through other enforceable legal frameworks, particularly the **African Charter on Human and Peoples' Rights**.

## **REGIONAL AND INTERNATIONAL HUMAN RIGHTS LAW**

Nigeria's human rights system is also shaped by regional and international legal instruments.

### **African Charter on Human and Peoples' Rights**

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The most important regional instrument is the **African Charter on Human and Peoples' Rights**, which has been **domesticated into Nigerian law**. Because it is domesticated, the Charter can be **directly enforced in Nigerian courts**.

The African Charter expands the human rights framework by recognising additional rights, including the rights to health, education, work, development, and a healthy environment. These rights sometimes provide additional legal avenues for human rights litigation.

The African Commission has had to act on complaints filed with it from Nigeria. In 1993, the Constitutional Rights Project, led by Clement Nwankwo, filed the case of **Constitutional Rights Project (in respect of Major General Zamani Lekwot and Six Others) v Nigeria**. The case is reported as **No. 87/93** and can be found on the Commission's website (<https://achpr.au.int/index.php/en/decisions-communications/constitutional-rights-project-zamani-lakwot-asix-others-nigeria-8793>) and report of its activities. The summary of the Commission's judgment is as follows:

### **87/93: Constitutional Rights Project (in respect of Zamani Lekwot and six others) / Nigeria**

#### **Summary of Facts**

1. Communication 87/93 was brought on behalf of seven men Zamani Lekwot, James Atomic Kude, Yohanna Karau Kibori, Marcus Mamman, Yahaya Duniya, Julius Sarki Zamman Dabo and Iliya Maza sentenced to death under the Civil Disturbances (Special Tribunal) Decree No. 2 of 1987 from Nigeria. This decree does not provide for any judicial appeal against the decisions of the special tribunals and prohibits the courts from reviewing any aspect of the operation of the tribunal.

2. The communication also alleges that the accused and their counsel were constantly harassed and intimidated during the trial, ultimately forcing the withdrawal of the defence counsel. Despite the lack of defence, the tribunal condemned the accused to death for culpable homicide, unlawful assembly and breach of the peace.

### **Argument**

3. The communication argues that the prohibition on judicial review of the special tribunals and lack of judicial appeals for judgments of these tribunals violates the right to an appeal to competent national organs against acts violating fundamental rights, guaranteed by Article 7 paragraph 1 (a) of the African Charter.
4. The communication complains that the conduct of the trials before these tribunals, which included harassment of defence counsel, and deprivation of defence counsel, violated the right to be defended by counsel of one's choice, guaranteed by Article 7 paragraph 1.
5. The communication finally complains that the practice of setting up special tribunals, composed of members of the armed forces and police in addition to judges, violates the right to be tried by an impartial tribunal guaranteed by Article 7 paragraph 1 (d).

### **Law**

#### **Admissibility**

6. The case was declared admissible at the 14th Session of the Commission on the following grounds: The case raises the question of whether the remedies available are of a nature that requires exhaustion.
7. The Act complained of in Communication No. 87/93 is The Civil Disturbances (Special Tribunal) Act, in which Part IV, Section 8 (1) provides: The validity of any decision, sentence, judgment, ... or order given or made, ... or any other thing whatsoever done under this Act shall not be inquired into in any court of law.

8. The Civil Disturbances Act empowers the Armed Forces Ruling Council to confirm the penalties of the Tribunal. This power is a discretionary, extraordinary remedy of a non-judicial nature. The object of the remedy is to obtain a favour and not to vindicate a right. It would be improper to insist on the Complainant seeking remedies from a source which does not operate impartially and have no obligation to decide according to legal principles. The remedy is neither adequate nor effective.
9. Therefore, the Commission is of the opinion that the remedy available is not of a nature that requires exhaustion according to Article 56 paragraph 5 of the African Charter.

### **Merits**

10. The Civil Disturbances (Special Tribunal) Act, Part IV, Section 8(1) provides: The validity of any decision, sentence, judgment ... or order given or made... or any other thing whatsoever done under this Act shall not be inquired into in any court of law.
11. A "decision, sentence, judgment...order given or made.. or any other thing whatsoever done under" the Civil Disturbances Act may certainly constitute an "act violating fundamental rights" as described in Article 7.1.a of the Charter. In this case, the fundamental rights in question are those to life and liberty provided for in Articles 4 and 6 of the African Charter. While punishments decreed as the culmination of a carefully conducted criminal procedure do not necessarily constitute violations of these rights, to foreclose any avenue of appeal to "competent national organs" in criminal cases bearing such penalties clearly violates Article 7.1.a of the African Charter, and increases the risk that even severe violations may go unredressed.
12. The communication alleges that during the trials the defence counsel for the Complainants was harassed and intimidated to the extent of being forced to withdraw from the proceedings. In spite of this forced withdrawal of counsel, the tribunal proceeded to give judgment in the matter, finally sentencing the accused to death. The Commission finds that defendants were deprived of their right to defence, including the right to be defended by counsel of their choice, violation of Article 7.1.cas cited above.

13. The Civil Disturbance (Special Tribunal) Act, Part II, Section 2(2) says that the tribunal shall consist of one judge and four members of the armed forces. As such, the tribunal is composed of persons belonging largely to the executive branch of government, the same branch that passed the Civil Disturbance Act.
14. Article 7.1.d of the African Charters requires the court or tribunal to be impartial. Regardless of the character of the individual members of such tribunals, its composition alone creates the appearance, if not actual lack, of impartiality. It thus violates Article 7.1.d.

### **Holding**

**For the above reasons, the Commission Declares** that there has been a violation of Articles 7(a), (c) and (d) of the African Charter; and **Recommends** that the Government of Nigeria should free the Complainants.

At the 17th Session the Commission decided to bring the file to Nigeria for a planned mission in order to make sure that the violations have been repaired.

### **ECOWAS Community Court of Justice**

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At the regional level, individuals and organisations may bring human rights cases before the **ECOWAS Community Court of Justice**. Unlike many international courts, applicants **do not need to exhaust domestic remedies before** approaching the ECOWAS Court.

The Court has delivered important judgments involving unlawful detention, violations of fair hearings, and similar issues. Its decisions have enhanced regional accountability for human rights violations.

### **African Commission on Human and Peoples' Rights**

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The **African Commission on Human and Peoples' Rights** also receives complaints and provides interpretative guidance under the African Charter. Other regional instruments relevant to human rights protection include:

- **African Charter on the Rights and Welfare of the Child**
- **Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)**

## International Human Rights Treaties

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Nigeria is also a party to several important international human rights treaties, including:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention Against Torture (CAT)
- Convention on the Rights of the Child (CRC)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- International Convention on the Elimination of Racial Discrimination (CERD)

Although international treaties must usually be **domesticated by the National Assembly** to be directly enforceable in Nigerian courts, they still influence constitutional interpretation, judicial reasoning, policy reform, and regional litigation.

The **Universal Declaration of Human Rights (UDHR)** also remains an important reference point in the development of human rights standards.

## STATUTORY FRAMEWORK SUPPORTING HUMAN RIGHTS

Several Nigerian statutes complement constitutional protections by providing procedures, remedies, and institutional mechanisms for protecting rights. Indeed, once the National Assembly enacts legislation on a matter provided for in Chapter II of the Constitution, the rights arising from that legislation become justiciable.

Although there are longstanding challenges to the judicial enforcement of the provisions of Chapter II of the Constitution, particularly their non-justiciability under Section 6(6)(b) of the Constitution, judicial interpretation has gradually recognised that legislative action can transform these otherwise non-justiciable provisions into actionable rights.

This position was affirmed in *Attorney-General of Ondo State v Attorney-General of the Federation*, where the court held that legislation enacted on matters within Chapter II, which confers rights on citizens, renders those rights enforceable. Similarly, in *SERAP v Nigeria*, the ECOWAS Court determined that the right to basic education is justiciable due to the enactment of the Universal Basic Education Law.

Likewise, in *Legal Defence & Assistance Project v Federal Ministry of Education*, the Federal High Court, Abuja, in 2018, confirmed that the right to basic education is both fundamental and enforceable following the enactment of the Compulsory, Free Universal Basic Education Act.

Examples of legislation that have conferred enforceable rights on citizens, thereby rendering them justiciable, include:

- **Administration of Criminal Justice Act 2015** – regulates arrest, detention, bail, and criminal trials
- **Anti-Torture Act 2017** – criminalises torture
- **Violence Against Persons (Prohibition) Act 2015** – addresses physical, sexual, and psychological violence
- **Child’s Rights Act 2003** – protects the rights of children
- **Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015** – addresses human trafficking
- **Freedom of Information Act 2011** – promotes transparency and access to public information
- **Discrimination Against Persons with Disabilities (Prohibition) Act 2018** – protects equality and accessibility
- **Compulsory Treatment and Care for Victims of Gunshot Act 2017** – requires hospitals to treat gunshot victims without prior police clearance
- **Nigeria Police Act 2020** and **Nigerian Correctional Service Act 2019** – regulate law enforcement and detention practices
- **National Mental Health Act 2021** – promotes and protects the rights of persons with intellectual, psychosocial or cognitive disabilities
- **Compulsory, Free Universal Basic Education Act 2004** – guarantees free basic education for every child of primary and junior secondary school age

## INSTITUTIONAL FRAMEWORK

Human rights protection in Nigeria also depends on a network of institutions responsible for enforcement and accountability.

### Courts

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The courts are the primary institutions for enforcing human rights. They interpret the Constitution, determine whether violations have occurred, and grant remedies such as declarations, injunctions, and compensation.

## **National Human Rights Commission (NHRC)**

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Empowered by the National Human Rights Commission (Amendment) Act 2010, the **NHRC** provides an accessible platform for receiving complaints, investigating violations, and monitoring human rights practices. Its findings may support litigation or policy reform.

## **Attorney-General and Ministries of Justice**

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These institutions represent government agencies in litigation, prosecute offences, and coordinate Nigeria's engagement with regional and international bodies.

## **Legal Aid Council**

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The **Legal Aid Council of Nigeria** provides legal assistance to indigent persons, particularly in cases involving criminal justice and personal liberty.

## **Other Accountability Institutions**

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Other institutions contributing to human rights protection include:

- **Public Complaints Commission**, which investigates maladministration in public institutions
- **National Agency for the Prohibition of Trafficking in Persons (NAPTIP)**, which combats human trafficking and protects victims
- **Public Petitions Committees** of the National and State Houses of Assembly provide forums for addressing grievances, enabling legislative inquiry and accountability for maladministration and rights violations
- **ECOWAS Community Court of Justice**, which serves as a regional court for human rights complaints
- **The Nigeria Police Force and Correctional Service** oversee law enforcement and custodial functions

Civil society organisations also play a vital role through the documentation of violations, public interest litigation, providing legal support for victims, and policy advocacy.





# SECTION 33: RIGHT TO LIFE

### **Constitutional Protection of Life**

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Section 33 of the Constitution guarantees that **every person has the right to life** and shall not be intentionally deprived of life except in execution of a sentence of a court following conviction for a criminal offence.

Although the provision appears narrowly framed, Nigerian courts and regional human rights bodies have interpreted the right to life broadly. The right imposes **both negative and positive obligations** on the State. On the one hand, the State must **not unlawfully take life**. On the other hand, it must take reasonable steps to protect life.

Indeed, all other rights depend on the existence of life, with the right to life regarded as the **foundation of the entire human rights system**.

### **Lawful Limitations on the Right to Life**

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The Constitution recognises limited circumstances in which deprivation of life may be lawful. These include situations where death results from execution of a lawful death sentence imposed by a court, use of reasonably necessary force in self-defence or defence of property, use of force to effect a lawful arrest or prevent escape, and suppression of riot, insurrection, or mutiny.

These exceptions are **interpreted strictly**. Any use of lethal force must be **necessary and proportionate**. Where a threat has already been neutralised, the continued use of lethal force may become unlawful.

### **Extra-Judicial Killings and Unlawful Use of Force**

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One of the most serious violations of the right to life is **extra-judicial killing**, where a person is intentionally killed outside the lawful judicial process. Examples include fatal shootings of unarmed individuals, deaths resulting from

excessive police or military force, deaths in police or military custody, and staged “accidental discharge” incidents.

Civilian deaths during law enforcement or security operations may also violate Section 33, where the use of force was **unnecessary, disproportionate, or negligent**. In such cases, courts closely examine whether the conduct of state agents complied with constitutional standards.

### **State Duty to Protect Life**

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The right to life may also be violated where authorities **fail to protect individuals from foreseeable harm**. Where the State knew, or ought reasonably to have known, that a person faced a **real and immediate risk to life**, it has a duty to take reasonable steps to prevent that harm.

This obligation is particularly relevant in situations involving communal violence, mob killings, insurgency or armed conflict, and threats reported to security agencies but ignored.

Regional courts have recognised this duty. For example, the **ECOWAS Court of Justice** has held Nigeria responsible for failing to protect individuals during post-election violence where authorities did not take reasonable preventive measures.

### **Deaths in Custody**

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Deaths occurring in police stations, prisons, or other detention facilities attract **heightened scrutiny**. Where a detainee dies due to torture, denial of medical treatment, neglect, and excessive use of force, the State bears a responsibility to provide a **credible explanation**. Persons deprived of liberty do not lose their constitutional rights. They remain entitled to protection of both **life and dignity**.

### **Systemic Failures Affecting the Right to Life**

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In some situations, violations of the right to life arise not from direct violence but from **institutional failures**. Examples may include denial of life-saving medical treatment in public facilities, gross negligence in state institutions, and systemic conditions leading to preventable deaths. Where such failures are attributable to the State, constitutional responsibility may arise under Section 33.

## **Due Process and Capital Punishment**

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The right to life is closely linked to **procedural fairness**. Section 33 permits deprivation of life only where it follows **a lawful conviction and sentence imposed by a court of competent jurisdiction**. The death penalty, therefore, remains lawful in Nigeria for offences such as murder, armed robbery, treason, and certain military offences.

However, strict procedural safeguards apply. The prosecution must prove guilt **beyond reasonable doubt**, and courts consistently emphasise that suspicion cannot justify a conviction in capital cases. Executing a prisoner while an appeal is pending, or where due process has been violated, may itself constitute a constitutional violation.

## **International Human Rights Standards**

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International human rights law increasingly discourages the use of the death penalty. Article 6 of the **International Covenant on Civil and Political Rights (ICCPR)** recognises the right to life while encouraging the progressive restriction of capital punishment. The **African Charter on Human and Peoples' Rights**, which forms part of Nigerian law, also prohibits arbitrary deprivation of life.

Although Nigeria has not abolished the death penalty, international standards continue to influence judicial reasoning, particularly regarding safeguards in capital cases.

## **Death Row Detention**

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Human rights concerns in capital cases often arise not only from the sentence itself but from conditions of detention. Extended confinement on death row under harsh psychological conditions may raise constitutional concerns when considered alongside the **right to dignity of the human person**.

## **Who Can Bring a Right to Life Claim**

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Cases involving the right to life often arise after the death of a victim. Under **Section 46 of the Constitution** and the **FREP Rules**, courts adopt a liberal approach to standing.

Claims may be brought by surviving victims of attempted killings, family members of the deceased, such as spouses, parents, or children, representatives acting on behalf of the deceased, and public interest litigants or civil society organisations.

Courts have repeatedly emphasised that human rights claims should **not fail on narrow technical grounds of standing**.

### **Burden of Proof**

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In right-to-life litigation, the claimant must first establish a **prima facie case** showing that the deprivation of life was unlawful or negligent. However, where death occurs in custody or involves direct state action, the evidential burden may shift to the State to provide a satisfactory explanation.

### **Remedies for Violations of the Right to Life**

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Courts may grant several forms of relief where the right to life has been violated. These include a declaration that the killing was unconstitutional, monetary compensation for the victim's family or estate, injunctions preventing further violations, and orders requiring institutional reform in appropriate cases. Such remedies serve not only to compensate victims but also to promote accountability and deter future abuses.

### **Civil and Criminal Accountability**

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Civil liability for wrongful death is separate from criminal liability. A person may be acquitted in criminal proceedings yet still be held liable in civil proceedings, which apply a lower standard of proof.

A commonly cited example is the **O.J. Simpson case in the United States**, where Simpson was acquitted in criminal court but later found liable for wrongful death in civil proceedings. This principle illustrates that civil remedies may still provide accountability where a criminal conviction is not secured.

## **Key Litigation Issues in Right to Life Cases**

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*(Practitioner's Checklist)*

When preparing litigation involving the right to life, practitioners should carefully consider the following issues:

### **1. Establishing the Facts**

- What occurred and when did the death or attempted killing take place?
- Who were the individuals involved (victim, witnesses, security agents)?
- Is there reliable documentation of the incident?

### **2. Identifying Responsible Parties**

- Were state actors such as police or military involved?
- Did authorities fail to act despite being aware of a risk to life?
- Are multiple institutions potentially responsible?

### **3. Gathering Evidence**

Important evidence may include:

- Witness statements
- Medical or autopsy reports
- Photographs or video recordings
- Detention records
- Official complaints or petitions previously submitted

Strong documentary evidence significantly improves the chances of success.

### **4. Legal Basis of the Claim**

- Does the case involve extra-judicial killing or death in custody?
- Does it involve excessive use of force by state agents?
- Did the State fail to protect life despite foreseeable risk?

Practitioners should also consider whether additional rights were violated, such as:

- Dignity of the human person
- Personal liberty
- Fair hearing

## 5. Remedies to Seek

Possible remedies include:

- Declaration that the killing violated Section 33
- Compensation for the victim's family
- Orders requiring investigation or prosecution
- Institutional reforms where systemic failures are revealed

## 6. Strategic Litigation Value

Practitioners should also consider whether the case:

- Exposes systemic abuses by law enforcement
- Can establish an important legal precedent
- May support broader advocacy or policy reform

Strategic right-to-life cases often play an important role in strengthening accountability.

**Selected judicial decisions on the right to life are outlined in the Appendix of this manual.** Judicial decisions from Nigerian and regional courts have clarified the scope of the right to life and the State's obligations.



# SECTION 34: RIGHT TO DIGNITY OF THE HUMAN PERSON

### **Constitutional Protection of Human Dignity**

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Section 34 of the Constitution guarantees that **every person is entitled to respect for the dignity of his or her person**. The provision prohibits torture, inhuman or degrading treatment, slavery and servitude, and forced or compulsory labour.

The right to dignity is widely regarded as **an absolute right**. Unlike some other rights, it cannot be easily restricted by the State. The protection applies to **all persons within Nigeria**, regardless of nationality, status, or circumstances.

However, the Constitution recognises limited exceptions relating to forced labour, including work arising from lawful court sentences, military or police duties, emergency situations, civic obligations, and compulsory national service. Outside these limited situations, forced labour and degrading treatment are unconstitutional.

### **Meaning of Human Dignity**

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Although the Constitution does not define “dignity,” Nigerian courts have clarified its meaning through judicial interpretation. In **Uzoukwu v Ezeonu II**, the Court of Appeal explained that:

- **Torture** involves the intentional infliction of severe physical or mental pain.
- **Inhuman treatment** refers to cruel or barbaric conduct.
- **Degrading treatment** involves conduct that humiliates or diminishes a person’s self-worth.

The right to dignity therefore protects both **physical integrity and psychological well-being**.

## **Torture and Degrading Treatment**

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Clear violations of Section 34 include torture during interrogation, forced confessions, sexual violence, public beatings, humiliating punishment, and public parade of criminal suspects before conviction.

Courts have repeatedly condemned the practice of **parading suspects before the media**, as it exposes individuals to public humiliation before guilt has been established. Law enforcement practices must therefore respect the dignity of individuals at every stage of investigation and arrest.

## **Dignity and Law Enforcement Practices**

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Certain police practices may violate Section 34 when carried out in abusive or humiliating ways. For example, stop-and-search operations are not unconstitutional in themselves. However, they may become unlawful if conducted in a manner that causes unnecessary humiliation.

The **Nigeria Police Act** requires officers to conduct searches in ways that minimise embarrassment and respect personal dignity. Excessive force during arrest or detention may also constitute degrading treatment.

## **Conditions of Detention**

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Many violations of human dignity occur within detention facilities. Examples include severe prison overcrowding, starvation or inadequate food, denial of medical treatment, custodial sexual violence, and psychological abuse or intimidation.

Courts have often emphasised that the lawful deprivation of a person's right to liberty **does not justify the infringement of other constitutional rights**. Even after arrest or conviction, individuals remain entitled to humane treatment. In some circumstances, prolonged detention under harsh psychological conditions may amount to degrading treatment.

## **Slavery, Servitude, and Forced Labour**

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Section 34 also prohibits slavery, servitude, and exploitative labour practices. Dignity may be violated where individuals are forced to work under threat, coercion, confinement, and conditions that prevent them from leaving.

In such situations, the absence of genuine freedom to leave may amount to **servitude within the meaning of the Constitution**. Human dignity is therefore violated not only by physical violence but also by **systems of domination that strip individuals of autonomy and freedom**.

### **Violations by Private Actors**

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Although many dignity violations involve state authorities, private individuals may also violate constitutional protections. Examples may include violent assault, humiliation of individuals, degrading punishment, and forced labour.

Where such conduct occurs and the State fails to prevent or investigate it, constitutional responsibility may arise. For example, the assault and humiliation of a **court bailiff** by private individuals has been recognised as degrading treatment under both the Constitution and the **African Charter on Human and Peoples' Rights**.

### **Degrading Enforcement Practices**

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Courts have also condemned enforcement practices that are unnecessarily degrading. For example, transporting a woman in a poorly ventilated police vehicle ("Black Maria") for a minor environmental offence was held to constitute **inhuman and degrading treatment**. Similarly, excessive or humiliating enforcement methods may violate Section 34 even where the underlying law enforcement objective is legitimate.

### **Dignity in the Digital Age**

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Modern technology has created new contexts in which human dignity may be violated. Examples include recording individuals in vulnerable situations without consent, sharing humiliating videos online, distributing intimate images without consent, and coordinated online harassment or public shaming.

Such conduct may cause severe psychological harm and lasting reputational damage. Where state authorities are involved, or where authorities fail to address serious abuse, Section 34 may be implicated.

## **Displacement, Conflict, and Human Dignity**

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Violence, insecurity, and internal displacement may also raise dignity concerns. Where displaced persons are forced to live for prolonged periods without adequate food, sanitation, healthcare, and security, the situation may violate the constitutional protection of dignity. The State therefore has an obligation to ensure that displaced persons are treated in conditions consistent with **basic human dignity**.

## **Dignity After Death**

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Respect for human dignity may extend beyond death. Under the **Fundamental Rights (Enforcement Procedure) Rules 2009**, family members or dependants may bring legal actions concerning violations affecting deceased persons.

Such cases may arise in situations involving ritual killings, mutilation of bodies, refusal to release corpses to families, unlawful use of bodies for medical purposes, organ harvesting, grave robbing, and recording or circulating videos of deceased persons. These cases recognise that dignity remains an important value even after death.

## **Threshold for Constitutional Violations**

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Not every insult or unpleasant experience amounts to a constitutional violation. For conduct to violate Section 34, it must reach a level of **constitutional seriousness** involving cruelty, humiliation, exploitation, and dehumanisation. Once this threshold is crossed, courts are required to provide effective remedies. Section 34 therefore functions as a core constitutional safeguard against brutality, humiliation, and abuse of power.

## **Key Litigation Issues in Dignity Cases**

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*(Practitioner's Checklist)*

When preparing litigation involving the right to dignity, practitioners should consider the following issues.

### **1. Nature of the Violation**

- Does the conduct involve torture, inhuman treatment, or degrading treatment?
- Does it involve forced labour, servitude, or slavery?
- Is the harm physical, psychological, or both?

Examples may include torture during interrogation, custodial abuse, sexual violence, or humiliating public treatment.

## 2. Establishing the Facts

- What happened and where did the incident occur?
- Who were the actors involved (police, military, prison officials, or private individuals)?
- Are there witnesses, recordings, or medical reports?
- Evidence such as medical reports, photographs, and detention records is often critical.

## 3. Determining State Responsibility

- Were state actors involved in the abuse?
- Did authorities fail to prevent or investigate serious violations?
- Did the conduct occur during arrest, detention, or law enforcement operations?

Courts apply strict scrutiny where state officials are involved.

## 4. Conditions of Detention

- Does the case involve prison or police detention conditions?
- Are detainees subjected to overcrowding, starvation, or denial of medical care?
- Are detainees subjected to humiliation or psychological abuse?

Detention conditions must respect basic human dignity.

## 5. Additional Constitutional Violations

Dignity violations often occur alongside other constitutional violations. Practitioners should consider whether the facts also implicate:

- **Section 33 – Right to Life**
- **Section 35 – Right to Personal Liberty**
- **Section 36 – Right to Fair Hearing**

Combining multiple constitutional claims may strengthen litigation.

## 6. Remedies to Seek

Possible remedies include:

- Declaration that Section 34 was violated
- Monetary compensation
- Injunctions against abusive practices
- Institutional reforms to detention practices

Courts may also grant orders preventing continued abuse.

## 7. Strategic Litigation Value

Practitioners should consider whether the case:

- Exposes systemic abuse within detention facilities
- May establish important legal precedent
- Could support broader advocacy or institutional reform

Strategic dignity cases often play a major role in improving law enforcement practices.

**Selected judicial decisions on the right to human dignity are outlined in the Appendix of this manual.** Judicial decisions from Nigerian and regional courts have clarified the scope of Section 34.



# SECTION 35: RIGHT TO PERSONAL LIBERTY

### Constitutional Protection of Personal Liberty

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Section 35 of the Constitution guarantees that **every person is entitled to personal liberty**. At its core, personal liberty means freedom from **unlawful restraint or detention**. A person is deprived of liberty whenever they are not free to leave a place at will. The right, therefore, protects individuals from **arbitrary arrest, detention, or confinement**.

The right is not limited to imprisonment in a formal detention facility. It applies to **any situation where a person's movement is unlawfully restricted**. Nigerian courts have consistently interpreted the right broadly. In **Jim-Jaja v Commissioner of Police**, the Court of Appeal held that personal liberty includes freedom from unlawful confinement "**whether in prison or otherwise**." Even brief unlawful detention may therefore violate the Constitution.

### Lawful Restrictions on Personal Liberty

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Although fundamental, the right to liberty is not absolute. Section 35(1) identifies limited circumstances where a person may lawfully be deprived of liberty.

These include detention following conviction by a court of competent jurisdiction, arrest upon reasonable suspicion of committing a criminal offence, detention to prevent the commission of a crime, compliance with a lawful court order, detention for the welfare or protection of minors, quarantine or public health measures, and immigration control.

These exceptions must be **strictly interpreted**. Any arrest must be based on **reasonable suspicion supported by objective facts**. Arrests based on vague suspicion, personal animosity, or administrative convenience are unconstitutional.

## Procedural Safeguards for Arrest and Detention

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Section 35 establishes important safeguards to protect individuals from abuse of detention powers. An arrested person must be informed promptly of the reasons for the arrest, receive this information in a language they understand, have the right to remain silent, and have access to legal counsel.

A particularly important safeguard is the requirement that an arrested person must be brought before a court **within a reasonable time**. The Constitution defines reasonable time as:

- **24 hours**, where a court is within reasonable distance
- **48 hours**, where a court is not easily accessible

Detention beyond these timelines without judicial authorisation becomes unlawful. In **Eda v Commissioner of Police**, the court emphasised that suspects must be brought before a court within the constitutional timeframe regardless of any other law relied upon by the police.

## Abuse of Detention Powers

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Courts have strongly criticised investigative practices that disguise unlawful detention as procedural necessity. One common example is the misuse of **holding charges**, particularly through the abuse of Section 239 of the Administration of Criminal Justice Act (ACJA), where suspects are brought before courts lacking jurisdiction simply to justify continued detention. Judicial procedures cannot be used to legitimise unconstitutional detention.

## Common Violations of Personal Liberty

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In practice, violations of personal liberty often occur in routine or normalised forms. A common example is **arrest for civil debts**. Nigerian courts have repeatedly held that the police cannot be used to enforce private financial obligations.

Similarly, law enforcement agencies cannot be used to resolve landlord-tenant disputes, loan repayments, family conflicts, and contractual disagreements. Using police detention to settle private disputes constitutes an abuse of state authority.

## **“Police Invitations” and Constructive Detention**

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Another frequent violation arises from so-called **police invitations**. Citizens may voluntarily respond to police invitations. However, once the person is **not allowed to leave**, the situation becomes detention. If there is no lawful basis for that detention, it violates Section 35 of the Constitution.

## **Arrest by Proxy**

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Arrest by proxy is unconstitutional. Criminal responsibility is **personal**, and relatives or associates cannot be detained because a suspect cannot be located. Detaining family members or friends to compel the appearance of a suspect amounts to **hostage-taking** and clearly violates the right to personal liberty.

## **Bail and Continued Detention**

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The right to personal liberty is also implicated where individuals remain in detention **after meeting bail conditions**. Bail is a constitutional safeguard and cannot be conditioned upon unofficial payments or “facilitation fees.” Continued detention after bail conditions have been fulfilled transforms an otherwise lawful arrest into **unlawful confinement**.

## **Unlawful Detention by Private Actors**

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Violations of personal liberty are not limited to state authorities. Private individuals or organisations generally have **no legal authority to detain persons**.

Examples include estate authorities blocking residents from leaving over unpaid levies, hospitals detaining patients until medical bills are paid, employers confiscating passports or restricting movement, and locking domestic workers inside premises.

In **Agbakoba v Director, State Security Service**, the Supreme Court held that restrictions on movement, including seizure of travel documents without lawful authority, violate constitutional guarantees.

## **Relationship with Other Constitutional Rights**

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Violations of personal liberty often occur alongside other rights violations. For example arrest of protesters may violate both liberty and freedom of

assembly, detention of journalists may implicate liberty and freedom of expression, and abusive detention conditions may violate both liberty and dignity. Courts therefore frequently examine liberty claims together with other constitutional protections.

### **Liberty After Acquittal**

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Where a person is acquitted by a court, continued detention becomes immediately unlawful. Authorities must release the person **without delay**. Any further confinement constitutes a fresh violation of the right to personal liberty.

### **Constitutional Presumption of Liberty**

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A fundamental principle underlying Section 35 is that **liberty is the default condition**. Every detention is presumed unlawful unless it falls within the specific exceptions recognised by the Constitution. The burden lies on the detaining authority to demonstrate that detention is lawful.

### **Significance of the Right to Personal Liberty**

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Section 35 serves as an important safeguard against arbitrary power. It ensures that the coercive authority of the State is exercised only within clearly defined legal limits and subject to judicial oversight. In a constitutional democracy governed by the rule of law, **liberty is a right, not a privilege granted at the discretion of authorities**.

### **Key Litigation Issues in Right to Personal Liberty Cases**

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*(Practitioner's Checklist)*

When preparing litigation involving the right to personal liberty, practitioners should consider the following issues:

#### **1. Establishing Detention**

- Was the person prevented from leaving a place voluntarily?
- Was the restraint physical, psychological, or implied through authority?
- How long did the detention last?

Any situation where a person cannot leave freely may amount to detention.

## 2. Legal Basis for the Detention

- Was the arrest based on reasonable suspicion of a criminal offence?
- Was there a court order authorising detention?
- Does the detention fall within the exceptions recognised by Section 35?

If no lawful basis exists, the detention may be unconstitutional.

## 3. Compliance with Constitutional Safeguards

- Was the detainee informed of the reason for arrest?
- Was the information given in a language the person understands?
- Was the detainee given access to legal counsel?

Failure to comply with these safeguards may render the detention unlawful.

## 4. Duration of Detention

- Was the detainee brought before a court within 24 hours?
- If not, was the detainee brought before a court within 48 hours?

Detention beyond these limits without judicial authorisation violates the Constitution.

## 5. Abuse of Police Powers

- Was the detention disguised as a police invitation?
- Was a holding charge used to justify extended detention?
- Was detention used to resolve a civil dispute?

Courts have repeatedly condemned such practices.

## 6. Bail Violations

- Has the detainee met bail conditions but remained in custody?
- Are authorities demanding unofficial payments before release?

Such conduct violates Section 35.

## 7. Liability of Private Actors

- Was the detention carried out by private individuals or organisations?
- Did authorities fail to intervene or investigate?

Unlawful detention by private actors may still engage constitutional liability.

## 8. Remedies to Seek

Possible remedies include:

- Declaration that the detention violated Section 35
- Compensation for unlawful detention
- Order for immediate release
- Injunctions preventing further unlawful arrests

Strategic litigation may also expose systemic abuse within law enforcement institutions.

**Selected judicial decisions on the right to personal liberty are outlined in the Appendix of this manual.** Judicial decisions have significantly shaped the interpretation of Section 35.



# SECTION 36: RIGHT TO FAIR HEARING

## Constitutional Protection of Fair Hearing

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Section 36 of the Constitution guarantees the **right to fair hearing** in the determination of civil rights and obligations and in criminal proceedings. The provision requires that any person whose rights are being determined by a court, tribunal, or administrative body must be given a **fair and impartial opportunity to present their case**.

Fair hearing is a cornerstone of the rule of law. It ensures that decisions affecting individuals are made through **transparent, impartial, and lawful procedures**. Courts have repeatedly emphasised that **once a breach of fair hearing is established, the entire proceeding becomes invalid**, regardless of whether the decision itself might have been correct.

## Core Principles of Fair Hearing

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Two foundational principles guide the right to fair hearing:

### 1. Audi Alteram Partem

*(Hear the other side)*

Every person must be given the opportunity to **know the allegations against them and respond to them**. This includes receiving adequate notice of proceedings, having sufficient time to prepare a defence, presenting evidence and arguments, and questioning opposing evidence where appropriate. A decision reached without giving a party an opportunity to be heard is generally invalid.

### 2. Nemo Judex in Causa Sua

*(No one should be a judge in their own case)*

Decisions must be made by an impartial and unbiased tribunal. A judge or decision-maker must not have a personal interest in the outcome of the case.

Bias may arise where the decision-maker has a personal interest in the matter,

has previously expressed strong views on the dispute, has a relationship with one of the parties. Even the **appearance of bias** may invalidate proceedings.

### **Fair Hearing in Criminal Proceedings**

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In criminal cases, the right to fair hearing is closely connected with the **presumption of innocence**. Every accused person is presumed innocent until proven guilty.

To protect this principle, Section 36 provides several safeguards, including the right to be informed promptly of the charges, have adequate time and facilities to prepare a defence, defend oneself personally or through a lawyer, examine witnesses presented by the prosecution, obtain the attendance of defence witnesses, and have the assistance of an interpreter where necessary.

These safeguards are intended to ensure that criminal trials are conducted fairly and transparently.

### **Public Hearing Requirement**

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Section 36 also requires that court proceedings be conducted **in public**. Public hearings promote transparency and public confidence in the administration of justice.

However, courts may exclude the public in limited circumstances, including protection of minors, protection of vulnerable witnesses, matters affecting national security, and issues involving public morality. Such restrictions must remain exceptional and justified.

### **Fair Hearing and Administrative Decisions**

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The right to fair hearing extends beyond the courts. Administrative bodies, disciplinary panels, and regulatory authorities must also respect fair hearing principles when making decisions that affect individuals.

This includes bodies such as professional disciplinary committees, university disciplinary panels, government administrative tribunals, and regulatory authorities. Even where proceedings are informal, decision-makers must ensure that affected persons are given **a meaningful opportunity to respond to allegations**.

## **Fair Hearing in Employment and Disciplinary Matters**

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Fair hearing issues frequently arise in employment and disciplinary proceedings. For example, a public officer facing disciplinary action must be informed of the allegations, given access to relevant evidence, and allowed to present a defence.

Where dismissal or disciplinary sanctions are imposed without giving the employee a proper opportunity to respond, courts may declare the decision invalid.

## **Delay and Fair Hearing**

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Excessive delay in legal proceedings may also undermine the right to fair hearing. Although delays are sometimes unavoidable, prolonged proceedings may affect the ability of parties to present evidence effectively.

Courts therefore emphasise the importance of conducting trials within a **reasonable time**.

## **Consequences of Breach of Fair Hearing**

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A breach of fair hearing has serious legal consequences. Once a court determines that a party was denied fair hearing, the decision reached in that process is usually **set aside**.

The affected proceedings may then be nullified, reheard by a competent tribunal, or remitted for fresh consideration. Courts treat fair hearing violations seriously because they undermine the legitimacy of the justice system.

## **Relationship with Other Constitutional Rights**

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Violations of fair hearing often occur alongside other constitutional violations. For example unlawful detention may violate both liberty and fair hearing, secret trials may violate both fair hearing and freedom of expression, and biased tribunals may affect property or employment rights. Combining these claims may strengthen litigation.

## **Key Litigation Issues in Fair Hearing Cases**

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*(Practitioner's Checklist)*

When preparing litigation involving fair hearing, practitioners should consider the following issues.

### **1. Notice of Proceedings**

- Was the person properly informed of the case against them?
- Did the notice clearly state the allegations or charges?
- Was adequate time given to prepare a defence?

Lack of proper notice may invalidate proceedings.

### **2. Opportunity to Respond**

- Was the person given an opportunity to present evidence?
- Were they allowed to challenge opposing evidence?
- Were they allowed legal representation?

Failure to provide these opportunities may constitute a breach of fair hearing.

### **3. Impartiality of the Decision-Maker**

- Did the judge or tribunal have any personal interest in the case?
- Was there evidence of bias or pre-judgment?
- Would a reasonable observer perceive the decision-maker as impartial?

Even the appearance of bias may invalidate proceedings.

### **4. Access to Evidence**

- Was relevant evidence disclosed to the affected party?
- Were documents or witness statements withheld?

Withholding evidence may prevent a party from preparing an adequate defence.

### **5. Conduct of the Proceedings**

- Were proceedings conducted openly and fairly?
- Was the person prevented from speaking or presenting arguments?
- Was the tribunal properly constituted?

Irregular procedures may violate constitutional safeguards.

## 6. Delay in Proceedings

- Did the proceedings take an unreasonably long time?
- Did delay affect the ability to obtain evidence or witnesses?

In some cases, excessive delay may undermine fairness.

## 7. Remedies to Seek

Possible remedies include:

- Declaration that the proceedings violated Section 36
- Order setting aside the decision
- Order for rehearing before a competent tribunal
- Compensation where appropriate

**Selected judicial decisions on fair hearing are outlined in the Appendix of this manual.** Judicial decisions have played a key role in clarifying the meaning and scope of Section 36.





# SECTION 37: RIGHT TO PRIVATE AND FAMILY LIFE

### **Constitutional Protection of Privacy**

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Section 37 of the Constitution guarantees the **right to private and family life**. It provides that the privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications shall be protected.

This provision protects individuals from **unlawful intrusion into their personal lives** by both state authorities and, in some circumstances, private actors.

Privacy protection is closely linked to **human dignity, autonomy, and personal freedom**. It allows individuals to maintain control over personal information, family relationships, and private spaces.

### **Scope of the Right to Privacy**

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The right to privacy under Section 37 covers several important areas of personal life. These include privacy of the home, confidentiality of communications, family relationships, protection of personal information, and protection against unlawful searches.

Courts have interpreted privacy broadly, recognising that modern threats to privacy may arise through both **physical intrusion and technological surveillance**.

## Privacy of Vote

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The courts have extended the right to privacy to include the protection of the vote, so that a person voting at an election is entitled to the secrecy of their ballot. In the Court of Appeal case of **Nwali v EBSIEC**, Justice Emmanuel Agim (now of the Supreme Court) stated thus:

*"...requiring or compelling [a person] to vote openly in the public watch and knowledge by queuing in front of the poster carrying the portrait of the candidate he has decided to vote for intrudes into, interferes with, and invades the privacy of his said decision ... therefore amounting to a clear violation of his fundamental right to the privacy of a citizen guaranteed him and protected by S.37 of the 1999 Constitution".*

## Privacy of the Home

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The home occupies a special place in constitutional protection. Unlawful entry into a person's home by law enforcement officials, government agents, or private individuals may violate Section 37 unless it is authorised by law.

Searches of private premises must generally be carried out under a **valid search warrant issued by a competent authority**. Even where a warrant exists, the search must be conducted **reasonably and respectfully**, without unnecessary damage or humiliation.

## Confidentiality of Communications

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Section 37 also protects the privacy of communications. This includes telephone conversations, letters and correspondence, and electronic communications. Interception of communications by government agencies without lawful authorisation may violate the Constitution.

Modern communication technologies have expanded the importance of this protection. Emails, text messages, and other digital communications may fall within the scope of constitutionally protected correspondence.

## Privacy and Family Life

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The Constitution also recognises the importance of **family relationships**. Family life includes relationships between spouses, parents and children, and other close relatives. Interference with family life may occur through arbitrary

separation of family members, unlawful removal of children, or excessive state intrusion into family decisions.

Courts generally recognise that family matters require **sensitive and proportionate intervention**, particularly where children are involved.

### **Searches and Seizures**

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Privacy rights are often implicated during **searches conducted by law enforcement agencies**. While searches may be necessary for criminal investigations, they must comply with constitutional safeguards.

Important protections include the requirement of lawful authority or a search warrant, reasonable conduct during searches, and respect for personal dignity and property. Unlawful searches or seizures may result in constitutional liability.

### **Digital Privacy and Data Protection**

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Technological developments have significantly expanded the scope of privacy concerns. Today, privacy violations may occur through unauthorised surveillance, unlawful interception of digital communications, misuse of personal data, or publication of private information online. Social media and digital platforms have increased the potential for large-scale dissemination of private information.

The **Nigeria Data Protection Act 2023** and related regulatory frameworks increasingly play a role in protecting personal data and digital privacy.

Although these developments are relatively recent, courts may interpret Section 37 in ways that reflect the evolving nature of privacy risks.

### **Privacy and Surveillance**

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State surveillance may be justified in limited circumstances, such as criminal investigations or national security. However, surveillance activities must be **lawful, necessary, and proportionate**.

Mass surveillance without adequate legal safeguards may violate constitutional privacy protections. Courts, therefore, examine whether surveillance measures are properly authorised and whether they intrude excessively on individual privacy.

## **Privacy and Public Officials**

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The right to privacy also applies to public officials, although their expectation of privacy may be more limited where issues of **public accountability or corruption** arise. Courts often balance privacy rights against the public interest in transparency and accountability. In such cases, disclosure of certain information may be justified where it serves a legitimate public interest.

## **Violations by Private Actors**

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Privacy violations may also arise from the actions of private individuals or organisations. Examples include unlawful recording of private conversations, publication of private images without consent, harassment or surveillance by private persons, and misuse of personal data. Where authorities fail to prevent or investigate serious violations, constitutional issues may arise.

## **Relationship with Other Constitutional Rights**

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Privacy rights often intersect with other constitutional protections. For example, unlawful searches may violate both privacy and dignity, surveillance of journalists may implicate privacy and freedom of expression, while interception of communications may affect privacy and fair hearing. Recognising these overlaps may strengthen litigation strategies.

## **Key Litigation Issues in Privacy Cases**

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*(Practitioner's Checklist)*

When preparing litigation involving the right to privacy, practitioners should consider the following issues.

### **1. Nature of the Intrusion**

- Did the conduct involve intrusion into a private home, space, electronic or computer appliance, etc.?
- Were communications intercepted or monitored?
- Was personal information disclosed without consent?

The nature and seriousness of the intrusion will determine whether constitutional protection is triggered.

## 2. Legal Authority

- Was the intrusion authorised by law?
- Was a valid search warrant obtained where required?
- Were surveillance measures properly authorised?

Intrusions lacking lawful authority are likely unconstitutional.

## 3. Conduct of the Authorities

- Were searches conducted reasonably and respectfully?
- Was excessive force used?
- Was property damaged unnecessarily?

Even lawful searches may become unconstitutional if conducted abusively.

## 4. Digital Privacy Concerns

- Were digital communications intercepted?
- Was personal data collected or shared unlawfully?
- Were private images or information published online?

Digital privacy issues are increasingly common in modern litigation.

## 5. Impact on Family Life

- Did the action interfere with family relationships?
- Were children or dependants affected?
- Was the interference necessary and proportionate?

Courts often apply careful scrutiny where family life is affected.

## 6. Remedies to Seek

Possible remedies include:

- Declaration that Section 37 was violated
- Injunction preventing further intrusion
- Compensation for harm suffered
- Orders requiring return or destruction of unlawfully obtained information

## 7. Strategic Litigation Value

Practitioners should also consider whether the case:

- Exposes unlawful surveillance practices
- Raises issues of digital privacy or data protection
- May establish precedent for emerging privacy challenges

Strategic privacy litigation may shape future standards in rapidly evolving areas such as digital communications.

**Selected judicial decisions on privacy are outlined in the Appendix of this manual.** Nigerian courts have addressed privacy issues in several contexts, particularly involving searches, communications, and movement restrictions.



# SECTION 38: RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

## Constitutional Protection of Religious Freedom

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Section 38 of the Constitution guarantees **freedom of thought, conscience, and religion**. This right allows every person to hold or change religious beliefs, practise and manifest religion, express religious convictions individually or in community with others, and observe religious practices and teachings.

The right protects both **belief itself** (the right to hold or not to hold a religious belief) and **the outward expression of that belief**. Freedom of thought and conscience is fundamental to a democratic society because it protects **personal autonomy and spiritual freedom**.

## Manifestation of Religion

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Section 38 protects the **manifestation of religion**, which may occur through worship and prayer, religious gatherings, teaching and preaching, religious dress and symbols, and observance of religious holidays and practices.

Individuals may practise their religion **alone or in association with others**, including through religious organisations. However, the manifestation of religion may sometimes interact with other laws or public interests.

## Religious Freedom in Educational Institutions

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Religious freedom issues often arise in **schools and educational institutions**. Students and teachers may wish to observe religious practices such as wearing religious clothing, participating in prayers, and observing religious holidays. Educational authorities must balance these rights with the need to maintain **order, discipline, and neutrality in public institutions**. Courts typically assess whether restrictions placed on religious expression are **reasonable and proportionate**.

## **Freedom to Change Religion**

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Freedom of conscience also includes the right to **change religious beliefs** or adopt new beliefs. Individuals cannot be compelled to adhere to a particular religion. Any attempt by authorities or community actors to **coerce religious belief or punish religious conversion** may violate constitutional protections.

## **Religious Autonomy and State Neutrality**

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Nigeria is a religiously diverse country with multiple faith traditions. The Constitution therefore requires the State to maintain **neutrality in religious matters**. Government institutions must avoid actions that favour one religion over others, impose religious practices on citizens, or discriminate based on religious belief. This principle helps protect religious pluralism and peaceful coexistence.

## **Limitations on Religious Freedom**

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Although freedom of religion is strongly protected, it is not entirely absolute. Under **Section 45 of the Constitution**, religious practices may be restricted by laws that are reasonably justifiable in a democratic society. For example, certain religious practices may be restricted where they endanger life, threaten public safety, or violate the rights of vulnerable persons.

Courts therefore balance **religious liberty with broader societal interests**.

**Religious Freedom and Employment.** Conflicts sometimes arise between religious practices and workplace rules. For example, disputes may occur where employees seek to observe religious dress codes, observe prayer times, or refrain from certain duties for religious reasons.

Employers must generally respect religious freedom while ensuring that workplace policies remain reasonable and non-discriminatory. Courts may examine whether restrictions imposed by employers are **necessary and proportionate**.

## **Religious Freedom and Public Order**

---

Public authorities may regulate religious gatherings in order to maintain public order. However, such regulation must not become a disguised attempt to suppress religious activity. Restrictions must therefore be lawful, necessary, and proportionate. Unjustified interference with peaceful religious gatherings may violate Section 38.

## Religious Discrimination

---

Freedom of religion is closely linked with the **constitutional prohibition of discrimination**. Discrimination based on religious belief may occur where individuals are treated unfairly in areas such as employment, education, public services, and access to opportunities. Where discriminatory treatment is linked to religious identity, constitutional protections may be engaged.

## Protection of Minority Religious Groups

---

In plural societies, minority religious groups may face discrimination or hostility. Section 38 plays an important role in protecting **religious minorities**, ensuring that individuals can practise their beliefs without fear of persecution or exclusion. Courts therefore emphasise the importance of **equal protection for all religious communities**.

## Key Litigation Issues in Right to Religious Freedom Cases

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*(Practitioner's Checklist)*

When preparing litigation involving freedom of religion, practitioners should consider the following issues.

### 1. Nature of the Religious Belief

- What belief or religious practice is involved?
- Is the practice sincerely held by the claimant?
- How central is the practice to the claimant's religion?

Courts generally avoid evaluating theological correctness but may examine sincerity of belief.

### 2. Nature of the Restriction

- What action limited the individual's religious freedom?
- Was the restriction imposed by government authorities, an institution, or private actors?
- How severe was the restriction?

Understanding the nature of the restriction is critical to determining constitutional liability.

### 3. Legal Basis for the Restriction

- Was the restriction authorised by law?
- Does it fall within the limitations recognised by Section 45?
- Is the restriction necessary to protect public safety, order, or the rights of others?

Restrictions without lawful basis may be unconstitutional.

### 4. Proportionality of the Restriction

- Is the restriction broader than necessary?
- Could the objective be achieved through less restrictive means?

Courts often apply proportionality analysis when assessing religious restrictions.

### 5. Discrimination Concerns

- Does the restriction target a particular religious group?
- Are members of other religions treated differently?

Religious discrimination may strengthen constitutional claims.

### 6. Remedies to Seek

Possible remedies include:

- Declaration that Section 38 has been violated
- Injunction preventing further interference
- Compensation where harm has been suffered
- Institutional reforms where discriminatory policies are involved

### 7. Strategic Litigation Value

Practitioners should consider whether the case:

- Addresses systemic discrimination against religious minorities
- Clarifies the balance between religion and public policy
- Establishes precedent for protecting religious freedom

Strategic cases can help strengthen religious tolerance and constitutional protections.

**Selected judicial decisions on religious freedom are outlined in the Appendix of this manual.** Nigerian courts have addressed several disputes involving religious freedom.



# SECTION 39: RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS

## Constitutional Protection of Freedom of Expression

---

Section 39 of the Constitution guarantees the **right to freedom of expression**, including the freedom to hold opinions and to receive and impart ideas and information without interference. This right protects the ability of individuals to **speak, write, publish, and communicate information**. It applies to both traditional and modern forms of communication.

Freedom of expression is central to democratic governance. It allows citizens to exchange ideas, criticise government policies, and participate meaningfully in public affairs. The Constitution also recognises the role of the **press and other media** in disseminating information and holding public authorities accountable.

## Scope of the Right

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Freedom of expression protects a wide range of activities, including political speech and public debate, publication of news and commentary, artistic and cultural expression, academic and intellectual discussion, and communication through digital platforms.

The right protects both the **expression of ideas** and the **right to receive information**. This dual protection ensures that individuals can both communicate and access knowledge necessary for democratic participation.

## Freedom of the Press

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Section 39 specifically recognises the importance of the **press and other media** in society. Journalists, editors, broadcasters, and media organisations play a key role in informing the public, exposing corruption or abuse of power, and facilitating public debate.

For these reasons, courts often emphasise the need to protect **media independence and investigative reporting**. However, the freedom of the press carries responsibilities. Journalists are expected to adhere to professional standards and avoid publishing false or harmful information.

## **Freedom of Expression in the Digital Age**

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Technological developments have expanded the platforms through which expression occurs. Today, freedom of expression applies to communication through social media platforms, blogs and online publications, messaging applications, and digital broadcasting.

Digital technologies allow individuals to participate more actively in public debate. At the same time, they have raised new challenges relating to misinformation, online harassment, and regulation of digital speech. Courts increasingly interpret constitutional protections in ways that reflect these evolving communication environments.

## **Limitations on Freedom of Expression**

---

Although strongly protected, freedom of expression is not absolute. Under **Section 45 of the Constitution**, expression may be restricted by laws that are reasonably justifiable in a democratic society. Restrictions may arise through laws relating to defamation, incitement to violence, hate speech, and national security. Courts often assess whether such restrictions are **necessary and proportionate**.

## **Defamation and Protection of Reputation**

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Freedom of expression must be balanced with the protection of individual reputation. Defamation laws allow individuals to seek remedies where false statements harm their reputation. Defamation may occur through written statements (libel), spoken statements (slander), or digital publications.

In such cases, courts must balance the protection of reputation with the importance of **open public debate**. Statements made in good faith or in the public interest may receive stronger constitutional protection.

## **Sedition and Criminal Speech Laws**

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Historically, laws relating to **sedition** were sometimes used to restrict criticism of government. However, courts have increasingly recognised that democratic governance requires robust public debate, including criticism of public officials. Restrictions on political speech are therefore subject to **careful judicial scrutiny**.

## **Expression and National Security**

---

Certain forms of expression may raise legitimate national security concerns. For example, speech that incites violence or promotes terrorism may be lawfully restricted. However, national security should not be used as a broad justification to suppress legitimate criticism or dissent. Courts therefore examine whether restrictions are **clearly authorised by law and proportionate to the threat involved**.

## **Freedom of Expression and Access to Information**

---

The right to receive information is closely linked to freedom of expression. Citizens must have access to information in order to participate effectively in public affairs. The **Freedom of Information Act 2011** strengthens this right by allowing individuals to request access to public records held by government institutions. Access to information promotes transparency and accountability in governance.

## **Protection of Journalists and Media Workers**

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Journalists may face legal or political pressure when reporting on sensitive issues. Freedom of expression protects journalists from harassment or intimidation arising from legitimate reporting activities. However, journalists must also comply with applicable laws, including those relating to defamation, national security, and protection of confidential information. Courts often play an important role in balancing these competing interests.

## **Relationship with Other Constitutional Rights**

---

Freedom of expression frequently intersects with other constitutional protections. For example, suppression of protests may affect both expression and assembly, censorship of publications may affect expression and access to information, and surveillance of journalists may implicate both expression and privacy. Recognising these overlaps can strengthen constitutional claims.

## **Key Litigation Issues in Right to Freedom of Expression Cases**

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*(Practitioner's Checklist)*

When preparing litigation involving freedom of expression, practitioners should consider the following issues.

### **1. Nature of the Expression**

- What form of expression is involved (speech, publication, digital communication)?
- Does the expression relate to political debate, public interest issues, or private matters?
- Was the expression made in good faith?

Political speech and public interest reporting often receive stronger protection.

### **2. Nature of the Restriction**

- What action limited the expression (arrest, censorship, regulatory sanction)?
- Was the restriction imposed by government authorities or private actors?

Understanding the source and form of the restriction is essential.

### **3. Legal Basis for the Restriction**

- Was the restriction authorised by law?
- Does the law fall within the limitations recognised by Section 45?
- Is the restriction necessary to protect national security, public order, or reputation?

Restrictions without clear legal basis may violate the Constitution.

### **4. Proportionality**

- Is the restriction broader than necessary?
- Could the objective have been achieved through less restrictive means?

Courts often evaluate whether restrictions are proportionate.

### **5. Impact on the Press**

- Does the restriction interfere with journalistic activities?
- Does it prevent reporting on matters of public interest?

Courts typically apply heightened scrutiny where media freedom is affected.

## 6. Remedies to Seek

Possible remedies include:

- Declaration that Section 39 was violated
- Injunction preventing censorship or interference
- Compensation for unlawful arrest or harassment
- Orders protecting access to information

## 7. Strategic Litigation Value

Practitioners should consider whether the case:

- Challenges censorship or restrictions on public debate
- Protects journalists or whistleblowers
- Clarifies the scope of digital speech protections

Strategic cases can strengthen democratic accountability and media freedom.

**Selected judicial decisions on freedom of expression are outlined in the Appendix of this manual.** Several judicial decisions have shaped the interpretation of Section 39.





# SECTION 40: RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION

## Constitutional Protection of Assembly and Association

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Section 40 of the Constitution guarantees every person the **right to assemble freely and associate with others**.

This includes the right to organise and participate in peaceful gatherings, form or belong to associations, join political parties, trade unions, and civil society organisations, and pursue collective interests through lawful organisations.

Freedom of assembly and association is essential for **democratic participation**, allowing citizens to organise, advocate, and express collective views on political and social issues.

## Freedom of Peaceful Assembly

---

The right to peaceful assembly protects gatherings such as public protests and demonstrations, political rallies, labour union meetings, civil society gatherings, and religious assemblies.

Peaceful protest is a recognised form of democratic expression. It enables citizens to express grievances, influence public policy, and hold authorities accountable. Authorities have a duty to **facilitate peaceful assemblies**, not merely tolerate them.

## Regulation of Public Assemblies

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Governments may regulate assemblies in order to maintain public safety and order. Such regulation may involve traffic control measures, public safety arrangements, and coordination with law enforcement. However, regulation must not be used as a tool to **suppress legitimate protest or political**

**participation.** Restrictions on assemblies must therefore be **lawful, necessary, and proportionate.**

### **Police Permits and the Right to Protest**

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Historically, police authorities often required organisers to obtain permits before holding public assemblies.

This practice was challenged in **Inspector-General of Police v All Nigeria Peoples Party (ANPP)**. The Court of Appeal held that requiring police permits for peaceful assemblies was unconstitutional. Citizens have the right to organise and participate in peaceful protests **without prior approval from the police.**

While organisers may notify authorities for security or logistical reasons, peaceful assembly does not depend on police permission.

### **Freedom of Association**

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Section 40 also protects the right to form and join associations. This includes the freedom to establish organisations such as political parties, trade unions, professional associations, non-governmental organisations, and community groups. The ability to organise collectively enables citizens to pursue shared interests, advocate for reform, and participate in public affairs.

### **Political Participation**

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Freedom of association plays a critical role in Nigeria's democratic process. Citizens have the right to form political parties, join political organisations, participate in political campaigns, and engage in lawful political advocacy. Restrictions that prevent individuals from participating in political organisations may violate constitutional protections.

### **Trade Unions and Labour Associations**

---

Workers have the right to organise through **trade unions** and labour organisations. This right supports collective bargaining, labour advocacy, and the protection of workers' interests. However, labour disputes must be conducted within applicable legal frameworks governing strikes and industrial action.

## **Limitations on Assembly and Association**

---

Although fundamental, these rights are not absolute. Under **Section 45 of the Constitution**, restrictions may be imposed where they are reasonably justifiable in a democratic society.

For example, assemblies that involve violence, destruction of property, or incitement to violence may lawfully be restricted. Courts therefore balance the right to protest with the need to maintain public order.

## **Responsibilities of Protest Organisers**

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While citizens have the right to assemble peacefully, organisers also have responsibilities. These may include ensuring protests remain peaceful, avoiding obstruction of emergency services, and cooperating with reasonable safety measures. Peaceful conduct strengthens constitutional protection for assemblies.

## **State Duties During Assemblies**

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Public authorities have important responsibilities during public gatherings. These include protecting participants from violence, maintaining public safety, and avoiding excessive use of force.

Security agencies must act proportionately and respect constitutional rights while managing public order. Excessive or indiscriminate force against peaceful demonstrators may violate constitutional protections.

## **Dispersal of Assemblies**

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Authorities may disperse assemblies where they become violent or threaten public safety. However, the use of force must remain **necessary and proportionate**. Peaceful participants should not be subjected to unnecessary violence, arbitrary arrest, or intimidation.

## **Relationship with Other Constitutional Rights**

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Freedom of assembly often overlaps with other constitutional rights. For example, protests involve both **assembly and freedom of expression**, police suppression of demonstrations may implicate **personal liberty**, and excessive force during protests may violate **human dignity**. Combining these claims may strengthen litigation.

## **Key Litigation Issues in Assembly and Association Cases**

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*(Practitioner's Checklist)*

When preparing litigation involving freedom of assembly and association, practitioners should consider the following issues.

### **1. Nature of the Gathering**

- Was the assembly peaceful?
- What was the purpose of the gathering (protest, political rally, labour meeting)?
- How many people were involved?

Peaceful assemblies receive strong constitutional protection.

### **2. Nature of the Restriction**

- Was the assembly prohibited or dispersed?
- Were participants arrested or harassed?
- Were organisers prevented from holding the gathering?

Understanding the form of interference helps determine constitutional liability.

### **3. Legal Basis for the Restriction**

- Was the restriction authorised by law?
- Was it justified on grounds such as public safety or public order?
- Was the restriction applied selectively to certain groups?

Restrictions without lawful basis may violate Section 40.

### **4. Conduct of Security Agencies**

- Did security agencies use excessive force?
- Were participants subjected to arbitrary arrest or detention?
- Were journalists or observers targeted?

Security responses must remain proportionate.

### **5. Discrimination Concerns**

- Were certain groups denied the right to assemble while others were allowed?
- Did the restriction target political or civil society groups?

Discriminatory restrictions may strengthen constitutional claims.

## 6. Remedies to Seek

Possible remedies include:

- Declaration that Section 40 was violated
- Injunction preventing further interference with assemblies
- Compensation for unlawful arrests or injuries
- Orders requiring authorities to respect constitutional rights

## 7. Strategic Litigation Value

Practitioners should consider whether the case:

- Challenges unlawful protest restrictions
- Protects civil society space
- Establishes precedent on police powers during demonstrations

Strategic cases may strengthen democratic participation and civic freedoms.

**Selected judicial decisions on freedom of assembly are outlined in the Appendix of this manual.** Judicial decisions have clarified the scope of Section 40 and strengthened protections for peaceful assemblies.





# SECTION 41: RIGHT TO FREEDOM OF MOVEMENT

### **Constitutional Protection of Freedom of Movement**

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Section 41 of the Constitution guarantees every citizen the **right to move freely throughout Nigeria and to reside in any part of the country**. The provision also protects the right of a citizen to **leave Nigeria and return to the country without restriction**.

Freedom of movement is essential to personal liberty, economic activity, and national unity. It allows individuals to live, work, and travel within the country without arbitrary interference. This right applies to **all Nigerian citizens**, regardless of ethnic origin, religion, or place of residence.

### **Scope of the Right**

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Freedom of movement includes several related liberties, including the right to travel freely within Nigeria, reside in any part of the country, relocate for work, education, or family reasons, and leave and re-enter the country. Restrictions that prevent citizens from travelling, relocating, or returning to Nigeria may violate constitutional protections.

### **Internal Movement within Nigeria**

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Nigeria's constitutional structure guarantees that citizens may live and work in any part of the country. Policies or practices that attempt to restrict settlement based on ethnic origin, religion, or state of origin may violate the constitutional guarantee of freedom of movement. Courts have emphasised that Nigeria operates as **a single national community**, and citizens are free to reside anywhere within the federation.

## **Right to Leave and Return to Nigeria**

---

Section 41 also protects the right of citizens to **leave Nigeria and return without interference**. This protection is closely connected to the right to obtain and use travel documents such as passports. Authorities cannot lawfully prevent a citizen from leaving the country unless such restriction is **clearly authorised by law**.

## **Passport Seizure and Travel Restrictions**

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Unlawful seizure of passports or travel documents may violate constitutional protections. In **Agbakoba v Director, State Security Service**, the Supreme Court held that preventing a citizen from travelling abroad without lawful authority violated constitutional rights. The Court emphasised that government agencies cannot impose travel restrictions without **clear legal justification**.

## **Movement Restrictions During Emergencies**

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Freedom of movement may sometimes be restricted in exceptional circumstances. For example, authorities may impose temporary restrictions during public health emergencies, security operations, and curfews declared to prevent violence.

However, such restrictions must remain **lawful, necessary, and proportionate**. Restrictions that are excessive or applied arbitrarily may violate constitutional guarantees.

## **Immigration and Deportation**

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The constitutional right to freedom of movement primarily protects **Nigerian citizens**. Non-citizens may be subject to immigration controls, including deportation or removal, where permitted by law. However, immigration authorities must still comply with **due process and applicable legal safeguards**.

## **Movement Restrictions and Security Operations**

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Security agencies sometimes impose movement restrictions in areas affected by armed conflict or serious security threats. Such measures may include curfews, roadblocks, and travel checkpoints.

While these measures may be necessary for public safety, they must not be implemented in ways that **unnecessarily restrict lawful movement** or target specific communities without justification. Courts may review such restrictions to ensure compliance with constitutional standards.

## **Internal Displacement and Freedom of Movement**

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Violence, conflict, and environmental disasters may force individuals to leave their homes. Internally displaced persons retain their constitutional rights, including the right to **move freely and resettle within the country**. Authorities must ensure that displacement policies and camp conditions respect basic constitutional protections.

## **Relationship with Other Constitutional Rights**

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Freedom of movement often overlaps with other constitutional rights. For example passport seizure may implicate both movement and personal liberty, curfews may affect movement and assembly rights, and restrictions targeting certain communities may raise discrimination concerns. Recognising these connections may strengthen constitutional claims.

## **Key Litigation Issues in Freedom of Movement Cases**

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*(Practitioner's Checklist)*

When preparing litigation involving freedom of movement, practitioners should consider the following issues.

### **1. Nature of the Restriction**

- Was the individual prevented from travelling within Nigeria?
- Was the individual prevented from leaving or returning to Nigeria?
- Was a passport or travel document seized?

Understanding the form of restriction is essential to assessing constitutional violations.

### **2. Legal Basis for the Restriction**

- Was the restriction authorised by law?
- Was there a court order supporting the restriction?
- Was the restriction imposed by an agency with lawful authority?

Restrictions without legal basis may violate Section 41.

### 3. Proportionality of the Restriction

- Was the restriction necessary for security, public health, or other lawful objectives?
- Was it broader than necessary?

Courts often assess whether restrictions are proportionate to the objective pursued.

### 4. Discriminatory Impact

- Did the restriction target individuals based on ethnicity, religion, or political views?
- Were certain groups disproportionately affected?

Discriminatory restrictions may strengthen constitutional claims.

### 5. Duration of the Restriction

- Was the restriction temporary or indefinite?
- Was it reviewed periodically?

Extended restrictions without review may raise constitutional concerns.

### 6. Remedies to Seek

Possible remedies include:

- Declaration that Section 41 was violated
- Order requiring restoration of travel rights
- Return of seized travel documents
- Compensation for unlawful restriction

### 7. Strategic Litigation Value

Practitioners should consider whether the case:

- Challenges unlawful travel restrictions
- Protects citizens against abuse of security powers
- Establishes precedent on passport seizure or curfews

Strategic cases may strengthen protections for freedom of movement.

**Selected judicial decisions on freedom of movement are outlined in the Appendix of this manual.** Judicial decisions have clarified the meaning and scope of Section 41.



# SECTION 42: RIGHT TO FREEDOM FROM DISCRIMINATION

## Constitutional Protection Against Discrimination

---

Section 42 of the Constitution guarantees that **no citizen of Nigeria shall be subjected to discrimination** on the basis of certain protected characteristics. Discrimination occurs where a person is treated **less favourably than others in similar circumstances** because of particular personal attributes.

The Constitution specifically prohibits discrimination based on ethnic group, place of origin, sex, religion, political opinion, or circumstances of birth. This protection ensures that all citizens are entitled to **equal treatment under the law and equal access to public opportunities**.

## Scope of the Right

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The prohibition of discrimination applies in several important areas of public life. Section 42 protects citizens against discriminatory treatment in relation to access to public services, employment in public institutions, education, government policies and programmes, and legal rights and obligations.

Government institutions must therefore ensure that policies and decisions do not unfairly disadvantage individuals on the basis of protected characteristics.

## Citizenship and Equality

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The protection under Section 42 applies specifically to **citizens of Nigeria**. It reflects the constitutional principle that all citizens are equal members of the national community, regardless of their ethnic background, religion, gender, or political views.

Practices that classify citizens as **“indigenes” and “non-indigenes”** have sometimes raised constitutional concerns where they result in unequal access

to opportunities or services. Courts may examine whether such practices are consistent with the constitutional guarantee of equality.

### **Gender Discrimination**

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Gender-based discrimination has been a recurring issue in Nigerian constitutional litigation. Women may face discrimination in areas such as employment opportunities, inheritance rights, access to education and participation in public life.

Courts have increasingly recognised that customary practices or institutional policies that discriminate against women may violate constitutional protections. Where such practices conflict with constitutional guarantees, the Constitution prevails.

### **Religious and Ethnic Discrimination**

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Nigeria's diversity makes protection against discrimination particularly important. Discriminatory treatment may occur where individuals are denied opportunities because of their religious beliefs, their ethnic identity, or their place of origin. Public institutions must ensure that decisions relating to employment, admission, or allocation of public benefits are **fair and non-discriminatory**.

### **Discrimination in Public Employment**

---

Discrimination claims frequently arise in the context of public employment. Examples may include refusal to hire qualified applicants because of ethnic origin, discriminatory promotion practices, and termination based on political or religious affiliation. Courts may review such decisions to ensure compliance with constitutional equality guarantees.

### **Indigene–Settler Distinctions**

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In several parts of Nigeria, distinctions between “indigenes” and “settlers” have affected access to education, employment, political participation, and government services. While states may recognise historical communities, discriminatory treatment of citizens based solely on origin may raise constitutional concerns under Section 42. Courts may examine whether such distinctions violate the principle of equal citizenship.

## **Relationship with International Human Rights Law**

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Nigeria is a party to several international treaties addressing discrimination. These include:

- **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**
- **International Convention on the Elimination of Racial Discrimination (CERD)**

Although international treaties must generally be domesticated to be directly enforceable in Nigerian courts, they may still influence constitutional interpretation and policy reform. Regional instruments such as the African Charter on Human and Peoples' Rights also emphasise equality and non-discrimination.

## **Limitations and Justifiable Distinctions**

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Not every difference in treatment amounts to unconstitutional discrimination. Certain distinctions may be lawful where they serve **legitimate and reasonable objectives**.

For example, policies designed to promote public safety, professional qualifications, affirmative action, and protection of vulnerable groups, may involve differential treatment that is justified. Courts therefore examine whether the distinction is **reasonable, objective, and proportionate**.

## **Relationship with Other Constitutional Rights**

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Discrimination claims often arise alongside violations of other rights. For example exclusion from employment may implicate equality and dignity, restrictions targeting particular religious groups may involve both discrimination and freedom of religion, and discriminatory detention practices may violate equality and personal liberty. Recognising these overlaps may strengthen constitutional litigation.

## **Key Litigation Issues in Discrimination Cases**

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*(Practitioner's Checklist)*

When preparing litigation involving discrimination, practitioners should consider the following issues.

### **1. Identifying the Protected Ground**

- Does the claim involve discrimination based on ethnicity, religion, sex, political opinion, or place of origin?
- Is the claimant a Nigerian citizen protected under Section 42?

Establishing the relevant protected characteristic is essential.

### **2. Differential Treatment**

- Was the claimant treated differently from others in similar circumstances?
- Were others given access to opportunities that were denied to the claimant?

Evidence of unequal treatment strengthens discrimination claims.

### **3. Source of the Discrimination**

- Was the discriminatory action taken by a government institution?
- Did a public policy or regulation cause the discrimination?

Section 42 primarily addresses discrimination linked to public authority.

### **4. Justification for the Distinction**

- Does the authority claim a legitimate reason for the differential treatment?
- Is the distinction reasonable and proportionate?

Courts may evaluate whether the distinction serves a legitimate objective.

### **5. Evidence**

- Are there documents showing discriminatory policies?
- Are there witnesses who can confirm unequal treatment?
- Are there statistical patterns showing systemic discrimination?

Documentary evidence is often critical.

## 6. Remedies to Seek

Possible remedies include:

- Declaration that Section 42 was violated
- Injunction preventing continued discrimination
- Compensation for harm suffered
- Orders requiring equal access to opportunities

## 7. Strategic Litigation Value

Practitioners should consider whether the case:

- Challenges systemic discrimination
- Addresses gender inequality or indigene–settler exclusion
- Establishes precedent for equal citizenship rights

Strategic cases can significantly influence public policy and institutional reform.

**Selected judicial decisions on freedom from discrimination are outlined in the Appendix of this manual.** Several judicial decisions have addressed discrimination under Nigerian law.





# SECTIONS 43 AND 44: RIGHT TO ACQUIRE AND OWN PROPERTY

## Constitutional Protection of Property Rights

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Sections 43 and 44 of the Constitution guarantee the **right of every citizen to acquire and own immovable property anywhere in Nigeria**. This protection reflects the constitutional principle that citizens are free to **live, invest, and establish property interests throughout the federation** without discrimination based on origin or residence.

Property rights are closely linked to economic security and personal autonomy. They enable individuals to acquire land, build homes, establish businesses, and transfer property to others.

## Scope of Property Rights

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The constitutional protection of property includes the right to acquire land and buildings, own property in any part of Nigeria, use and develop property lawfully, and transfer or dispose of property. This protection applies to both **residential and commercial property**. However, property rights are exercised within Nigeria's legal framework governing land ownership, including the **Land Use Act**.

## The Land Use Act and Property Rights

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The **Land Use Act 1978**, which is incorporated into the Constitution, regulates land ownership in Nigeria. Under the Act:

- All land in each state is vested in the **Governor**, who holds it in trust for the people
- Individuals obtain **statutory or customary rights of occupancy** rather than absolute ownership of land

Although the State holds ultimate control over land administration, individuals remain entitled to **secure legal interests in land and protection against arbitrary deprivation of property.**

## **Compulsory Acquisition of Property**

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Section 44 of the Constitution recognises that property may be **compulsorily acquired by the government**, but only under specific conditions. Such acquisition must satisfy two key requirements:

1. It must be authorised by law, and
2. Prompt compensation must be paid to the owner.

Compulsory acquisition is typically undertaken for **public purposes**, such as infrastructure development, urban planning, or public facilities. However, an acquisition without lawful authority or without compensation may violate constitutional protections.

## **Requirement of Public Purpose**

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Property can only be compulsorily acquired where the acquisition serves a **public purpose**. Examples may include the construction of roads or highways, the development of public buildings, the provision of public utilities, and urban development projects. An acquisition undertaken primarily for private benefit or without genuine public interest may be challenged in court.

## **Compensation for Acquired Property**

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Where property is compulsorily acquired, the Constitution requires the payment of **prompt and adequate compensation**. Compensation is intended to place the property owner in a position similar to the one they occupied before the acquisition.

Disputes often arise concerning the amount of compensation, delays in payment, and valuation of the property. Where compensation is delayed or inadequate, affected persons may seek judicial remedies.

## **Access to Courts**

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Section 44 also guarantees access to the courts for persons whose property has been compulsorily acquired. Affected individuals have the right to challenge

the legality of the acquisition, the adequacy of compensation, and procedural irregularities in the acquisition process. Judicial review plays an important role in preventing abuse of compulsory acquisition powers.

### **Government Demolition and Property Rights**

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Property disputes frequently arise where government authorities demolish buildings or structures. Demolition without proper legal process may violate constitutional property rights.

Authorities are generally expected to provide lawful notice, follow applicable planning regulations, and avoid arbitrary destruction of property. Where demolitions occur without legal justification, affected individuals may seek constitutional remedies.

### **Property Rights and Environmental Regulation**

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Government authorities may impose regulations affecting the use of property in order to protect public health, safety, or the environment. Examples include zoning regulations, environmental protection measures, and building standards.

Such regulations do not necessarily amount to unconstitutional deprivation of property, provided they are **reasonable and authorised by law**.

### **Relationship with Other Constitutional Rights**

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Property rights often intersect with other constitutional protections. For example, discriminatory denial of property rights may implicate equality protections, unlawful demolition may violate dignity and property rights, and displacement resulting from acquisition may affect freedom of movement. Recognising these connections may strengthen constitutional litigation.

## **Key Litigation Issues in Property Rights Cases**

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*(Practitioner's Checklist)*

When preparing litigation involving property rights, practitioners should consider the following issues:

### **1. Nature of the Property Interest**

- What type of property is involved (land, building, or other immovable property)?
- Does the claimant hold a statutory or customary right of occupancy?

Establishing the claimant's legal interest in the property is essential.

### **2. Nature of the Government Action**

- Was the property compulsorily acquired?
- Was it demolished or taken over by authorities?
- Was the acquisition carried out under a valid law?

Identifying the nature of the interference helps determine constitutional liability.

### **3. Public Purpose Requirement**

- Was the acquisition genuinely for public use?
- Was the property transferred to private parties after acquisition?

Acquisitions lacking genuine public purpose may be unconstitutional.

### **4. Compensation Issues**

- Was compensation offered to the owner?
- Was the compensation adequate and timely?
- Were proper valuation procedures followed?

Failure to pay prompt compensation may violate Section 44.

### **5. Procedural Compliance**

- Were legal procedures followed before the acquisition or demolition?
- Was proper notice given to affected persons?

Procedural irregularities may invalidate government actions.

## 6. Remedies to Seek

Possible remedies include:

- Declaration that the acquisition violated Sections 43 or 44
- Order requiring payment of compensation
- Injunction preventing unlawful acquisition or demolition
- Damages for loss suffered

## 7. Strategic Litigation Value

Practitioners should consider whether the case:

- Challenges abuse of compulsory acquisition powers
- Addresses unlawful demolition practices
- Clarifies compensation standards

Strategic litigation can strengthen property rights and promote accountable land administration.

**Selected judicial decisions on property rights are outlined in the Appendix of this manual.** Nigerian courts have addressed several disputes concerning compulsory acquisition and property rights.





# SECTION 45: RESTRICTIONS ON AND DEROGATION FROM FUNDAMENTAL RIGHTS

### **Constitutional Framework for Limiting Rights**

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The Constitution recognises that fundamental rights must sometimes be balanced against broader societal interests. Section 45, therefore, provides circumstances in which certain rights may be **lawfully restricted**. Under Section 45(1), laws affecting the rights guaranteed under **Sections 37– 41** of the Constitution may be valid if they are **reasonably justifiable in a democratic society**.

Restrictions may be justified where they are enacted in the interests of national defence, public safety, public order, public morality, public health, and protection of the rights and freedoms of others.

This provision recognises that constitutional rights must sometimes be balanced with the collective interests of society.

### **Meaning of “Reasonably Justifiable in a Democratic Society”**

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The phrase “**reasonably justifiable in a democratic society**” establishes an important constitutional standard. Courts interpret this phrase to ensure that restrictions on rights are not arbitrary or excessive. In assessing whether a restriction is valid, courts typically consider whether the limitation is:

- **Lawful** – authorised by a valid law
- **Necessary** – required to achieve a legitimate objective
- **Proportionate** – not more restrictive than necessary

This approach ensures that government authorities cannot impose broad or unnecessary limitations on fundamental freedoms.

## **Legality Requirement**

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For a restriction on rights to be valid, it must first be **authorised by law**. Administrative decisions, informal directives, or discretionary actions that interfere with constitutional rights may be unlawful if they lack clear legal authority. Courts, therefore, examine whether the restriction is grounded in a **properly enacted law**.

## **Necessity and Proportionality**

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Even where a restriction is authorised by law, it must still satisfy the requirements of **necessity and proportionality**. A restriction is considered necessary where it addresses a genuine public interest such as security, safety, or public health. Proportionality requires that the restriction must not go beyond what is required to achieve its objective. For example, a law regulating public demonstrations may be permissible, but a blanket prohibition on all protests would likely be considered disproportionate.

## **Protection of the Rights of Others**

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Section 45 also recognises that the exercise of one person's rights must not undermine the rights of others. For example, freedom of expression does not justify defamation, freedom of religion does not permit harmful practices, and freedom of assembly does not authorise violent protests. Courts, therefore, balance competing rights in order to ensure that constitutional protections operate fairly for all members of society.

## **Public Health and Emergency Measures**

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Restrictions on rights may sometimes arise in response to public health emergencies. For example, during disease outbreaks, authorities may impose measures such as quarantine requirements, movement restrictions, and limits on public gatherings.

Such measures may be constitutionally permissible where they are **necessary to protect public health** and applied in a proportionate manner. However, emergency powers must not be used as a pretext for unnecessary or prolonged restrictions on fundamental rights.

## **Derogation During a State of Emergency**

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Section 45(2) addresses situations where the government formally declares a **state of emergency** under the Constitution. During such periods, certain rights may be temporarily restricted to the extent reasonably necessary to address the emergency.

However, emergency measures remain subject to constitutional safeguards. Restrictions must be temporary, necessary for addressing the emergency, and consistent with the Constitution. Even during emergencies, some rights remain strongly protected.

## **Judicial Oversight of Restrictions**

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Courts play a critical role in ensuring that restrictions on rights remain within constitutional limits. Where individuals challenge laws or actions that restrict fundamental rights, courts may examine whether the restriction is authorised by law, whether it serves a legitimate public purpose, and whether it is proportionate to the objective pursued.

Through judicial review, courts ensure that constitutional rights are not eroded by excessive government action.

## **Relationship with Other Constitutional Provisions**

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Section 45 operates in conjunction with other constitutional protections. When assessing restrictions, courts often examine whether government action also affects the dignity of the human person, personal liberty, fair hearing, and freedom from discrimination. Where restrictions affect multiple rights, courts may apply **heightened scrutiny**.

## **Key Litigation Issues in Rights Restriction Cases**

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*(Practitioner's Checklist)*

When preparing litigation involving restrictions on rights, practitioners should consider the following issues.

### **1. Identification of the Restricted Right**

- Which constitutional right has been limited?
- Does the restriction affect rights under Sections 37–41?

Clearly identifying the affected right is the first step in constitutional analysis.

## 2. Legal Basis for the Restriction

- Is the restriction authorised by a valid law?
- Is the law properly enacted by the legislature?

Restrictions lacking legal authority are likely unconstitutional.

## 3. Legitimate Objective

- Does the restriction aim to protect national security, public safety, or another recognised objective?
- Is the objective genuine and supported by evidence?

Courts examine whether the restriction serves a legitimate public interest.

## 4. Necessity

- Is the restriction necessary to achieve the stated objective?
- Could the objective be achieved through less restrictive measures?

If less restrictive alternatives exist, the restriction may be unconstitutional.

## 5. Proportionality

- Does the restriction impose excessive limitations on rights?
- Does it affect more people than necessary?

Proportionality ensures that restrictions remain balanced and reasonable.

## 6. Duration of the Restriction

- Is the restriction temporary or indefinite?
- Has the restriction been reviewed periodically?

Long-term restrictions may require stronger justification.

## 7. Remedies to Seek

Possible remedies include:

- Declaration that the restriction violates the Constitution
- Injunction preventing enforcement of the law or policy
- Compensation for harm suffered
- Judicial review of administrative decisions

## 8. Strategic Litigation Value

Practitioners should consider whether the case:

- Challenges excessive government powers
- Clarifies constitutional limits on emergency measures
- Strengthens protections for civil liberties

Strategic litigation can play an important role in preserving constitutional freedoms.

**Selected judicial decisions on constitutional restrictions are outlined in the Appendix of this manual.** Judicial decisions have helped clarify the limits of government authority under Section 45.



# IDENTIFYING AND PREPARING HUMAN RIGHTS CASES

Human rights litigation begins long before a case is filed in court. Effective litigation requires careful **fact-finding, legal analysis, and strategic planning**. At the outset, practitioners must determine whether the facts disclose a violation of constitutional or statutory rights and whether litigation is the most appropriate response.

Not every injustice is best addressed through the courts, nor will every grievance succeed in litigation. For this reason, early case assessment is essential. A sound evaluation should consider both the legal viability and alternative avenues for redress, including the following:

### a. **Advocacy, Petitions, and Public Engagements**

This may involve engaging institutions such as the National Human Rights Commission (NHRC), regional bodies like the African Union, or international mechanisms such as the African Commission on Human and Peoples' Rights and the United Nations and its agencies.

Practitioners may submit petitions requesting investigation or intervention, or direct communications to embassies, diplomatic missions, and international human rights organisations.

Public engagement strategies, such as media advocacy, social media campaigns, and other awareness initiatives, may also be employed to draw attention to violations and exert pressure for accountability.

### b. **Use of Alternative Dispute Resolution (ADR)**

In appropriate cases, mechanisms such as negotiation, mediation, or conciliation may provide faster, less adversarial, and more flexible remedies than formal litigation.

### c. **Engagement with Human Right Organisations**

Both national and international human rights organisations can provide support through documentation, advocacy, technical assistance, and in some cases, legal representation.

### d. **Complaints to National Human Rights Mechanisms**

Litigants may also lodge complaints with domestic oversight bodies, including the National Human Rights Commission (NHRC), the Public Complaints Commission, and the Public Petitions Committees of the National and State Houses of Assembly.

## **Identifying a Human Rights Violation**

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The first step is determining whether the situation involves a **legally recognised rights violation**. Common indicators include unlawful arrest or detention, torture or degrading treatment, denial of fair hearing, suppression of peaceful protest, discrimination by public authorities, and unlawful seizure of property. Practitioners should identify **which constitutional provisions may have been violated**.

## **Gathering Preliminary Information**

---

Accurate documentation is essential in human rights litigation. Key information should include the names and contact details of victims and witnesses, the date, time, and location of the incident, the identities of officials or institutions involved, and any prior complaints made to authorities.

Supporting evidence may include photographs or videos, medical reports, police or detention records, and official correspondence. Early documentation often determines the strength of the case.

## **Assessing Legal Viability**

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Before initiating litigation, practitioners should consider several questions:

- Does the available evidence support the claim?
- Which court has jurisdiction?
- Are there procedural obstacles to filing the case?
- What remedies are realistically obtainable?

Where the legal foundation is weak, practitioners may consider advocacy or administrative remedies instead of litigation.

### **Strategic Considerations**

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Human rights cases sometimes have broader implications beyond the individual claimant. Strategic considerations may include:

- Whether the case can establish an important legal precedent
- Whether it exposes systemic abuses
- Whether litigation may support policy reform

Strategic litigation may therefore combine **legal action with advocacy and public engagement**.





# COMMENCING HUMAN RIGHTS LITIGATION

## Legal Basis for Enforcement

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Fundamental rights in Nigeria are primarily enforced through **Section 46 of the Constitution and the Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules)**. These rules were designed to simplify access to justice in human rights cases. They encourage courts to prioritise substantive justice, adopt liberal rules of standing, avoid excessive technicalities and rely on international human rights standards where appropriate.

## Jurisdiction of Courts

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Human rights enforcement cases may be filed before the **Federal High Court**, the **High Court of a State**, and the **High Court of the Federal Capital Territory**. The appropriate court generally depends on the **location of the violation and the parties involved**. Where federal agencies are defendants, the Federal High Court may have jurisdiction.

## Locus Standi or Standing (Who Can Sue?)

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Locus standi is the legal standing or right of a person or group to bring a lawsuit. Traditionally, only a person whose rights are directly affected can sue. This restrictive approach was reflected in cases such as **NBC Plc v Ezeifo**, where the Court of Appeal held that a litigant lacked locus standi to challenge the validity of a pension law because he had no distinct injury beyond that of all residents.

To override limitations, courts have expanded standing in human rights cases. Courts in many jurisdictions have broadened standing to allow public interest litigation (PIL). Under the Fundamental Rights (Enforcement Procedure) Rules, a plaintiff need not demonstrate personal injury as the potential or threatened

breach of rights suffices. Accordingly, NGOs, human rights activists, and associations can bring actions on behalf of affected groups.

There are, however, key principles that must be shown in public interest litigations. It must be shown that the issue is justiciable (appropriate for court), there is genuine concern for affected persons and that litigation will advance justice as in **SERAP v Nigeria**.

Recent developments in these areas of locus standi, by legislation and case law, indicate improvement in opening the litigation space for broader and liberal locus standi laws. By legislation, the Fundamental Rights (Enforcement Procedure) Rules 2009 allow non-victims to raise a complaint of violation and seek redress on behalf of the victim. Sections 88 and 89 of the Administration of Criminal Justice Act 2015 allow a third party to raise a private criminal complaint on behalf of a victim. See also relevant provisions of the Violence Against Persons (Prohibition) Act 2015.

Judicial authorities point to the same trend. In the case of **Centre for Oil Pollution Watch v NNPC**, the Supreme Court ruled that NGOs seeking to protect the environment have the locus standi to sue for environmental damage, even if they are not personally affected landowners.

However, in **Okonjo-Iweala v Fawehinmi & Ors**, the Supreme Court held that although courts now adopt a more liberal approach to standing, a plaintiff must still show sufficient interest or he is affected. The Court further held that Courts must avoid opening the floodgates to frivolous litigation.

### **Who May Bring a Human Rights Case**

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The FREP Rules adopt a **liberal approach to standing (locus standi)**. Cases may be brought by:

- The victim of the violation
- A representative acting on behalf of the victim
- A legal practitioner
- A civil society organisation
- A public interest litigant

This approach ensures that violations are not left unchallenged simply because victims lack resources or legal knowledge.

## Required Court Documents

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Human rights cases are usually commenced by **Originating Motion**. Key documents typically include:

1. **Originating Motion** – requesting enforcement of fundamental rights
2. **Statement of Facts** – explaining the violation and relief sought
3. **Supporting Affidavit** – sworn evidence supporting the claim
4. **Written Address** – legal arguments supporting the application

These documents must clearly identify the rights violated and the remedies sought.

## Service of Court Processes

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Once filed, the application must be **served on the respondent**. The respondent is typically the government authority or individual responsible for the alleged violation. Proper service ensures that the respondent has an opportunity to respond to the claim.





# CONDUCT OF HUMAN RIGHTS PROCEEDINGS

## Court Hearings

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After filing and service, the court will schedule hearings to consider the case. Human rights proceedings are generally **summary in nature**, meaning they rely primarily on affidavit evidence rather than extensive oral testimony. However, courts may permit oral evidence where necessary.

## Role of Affidavit Evidence

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Affidavits form the primary evidentiary basis in fundamental rights cases. Affidavits should contain a clear account of the events, identification of responsible parties, and supporting documents where available.

Respondents may challenge these claims by filing **counter-affidavits** disputing the facts. The Court then evaluates the competing affidavits alongside the parties' legal arguments to determine the issues and deliver judgment.

## Interim Relief

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In urgent situations, courts may grant **interim orders** to prevent ongoing violations. Examples include orders preventing unlawful detention, injunctions stopping demolition of property, and orders restraining harassment or intimidation. Such orders preserve the status quo until the court decides the substantive case.

## Judicial Remedies

---

Where a violation is established, courts may grant several forms of relief. Common remedies include **declarations** that a right has been violated, injunctions restraining unlawful conduct, **orders for release from detention**, and **monetary compensation**. In some cases, courts may also issue orders requiring institutional reforms.





# ENFORCEMENT AND IMPACT OF JUDGMENTS

### Importance of Enforcement

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Obtaining a court judgment is only one stage of human rights litigation. Effective enforcement is necessary to ensure that court decisions translate into **real protection for victims**. In some cases, government authorities may delay or resist compliance with court orders. Practitioners must therefore monitor implementation carefully.

### Enforcement Procedures

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Where a respondent fails to comply with a court order, several enforcement mechanisms may be used. These include **garnishee proceedings** to enforce monetary awards, **committal proceedings** for contempt of court, and **execution orders** for the enforcement of judgments. These mechanisms help ensure that judicial decisions are respected.

### Monitoring Compliance

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Civil society organisations often play an important role in monitoring compliance with human rights judgments. This may involve tracking implementation of court orders, engaging relevant authorities, and raising public awareness of non-compliance. Monitoring strengthens accountability and reinforces the authority of the courts.

### Strategic Use of Judgments

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Human rights litigation may also contribute to broader reform. Successful judgments can establish legal precedent, influence public policy, encourage legislative reform, and improve institutional practices. For this reason, litigation is often most effective when combined with **advocacy, public education, and institutional engagement**.

## Conclusion

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Human rights litigation remains one of the most important tools for enforcing constitutional protections in Nigeria. Through careful case preparation, strategic advocacy, and effective use of the courts, lawyers and civil society actors can help transform constitutional guarantees into **practical protections for individuals and communities.**

The procedures and strategies outlined in this Manual are intended to support that effort and strengthen the protection of human rights across Nigeria.



# HUMAN RIGHTS LITIGATION FLOWCHART

# HUMAN RIGHTS LITIGATION PROCESS IN NIGERIA

## STEP 1 — IDENTIFY THE RIGHTS VIOLATION

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Ask:

- What happened?
- Which constitutional right was violated?
- Who committed the violation?

Common rights violations include:

- Unlawful arrest or detention
- Torture or degrading treatment
- Denial of fair hearing
- Suppression of protest
- Discrimination
- Unlawful seizure of property

## STEP 2 — DOCUMENT THE FACTS

---

Collect evidence early:

- Witness statements
- Photographs or video
- Medical reports
- Police records
- Correspondence or complaints

Strong documentation is often decisive.

## STEP 3 — ASSESS THE LEGAL CLAIM

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Determine:

- Which constitutional provisions apply
- Whether the FREP Rules are appropriate
- Whether other statutes apply (ACJA, FOI Act, Anti-Torture Act)

Consider whether the case also involves:

- Dignity
- Liberty
- Discrimination
- Freedom of expression

#### **STEP 4 — IDENTIFY THE PROPER DEFENDANT**

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Typical defendants include:

- Nigeria Police Force
- Military authorities
- Government ministries or agencies
- Prison authorities
- Private actors acting with state involvement

The case must be brought against the **authority responsible for the violation**.

#### **STEP 5 — FILE THE APPLICATION**

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Prepare the following documents:

- Originating Motion
- Statement of Facts
- Supporting Affidavit
- Written Address

File the case before the **appropriate High Court**.

#### **STEP 6 — COURT PROCEEDINGS**

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Human rights cases are usually decided based on **affidavit evidence**.

Possible stages include:

- Filing of counter-affidavit
- Written submissions
- Oral arguments

The court then delivers judgment.

#### **STEP 7 — OBTAIN REMEDIES**

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Courts may grant:

- Declarations of rights violations
- Injunctions

- Release from detention
- Monetary compensation

## **STEP 8 – ENFORCE THE JUDGMENT**

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If authorities fail to comply, use:

- Contempt proceedings
- Garnishee proceedings
- Enforcement orders

Litigation does not end with judgment.

## **STEP 9 – STRATEGIC ADVOCACY**

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Successful cases may support:

- Law reform
- Institutional change
- Public awareness
- Further litigation

Strategic cases can transform systemic practices.

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# APPENDICES

## APPENDIX A

### PRACTITIONER GUIDE

#### TOP 20 LITIGATION STRATEGIES USED BY LEADING HUMAN RIGHTS LAWYERS IN NIGERIA

Human rights litigation is not only about knowing the law. Successful cases often depend on **strategic thinking, careful preparation, and effective use of legal tools.**

Experienced human rights lawyers in Nigeria frequently apply the following strategies when pursuing public interest and constitutional litigation.

##### 1. Frame the Case Around Constitutional Rights

The most effective human rights cases clearly identify **specific constitutional provisions that have been violated.** Instead of presenting a general grievance, the claim should explicitly link the facts to constitutional protections under **Chapter IV of the Constitution.**

##### 2. Combine Multiple Rights in One Claim

Many human rights violations affect more than one constitutional right. For example:

- Unlawful detention may violate **personal liberty, dignity, and fair hearing**
- Suppression of protest may violate **expression and assembly**

Combining related rights often strengthens the legal argument.

##### 3. Use the Fundamental Rights (Enforcement Procedure) Rules

The **FREP Rules 2009** provide a simplified and flexible procedure for enforcing constitutional rights. Lawyers should use these rules whenever possible because they:

- Reduce procedural technicalities
- Allow broader standing
- Encourage reliance on international human rights law

##### 4. Select the Right Defendant

A common mistake in human rights litigation is suing the wrong party. The claim should be brought against **the authority responsible for the violation,** such as:

- The Inspector-General of Police
- A government agency
- Prison authorities
- Relevant public officials

Proper identification of defendants is critical.

##### 5. Gather Evidence Early

Human rights cases often depend heavily on evidence collected immediately after the incident. Important evidence may include:

- Medical reports
- Photographs or videos
- Witness statements
- Police or detention records

Early documentation greatly improves the chances of success.

## 6. Seek Interim Relief in Urgent Cases

Where a violation is ongoing, lawyers should consider applying for **interim orders**. Examples include:

- Orders for immediate release from unlawful detention
- Injunctions preventing demolition of property
- Orders stopping harassment or intimidation

Interim relief can prevent further harm while the case proceeds.

## 7. Use Regional and International Law

Nigerian courts increasingly recognise the relevance of **international human rights standards**.

Lawyers may rely on instruments such as:

- African Charter on Human and Peoples' Rights
- ICCPR
- CEDAW

The African Charter is particularly important because it has been domesticated into Nigerian law.

## 8. Cite Leading Judicial Precedents

Successful litigation often relies on **strong case law**. Judges are more likely to accept arguments supported by precedents such as:

- **Fawehinmi v Abacha**
- **ANPP v IGP**
- **Arthur Nwankwo v State**

Practitioners should carefully research relevant authorities.

## 9. Use Affidavit Evidence Strategically

Human rights proceedings often rely primarily on **affidavit evidence**. Affidavits should be:

- Clear
- Detailed
- Supported by documents where possible

Weak or inconsistent affidavits can undermine otherwise strong cases.

## 10. Anticipate the Government's Defence

Government authorities often defend cases by arguing:

- National security concerns
- Public order considerations
- Statutory authority

Effective lawyers anticipate these arguments and prepare responses in advance.

## 11. Challenge Procedural Violations

Many cases succeed because authorities **fail to follow proper procedures**. For example:

- Detention beyond constitutional timelines
- Lack of arrest warrants
- Denial of legal representation

Procedural violations often provide strong constitutional claims.

## 12. Use Litigation to Expose Systemic Abuse

Some cases involve patterns of abuse rather than isolated incidents. Strategic litigation may highlight:

- Widespread unlawful detention
- Torture in detention facilities
- Discriminatory government practices

Courts may issue broader remedies where systemic violations are proven.

## 13. Protect the Safety of Victims and Witnesses

Human rights cases may expose victims or witnesses to intimidation. Lawyers should consider measures such as:

- Protecting confidential information
- Avoiding unnecessary publicity
- Ensuring secure communication

Protecting clients is an essential professional responsibility.

## 14. Engage Civil Society Organisations

Civil society organisations often provide valuable support by:

- Documenting violations
- Providing research
- Assisting victims
- Mobilising public awareness

Collaboration between lawyers and civil society strengthens human rights litigation.

## 15. Use Public Interest Litigation Strategically

Public interest litigation allows lawyers to challenge practices affecting **large groups of people**.

Such cases may address issues such as:

- Police brutality
- Unlawful detention practices
- Restrictions on protests

Strategic public interest cases can produce significant legal reforms.

## 16. Consider Regional Litigation

Where domestic remedies are ineffective, cases may be brought before **regional bodies**. For example:

- ECOWAS Community Court of Justice
- African Commission on Human and Peoples' Rights

Regional litigation can sometimes produce stronger enforcement of human rights obligations.

## 17. Combine Litigation with Advocacy

Legal action alone may not always achieve lasting reform. Successful strategies often combine litigation with:

- Media engagement
- Public education
- Policy advocacy

This approach can increase pressure for compliance with court judgments.

## 18. Monitor Implementation of Judgments

Obtaining a favourable judgment is not the end of the process. Lawyers must ensure that court orders are **properly implemented**. This may involve:

- Follow-up litigation
- Enforcement proceedings
- Engagement with authorities

## 19. Train Future Human Rights Lawyers

Strong human rights litigation depends on the development of skilled lawyers. Experienced practitioners often contribute by:

- Mentoring younger lawyers
- Supporting legal education
- Conducting training programmes

Building capacity strengthens the human rights movement.

## 20. Use Litigation to Strengthen Democracy

Ultimately, human rights litigation serves a broader purpose. Through the courts, lawyers help to:

- Hold public authorities accountable
- Protect vulnerable communities
- Strengthen constitutional governance

Strategic litigation, therefore, plays an essential role in **defending the rule of law and democratic values**.

## Concluding Note

Human rights litigation requires not only legal knowledge but also **strategy, persistence, and collaboration**.

The approaches outlined in this section reflect lessons drawn from decades of human rights advocacy and constitutional litigation in Nigeria.

Used effectively, these strategies can help ensure that the rights guaranteed in the Constitution become **real and enforceable protections for all citizens**.

## APPENDIX B SAMPLE LITIGATION TEMPLATES

### ORIGINATING MOTION

IN THE HIGH COURT OF \_\_\_\_\_ STATE  
HOLDEN AT \_\_\_\_\_

SUIT NO: \_\_\_\_\_

IN THE MATTER OF AN APPLICATION FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS

BETWEEN

APPLICANT: \_\_\_\_\_

AND

RESPONDENTS:

1. \_\_\_\_\_
2. \_\_\_\_\_

### MOTION ON NOTICE

BROUGHT PURSUANT TO:

- Sections **33–46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**
- The **Fundamental Rights (Enforcement Procedure) Rules 2009**
- The inherent jurisdiction of the Honourable Court

### RELIEFS SOUGHT

The Applicant seeks the following reliefs:

1. A declaration that the arrest and detention of the Applicant on \_\_\_\_\_ violates the Applicant's fundamental rights guaranteed under Section \_\_\_\_ of the Constitution.
2. A declaration that the conduct of the Respondents constitutes a violation of the Applicant's right to \_\_\_\_\_.
3. An order directing the Respondents to pay the sum of N \_\_\_\_\_ as compensation for the violation.
4. An order of perpetual injunction restraining the Respondents from further violating the Applicant's rights.

### GROUND FOR THE APPLICATION

This application is based on the following grounds:

1. The Applicant was arrested on \_\_\_\_\_ without lawful justification.
2. The Applicant was detained beyond the constitutionally permitted period.
3. The Respondents acted in violation of the Applicant's constitutional rights.

## SUPPORTING AFFIDAVIT

I, \_\_\_\_\_ Male/Female, Nigerian citizen, residing at \_\_\_\_\_, do hereby make oath and state as follows:

1. I am the Applicant in this case.
2. On \_\_\_\_\_ at approximately \_\_\_\_\_, officers of the \_\_\_\_\_ arrested me at \_\_\_\_\_.
3. I was not informed of the reason for my arrest.
4. I was detained at \_\_\_\_\_ Police Station for \_\_\_\_\_ days.
5. During the detention, I was denied access to my lawyer.
6. I verily believe that my detention was unlawful and unconstitutional.
7. I depose to this affidavit in good faith believing the facts stated to be true.

## WRITTEN ADDRESS

### INTRODUCTION

This application concerns the unlawful arrest and detention of the Applicant in violation of the Constitution.

The Applicant respectfully asks this Honourable Court to enforce the fundamental rights guaranteed under Chapter IV of the Constitution.

### ISSUES FOR DETERMINATION

Whether the arrest and detention of the Applicant violated the fundamental rights guaranteed under Sections \_\_\_\_ of the Constitution.

### ARGUMENT

Section \_\_\_\_ of the Constitution guarantees the right to \_\_\_\_\_.

In **Jim-Jaja v Commissioner of Police**, the Court held that unlawful detention constitutes a violation of personal liberty.

The actions of the Respondents clearly violate the Applicant's constitutional rights.

### CONCLUSION

The Applicant respectfully urges this Honourable Court to grant the reliefs sought.

## APPENDIX C DEFINITIONS

“**Access to justice**” means the ability of individuals or groups to seek and obtain remedies for rights violations through fair, affordable, and effective legal processes.

“**Advocacy**” refers to actions taken to promote, protect, or support a cause, policy, or group, particularly in advancing human rights and justice.

“**Affidavit**” means a written statement confirmed by oath or affirmation, used as evidence in court.

“**Bail**” means the temporary release of an accused person awaiting trial, sometimes on condition of payment or guarantee.

“**Beyond reasonable doubt**” is the standard of proof required in criminal cases, meaning the evidence must be so convincing that there is no reasonable doubt of the defendant’s guilt.

“**Blanket prohibition**” means a complete ban that applies universally without exceptions.

“**Cause of action**” means the facts that give a person the legal right to bring a case before a court.

“**Class action**” means a lawsuit brought by one or more persons on behalf of a larger group with similar legal complaints.

“**Compensation**” is the payment or remedy provided to a person for harm, loss, or injury suffered.

“**Computation of time**” refers to the legal method for calculating deadlines for filing or responding to court processes as prescribed by law or court rules.

“**Derivative rights**” are rights that are not expressly stated in the Constitution or statute but arise from or are implied by existing protected rights. For example, the right to legal representation may be derived from the right to a fair hearing.

“**Discretion**” is the power or authority of a judge or public official to make decisions based on their judgment within the bounds of the law.

“**Duty bearers**” are entities legally responsible for respecting, protecting, and fulfilling human rights, including the State and, in some cases, private actors.

“**Evidential burden**” refers to the obligation to present sufficient evidence to support a claim or defence in legal proceedings.

“**Extra-judicial**” are actions taken outside the formal judicial process or without legal authority.

**“Frontloading”** is a procedural requirement that parties file all relevant documents, evidence, and witness statements at the beginning of a case, rather than introducing them gradually.

**“Fundamental rights”** are human rights expressly guaranteed under Chapter IV of the Constitution and given special legal protection, including access to judicial enforcement.

**“Human rights”** are rights inherent to all human beings by virtue of their humanity. They are universal, indivisible, and interdependent, applying equally to all persons regardless of status.

**“Human rights litigation”** is the use of courts and related legal mechanisms to enforce human rights, challenge violations, and obtain remedies for affected persons or communities.

**“Human rights violations”** occur when a legally protected right is unlawfully denied, restricted, or interfered with by a state or, in some cases, a non-state actor.

**“Interim order”** refers to a temporary court order issued to maintain the status quo until a final decision is made.

**“Justiciable rights”** are rights that a court has the legal authority to adjudicate upon and for which it can grant remedies.

**“Jurisdiction”** refers to the legal authority of a court to hear and determine a particular case, based on factors such as subject matter, location, or the parties involved.

**“Legal viability”** refers to the likelihood that a case or legal claim can succeed based on existing laws and evidence.

**“Maladministration”** is the improper, illegal, or negligent management of public affairs by authorities.

**“Non-State actors”** include private individuals, corporations, and organisations whose actions may affect human rights, particularly where they exercise significant power or influence.

**“Pleadings”** are the formal written documents filed by parties in a lawsuit that set out their claims, defences, and material facts.

**“Public interest litigation”** involves legal actions brought to protect collective or societal interests, especially where affected persons cannot easily approach the courts themselves.

**“Public-Spirited Person or Actor”** refers to an individual or organisation that initiates legal action primarily to advance the public good rather than personal benefit.

**“Search warrant”** means a legal document issued by a court authorising law enforcement to search a specific place for evidence.

“**Socio-Economic rights**” relate to the conditions necessary for a dignified life, including rights to health, education, housing, work, and social welfare.

“**State**” refers to the government of Nigeria at the federal, state, and local levels.

“**State actors**” are government officials, agencies, institutions, and bodies exercising public authority or performing public functions.

“**Strategic impact litigation**” refers to litigation deliberately designed to achieve wider legal or social change through a carefully selected case.

“**Strategic litigation value**” means the potential of a case to create broader legal or social impact beyond the immediate parties involved.

“**Substantive justice**” refers to justice that focuses on the fairness and outcome of a case rather than just procedural correctness.

“**Unconstitutional**” refers to something that violates or is inconsistent with the provisions of a constitution.

## APPENDIX D

### LIST OF CASES

#### Foundational Human Rights Cases

**Abacha v Fawehinmi (2000) 6 NWLR (Pt. 660) 228** – African Charter is part of Nigerian law and enforceable.

**Adesanya v President of the Federal Republic of Nigeria (1981) 2 NCLR 358** – Only persons with sufficient interest have standing to bring a case.

**Chief Dr (Mrs) Olufunmilayo Ransome-Kuti v Attorney General of the Federation, (1985) 7 NWLR (Pt. 6) 221** – Courts must grant effective relief for rights violations.

**Fawehinmi v Abacha (1996) 9 NWLR (Pt. 475) 710** – African Charter can be relied on in fundamental rights actions.

**Fawehinmi v IGP (2002) 7 NWLR (Pt. 767) 606** – Constitutional immunity does not bar police investigation.

**Gov. Lagos v Ojukwu (1986) 1 NWLR (Pt. 18) 621** – Government cannot use self-help or disobey court orders.

**Jim-Jaja v Commissioner of Police, Rivers State (2013) 6 NWLR (Pt. 1350) 225** – Fundamental rights cases must be treated urgently.

#### Chapter 2 – Legal and Institutional Framework for Human Rights Protection in Nigeria

**Attorney General of Ondo State v Attorney General of the Federation (2002) 9 NWLR (Pt. 772) 222** – The provisions of Chapter II of the Constitution become enforceable via legislative enactments of the National Assembly.

**Constitutional Rights Project (in respect of Zamani Lekwot & Ors) v Nigeria (Comm. No. 87/93)** - The African Commission held that Nigeria violated Articles 7(1)(a), (c), and (d) of the African Charter by trying the complainants before a special tribunal that excluded any avenue of judicial appeal, denied effective legal representation through intimidation of counsel, and lacked institutional impartiality due to its executive-controlled composition.

**Legal Defence & Assistance Project v Federal Ministry of Education (unreported Suit No. FHC/ABJ/CS/978/15 judgment delivered on 17 April 2018)** – Right to basic education is both fundamental and enforceable following the enactment of the Compulsory, Free Universal Basic Education Act.

**SERAP v Nigeria (ECW/CCJ/JUD/07/10)** – Right to education is justiciable.

### **Chapter 3 – Right to Life (Section 33)**

**Attorney General of Kaduna State v Hassan (1985) 2 NWLR (Pt. 8) 483** – The powers of the Attorney General in criminal prosecutions must be exercised lawfully and by proper authority.

**Bello v Attorney-General of Oyo State (1986) 5 NWLR (Pt. 45) 828** – A prisoner was executed while his appeal was pending. The Court held this was unconstitutional.

**COP v Alozie (2017) 7 NWLR (Pt. 15665) 368** – Confessions obtained through torture, duress or inducement can be challenged.

**Kudirat Abiola v Federal Republic of Nigeria (ECW/CCJ/APP/62/2022)** – The Court held that in human rights cases involving deceased victims, applicants must show a legal relationship or authority to represent the deceased.

**Modupe Afolalu v Federal Republic of Nigeria (ECW/CCJ/JUD/15/14)** – State may be held responsible for a violation of the right to life where it fails to prevent foreseeable violence or fails to protect citizens.

**Odafe v AG Federation (unreported Suit No: FHC/PH/CS/680/2003)** – State must provide medical care to detainees.

**The People of the State of California v O.J. Simpson, No. BA097211 (Cal. Super. Ct. Oct. 3, 1995)** – Civil liability can exist despite criminal acquittal.

**Onuoha Kalu v State (1998) 13 NWLR (Pt. 583) 531** – Death penalty is constitutional as the right to life is not absolute.

**SERAP v Federal Republic of Nigeria (ECW/CCJ/APP/15/16)** – State must prevent killings, investigate violations and protect its citizens from violence by both state and non-state actors.

### **Chapter 4 – Right to Dignity (Section 34)**

**Faith Okafor v Lagos State Government (2017) 4 NWLR (Pt. 1556) 404** – The Court of Appeal held that even where an arrest is lawful, the manner of arrest, detention, or transportation must not be degrading or inhuman.

**Idisi v Aakoo (2021) LPELR-55954(CA)** – A bailiff was assaulted while serving court process. The court held that the obligation to respect dignity applies to private individuals as well as government authorities.

**Mogaji v Board of Customs & Excise (1982) 3 NCLR 552** – The use of excessive force by law enforcement officers may amount to inhuman treatment and a violation of the right to dignity.  
**NSCDC, Benue State Command v Samuel (2022) LPELR-56933(CA)** – Dependants can enforce rights of deceased.

**Ogugu v State (1994) 9 NWLR (Pt. 366) 1** – African Charter enforceable on dignity claims. *Sunday Ukpai v Ajuba Nig. Ltd. (NICN/LA/77/2015)* – Forced labour, threats, and oppressive working conditions may amount to servitude and a violation of the right to dignity.

**Uzoukwu v Ezeonu II (1991) 6 NWLR (Pt. 200) 708**. The case involved allegations of violation of fundamental rights, and the Court of Appeal was called upon to interpret the meaning of the right to dignity and its components under the Constitution. The Court defined key components of the right to dignity:

- Dignity: Conveys the meaning or connotation of being degraded at least in one's own estimation of his societal status or societal standing.
- Torture: Infliction of excessive pain or anguish, whether physical or mental.
- Inhuman Treatment: Any barbarous or cruel act done without regard to the suffering of another person.
- Degrading Treatment: Treatment that lowers a person's dignity, status, character, or self-worth in the eyes of others or the victim.
- Slavery: A condition where a person is treated as property or forced into drudgery.
- Servitude: Compulsory labour or subjection to oppressive or irksome working conditions similar to slavery.

### **Chapter 5 – Right to Personal Liberty (Section 35)**

**Agbakoba v Director, State Security Service (1999) 3 NWLR (Pt. 595) 340** – Passport seizure without lawful basis is unlawful and unconstitutional.

**Dokubo-Asari v FRN (2007) LPELR-958(SC)** – Right to personal liberty is not absolute and may be restricted where a person is lawfully arrested on reasonable suspicion of having committed a serious offence, or to prevent further offences.

**Eda v Commissioner of Police (1982) 3 NCLR 219**– Any unlawful detention (no matter how short the duration) violates liberty.

**Huri-Laws v Nigeria (Communication 225 of 1998) [2000] ACHPR 23 (6 November 2000)** – Where the State fails to prevent, investigate, or punish violations of personal liberty by state agents or private actors, the State is responsible for the violation.

**Lufadeju v Johnson (2007) 8 NWLR (Pt. 1037) 535** – The practice of remanding suspects through a "holding charge" before a magistrate who had no jurisdiction to try the offence was criticised by the Supreme Court.

**Oladipo v FRN (2009) 13 NWLR (Pt. 1159) 83** – Arrest based on suspicion must be objective and based on verifiable facts and circumstances that would lead a reasonable person to believe that a crime has been committed.

## **Chapter 6 – Right to Fair Hearing (Section 36)**

**Adigun v AG Oyo State (1987) 1 NWLR (Pt. 53) 678** – Fair hearing means giving a person the opportunity to present his case before a decision affecting his rights is taken.

**Aoko v Fagbemi (1961) 1 ALL NLR 400** – No person can be convicted of an offence not known to law.

**Ariori v Elemo (1983) LPELR-552(SC)** – Delay in delivery judgment does not amount to breach of fair hearing unless the delay is so excessive that it results in miscarriage of justice.

**Deduwa v Okorodudu (1976) 9–10 SC 329** – Bias disqualifies adjudicator.

**Denloye v Medical and Dental Practitioners Disciplinary Tribunal (1968) 1 All NLR 306** – Denial of legal representation. Amounts to a breach of fair hearing.

**Garba v University of Maiduguri (1986) 1 NWLR (Pt. 18) 550** – Disciplinary bodies must ensure fair hearing.

**LPDC v Fawehinmi (1985) 2 NWLR (Pt. 7) 300** – Specialised disciplinary bodies and administrative tribunals must comply with the constitutional requirements of fair hearing.

**Maxwell Nosakhare Uwaifo v IGP & Ors** (unreported Suit No. FHC/WR/CS/87/2025 delivered 17 March 2026) – Police must identify themselves, and citizens can record police officers performing public duties in public spaces.

**Onuwa Kalu v State (2017) 14 NWLR (Pt. 1586) 522** – Breach of fair hearing nullifies proceedings.

**Onyekwuluje v Benue State Government (2015) 16 NWLR (Pt. 1484) 40** – Any decision reached in breach of fair hearing is null and void and cannot bind the affected party.

**R v Princewill (1963) 1 ALL NLR 1** – Vague charge violates fair hearing.

## **Chapter 7 – Right to Private and Family Life (Section 37)**

**Emerging Markets Telecommunication Services Ltd (Etisalat) v Osunde (2018) LPELR-44110(CA)** – Disclosing customer data without consent violates privacy.

**Ezumezu v NIS (unreported FHC/ABJ/CS/75/2023)** – Failure to issue the passport within the official timeline violates fundamental rights.

**Fawehinmi v IGP (2002) 7 NWLR (Pt. 767) 606** – Searches conducted by law enforcement officers must be legally authorised and reasonable.

**Malone v United Kingdom [1984] ECHR 10** – Phone tapping violates privacy.

**Molehin v UBA (unreported Suit No. FHC/L/CS/2625/2023)** – Consent to use customer data cannot be dispensed with even where the bank claims to have acted in the customer's interest.

**Nwali v Ebonyi State Independent Electoral Commission (EBSIEC) (2014) LPELR-23682(CA)** – The right to privacy under Section 37 of the Constitution extends beyond physical and informational privacy to include personal choices and decisions, such as the freedom to vote in secret. Accordingly, any system that compels open voting violates that right.

**Onagoruwa v IGP (1991) 5 NWLR (Pt. 193) 593** – Unlawful search violates privacy.

**Olakehinde v EFCC (2025) LPELR-80483(SC)** – Privacy not absolute and may be restricted where there is a reasonable suspicion of crime or where the action is authorised by law.

### **Chapter 8 – Right to Freedom of Religion (Section 38)**

**Lagos State Government v Abdulkareem (2022) LPELR-58517(SC)** – Forcing a person to dress in a manner contrary to their religious beliefs violates the right to freedom of religion.

**Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo (2001) 7 NWLR (Pt. 711) 206** – A competent adult has the right to refuse medical treatment based on religious beliefs.

**Provost, Kwara State College of Education v Saliu (2014) 11 NWLR (Pt. 1419) 65** – A public institution cannot prohibit a student from manifesting her religion through dress unless there is a lawful and compelling justification.

**Uwuese v Azuana (2025) LPELR-81268(CA)** – Religion includes the freedom to live one's life according to one's beliefs.

### **Chapter 9 – Right to Freedom of Expression (Section 39)**

**Akomolafe v Guardian Press (2003) LPELR-5910(CA)** – Press must act responsibly and publish accurate information.

**Arthur Nwankwo v State (1985) 6 NCLR 228** – Public officials must tolerate criticism, and sedition laws that criminalise political criticism are inconsistent with freedom of expression.

**AG Federation v Guardian Newspapers (1999) 9 NWLR (Pt. 618) 187** – For a ban or restriction on a newspaper to be valid, it must be authorised by a law reasonably justifiable in a democratic society.

**AG Federation v The Punch (Nig.) Ltd. (2019) 15 NWLR (Pt. 1694) 40** – Sealing of newspaper premises by security agents held to be unconstitutional.

**Din v African Newspapers (1990) 3 NWLR (Pt. 139) 392** – The right to comment freely on matters of public interest is a fundamental aspect of freedom of expression in a democratic society, but this right does not extend to making defamatory statements.

**Media Rights Agenda v Attorney-General of the Federation (unreported Suit No. FHC/ABJ/CS/1301/2021)** – Attacks or killings of journalists while performing their duties violate the right to freedom of expression and the press.

**SERAP v FRN (ECW/CCJ/JUD/08/21)** – Access to social media platforms is protected under the right to freedom of expression.

**Tony Momoh v Senate (1981) 1 NCLR 105** – Compelling a journalist to disclose confidential sources would undermine press freedom.

### **Chapter 10 – Right to Freedom of Assembly and Association (Section 40)**

**AGF v Abubakar (2007) 10 NWLR (Pt. 1041) 1** – Every citizen has the constitutional right to belong to or join any political party or association of his choice.

**Chukwuma v COP (2005) 8 NWLR (Pt. 927) 278** – Police cannot suppress peaceful gatherings.

**IGP v ANPP (2007) 18 NWLR (Pt. 1066) 457** – No police permit required to hold peaceful rallies or processions.

**INEC v Musa (2003) 3 NWLR (Pt. 806) 72** – The Court struck down administrative requirements that unjustifiably restricted the formation and registration of political parties.

**James v Okereke (2008) 13 NWLR (Pt. 1105) 554** – No person can be compelled to join or remain in an association against his will, as freedom of association includes the right not to associate.

**NUP v INEC (2021) 17 NWLR (Pt. 1805) 305** – The right to form and belong to political parties is not absolute and may be regulated by law.

### **Chapter 11 – Right to Freedom of Movement (Section 41)**

**Azuh v UBN (2014) LPELR-22913(SC)** – Movement can be restricted during criminal proceedings.

**Danjuma Abu v State (2024) LPELR-62381(SC)** – The right to freedom of movement is the right from which every right constituted under Chapter IV of the 1999 CFRN derives its foundation.

**Director, State Security Service v Agbakoba (1999) 3 NWLR (Pt. 595) 314** – Passport seizure violates constitutional right to freedom of movement.

**Ezeigbo v ASCO (2022) LPELR-56864(SC)** – Section 41 protects citizens from being expelled from or refused entry into Nigeria.

**Shugaba Darman v Minister of Internal Affairs (1981) 2 NCLR 459** – Unlawful deportation of a Nigerian citizen is illegal.

### **Chapter 12 – Right to Freedom from Discrimination (Section 42)**

**Lafia Local Government v Executive Government of Nasarawa State (2012) LPELR-20602(SC)** – Discriminatory policies are unconstitutional.

**Maiya v The Incorporated Trustees of Clinton Health Access Initiative Nigeria (2012) 27 NLLR (Pt. 76) 110** – Discrimination based on pregnancy is unlawful.

**Okoli v Okoli (2002) LPELR-7097(CA)** – Women can inherit their father's property.

**Olisa Agbakoba v Attorney General of the Federation (unreported Suit No. FHC/L/CS/1358/2013 Judgment delivered on 17 December 2014)** – Quota system of federal government colleges based on state of origin, gender and ethnicity was held unconstitutional.

**Olaḡide v NPF (NICN/AK/14/2021)** – Discrimination on the basis of marriage and pregnancy is unconstitutional.

**Ukeje v Ukeje (2014) LPELR-22724(SC)** – No discrimination against children born out of wedlock.

### **Chapter 13 – Right to Acquire and Own Immovable Property and Compulsory Acquisition of Property (Sections 43 – 44)**

**Adole v Gwar (2008) 11 NWLR (Pt. 1099) 562** – Certificate of Occupancy does not automatically confer title.

**Adamawa State Ministry of Lands & Survey v Salisu (2021) 2 NWLR (Pt. 1759) 1** – Land acquired for “public purpose” must be proved and cannot be used for private purpose.

**AG Lagos State v Sowande (1992) 8 NWLR (Pt. 261) 589** – Improper notice invalidates acquisition.

**Elf Petroleum (Nig.) Ltd v Umah (2018) 10 NWLR (Pt. 1628) 428** – Compulsory acquisition of property without payment of compensation is unconstitutional.

**Eliochin v Mbadinwe (1986) 1 NWLR (Pt. 14) 47** – A landlord who resorts to self-help to recover possession violates the tenant's rights.

**GTB v Chijioke (2024) LPELR-81087(CA)** – Restricting a bank account without a valid court order, or continuing the restriction after the order has been vacated, amounts to a violation of the account holder’s proprietary rights.

**Osho v Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157** – A holder of a right of occupancy has a legally protected interest in land which cannot be arbitrarily revoked.

## **Chapter 14 – Restrictions on and Derogation from Fundamental Rights (Section 45)**

**Director, State Security Service v Agbakoba (1999) 3 NWLR (Pt. 595) 314** – Restrictions on constitutional rights must be supported by clear legal authority and must fall within the exceptions permitted by law.

**Dokubo-Asari v FRN (2007) 12 NWLR (Pt. 1048) 320** – Individual rights may be restricted in the interest of public safety and national security.

**Ezeigbo v Asco Investment Ltd., (2022) 8 NWLR (Pt. 1832) 367** – Rights guaranteed under Chapter IV of the Constitution are protected but not absolute.

## **Chapter 16 – Commencing Human Rights Litigation**

### **Locus standi or Standi (Who Can Sue?)**

**Centre for Oil Pollution v NNPC (2019) 5 NWLR (Pt. 1666) 518** – NGOs and public-spirited persons can bring public interest actions.

**NBC Plc v Ezeifo (2001) 12 NWLR (Pt. 726) 11** – A litigant lacked locus standi to challenge the validity of a pension law because he had no distinct injury. The court held that where a plaintiff has no locus standi, his claim must fail.

**Okonjo-Iweala v Fawehinmi (2025) 7 NWLR (Pt. 1988) 1** – Although courts now adopt a more liberal approach to standing, a plaintiff must still show sufficient interest or how he is affected.

## **Chapter 18 – Enforcement and Impact of Judgments**

**CBN v Interstella (2018) 7 NWLR (Pt. 1618) 294** – CBN can be garnisheed in the enforcement of judgments relating to government accounts.

**CBN v Ochife (2025) 12 NWLR (Pt. 2000) 1** – Garnishee proceedings may be directed at the Governor of the CBN. The Court also observed that Section 84 of the SCPA cannot override Section 287 of the Constitution therefore, court judgments must be enforced without executive interference.

### **Importance of Judicial Precedents**

These decisions collectively establish several key principles of Nigerian constitutional law:

- Fundamental rights must be interpreted broadly
- Government authority is subject to constitutional limits
- Courts play a central role in protecting individual liberties
- International human rights standards influence Nigerian jurisprudence

Judicial decisions are central to the development of human rights law. Through their judgments, courts interpret constitutional guarantees, clarify legal principles, hold public authorities accountable, and expand the scope of rights protection. For lawyers and advocates, familiarity with judicial precedents is essential for building strong legal arguments in human rights litigation

### **Using Case Law in Human Rights Litigation**

When preparing a case, practitioners should identify the relevant constitutional right, locate leading precedents interpreting that right, and apply the legal principles from those cases to the facts of the present dispute. Strong reliance on precedent strengthens constitutional arguments and promotes consistency in judicial decision-making.

## APPENDIX E

### FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009

#### Under Chapter IV of the Constitution

(1st December 2009)

#### Commencement

In exercise of the powers conferred on me by section 46(3) of the Constitution of the Federal Republic of Nigeria, 1999 and all other powers enabling me in that behalf, I, IDRIS LEGBO KUTIGI, GCON, Chief Justice of Nigeria, hereby make the following Rules:

#### PREAMBLE

1. The Court shall constantly and conscientiously seek to give effect to the overriding objectives of these Rules at every stage of human rights action, especially whenever it exercises any power given it by these Rules or any other law and whenever it applies or interprets any rule.
2. Parties and their legal representatives shall help the Court to further the overriding objectives of these Rules.
3. The overriding objectives of these Rules are as follows:
  - a. The Constitution, especially Chapter IV, as well as the African Charter, shall be expansively and purposely interpreted and applied, with a view to advancing and realising the rights and freedoms contained in them and affording the protections intended by them.
  - b. For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions. Such bills include;
    - i. The African Charter on Human and Peoples' Rights and other instruments (including protocols) in the African regional human rights system,
    - ii. The Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system,
  - c. For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the Court may make consequential orders as may be just and expedient.
  - d. The Court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented.
  - e. The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of locus standi. In particular, human rights activists, advocates, or groups as well as any non-governmental organisations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:

- i. Anyone acting in his own interest;
  - ii. Anyone acting on behalf of another person;
  - iii. Anyone acting as a member of, or in the interest of a group or class of persons;
  - iv. Anyone acting in the public interest, and
  - v. Association acting in the interest of its members or other individuals or groups
- f. The Court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture, pursue the speedy and efficient enforcement and realisation of human rights.
- g. Human rights suits shall be given priority in deserving cases. Where there is any question as to the liberty of the applicant or any person, the case shall be treated as an emergency.

## ORDER I – APPLICATION AND INTERPRETATION

### Citation

1. These Rules may be cited as the Fundamental Rights (Enforcement Procedure) Rules, 2009.

### Interpretation

2. In these Rules –

“**African Charter**” means the African Charter on Human and Peoples’ Rights; Interpretation.

“**Applicant**” means a party who files an application or on whose behalf an application is filed under these Rules;

“**Application**” means an application brought pursuant to these Rules by or on behalf of any person to enforce or secure the enforcement of his fundamental rights;

“**Constitution**” means the Constitution of the Federal Republic of Nigeria, 1999;

“**Court**” means the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja.

“**Defend**” includes react to;

“**Fundamental Right**” means any of the rights provided for in Chapter IV of the Constitution, and includes any of the rights stipulated in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act;

“**Human Rights**” includes fundamental rights;

“**Judge**” means a Judge of the Court;

“**Legal Representative**” means a legal practitioner within the meaning of the Legal Practitioners’ Act.

“**Notarised**” means endorsed (with signature and stamp or seal) by a legal practitioner appointed as a Notary Public under Notaries Public Act.

“**Originating Application**” means every application other than an application in a pending cause or matter;

“**Public Interest**” includes the interest of Nigerian society or any segment of it in promoting human rights and advancing human rights law;

“**Prison Superintendent**” means the person, whatever his official title, in charge of the prison or any other place in which the applicant is restrained or confined;

“**Registrar**” means the Registrar of the Court hearing the application or of any Court to which an order is directed;

“**Respondent**” means a party against whom a human rights case has been instituted under these Rules;

“**Rules**” mean Fundamental Rights (Enforcement Procedure) Rules and any amendments to them;

“**State**” means any of the component parts of the Federal Republic of Nigeria, and includes the Federal Capital Territory, and the Government of a State or Administration of Federal Capital Territory where the context allows.

## **ORDER II – COMMENCEMENT OF ACTION**

### **Cause of Action**

1. Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress:

Provided that where the infringement occurs in a State which has no Division of the Federal High Court, the Division of the Federal High Court administratively responsible for the State shall have jurisdiction. Form No. 1 in the Appendix may be used as appropriate.

### **Mode of Commencement**

2. An application for the enforcement of the Fundamental Right may be made by any originating process accepted by the Court which shall, subject to the provisions of these Rules, lie without leave of Court.
3. An application shall be supported by a Statement setting out the name and description of the applicant, the relief sought, the grounds upon which the reliefs are sought, and supported by an affidavit setting out the facts upon which the application is made.
4. The affidavit shall be made by the Applicant, but where the applicant is in custody or if for any reason is unable to swear to an affidavit, the affidavit shall be made by a person who has personal knowledge of the facts or by a person who has been informed of the facts by the Applicant, stating that the Applicant is unable to depose personally to the affidavit.

### **Applicant's Written Address**

5. Every application shall be accompanied by a Written Address which shall be succinct argument in support of the grounds of the application.

### **Respondent's Written Address**

6. Where the respondent intends to oppose the application, he shall file his written address within 5 days of the service on him of such application and may accompany it with a counter affidavit.

### **Applicant's Address on Points of Law**

7. The applicant may on being served with the Respondent's Written Address, file and serve an address on points of law within 5 days of being served, and may accompany it with a further affidavit.

## **ORDER III – LIMITATION OF ACTION**

1. An Application for the enforcement of Fundamental Right shall not be affected by any limitation Statute whatsoever.

## **ORDER IV – GENERAL CONDUCT OF PROCEEDINGS**

### **Date for Hearing**

1. The application shall be fixed for hearing within 7 days from the day the application was filed.

### **Adjournments**

2. The hearing of the application may from time to time be adjourned where extremely expedient, depending on the circumstances of each case or upon such terms as the Court may deem fit to make, provided the Court shall always be guided by the urgent nature of applications under these Rules.

### **Ex parte Application**

3. The Court may, if satisfied that exceptional hardship may be caused to the Applicant before the service of the application especially when the life or liberty of the applicant is involved, hear the applicant ex parte upon such interim reliefs as the justice of the application may demand.
4.
  - a. The application ex parte under this Order shall be supported by affidavit which shall state sufficient grounds why delay in hearing the application would cause exceptional hardship;
  - b. A party moving the Court ex parte may support the application by argument addressed to the Court on the facts put in evidence;
  - c. Where the application is made ex parte for interim reliefs, the Court may make the following orders;
    - i. Grant bail or order release of the Applicant forthwith from detention pending the determination of the application;
    - ii. Order that the Respondent against whom the order for the release of the applicant is sought be put on notice and abridge the time for hearing the application;

- iii. Order the production of the Applicant on the date the matter is fixed for hearing if the Applicant alleges wrongful or unlawful detention.
- iv. Grant Injunction restraining the Respondent from taking further steps in connection with the matter or maintaining status quo or staying all actions pending the determination of the application;
- v. Any other order as the Court may deem fit to make as the justice of the case may demand.

### **Production of Applicant**

- 5. The order for the production of the applicant detained must state the Court or Judge before whom, and the date on which the applicant detained is to be brought. Form Nos. 2 and 3 in the Appendix may be used as appropriate.

### **Discharge of ex parte Orders**

- 6. Where an order is made on a motion ex parte, a party affected by it may within seven days after service of the order, or within such further time as a Court may allow, apply to the Court by motion to vary or discharge it; and the Court may, on notice to the party obtaining the order, either refuse to vary or discharge it with or without imposing terms as to costs or security, or, as may seem just.

## **ORDER V – SERVICE OF COURT PROCESS**

### **By Whom Service is to be Effected**

- 1. Service of the originating application or order of Court shall be done by a Sheriff, Deputy Sheriff, Bailiff or other officer of the Court.

### **Service of Process: How Effected**

- 2. The application must be served on all parties directly, so long as a service duly effected on the Respondent's agent will amount to personal service on the Respondent.

### **Service of Order for Production of Applicant**

- 3. Where an order is made by the Court for the production of the Applicant restrained, such order must be served personally on the party to whom it is directed or an officer in his office.

### **Service of Order for Production to More Than One Party**

- 4. If the order is made against more than one party, the order must be served personally on each of the parties the order is directed to in the same manner or on any officer in their offices.

### **Service to Police Officer or Prison Superintendent**

- 5. If it is not possible to serve such an order personally, or if it is directed to a Police Officer, or a Prison Superintendent or other Public Official, it may be served by leaving it with any other officer working in the office of the Police Officer, or office of the Prison Superintendent or of the office of the Public Officer to whom the order is directed.

### **Such order shall be sufficient warrant to any Superintendent of a Prison, Police**

6. Such order shall be a sufficient warrant to any Superintendent of a Prison, Police Officer in charge of a police station, Police Officer or Constable in charge of the applicant or any other person responsible for his detention, for the production in Court of the applicant under restraint.

### **Substituted Service**

7. Where it appears to the Court, either after or without an attempt at personal service of the Court processes that for any reason personal service cannot be conveniently effected, the Court may order that service be effected either –
  - a. By delivery of the document to an adult person at the usual or last known place of abode or business of the party to be served; or
  - b. By delivery of the document to some person being an agent of the party to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or the person, come to the knowledge of the party to be served; or
  - c. By delivery of the document to any senior officer of any Government agency that has office both in the State where the breach occurred and head office either in the Federal Capital Territory or elsewhere; a service on the agency through its office in any state where the breach occurred will be considered as sufficient service; or
  - d. By advertisement in the Federal Government Official Gazette, or in some newspapers circulating within the jurisdiction; or
  - e. By notice put up at the principal Court House of, or some other place of public resort in the Judicial Division where the proceedings in respect of which the service is made is instituted, or at the usual or last known place of abode, or business, of the party to be served.

### **Service on an Employee of Government**

8. When a party to be served is in the service of any Ministry or Extra Ministerial Department of Government or of a Local Government, the Court may transmit the document to be served and a copy thereof to any senior officer of the Department of Government in the Judicial Division or place where the party to be served works or resides or of the Local Government in whose service the party to be served is, and such senior Officer, or Local Government shall cause the same to be served on the proper party accordingly.
9. If on the hearing of the application the Court is of the opinion that any person who ought to have been served with the application has not been served, whether or not the person is one who ought to have been served, the Court may adjourn the hearing on such terms, if any, as it may direct in order that the application may be served on that person.
10. Service of the application and other processes, notices, summons, orders and documents whatever shall be effected between the hours of six in the morning and six in the evening.
11. Save in exceptional circumstances and as may be authorised by a Court, service shall not be effected on Sunday or public holiday.

## **ORDER VI – AMENDMENT OF STATEMENTS AND AFFIDAVITS.**

### **Hearing of Application**

1. No grounds shall be relied upon or any relief sought at the hearing of the application except the grounds and the reliefs are set out in the statement.
2. The Court may, on the hearing of the application allow the statement to be amended and may allow further affidavits to be used if they deal with new matters arising from the counter affidavit of any party to the application.
3. The application for amendment shall be supported by an exhibit of the proposed application to be amended and may be allowed by the Court upon such terms or otherwise as may be just.

### **Non Compliance**

4. Where a party who obtained an order to amend fails to comply with the order within the time allowed by the order of Court, such party shall be deemed to have abandoned the amendment unless he obtains an order of Court for extension of time to file the same.

### **Notice of Application**

5. Where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he must put the other party or parties on notice of his intention to amend.

## **ORDER VII – CONSOLIDATION OF SEVERAL APPLICATIONS RELATING TO THE SAME INFRINGEMENT**

### **Order for Consolidation**

1. The Judge may on application of the Applicant consolidate several applications relating to the infringement of a particular Fundamental Right pending against several parties in respect of the same matter, and on the same grounds.

### **Application for Re-Assignment**

2. Where applications are pending before different Judges, the Applicant shall first apply to the Chief Judge of the Court for re-assignment of the matter to a Judge before whom one or more of the matters are pending.

### **Application for Consolidation**

3. The Applicant must show that the issues are the same in all the matters before the application for consolidation may be granted by the Court.

## **ORDER VIII – NOTICE OF PRELIMINARY OBJECTION DISPUTING THE COURT’S JURISDICTION**

### **Application to Set Aside Proceeding**

1. Where the Respondent is challenging the Court’s jurisdiction to hear the application, he may apply to the Court for an order striking out the suit or setting aside the proceedings.

### **Respondent's Notice of Preliminary Objection**

2. The Respondent's Notice of Preliminary Objection must be filed along with the counter affidavit to the main application.

### **Counter Affidavit**

3. Where the Respondent elects, not to file a counter affidavit to the main application, the Court shall presume that the Respondent has accepted the facts as presented by the Applicant.

### **Hearing**

4. On the date of hearing, the preliminary objection shall be heard along with the substantive application.

### **Orders**

5. The Court after hearing the application may make any of the following orders:
  - a. Striking out the application for want of jurisdiction; or
  - b. Setting aside the service of the originating application.
6. Where the Court does not decline jurisdiction, the Court shall go ahead to give its Ruling on the substantive application.

## **ORDER IX – EFFECT OF NON COMPLIANCE**

1. Where at any stage in the course of or in connection with any proceedings there has, by any reason of anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to–
  - i. Mode of commencement of the application;
  - ii. The subject matter is not within Chapter IV of the Constitution or the African Charter on Human and People's Rights (Ratification and Enforcement) Act

## **ORDER X – APPLICATION TO QUASH ANY PROCEEDINGS**

### **How to Commence**

1. In the case of any application for an order to remove any proceedings for the purpose of their being quashed, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the application he has served a certified copy thereof together with a copy of the application on the Attorney-General of the Federation or of the State in which the application is being heard as the case may be, or accounts for his failure to do so to the satisfaction of the Court hearing the application.

### **Orders**

2. Where an order to remove any proceedings for the purpose of their being quashed is made, in any such case, the order shall direct that the proceedings shall be quashed forthwith upon their removal into the Court which heard the application.

## **ORDER XI – ORDER WHICH THE COURT MAY MAKE**

At the hearing of any application, under these Rules, the Court may make such orders, issue such writs, and give such directions as it may consider just or appropriate for the purpose of enforcing or securing the enforcement of any of the Fundamental Rights provided for in the Constitution or African Charter on Human and People’s Rights (Ratification and Enforcement) Act to which the applicant may be entitled.

## **ORDER XII – HEARING OF THE APPLICATION**

### **Written Address**

1. Hearing of the application shall be on the parties’ written addresses.

### **Oral Argument**

2. Oral argument of not more than twenty minutes shall be allowed from each party by the Court on matters not contained in their written addresses provided such matters came to the knowledge of the party after he had filed his written address.

### **Adoption of Address**

3. When all the parties’ written addresses have been filed and come up for adoption and either of the parties is absent, the Court shall either on its own motion or upon oral application by the Counsel for the party present, order that the addresses be deemed adopted if the Court is satisfied that all the parties had notice of the date for adoption and a party shall be deemed to have notice of the date for adoption if on the previous date last given, the party or his Counsel was present in Court.

### **Content of Address**

4. The written address shall contain –
  - a. The application on which the address is based;
  - b. A brief statement of facts with reference to exhibits (if any) attached to the application;
  - c. Issue arising for determination and
  - d. A succinct statement of argument on each issue incorporating the purport of the authorities referred to, together with full citation of each such authority.

### **List of Authorities**

5. All written addresses shall be concluded with a numbered summary of the points raised and the party’s prayer. A list of all the authorities referred to shall be submitted with the addresses. Where any unreported judgment is relied upon the certified true copy shall be submitted along with the written address.

## **ORDER XIII – RIGHT OF ANY OTHER PERSON OR BODY TO BE HEARD**

### **Right of Any Other Person to be Heard**

1. Any person or body who desires to be heard in respect of any Human Rights Application and who appears to the Court to be a proper party to be heard, may be heard whether or not the party has been served with any of the relevant processes, and whether or not the party has any interest in the matter.

### **Amici Curiae**

2. Amici curiae may be encouraged in human rights applications and may be heard at any time if the Court's business allows it. 16 Fundamental Rights (Enforcement Procedure) Rules, 2009

### **ORDER XIV – COMMITTAL FOR CONTEMPT**

Nothing in these Rules shall affect the power of Court to punish for contempt. Form No.4 in the Appendix may be used as appropriate.

### **ORDER XV – TRANSITIONAL PROVISIONS**

#### **Abrogation of 1979 Rules**

1. The Fundamental Rights (Enforcement Procedure) Rules 1979 are hereby abrogated.

#### **Commencement**

2. From the commencement of these Rules, pending Human Rights applications commenced under the 1979 Rules shall not be defeated in whole or in part, or suffer any judicial censure, or be struck out or prejudiced, or be adjourned or dismissed, for failure to comply with these Rules provided the applications are in substantial compliance with the Rules.

#### **Pending Application under 1979 Rules**

3. Such pending Human Rights applications may continue to be heard and determined as though they have been brought under these Rules.

#### **Instances not Covered by these Rules**

4. Where in the course of any Human Rights proceedings, any situation arises for which there is or appears to be no adequate provision in these Rules, the Civil Procedure Rules of the Court for the time being in force shall apply.

## **APPENDIX**

### **A. SCHEDULE OF FEES**

#### **FILING FEE IN FUNDAMENTAL RIGHTS APPLICATIONS**

The Filing Fees for application for enforcement of Fundamental Rights shall be Five Hundred Naira (N500.00);

For a motion, it shall be One Hundred Naira (N100.00);

For an Affidavit, it shall be Fifty Naira (N50.00);

For a written address, it shall be One Hundred Naira (N100.00); and

For any other process, it shall be One Hundred Naira (N100.00).

## B. FORMS

### FORM NO. 1

#### NOTICE OF APPLICATION FOR ORDER ENFORCING A

##### FUNDAMENTAL RIGHT (ORDER 2 RULE 1)

Suit No.....

In the Federal High Court/High Court of .....State.

In the matter of an application by ..... for an order for the enforcement of a Fundamental Right.

and

In the matter of ..... Applicant.

TAKE NOTICE that the Federal High Court/High Court of ..... State will be moved on the ..... day of ..... 20 ..... or so soon thereafter as Counsel can be heard on behalf of..... (for an order that ..... ) ..... in terms of the relief sought in the statement accompanying the affidavit in support of the application.

And take notice that on the hearing of this application the said..... will use the affidavit of ..... and the exhibits therein referred to.

DATED the ..... Day of ..... 20 .....

(Signed)

Applicant or his legal representative

To:

Respondent or his legal representative

*Note: Delete the High Court which is not applicable*

### FORM NO. 2

#### ORDER FOR PRODUCTION OF PERSON DETAINED

##### (ORDER 4 RULE 5; ORDER 5 RULES 3, 4, 5 & 6)

Suit No.....

In the matter of enforcement of a Fundamental Right.

In the matter of detention.....

.....Applicant.....

Prison or to the Superintendent of.....

.....at.....

We command you that you produce in the Federal High Court at...../or in the

High Court of.....State at .....on the day and at the time the body of..... being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, that our Court (or Judge) may then and there examine and determine whether such case is legal, and have you there and then this Order.

Witness this .....Day of ..... 20 .....

.....  
Judge

Note: Delete the High Court which is not applicable

To :

.....  
The officer or person against whom  
Order is sought.

### FORM NO. 3

#### NOTICE TO BE SERVED WITH THE ORDER FOR

#### PRODUCTION OF PERSON DETAINED

#### (ORDER 4 RULE 5; ORDER 5 RULES 3, 4, 5 AND 6)

Suit No .....

In the Federal High Court at ...../or the High Court of .....  
.....State at ..... In the matter of the  
application of .....

(If in a cause already begun, here insert the title, not otherwise).

WHEREAS this Court (or the Honourable Justice .....) has made an  
order directed..... (or other person having the custody of .....  
..... if so) command him to have the body ..... before the said Court .....  
..... at ..... on the day and at the time specified in the order together  
with the day and cause of his being taken and detained.

TAKE NOTICE that you are required by the said order to have the body of the said .....  
..... before this Court (or before the Judge aforesaid) on  
..... day of ..... 20..... at ..... O'clock and make  
a return to the said Order. In default thereof the said Court will then, or so soon thereafter as  
Counsel can be heard, be moved to commit you to prison for your contempt in not obeying the  
said Order (or if in vacation application will then be made to one of the Judges of the said Court

for a warrant for your arrest in order that you may be held to answer for your contempt in not obeying the said order).

DATED the ..... Day of ..... 20 .....

(Signed)

Applicant or his legal representative

Note: Delete High Court which is not applicable.

**FORM NO. 4**  
**ORDER OF COMMITAL**  
**(ORDER 14)**  
**(HEADING AS IN THE COMMENCEMENT OF APPLICATION)**

Suit No .....

Upon Application this day made unto this Court by Counsel for the Applicant and upon reading (an affidavit) of ..... filed the .....day of .....  
..... 20..... for service on the Respondent .....  
..... a copy of the order of Court dated the ..... day of .....  
..... 20..... and notice of this motion.

And it appearing to the satisfaction of the Court that the Respondent.....  
..... has been guilty of contempt of Court in (state the contempt).

It is ordered that for his said contempt the Respondent do stand committed to prison to be there imprisoned (until further order).

It is further ordered that this order shall not be executed if the Respondent.....  
..... complies with the following terms, namely, .....

DATED the .....Day of ..... 20 .....

.....

Judge



## About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making process.

The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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