NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF ARTS AND SOCIAL SCIENCES

COURSE CODE: CSS 452

COURSE TITLE: Victims of Crime and Human Rights Violations

COURSE GUIDE

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CSS 452: **COURSE GUIDE**

CONTENTS

INTRODUCTION

CSS 452:- Victims of Crime and Human Rights Violations is a one semester three credits four hundred level course. It will be available to all students to take towards the core module of their B.Sc in **Criminology.**

This course guide tells you briefly what the course is about, what course materials you will be using and how you can work your way through these materials. It suggests some general guidelines for the amount of time you are likely to spend on each unit of the course in order to complete it successfully. It also gives you some guide in your tutor-marked assignments. Detailed information on tutor-marked assignments is found in the separate Assignment File, which will be available in due course.

The course will consists of fourteen units which involves:

Unit 1	=	Definition of crime
Unit 2	=	The Role and characteristics of victims of Crime
Unit 3	=	Psychological impact of victimization
Unit 4	=	Treatment of victims in the criminal justice system
Unit 5 .	=	Fundamental Human Rights 1
Unit 6	=	Fundamental Human Rights 2
Unit 7	=	Violations of Fundamental Human Rights
Unit 8	=	The Role of Law enforcement agents in crime
Unit 9	=	Enforcement Procedure for Human Rights violations Investigation & Services
Unit 10	=	Contemporary development in policy and services to address rights of needs of victims
Unit 11	=	The Role of the Judiciary in criminal proceedings
Unit 12	=	Sentencing the offender: Aims and Objectives
Unit 13	=	Universal Declaration of Human Rights
Unit 14	=	Statutory Power of the Police in checkmating Criminal activities.
Unit 15	=	Judicial Characteristic to Individual Fundamental Human Rights in Nigeria
Unit 16	=	Definition: Meaning and Classes of Human Rights
Unit 17	=	Introduction to Human Rights and Civil Liberties
Unit 18	=	Historical Antecedent of Human Rights in Nigeria
Unit 19	=	Human Rights as a Universal Concern
Unit 20	=	Fundament Objective and Directive Principals of State policy, Fundamental Rights and Fundamental human Rights Cases

THE COURSE

The aim of the course can be summarized as follows:

This course aims to give you an understanding of the definition of Crime, who is a victim of Crime, role and characteristics of victims of Crime, violations of assessment purposes. At the end of the course is a final examination. The course should take you about 53 weeks in total to complete.

COURSE MATERIALS

Major components of the course are

1. Course Guide
2. Study Units
3. Textbooks
4. Assessment File
5. Presentation Schedule
6. The Nigerian Constitution
7. The Penal Code
8. The Criminal Code
9. The Evidence Act

STUDY UNITS

There are twenty units in this course, as follows

Unit 1 = Definition of crime

Unit 2 = The Role and characteristics of victims of Crime

Unit 3 = Psychological impact of victimization

Unit 4 = Treatment of victims in the criminal justice system

Unit 5 = Fundamental Human Rights 1

Unit 6 = Fundamental Human Rights 2

Unit 7 = Violations of Fundamental Human Rights

Unit 8 = The Role of Law enforcement agents in crime

Unit 9 = Enforcement Procedure for Human Rights violations Investigation & Services

Unit 10 = Contemporary development in policy and services to address rights of needs of victims

Unit 11	= The Role of the Judiciary in criminal proceedings
Unit 12	= Sentencing the offender: Aims and Objectives
Unit 13	= Universal Declaration of Human Rights
Unit 14	= Statutory Power of the Police in checkmating Criminal activities.
Unit 15	Judicial Characteristics to Individual Fundamental human Right in Nigeria
Unit 16	Definition: Meaning and Classes of Human Rights
Unit 17	Introduction to Human Right and Civil Liberties
Unit 18	Historical Antecedents of Human Right in Nigeria
Unit 19	Human Right as a Universal Concern
Unit 20	Fundamental Objectives And Directives Principles of State Policy, Fundamental Rights And Fundamental Human Rights Cases

Each study units consists of three to six week work, and includes specific objectives, directions for study, reading material. Each unit contains a number of self-tests. In general, these self tests question you on the materials you have just covered or require you to apply it in some way and, thereby, help you to gauge your progress and to reinforce your understanding of the material. Teacher with tutor-marked assignments, human rights, the role of law enforcement agency in combating crone, compensation of victims of crime and so on.

This will be achieved by aiming to:

- Introduce you to the basic principles in criminal law
- Demonstrate the requirements or the elements of a crime . Find out who are the parties to criminal activities
- Know the compensations for victims of crime
- Know the role of the judiciary in convicting criminals.

COURSE OBJECTIVES

To achieve the aims set out above, the course sets overall objectives. In addition, each unit also has specific objectives, the unit objectives are always included at the beginning of a unit and you should read them before you start

working through the unit. You may want to refer to them during your study of the unit to check on your progress.

You should always look at the Unit objectives after completing a unit. In this way you can be sure that you have done what was required of you by the unit.

Set out below are wider objectives of the course as a whole. By meeting these objectives you should have achieved the aims of the course as a whole.

On successful completion of this course, you should be able to:

- Explain what crime is and what action constitutes crimes
- Identify the elements of crime
- Know who victims of crime are
- Know what fundamental human rights are
- Know how the above rights are violated
- Know the procedure for enforcing those rights above
- Find out how victims of crime are compensated
- The role of the police in investigating crimes
- The role of the courts in the administration of criminal justice
- Treatment of victims of crime in criminal justice system etc.

WORKING THROUGH THIS COURSE

To complete this course you are required to read the study units, read set books and read other materials by the NOU. Each unit contains self-assessment exercise and at points in the course, you are required to submit assignment for these exercises will assist you in achieving the stated learning objectives of the individual units and of the course.

ASSIGNMENT FILE

In this file you will find all the details of the work you must submit to your tutor for marking. The marks you obtain for these assignments will count towards the final mark you obtain for this course.

There are six assignments in this course. The six course assignments will cover

	(Units)
Definition of Crime and role of victims in crime	(1 & 2)
Treatment of victims and Fundamental Human Rights	(4 & 5)
The Role of the Police in Crime and enforcement of Right	(8 & 9)
The Role of the Courts in trial and sentencing	(11 & 12)
Universal Declaration of Human Rights and Constitutional Rights of the Offender.	(13 & 14)

Judicial Characteristics to Individual Fundamental Human Right in Nigeria (6)

PRESENTATION SCHEDULE

The Presentation Schedule included in your Course materials gives you the important dates for the completion of tutor-marked assignments and attending tutorials. Remember you are required to submit all your assignments by the due date. You should guard against falling behind in your work.

ASSESSMENT

There are two aspects to the assessment of the course. First are the tutor-marked assignments; second, there is a written examination. The work you submit to your tutor for assessment will count for 50% of your total course mark.

At the end of the course you will need to sit for a final written examination of also count for 50% of your total course mark.

TUTOR-MARKED ASSIGNMENTS (TMAS)

There are five tutor-marked assignments in this course. You only need to submit four of five assignments. You are encouraged; however, to submit four of the five marks will be counted. Each assignment counts 12.5% towards your total course work.

Assignment questions for the units in this course are contained in the Assignment File. You will be able to complete your assignment from the information and materials contained in your set books, reading, and study units.

FINAL EXAMINATION AND GRADING

The final examination CSS 452 will be of three hours' duration and have a value of 50% of the total course grade. The examination will consist of questions which reflect the types of self-testing, practice exercises and tutor-marked problems you have previously encountered. All areas of the course will be assessed.

Use the time between finishing the last unit an sitting the examination to revise the entire course. You might find it useful to review your self-tests, tutor-marked assignments and comments on them before the information from all parts of the course.

COURSE MARKING SCHEME

The following table lays out how the actually course marking is broken down.

Assessment	**Marks**
Assignment 1-5	Five assignments, best four marks of the five count at 12.5% each - 50% of the course mark
Final Examination	50% of overall course marks
Total	**100% of course marks**

COURSE OVERVIEW

This table brings together the units, the number of weeks you should take to complete them, and the assignments that follow them.

	Title of Work	Weekly Activity	Assessments (end of unit)
1	Definition of crime	4	Assessment I
2	The Role and characteristics of victims of Crime	4	
3	Psychological impact of victimization	3	Assessment 2
4	Treatment of victims in the criminal justice system	6	
5	Fundamental Human Rights 1	5	Assessment 3
6	Fundamental Human Rights 2	3	
7	Violations of Fundamental Human Rights	4	

8	The Role of Law enforcement agents in crime	3	Assessment 4
9	Enforcement Procedure for Human Rights violations Investigation & Services	4	
10	Contemporary development in policy and services to address rights of needs of victims	2	Assessment 5
II	The Role of the Judiciary in criminal proceedings	2	
12	Sentencing the offender: Aims and Objectives	2	
13	Universal Declaration of Human Rights	3	
14	Statutory Power of the Police in check mating Criminal Activities.	2	
15	Judicial Characteristics to Individual Fundamental Human Right in Nigeria	2	
16	Definition: Meaning and Classes of Human Right	2	
17	Introduction to Human Right and Civil Liberties	2	
18	Historical Antecedents of Human Right in Nigeria	2	
19	Human Right as a Universal concern	2	
20	Fundamental Objectives and Directives Principles of State Policy, Fundamental Right and Fundamental Human Rights Cases	2	Assessment 6
	TOTAL	**59**	

HOW TO GET THE MOST FROM THIS COURSE

In distance learning the study units replace the university lecture. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at your own pace and at a time and place that suit you best.

Think of it as reading the lecture instead of listening to a lecturer. In the same way that a lecturer might set you some reading to do, the study units tell you when to read your books or other material, and when to undertake computing practice work, just as a lecturer might give you an in-class exercise, your study units provides exercises for you to do at appropriate points.

Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit and how a particular unit integrated with the other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit you must go back and check whether you have achieved the objectives. If you make a habit of doing this you will significantly improve your chances of passing the course.

The main body of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a Reading section.

Self-tests are interspersed throughout the units, and answers are given at the ends of the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each self test as you come to it in the study unit. There will also be numerous examples given in the study unit; work through these when you come to them, too.

The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutor or post the question on the WebCT OLE's discussion board. Remember that your tutor's job is to help you. When you need help, don't hesitate to call and ask your tutor to provide it.

1. Read this Course Guide thoroughly
2. Details of your tutorials, and the date of first day of the semester is available from WebCT OLE. You need to gather together all this information in one place, such as your dairy or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates for working or each unit.
3. Once you have created your own study schedule, do everything you can to stick to it. The major reason that students fail is that they get behind

with their course work. If you get into difficulties with your schedule, please let your tutor know before it is too late for help.

4. Turn to Unit 1 and read the introduction and the objectives for the unit.
5. Assemble the study materials. Information about what you need for a unit is given in the 'Overview' at the beginning of each unit. You will almost always need both the study unit you are working on and one of your set books on your desk at the same time.
6. Work through the unit. The content of the unit itself has been arranged to provide a sequence for you to follow. As you work through the unit you will be instructed to read sections from your set books or other articles. Use the unit to guide your reading.
7. Keep an eye on the WebCT OLE. Up-to-date course information will be continuously posted there.
8. Well before the relevant due date (about 4 weeks before due dates), assess the Assignment File on the WebCT OLE and download your next required assignments carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the exam. Submit all assignments no later than the due date.
9. Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study material or consult your tutor.
10. When you are confident that you have achieved a unit's objectives, you can then start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.
11. When you have submitted an assignment to your tutor for marking do not wait for it return before starting on the next units. Keep to your schedule. When the assignment is returned, pay particular attention to your tutor's comments, both on the tutor-marked assignment form and also written on the assignment. Consult your tutor as soon as possible if you have any questions or problems.

12. After completing the last overview the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in this Course Guide)

TUTORS AND TUTORIALS

There are 20 hours of tutorials (ten - 2-hours sessions) provided in support of this course. You will be notified of the dates, times and location of these tutorials. Together with the name and phone number of your tutor, as soon as you are allocated a tutorial group.

Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and provide assistance to you during the course. You must mail your tutor-marked assignments to your tutor well before the due date (at least two working days are required). They will be marked by your tutor and returned to you\as soon as possible.

Do not hesitate to contact your tutor by telephone, e-mail, or discussion board if you need help. The following might be circumstances in which you would find help necessary. Contact your tutor if.

- You do not understand any part of the study units or the assigned readings
- You have difficulty with the self-tests or exercises
- You have a question or problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and to ask questions which are answered instantly. You can raise any problems encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them.

You will learn a lot from participating in discussions activity.

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MODULE 1

INTRODUCTION:

Unit 1 Definition of crime

Unit 2 The Role and characteristics of victims of Crime

Unit3 Psychological impact of victimization

Unit 4 Treatment of victims in the criminal justice system

Unit 5 Fundamental Human Rights 1

UNIT 1 THE CONCEPT OR IDEA OF CRIME CONTENTS

1.0 INTRODUCTION

Victims of Crime and Human Rights violations is a course you will find very interesting, as it touches on the life of citizens. You may be the victim of crime or the offender or the accused person, which ever side you fall, it is important you know what crime is all about. In this connection, this unit will examine various issues as it touches on definition of crime, the scope

of criminal law, differences between crimes and civil wrongs, the elements of a crime, the requirements in criminal actions, participation in crime, principals and abettors and criminal conspiracy.

2.0 OBJECTIVES

The major aim of this unit is that at the end, you should be able to:

- Define what crime is.
- Know the scope of Criminal law,
- Differentiate between crimes and civil wrongs,
- Know the elements of a crime,
- Find out the requirements of a criminal action,
- Know the parties to a crimes
- Define principals and abettors of crime; and
- Criminal conspiracy

3.0 MAIN CONTENT

3.1 Definition of Crime

The definition of the word "Crime may vary at particular periods in the same country or in different countries. Criminologists have agreed broadly however that a crime is what each society by its laws says is a conduct which breaches the social, moral or other norms of the society and is therefore resented by the said society. In order to express the resentment or criticism of the conduct, the society punishes in one form or another such conduct under the criminal law of the society. A judicial approach to the definition of crime was given as follows, to wit:

> *"the Criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one; is to act prohibited with penal*

consequences? This is, I think, the true test of criminality".

Still on the question or definition of crime, it is often a difficult and an elusive task to give a concise and apt definition of most legal terms. I. E. Okogwu, in an attempt to formulate a precise definition of the word "Law"; admitted:

"Our answer to the question what is law could only be arbitrary for ever since Immanuel Kant sought to define "Law", there has been an unending struggle among jurists to give a universally accepted definition".

The task of giving a comprehensive definition is by no means easier when one tries to define the word ôCrimeôwhich is but only a branch of ôLaw'ô One can however make an attempt at giving a workable definition; to this end, we shall examine two major approaches to this definitional quagmire.

1. From the sociological point of view, a crime is seen as an "anti-social" behaviour and encompasses in its preview many acts the conventional lawyer may not regard as anything more than minor deviation behaviours; and
2. From the legal approach, crime is treated or defined as essentially a legal concept and therefore best understood by reference to law.

It is submitted that the second approach is preferable as it eliminates from serious consideration other vices that rightly belong to and should be the concern of other disciples. For instance, lying simpliciter is undoubtedly a vice and a sin against all religions but short of stirring public disorder, it should not be an area for renal legislation.

Taking, therefore, as our reference point the second approach we find section of the Criminal Code defining offences (or crimes) as:

"acts or omissions which render the person doing the act or making the omission liable to punishment under this code".

According to Glanville Williams, a famous English Jurist, crime:

"Is a legal wrong that can be followed by criminal proceedings which may result in punishment"

Allen Gledhill, whose definition seems more comprehensive sees crime as "a human conduct which the state decides to prevent by threat of punishment, liability of which is determined by legal proceedings of a special kind".

The word Punishment appears in both definitions above and this suggests that whenever a human conduct is prescribed with penal consequences, such conduct is more often than not criminal. To other writers, one needs to do as far as crime is concerned, is to observe the proceedings of any given case, and Okonkwo and Naish believe that what marks out a criminal case from a civil one is essentially the different procedures used or adopted. The two writers above are of the opinion that the legal definition of a Crime is essentially a definition in terms of procedure.

Self— Assessment Exercise 3.1

Attempt a legal and sociological definition of Crime

In discussing the scope of criminal law, there are three basic questions we need to ask and answer.

1. Does a human conduct become criminal in the basis that it conflicts with the moral code of a given society?
2. Does a human conduct become criminal because it results into injury to members of society? And what is the meaning of "injury? In other words does it have to be a physical injury?

3. Is the justification for categorization of certain acts as crimes none other than that the rulers of the day decide to classify and call them so?

In answering the above questions, we shall examine three schools of though as far the subject in issue is concerned.

The Moralists' School

This in view is to the effect that crimes are essentially sins and /or immoral acts and the entire field of criminal law could be seen at its best when it sticks closely to the notion of sin. Lord Denning had said that "in order that an act should be punishable as a crime, it must be morally blame worthy. In other words, it must be a sin. To Devlin the society is at liberty to use Criminal Law to stamp out immorality. This is of the opinion that more often than not, societies disintegrate from within rather than from without and just as organized society e.g. societies having discernible governmental institutions, cannot tolerate subversion, it should not tolerate vice. Devlin remarked further that "The suppression of vice is as much the law's business as the suppression of subversion".

The above point is valid to a certain extent. It is not gainsaying that most of the heinous crimes are also sins. To this end, murder, rape and theft have been regarded as grave differences from earliest times and their categorization as such by modern criminal law is quite appropriate. Moreover, the contention that criminal law exists to prevent injury i.e. Physical injury, per se is untenable for if it were so, sexual promiscuity (e.g. running a brothel, fornication so and could not have been within the ambit of the criminal law). It will also be readily accepted that even if one were to try to separate what is criminal from what is immoral, such a separation cannot be water-tight as both law and morality fashion a

society towards greater security and contentment In the case **of R vs. Dudley & Stephen (1884) 14 QBD 273, Lord Coleridge opin ed:**
"The absolute divorce of law from morality would be a total consequence".

Utilitarian School

This school argues that crimes should be estimated on the basis of what is injurious to society. They contend that the function of the criminal law should be restricted to the prevention of injury and that the penal law should not be invoked to enforce a moral principle per se. Perhaps, the most notable of the early proponents of this view point was John Stuart Mills, who advocated that the only purpose for which power can be rightly exercised community is to prevent harm to others. J. S. Mills argued that: "A person's own good either physical or moral is not sufficient warrant. He cannot rightly be compelled to do or for bear because, in the opinion of others, to do so would be wise or even right".

A modern advocate of the Utilitarian approach is H.L.A. Hart, whose view is that no penal sanction can be justified when meted to some one whose conduct was not directed and injurious to a particular victim. The Utilitarian view now dominates Western jurisprudence and, from some indications has found some follower even in Nigeria.

The Positivists' School

The Positivists simply states that a Crime is whatever act or omission that rulers of the day proscribed by threat of penal consequences. In this connection, though any promulgative authority could do well to be guided by the two views already explained, the modern state can term certain acts or omissions as criminal without proof of injury in the strict sense and with little or no reference to the notions of sin or morality. For instance, under the road traffic regulations which create offences, such actions as

blaring of one's car born repeatedly may attract a penal sanction even through the average Nigerian motorist sees nothing abnormal about it. On the other hand, incest which is undoubtedly viewed as immoral by all communities in habiting the Southern States of Nigeria is not making a crime in the Criminal code and perhaps, this may be viewed as a lacuna in this aspect of the law. Likewise, adultery is not a crime under the criminal code as it is under sections 387 and 388 of the Penal Code applicable in the Northern States of Nigeria.

It must be realized that each of the three schools has some truth and a crime is actually a combination of all the three. Admittedly, a state has an unfettered discretion to create offences but it behaves the nailing class to seriously think about enforcement. An act made criminal or a penal sanction attached to a crime which the ordinary members of society cannot justify from the moral stand point, cannot command respect or acceptance and will be difficult to enforce. On the other hand, though crime and morality have had overlapping jurisdictions over the years, their areas do not necessarily always overlap. To this end, though most crimes are mala in se i.e. drawn from the notion of what is sinful or immoral, the new category of offences being created daily by statutes are clearly mala prohibita and may have little or no relationship with sin. It is therefore reasonable to conclude that both the criminal law and morality do help to fashion a society to the achievement of peace and justice but the former can exist without the latter and vice -versa.

Self-Assessment Exercise 3.2

Discuss the three schools of thought in relation to the scope of criminal law.

3.3 Distinctions between Crimes and Civil Wrongs

1. A Crime is often said to be a public wrong in the sense that when any crime is committed, it is first and foremost against the state acting as a custodian of people's liberty. The person injured or killed or whose purse is snatched is only wronged as a secondary party. At least two results follow from this standpoint. Firstly, since crime is a public wrong, it is in theory at least possible for any member of the public to prosecute the offender. In practice, however, this hardly obtains as a state organ; normally the police take over the prosecution on behalf of the public. In contrast, in civil cases, only the wronged party e.g one who suffered a tort can sue. Secondly, if proceedings are commenced at any stage before judgment is given the state can enter a *nolle prosequi* to terminate either the prosecution itself commenced or order the discontinuance of a private prosecution.

In this connection section 174 (1) (a - c) of the 1999 Constitution of the Federation Republic of Nigeria (hereinafter referred to as (CFRN), provides:

"The Attorney-General of the Federation shall have power,

(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any act of the National Assembly;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or persons; and

(c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

2. The Standard of proof in a criminal trial is higher than that which is required in a civil case. Put differently, greater amount of effort is required to adduce cogent evidence to prove guilt before the prosecution can secure a conviction. In civil case, the proof required of the plaintiff is satisfied if, on balancing his evidence against that of the defence, a court can say that the evidence the plaintiff tendered was more probably the plausible explanation of what had transpired. Thus, lawyers speak of the burden required of the plaintiff in a civil case as being based "on the balance of probabilities" whereas the prosecution in a criminal case or trial must in accordance with the provision in section 137 of the evidence Act, prove its case "beyond a reasonable doubt".
3. The end result of a criminal trial is the certainty of meting out punishment which before the advent of modern theories of punishment was very often primitive. In civil cases, the intention is to compensate or award damages to the party wronged.
4. In a Criminal trial, the court after pronouncing the accused guilty goes ahead to enforce its judgement, whereas in civil cases, the plaintiff in whose favour a judgment is given applies for its execution.

Self- Assessment exercise 3.3

Explain the terms "Beyond Reasonable doubt" and "Balance of Probabilities in respect of Criminal and Civil cases.

3.4 The Elements of a Crime

The Actus Reus

It is a well known fact that as long as a "conduct" rest in intention alone, it is not punishable as a crime, for only God knows the evil machinations of

individuals. Thus the modern criminal law knows no equivalent of the biblical stand in Matthew Chapter 5 verse 28 to the effect that if you saw a woman and wished in your heart that you had sexual intercourse with her, you had already committed adultery. There must be in any modern crime a willed muscular movement culminating in a result which the law forbids i.e. Reus. The actus reus is the prohibited action or acts.

Mens Rea

Before the 13th century in Britain a person who produced a prohibited consequences ie. the actus reus, was held liable with no enquiry made as to whether his mind was blameworthy. Later, however, thanks to the influence of the church, it was increasingly felt that to convict such a person would be unfair and would violate all notions of justice. Thus, the concept of mens rea was developed in the 13th century with the result that save for few offences that are of strict liability, no person can now be convicted of an offence without any enquiry as to the condition of his mind when doing the prohibited act. To this end, Mens rea or for murder, malice aforethought can be loosely defined as the wicked, malicious or evil mind of the accused person i.e his intentions or guilty mind.

Self-Assessment Exercise 3.4

Differentiate between the prohibited act of the accused person and the intention of the accused.

3.5 Participation in Crime - Joint Acts

Very often, crimes are committed by more than one person and the question that arises in these situations is, to what extent is each participant liable for the criminal act? Here are three types of parties or participation in crime.

1. Joint Acts:

When two or more persons with a common intention to commit an offence go ahead and commit it, then each of them is liable to the same extent as if he alone commits the offence. Section 79 of the Penal Code provides: "When a Criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone". Thus is the case of *R .v Atanyi,* where two robbers - one was armed and the other was not attacked and killed a girl, the West African Court of Appeal (WACA) held that in such situations both robbers can be held liable even though on the facts of the case only one was held liable.

In *Garba Vs. Hedejia,* two persons attacked and killed a girl. The trial court held that they had a common intention to cause the girl's death and so they were both held liable.

2. Principals and Abettors

A person can commit an offence if not by his hands in which case he is the principal, then through other persons and under the Penal Code, these others are known as abetted persons. The law in the Northern States of Nigeria is in fact quite similar to what exists now in Britain, for the 1967 Criminal Law Act has dropped the terminologies of "Accessory before" or "After the fact" which existed under the common law. Thus, under the Penal Code, a party is either a principal or an abettor. One can abet an offence by three main methods. Section 83 of the Penal Code provides: "A person abets the doing of a thing who:

a. Instigates any person to do that thing; or
b. Engages with one or more other person or persons in any conspiracy for the doing of that thing; or
c. Intentionally aids or facilitates by any act or illegal omission the doing of that thing.

Once there is an abetment, it is no defence to the principal that the act abetted is not committed, section 84 of the Penal Code. For instance, A gave B instructions to burgle a shop and remove therefore expensive electrical goods. Unknown to both, that shop was gutted by fire in the evening and all the goods burnt. B turns out with house-breaking equipment for the operation at midnight and is arrested at the sce ne.

B, later confesses his mission. Here A has abetted the offence irrespective of the fact that it was physically impossible for B to commit the offence abetted.

3. Criminal Conspira cy

So long as an intention to commit a crime rests on one person alone, the Criminal law-will not interferes. However, if several persons, in concert, form an intention to commit a crime, then the state intervenes and charges them with the offence of conspiracy. The rationale is that the modern state in its attempt to prevent criminal conduct does not need to fear the evil machinations of one individual but it is fearful of a group. Section 96 of the Penal code provides inter alia:

When two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means such an agreement is called Criminal Conspiracy"

In Attorney-General of the Federation Vs Titilayo & others, it was held that a conspiracy charge can lie even though one of the conspirators has run away. Likewise it is not necessary in proving a conspiracy, that the parties to the conspiracy met under one roof and agreed to commit the main offence. It is also immaterial that some conspirators are not known to one another. In Rvs Cambell Blair C. J. remarked a nd said:

"Such agreements may be made in various ways. There may be one person to adopt the metaphor of counsel, round whom the rest revolve. There may be a conspiracy of another kinds, where the

metaphor would be rather that of a chain. Mr. A. communicates with B, B with C, C with D and so on to the end of the list of conspirators".

Self-Assessment Exercise 3.5

Highlight and discuss the various method of being a party to a Crime 4.0

4.0 CONCLUSION

We have been able to explain what crime is or what constitutes a crime. The definition here may not be an exclusive one, reason being that most legal terms lack or suffer definitional problem. However, we made attempt to give working definition of the word Crime. Our major source was the criminal code, judicial pronouncements and other legal materials.

5.0 SUMMARY

In this unit, we dealt with the meaning or definition of Crime, the scope of criminal law, the elements of a crime, the distinctions between Crimes and Civil wrongs. We concluded by examining the parties to a crime and the various methods of participating in criminal activities.

6.0 TUTOR - MARKED ASSIGNMENTS

1. Attempt a statutory and judicial definition of the word Crime.
2. Whether Criminal or Civil case, the State is involved one way or the other in the prosecution or litigation of such a case. Discuss how the state is involved either in Criminal or Civil case.
3. Discuss and proffer solutions to how Criminal activities can be eliminated from the Nigerian society.

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UNIT 2: THE ROLE AND CHARACTERISTICS OF VICTIMS OF CRIME

1.0 INTRODUCTION

The role of victims of crime in prosecuting the offender cannot be overemphasized. This is because it is the victim who had suffered emotional, psychological torture during the criminal incident, so the victim would be in a better position to relate exactly what transpired at the time of the crime. So the various issues that will be examined in this unit are the role and characteristics of victim of crime, who a victim of crime is, justice in a criminal case, problems of identification of offenders by victims, delays in trials and of course, compensation for victims of crime.

2.0 OBJECTIVES

It is believed that by the end of this unit, you should be able to:

- Know who victims of crime are,
- Identify the role of victims of crime
- Know how victims are compensated
- Appreciate the problems of victims identifying offenders,
- Know the delays in prosecuting the offenders

3.0 MAIN CONTENT

3.1 Who is a Victim of Crime?

A Victim of Crime is a person who is sacrificed, injured, destroyed, cheated, defrauded or swindled as a result of the criminal intent or behaviour of another person, which behaviour is punishable by the criminal law of the society in question.

There is nothing which is a crime if it is not abhorred by the society in which such conduct operates or if it is not required for the improvement of the society. A society starts in having a moral norm which is usually in operation together with a social norm. The standard of behaviour is created by the society and any breach of the standard may be considered as so serious as to warrant some form of punishment. Those who suffered as a result of breach of this standard of behaviour by the failure to act or omission of some other persons are regarded as victims of crime.

In all cases, the welfare of the society and its citizenry is paramount and must transcend over the wishes of an individual (criminals) member of the society. Law, therefore, in effect can be said to be the expression of a society as to what should be preserved or prohibited, and law as an instrument for penalizing those who have injured others. The society must in addition to punishment of offenders, provide welfare for victims of crime in order to help them overcome the trauma and psychological pain they went through during the ordeal. A society, whether as a small community or a nation, is a living and developing institution, the behaviour of its members must also by necessity form part of the living and developing institution and must therefore be developing.

Self-Assessment Exercise 4.1

Who is a victim of crime, and what should the society do in order to help them overcome their trauma.

3.2 Justice in a Criminal Case

The administration of justice demands parity of treatment. In a criminal case, it begins right from the investigation of the crime upon the police requiring or inviting a suspect or offenders upon being taken into custody to make a statement. Parity of treatment in the administration of justice demands the maintenance of a complete balance in the scale of justice. The law recognizes the right of every person, victims and offenders alike, in the trial of cases. The courts have been established to protect the right of people. It has been established in respect of criminal cases to protect the right of the accused, the right of the victim of crime and the right of the society. It is implicit in the concept of fair hearing as an aspect of natural justice that the court should give equal opportunities to both sides to the conflict, and in a criminal trial under our adversary system, to presume the innocence of the accused until he is proved guilty.

In the case of **Sunday Okoduwa vs The State**, the court stated that ñthere are certain fundamental norms in the system of administration of justice we operate. The system is the adversary system, in contradistinction to the inquisitorial system. In that adversary system, parties, with their counsel, and the judge have their respective roles to play. Basically, it is the role of the judge to hold the balance between the contending parties and to decide the case on the evidence brought by both sides and in accordance with the rules of the particular court and the procedure and practice chosen by the parties in accordance with those rules. Under no circumstances must a judge under the system do anything which can give the impression that he descended into the arena of conflict, as obviously his sense of justice will be absurdé ò

The above observations make it clear that a criminal trial conducted in the context of our adversary system of administration of criminal justice does not authorize a trial judge to take sides in the conflict by usurping the function of either the prosecutor or the defense or to turn an investigator or an inquisitor or to protect the interests of the victim beyond the role permissible in that system. The differences between an inquisitorial method of trying an accused person and the accusatorial method is that in the later system of criminal trial which we operate in Nigeria, the judge

as umpire is not expected to descend into the arena of conflict. It is both the Constitutional duty imposed on the court and the right conferred on the accused by the constitution to ensure the purity of our criminal justice administration that the presumption of innocence of the accused is maintained inviolate.

There is that possibility and it has happened in a number of cases, where the victim is not only wrongly arrested but prosecuted and convicted. One of the problems of a victim could be that of identifying the criminal and this at times could involve an identification parade, in which the victim is required to identify the person who attacked him or who otherwise committed the offence in question. But because of the secrecy with which criminals perpetrate their crimes, this has in many cases deprived the prosecution of eye witnesses who could identify the criminals. This has also in many cases, resulted in the non-detection of the crime or the criminal to the annoyance or dissatisfaction of the victim who in such occasions considers that our administration of criminal justice is unsatisfactory or that the police have not carried out their investigation thoroughly.

In other cases, where the accused is arrested and tried, but he is discharged or acquitted by the court because the prosecution has failed to prove the case beyond reasonable doubt, or because the charge is dismissed by the court on a technical ground, the victim in many cases considers that justice has not been done to him. In this regard, it has been said that:

> *"Prosecuting counsel should look on themselves not as advocates but as ministers of justice and their task is not to secure convictions but to help in the administration of justice"*

This must be so because there is a presumption in law in favour of the liberty and innocence of the subject until he is proved guilty and the right to silence. Cases do occur when one person sees another in the very act of committing a crime or who is the victim on whom or against whom a

crime have been committed, is accused of having committed a crime, and arrested and charged. In such a case the normally expected re-action of the person so wrongly arrested, is not to keep silent but to open his mouth at the earliest opportunity and explain that he was mistakenly accused and identified. It will be wrong and dangerous that he, the victim so arrested and charged in those circumstances, should through the exercise of arrest, police investigation and charge and arraignment before the court remain silent without speaking, or giving an indication that he was wrongly identified, and for him not to name the true criminal if he can.

Nonetheless, the courts should therefore always see that justice is never defeated by technical rules of procedure. If justice is defeated, this could create problems for the victim. Those rules should be seen as subservient hand maids to justice not as omnipotent masters at war with justice. In order that many victims of crime could be made to find great satisfaction with criminal administration of justice, and not suffer from maladministration thereof, few example, where an accused rests his case on a no case submission, the prosecution's case calls for some explanations which only the accused person can give, and the accused decides to rest on a no case submission, the trial court must not be deterred by the incompleteness of the tale resulting from the unwillingness of the accused to testify and from his exercising his right of silence, from drawing the inferences that properly flow from the evidence it has got, not dissuaded from reaching a firm conclusion by speculation on what the accused might have said had he testified.

Self-Assessment Exercise 4.2.
Discuss in brief the role of the victim during trial in criminal cases.

3.3 Problems of Identification by Victims

One of the major issues in criminal cases is the problem of identification of the criminal by the victim. It is settled law that since the burden of proving the guilt of an accused person beyond reasonable doubt lies on the prosecution, and does not shift once the defence sets up an *alibi*, it is for the prosecution to lead evidence to disprove it. A court of trial faced with

evidence tending to show that the accused person was somewhere else at the time of the commission of the crime is under a duty to test such evidence against the evidence led by the prosecution in rebuttal; and if on the whole the court is in doubt as to the guilt of the accused, such accused must enjoy the benefit of such doubt and be acquitted.

In the case of **Samuel vs. The State**, where the victims of a robbery had not mentioned the names of the persons who robbed them to the police when they first made their statements and a bogus identification parade was conducted by the police, Oputa JSC, as he then was, in castigating the police that they were not entitled to assist the identification of suspected person already under arrest observed as follows:

"… Here, the appellant was under arrest after being beaten up by members of the Civil Defence as an armed robber. The prosecution witnesses were then brought to the police station and asked is this the man" what will be the natural answer but Yes' – another case of res ipsa loquitor (the facts speak for itself) but now in the criminal law. The impropriety of the method used in the identification of the appellant was reduced into a farce when he considers the evidence of the 2nd P. W. William Emeurude about what happened on the night of the robbery; "Policeman… came in a beetle car and asked if we know Samuel Bozin and we replied Yes? They asked if we could identify him if we saw him. We replied "Yes".

What was it that was being identified: The Robber or Samuel Bozin?

> *"The identification of suspected persons must be very carefully conducted and it is very wrong to point out the suspected person and ask "is that the man?" The usual and proper way is to place the suspected person with a sufficient number of others and to have the identifying witness pick out the accused without any assistance… This is what is called identification parade. I simply cannot put into any legal compartment what was done in this case. A parade with only the appellant on parade is definitely not an identification parade known to the*

law… Also it is highly improper to invite witnesses to identify the appellant not mixed up with other people".

Dealing with the failure of the victims to name the appellant to the police at the earliest opportunity, **Obaseki JSC** as he then was said:
ñIt is therefore a surprise that in the light of the evidence that the robbers were not marked and that the appellant played an active part in the robberyé not one of the prosecution witnesses 1-6 mentioned his name to the police at the earliest opportunity. Not even the 1st batch of policemen came to the scene of the robbery and asked whether they know Samuel Bozin and any of them jump up and say óAh! He was one of the four persons who came to rob us? It was not even until they saw him in the police custody before the P. Ws 1-6 identified him and accused him of being one of the robbers. The logical deduction or inference from such identification in the circumstances described is that the identification is faulty and unsatisfactory. Its evidential value is reduced to nilò

There are occasions where a failure by the police to check an alibi may cast doubt on the reliability of the case for the prosecution. But in a case where the accused is identified by an eye witness who has an opportunity of knowing him thereby, and who points the accused out in an identification parade and also testifies at the trial, there will be a straight issue of credibility and the judge will consider both the evidence of alibi and the prosecutionôs evidence in rebuttal, and determine whether or not the prosecution has proved its case beyond reasonable doubt. In some cases, where a witness sees a suspected person and calls the police to arrest him, identification is not only unnecessary but a superfluous formality.

Self-Assessment Exercises 4.3.

Conduct a comprehensive research on the legal and proper procedure to follow before, during and after identification parade.

3.4 Problems of Delay in Trial and Restitution: Effect on Victims.

The delay in the trial of criminal cases arising in the administration of justice in our courts creates enormous problems for victims of crimes. Such delay could affect the return or delivery to him upon conclusion of the trial and upon an order of the court or tribunal, of any moveable property or document produced before the court or tribunal to which a victim is entitled.

By virtue of the provisions of section 357(1) of the Criminal Procedure Code, the court has power when an enquiring or trial in any criminal case is concluded to make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person appearing to be entitled to possession thereof of any moveable property or document before it or in its custody or regarding which an offence appears to have been committed or which has been used in the commission of any offence.

The effect of the provision is that if some monies or goods of the victim are recovered by the police during investigation and are produced or tendered in evidence at the trial or are otherwise in the custody of the court, it is only when the criminal case is concluded that an order for its return or delivery to any person appearing to be entitled thereto could be made by the court or tribunal. In some cases even when there had been delay in the trial, and the trial is at long last concluded, the court fails to make an order for such return or delivery of the monies or properties to the victim who it finds entitled thereto, or makes inappropriate order in that behalf.

Self-Assessment Exercise 4.4.

What is the jurisprudential effect of section 357(1) of the Criminal Procedure Code?

3.5 Compensation For Victims

Up till now, our laws have not made any óadequateô provisions for the compensations of victims of crimes, as distinct from órestitutionô Justice, it has always been said, has not got two weights and measures, one for the

accused and another for the victims, who in a criminal case is represented by the state, i.e. the Prosecution. The question however, is this: Has the state provided adequate social justice to the victims of crimes by merely providing for the trial and punishment of the suspect and the restoration of the recovered property of the victims of crime? The answer is ñNoò

Our society has not done so. It has failed to provide adequate or satisfactory social justice to the victims of crimes, in so far as a scheme for the compensation of victims has not been established. A beginning ought to be made. There is need for a criminal injuries compensations under which victims of crime who sustain injuries could be awarded ex-gratia award of public bounty from public funds at the discretion of the Board establishment to manage and control the scheme. More and more crimes are committed every day in our country and injuries are caused to innocent citizens.

In England, the Criminal Inquires Compensation Scheme was established in 1964 under the royal prerogative to make compensation to the victims of crime of violence. The compensation is made ex-gratia out of public purse, and the scheme is administered under the Criminal Inquiries Compensation Board. The Board is charged by the crown, with the duty of distributing the bounty of the crown to those who sustain injury directly attributable to a crime of violence or to assisting in apprehending an offender or preventing an offence. The Board has discretion in making or refusing to make an award, when a victim applies for such award. But its decision is subject to judicial review by the courts. The time is ripe, in fact, now, we think, for such a scheme to be established in this country and we recommend that a Board be set up by the Federal and State Government to study the Scheme as it operates in other jurisdictions, especially in the U.K, and make recommendations. There should be a Criminal Inquires Compensation Board in each State of the Federation and in Abuja the Federal Capital Territory.

In making the recommendation for the establishment of such a Board, we must emphasize that the character, way of life and other circumstances of a victim, apart from the injuries received from the crime, will be taken into

account. This is to ensure that the scheme, intended to provide compensation for criminals. In the case of **R vs. Criminal Inquires Compensation Board exparte Thomp-stone and exparte Crowe,** the applicants who applied for compensation under the scheme were found to be victims of unprovoked attacks on separate and unconnected occasions. Both of them had a long list of previous convictions which they disclosed in their applications to the Board when looking for ex-gratia compensation.

The Board found that there was no connection between the attacks in question and the applicantôs previous criminal way of life, but it rejected their claims, on the ground that by virtue of provision in the scheme, it was inappropriate to award compensation from public funds to them, having regard to the ñcharacter, conduct and way of life of the applicantsò. The applicant applied for judicial review of the Boardôs decision contending that the Board had no jurisdiction on those grounds to reject the claim in so far as there was no connection between the injury complained of and the victimôs character, conduct and way of life. The judge dismissed their application. On appeal to the court of Appeal; the decision of the judge was upheld.

Sir John Donald M. R. (Master of the Roll), after reviewing each applicantôs record of convictions for dishonesty before and since the injury (which he said is a bad one) observed thus in concluding his judgment; to wit:

> *"In each case, although different categories of circumstances can be taken into account, the issue is the same. Is the applicant an appropriate recipient of an ex-gratia compensatory payment made at public expense? As with all discretionary decision, there will be cases where the answer is clear one way or the other and cases which are on the border line and in which different people might reach different decisions. The court has left the decisions to the Board and the court can and should only intervene if the Board has misconstrued its mandate or its decision is plainly wrong. Neither can in my judgment be said in the present appeals".*

Self-Assessment Exercise 3.5

Write a memorandum to the Governor of your State, stressing to him the need to set up Criminal Injuries Compensation Board in the State.

Give examples of jurisdictions already operating this scheme in your memorandum.

4.0. CONCLUSION

The victims of crimes as been shown in this unit are confronted by many problems in the administration of justice, problems of identification of suspects, restitution of goods, delays in trial in particular. But those among them who sustain injuries directly attributable to a crime of violence or to assisting in apprehending an offender or preventing an offence, deserve ex-gratia bounty from the state.

5.0 SUMMARY

We have explained who a victim of crime is, justice in criminal case, the problems of identifying a particular suspect by the victim of crime, delays in the criminal justice administration and the possible compensations for the victims. We also suggested that at the Federal and State levels there should be an established Criminal Injuries Compensation Board to compensate victims of crime ex-gratia if their claims are valid and genuine.

6.0 TUTOR-MARKED ASSIGNMENTS

Discuss in full the factors that are responsible for delay in the trial of Criminal cases in Nigeria. What are your suggestions to these problems?

7.0 REFERENCES/ FU RTHER RE ADINGS

Sunday Okoduwa vs. The State (1988) 2 N.W.L.R. 233, at 354

Edet Akpan vs. The State (1986) 3, N.W.L.R, 225

Samuel Bozin vs. The State (1985), 2, N.W.L.R, 465

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UNIT 3: PSYCHOLOGICAL IMPACT OF VICTIMIZATION

1.0 INTRODUCTION

Victims of crime include not only persons but also institutions and organizations, but when we talk of psychological problems, we are limited to inter-personal offences, as we know more about psychology of human beings; and both victims and offenders can be more readily identified. This is necessary and relevant especially in the context of restitution. These inter-personal offences include theft, robbery, armed robbery, burglary, physical sexual assault etc. They may be classified into loss of or damage to property and violation of the person, assault and battery.

2.0 OBJECTIVES

The major aim of this unit is that at the end, you should be able to know:

- The psychological trauma victims of crime go through;
- Victims of loss or damage to property;
- What voluntary organization can do in preventing crime;
- How victims of organized crimes are compensated;
- The suggested solutions to the problems of victims of crime.

3.0 MAIN CONTENT

3.1 Victims of Loss or Damage to Property

The psychological sense of loss vary in degree depending on how much the property is an extension of the person in the victims perception. Damage to a fence or loss of money may not carry the same impact as loss of a wedding ring or heirloom ï which may be less in terms of monetary value. Breaking into a bedroom will be regarded more psychologically traumatic than breaking into a sitting room as a bedroom connotes more privacy, security and intimacy than a sitting room Section 37 CFRN 1999. Therefore in addition to what material loss that may be sustained, the psychological trauma will be more severe in the case of breaking into a bedroom.

Where the self esteem of a person depends on his material wealth, as it indeed contributes significantly to self esteem, and standing in the community, the loss or appreciable reduction of such material wealth through criminal act of someone else like robbery, constitute serious psychological trauma and diminished material security.

Another dimension is added to this if it is a case of armed robbery ï as this may lead to violation of the person and threat to life, which constitutes the second category of victims. This category ranges from physical harm to sexual assault and murder. Sex is the most intimate of human physical and emotional inter-personal relationship. To be sexually raped by a strange person is the most severe psychological trauma of all ï apart from the physical pain of forced coitus which may involve bruises all over the body and laceration of the introitus.

There are different points in time at which psychological problems of victims can be considered, and this relates particularly to inter-personal offences especially rape. The offence itself, what happens immediately after and what happens during the court proceedings. The offence itself makes the victims fearful, angry, shocked and helpless. The episode as indicated above will involve physical pain as well as psychological trauma. Immediately after, there is the feeling of loss of virtue, feeling of being

defiled, anger, depression, anxiety, and shame. This state of emotional anguish can linger for varying period depending on what support the victim receives from sympathizers. Where the victim lives alone, she suffers from insomnia and severe anxiety both of which may be reduced by appropriate medication and social network support. There will be the fear and shame of going out because one may be identified as the victim of rape; there is at the same time fear of being alone in the house, lest the offenders came again.

It is not only the victim who suffers. For instance, neighbours of a household which has been the victim of armed robbery also suffer. They are afraid lest it is their turn next. They suffer from insomnia, such that every little noise at night sets them agog. Because of this mental state and insomnia, their performance at work is adversely affected. There are those who are indirectly victimized by the violent death of family members who are direct victims of crime. They suffer from intense emotional trauma of sudden bereavement, and they go through the process of mourning and grieving in addition to the physical and material loss.

The direct victims of crime are also secondarily victimized by the process of the criminal justice system both materially and emotionally. The operators of the system often appear to be insensitive to the suffering and needs of the victims especially the defence counsel in cases of sexual assault and rape. It is painful enough to have to recall the tragic incident, but to suggest that the victim is a prostitute- which is the usual play of the defence counsel is adding insult to injury. Few victims understand their role in court. The whole setting and procedure are intimidating to those who are not familiar with them, especially victims of crime. Some victims feel not only that they have been denied a service, but also that they have been challenged when they are most vulnerable. I was a victim of road accident on one occasion when the defence counsel took advantages of his personal knowledge of me to suggest that I was careless. This is the type of experience of secondary victimization which does not encourage most victims of crime to report to the police. This is why we have focused on the psychological problems of victims in this unit. This is not to play down the

material loss including time loss which is involved in the criminal justice process.

Self-Assessment Exercise 3.1

Narrate the experience of a victim of crime related or known to you and how you were affected by the incident.

3.2 Voluntary Organizations

The role of voluntary organizations in other parts of the world in providing for the needs of the victims of crime and in constituting pressure groups on the government is remarkable. Their advocacy role has been most effective. The formation of such organizations needs to be encouraged and such organization like the Nigerian Society of Criminology which can play even a much wider role can be resuscitated and revitalized. This is pertinent at this point of economic melt down when we are being constantly reminded that government efforts no matter how great cannot suffice for the enormous needs and demands in this and other sectors, and there is need to supplement this with voluntary support.

Self –Assessment Exercise 3.2

List and discuss the role of voluntary organizations in assisting the victims of crime. Mention these organizations.

3.3 Nature and characteristics of Organized Crimes

Long before independent in 1960, individuals belonging to apparently rival play-groups occasionally arranged wrecking disruptions at **Hubert Ogunde's** stagings; and ñorganized criminalsò sometimes printed counterfeit tickets for his plays thus causing him and his troupe to suffer loss and deprivation from ñunscrupulous profiteering by ticket touts.

Today, bank workers connive with one another and/or with computers operators to defraud unsuspecting individuals, governmental and private corporate bodies of millions of Naira, especially with the current Automatic Teller Machine (ATM) system.

In between these two time-differentiated kinds of organized crime, the list can be endless: political, economical/commercial, administrative / professional corruption; bribery, kickbacks, and gratification for public project; fraudulent false accounting; under-invoicing, over-invoicing and transfer-pricing; smuggling; drug trafficking and peddling, prostitute-racketeering; etc. as put by the United Nations document, with respect to its global dimensions: ñalthough illicit drug trafficking probably accounts for the largest share of organized crimeôs criminal transaction, these illegal operations also include weapons, industrial secrets, unlawfully acquired assets and human economic and sexual slavery, to mention some of them.

Unlike the case with common/street crimes, the cost and adverse consequences of the victimization accruing from organized crime are incalculable and inestimable, respectively. According to an assessment in the U.N. document cited above, the magnitude and seriousness of the impact of organized crime on the economic, political and social life of numerous countries cannot be overestimated; and with particular regard to Nigeria, we have put the ñtollò this category of crimes exacts in the country thus:

> ñ*Economically, politically and socio-morally, the cost entails enormous damage to the country's corporate life and existent; the incalculable loss of government revenue; the undermining of the economy, national development and political stability; the debilitating effect on efficiency, effectiveness, worker-morale and productivity; the perversion and frustration of the formal equality provided for by the Constitution and the codes; even the tainting of the national image of the country abroad"*

Relative to the enormity and multi-dimensions of the victimization of individuals, groups of individuals, large segments of the population and the whole society by organized crimes, it must seen paradoxical that their criminal acts are the most difficult to detect or investigate; their perpetrators most difficult to ñcatchò or ñpin-downò by the criminal justice system; and their victims most difficult to locate or

identify in person, time and place. Very much unlike common crimes, their perpetrators, and their victims.

It may be argued that the paradox lies in the recency of concern with organized crime but one should be more than persuaded that the paradox inheres in the character of organized crime itself and in the nature of its victimization. By character, õorganized crime are often managed in accordance with regular business and public administration practices, utilized in the management of legitimate commercial enterprises in the modern world.

By nature, the modal victim of organized crime is one who is a ñ victim even though he may not be conscious of the injury or loss that he has sustained. Such unconscious victimization is common in cases of exploitation, fraud, corruption, and pollution, involving a multiplicity of victimsò Furthermore, the victimization is as remote as it is diffused, special difficulties arise from the fact that often, and the harm is spread over many people and may be cumulative, in both place and time.

Self-Assessment Exercise 3.3

What is organized Crime? Are organized Crimes limited to robbery or murder cases alone? If not, list and discuss other types of organized crimes.

3.4 Compensating Victims of Organized Crimes

All that has been said in the proceeding paragraphs above suggest that organized crimes, as a species of crime in general, deserve specialized and focused enforcement/control attention; that if the victims of organized crimes are to be restituted and/or compensated most of the criminals concerned must somehow be õcaughtò and õpinned-downò and that their victims must somehow be determined and identified. At a start one way of satisfying the indications is to highlight the man identifying features or characteristics of organized crimes in an õoutlineòfashion:

- they are carried out primarily for economic gain and involve some forms of commerce, industry, trade, governmental or corporate services;
- they involve some form of organization in the sense of a set or system of more or less ñformalò relationships between the parties committing the criminal acts;
- they involve either the use or misuse of legitimate forms and techniques of commerce; business, trade, industry or public administration;
- usually, the circumstances of perpetration are subtle or of low-visibility, thus making discover/ reportability difficult;
- usually, the victims are common/ordinary citizens and consumers of goods and services who have no awareness of their victimization;
- typically, but not necessarily, the persons behind the commission of these crimes have social status, political, economic and/or bureaucratic power;
- usually, they are able to influence, either directly or indirectly, official and/or public perception of and reaction to their own criminal behaviour;
- having social standing legitimate or fake in their particular communities and/or larger society, they do anything or everything to avoid actual imprisonment; and
- even though they are ñprofit-orientedò and one averse to economic sanctions, they are usually in good financial standing enough to restitute/compensate victims, if only to avoid imprisonment.

These identifying features or characteristics of organized crimes obviously show that they are different from common/street crimes in nature and character and in magnitude/seriousness of victimization, and the difference dictates a mode of handling and sentencing that must be different from that suggested for common/street crimes.

Self-Assessment Exercise 3.4

What are common / Street Crimes. How are common/street crimes different from organized crimes?

3.5 **Suggested Solution s to the problems of the victims**

After identifying some of the problems faced by victims in an organized crime situation, it is also pertinent to identify some management measures for minimizing these problems. It is the law enforcement perspective therefore that:

- The state should give substantial financial assistance to victims generally and special aid to some categories of victims such as those involved in rape, family abuse and armed robbery. The special aid should be through the provision of victims and witnesses services e.g rape crisis centre and battered wives or husbands centre. These services could also be provided by non-criminal justice agencies like State or Local Departments of Health or other Private Organizations;
- If a victim dies, monetary compensation to cover burial and related expenses should be available to his dependants;
- Our laws should be reviewed so that they can provide some measures of personal relief to victims from payments derived from fines in criminal cases;
- Criminal investigations when interviewing emotionally disturbed victims should be able to provide some support during the victims emotional crisis through guidance;
- Victims must be notified of case progress, key decisions taken during the trial and the sentencing of the offenders;
- the victims should be notified of the release or escape of the offender;
- victims of crime will be more willing to contribute to the apprehensive and conviction of criminals when the costs to them are negligible or borne by the state; and
- police/public relations must improve so as to bring about confidence and trust for one another.

Self-Assessment Exercise 3.5.

What counseling would you give to a young girl of 20 years who has just been raped by K abriel Oyakiromien and is going through emotional crisis?

4.0 CONCLUSION

We have been able to explain several terms in this unit, from victims of loss or damage to property, voluntary organization, to nature of organized crime, compensation for victims of organized crime and suggested solutions to the problems of the victims of crime. It is hoped that our society, will be better for it if only you and I contribute to the total eradication of crimes in whatever form it takes.

5.0 SUMMARY

In this unit, we took a tangent examination at the nature, features and characteristics of organized crimes. We also noticed that organized crimes are different from common/street crimes because of the status of those involved in the organization, management and execution of advanced crime, whatever kind of crime, whether organized or common crime is evil and itôs totally condemnable in its entirety legally, morally and otherwise.

6.0 TUTOR- MARKED ASSIGNMENTS

You have been asked as a student of Noun, School of Arts and Social Sciences, to present a paper on ñThe factors responsible for Criminal activities in Higher Institutions of Learning, especially during examination periodsò

Write your paper for onward transmission to the Vice-Chancellorôs office through the Dean SASS.

7.0 REFERENCES/ FU RTHER READINGS

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UNIT 4: TREATMENT OF VICTIMS IN THE CRIMINAL JUSTICE SYSTEM

1.0 INTRODUCTION

The current worldwide interest in improving the situation of victims of crime is often attributed to the efforts of Margery Fry, a British social reformer. Fry started a movement for the establishment of a special program of compensation of crime victims by the state. The interest engendered by that movement prompted Stephen Schafer to survey the means of making reparations to victims around the world. The movement for reform continued in New Zealand, which in 1983 established the first comprehensive state crime victim compensation program, which made awards to victims of violent Crime for medical and funeral expenses and for lost earning and support. In this unit, we want to consider how victims of crime are treated in our criminal justice system, before, during and after trial, and how adequate compensations are made for them by the state, if any.

2.0 OBJECTIVES

The major objectives of this unit are to examine the treatment of victims of crime from the beginning of trial of the accused until sentence is pronounced by a court of competent jurisdiction. Also, to find out how Nigeria can join the League of Nations in establishing programmes as means of caring for them.

3.0 CONTENTS

3.1 Victims Rights before Trial

Charges in the criminal justice process on behalf of the victim at the pretrial stage include the establishment of requirements that victims receive protection and assistance; that they be informed of their rights; that they have alternatives to the criminal justice system; and that any necessary participation in it be less onerous and more meaningful. To this end, the protection of the victim, it is expected that bystanders at the scene of an emergency give reasonable assistance to persons exposed to or who have suffered grave physical harm, or at least report serious crimes e.g. rapes, murder, or armed robbery to the police as soon as is reasonably practicable. Moreover, in as much as meaningful participation of victims in the criminal justice process requires that they be safe and free from intimidation, several states give them a statutory right of reasonable efforts at police protection. Although threats and injuries to victims are punishable as general assault crimes, most states punish the intimidation of retaliation against victims and witnesses as a separate offence with an enhanced penalty.

This concern for the safety of victims is accompanied by sensitivity toward their needs in recovering from the victimization and in coping with the criminal justice process. In some jurisdictions, for e.g. the United States of America, some states require that Police Officers or prosecutors provide victims with information about state compensation program and social services. This first encounter with the police may also be the last involvement of many victims with the traditional criminal justice system, for many communities have established as an alternative a citizen dispute or mediation centre, like Lagos State.

Victims who remain involved in the traditional criminal justice system are the intended beneficiaries of various victim/witness assistance programs that are sponsored by the state. These programs offer assistance in seeking the prompt return of recovered stolen property, witness fees, and the cooperation of employers and creditors transportation to the court, orientation to court procedures, preparation for testimony, escorts through the court house, and notification of court appearances and cancellations in order to minimize waiting and unnecessary travels. Equally important, victims and witnesses are informed of the progress of the case.

Self-Assessment Exercise 3.1.

Mr. Godswell Ifidonma Oyakhiromena is a notorious armed robber. He robbed Ofoluemadon and Onwubereka on their way to the swimming pool. Oyakhiromiena has been charged to court and standing trial before a high court in Afghanisfan. What are the rights of the victims before the commencement of Oyakhiromena trial and sentence.

3.2 **Victims Rights during the Trial**

Another set of changes in the criminal justice process affects the victim during the trial. For example, in Alabama, the statute changes the law that allowed the exclusion of the victim from the trial of the accused, granting the victim the right not only to be present throughout the trial but also to sit at the prosecutorôs table. Some laws give victims the right to a prompt disposition of the case in which they are involved. In California for instance, a citizen-initiated ñVictims Bills of Rightsò abolished the exclusionary rule and the defence of diminished capacity. Some other laws promote the prompt return of recovered stolen property to the victim by authorizing the prosecution to use a photograph of it as evidence in the trial regarding its theft.

Furthermore, some states in the U.S.A. give the trial judge the discretion to close portions of a trial in order to diminish the fear of witnesses who are afraid to testify. Even states that permit television

cameras at Criminal trials admonish their courts ñto take special pains to protect certain witnesses ï for e.g children, victims of sex crimes, some informants, and even the very timid witness or party from the glare of publicity and the tensions of being ñon cameraò.

Also, in the U. S. A. the taking of testimony through closed-circuit television and video taped depositions has been authorized in many states in order to minimize the trauma of child victims of sexual offences. Moreover, the United States Supreme Court has indicated that courts in determining the rights of a defendant to a new trial because of alleged error may not ignore the interest of the victim in avoiding the ordeal of repeated trials.

Self-Assessment Exercise 3.2

Can Nigeria adopt the United States Criminal Justice System? State your reasons.

3.3 Victims Rights at Sentencing

Another change in the criminal justice process affects victims during the sentencing of the convicted offender. There is the need to inform victims of any contemplated plea agreement, so that they can inform the prosecutor of their views and be present and hear when the judge considers the prosecutorôs recommendation. Some courts voluntarily consider the recommendations of advisory sentencing panels, which at times include the victims of the crimes. It is advisable that the sentencing judge receive and consider a ñvictim impact statementò that is, a summary of an interview with the victim or a written statement submitted by him to the prosecuting attorney, who has the obligation of soliciting the victimôs views. The victimôs statement should include inter alia in the pre-sentence report ñan assessment of the financial, social, psychological, and medical impact upon, and cost to, any individual against whom the offence has been committed.

The requirement of consideration of the victimôs injuries, however, is not the most important issue in the law of sentencing that affects victims. Rather, it is the law and practices regarding restitution by the offender that

should be of utmost importance to the victim. Although, restitution as a condition of probation has long been a sentencing option in some jurisdictions. Until recently, it has been little used, perhaps because of the failure of many probation laws to specify it as a choice, the difficulties of determining appropriate terms, the indigene of most offenders and the problems of enforcement; perhaps because of judicial insensitivity to the needs of victims. Publicity about restitution prompted some states in the U.S.A. to make administrative and legislative changes, including the express authorization of restitution as a condition of probation, parole or work release.

In order to ensure judicial awareness of sentencing options, a law in the U.S. A. requires that the pre-sentence report set forth ñany compensatory benefit that various sentencing alternatives would confer on ñthe victim. Many states in the U.S. and the Federal government even require that the sentencing judge who grants probation order restitution as a condition thereof or state the reasons for not doing so, the California Constitution mandating restitution in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extra-ordinary reasons exist to the contrary.

In other instances, many new restitution programs emphasize service to the victim or the community by offenders without means to make monetary restitution. These programs sometimes involve the victim in the process of determining the amount and nature of the restitution, even to the extent of negotiation with the offender.

In rendering assistance to crime victims in the restitution programs, it should be a requirement of the law that persons convicted of crime be assessed to fee, in addition to any time or term of imprisonment, for the support of state crime compensation. Though, this fee may have small adverse consequences for each offender but it will be used for the benefit of all victims who are eligible for compensation or assistance. It differs from restitution in that, usually it is merely a nominal amount, either a flat fee or a percentage of any fine; as assessed on all offenders, without regard to the amount of any damage inflicted.

Self-Assessment Exercise 3.3.

The Courts should seek the opinions of victims of crime before imposing the appropriate sentence on the offender. Do you agree?

3.4 The Constitutionalization of Victim's Rights.

The Victims bills of right which appear to grant extensive rights to victims in the criminal justice process in the U.S. look deceptive. This is so because the bill virtually nullifies those apparent ñrightò by the vagueness of language in the bill, by extending them only to the extent reasonably possible and subject to available resources; by providing no enforcement mechanisms or by specifying that no cause of action arises for violations thereof.

The unenforceability of the victimôs bills of rights and a desire to give the victim the same symbolic standing as the accused-led to a movement to amend the U.S. Constitution on behalf of the victims. As a result of this amendment in the Constitution, it was said and included that ñLikewise, the victim, in every criminal prosecution shall have the right to be present and heard at all critical stages of judicial proceedingsò Constitutional amendments on behalf of the victim have been adopted in California, Florida, Michigan and Rhode Island. It will certainly not be a bad idea if Nigeria adopts constitutional amendments on behalf of victims of crime.

Self-Assessment Exercise 3.4

Constitutionalization of VictimsôRight in the 1999 Constitution of the Federal Republic of Nigeria is in the right direction. Discuss.

3.5 International Standards Regarding Victim

Although the discussion above has been on the developments in the U.S.A., the movement for improvement of the situation of the victim of crime has made important advances in many Countries, Nigeria is not an exception. For example, regional and international standards have been established on behalf of the victim. For instance, the committee of Ministers of the Council of Europe has issued recommendations of the ñposition of the victim in the framework of Criminal law and procedureò These recommendations concern legislation and practices at the police

level, and in respect of prosecution, questioning the victim, court proceedings at the enforcement stage, the protection of privacy, and special protection of the victim.

The Council of Europe has also issued recommendations regarding assistance to victims and prevention of victimization. Furthermore, the United Nations has adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This Declaration establishes Standards concerning the prevention of victimization, access of the victim to justice and fair treatment, restitution from the offender, compensation from the state, and social assistance toward recovery. Moreover, the Declaration provides standards regarding the victims of abuse of power. To this end, any country desiring to improve the situation of victims can consider not only the experience with such efforts in a variety of individual lands, but also standards that have been developed through the cooperation of many states. Nigeria has to wake up to these international standard as far as victims of crime rights are concerned.

Self-Assessment Exercise 3.5

ñJustice delayed to a victim of Crime is justice denied? Comment

4.0 CONCLUSION

We have been able to take a look at the rights of the victim before, during and at sentencing levels at the time of trial of the offender. We also examined the possibility of constitutionalizing victims rights in Nigeria as it has been done in other jurisdictions; and finally, we looked at the international standards rights of victims. Our major source of information was materials from the United States Jurists.

5.0 SUMMARY

In this unit, we dealt with the issues of victims rights as the various levels of trial of the offender. The treatment of the victim of crime is very crucial before, during and after trial, otherwise a court may be alleged of bias.

6.0 TUTOR-MARKED ASSIGNMENTS

Augustina Youngerman was a victim of rape during her NYSC Programme in Port Harcourt. It was alleged by the defence Counsel that she was a prostitute. Before the trial of the offender, Augustina was never allowed access to her Lawyer, never attended court proceedings as the judge has said that it was not necessary for Tina to be present at the hearing.

Briefly explain to Tina her rights before, during and after trial.

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UNIT 5: FUNDAMENTAL HUMAN RIGHTS 1

1.0 INTRODUCTION

No Modern Society can exist without a system of Laws. The Institution of law is therefore crucial to the social organization of human beings. To this end, the fundamental rights of Nigerians are enshrined in the Nigerian 1999 Constitution. Human rights are part of common heritage of all man kind without discrimination on grounds of race, sex, religious or other differences. These rights, common to all mankind, have a long history, many of them finding their root in religious teachings. At present, these rights have been formulated more comprehensively than ever before and agreed to by all people from all parts of the world. So in this unit, we shall be taking a look at the various rights we are entitled to as human beings in a civilized society.

2.0 OBJECTIVES

At the end of this unit, you would have been able to know the various kinds of rights you are entitled to by the provisions of the Nigerian Constitution, these rights include, to wit:

- Right to life and human dignity;
- Right to personal liberty;
- Right to fair hearing;
- Right to private and family life;
- Right to freedom of thought; and
- Right to freedom of expression and the Press.

3.0 MAIN CONTENT

3.1. Right to Life and Dignity of the Human Person

Section 33(1) of the 1999 Constitution of the Federal Republic of Nigeria provides: Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. Section 33(2) says that: ñA person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law of such force as is reasonably necessary:

(a) For the defence of any person from unlawful violence or for the defence of property;
(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
(c) For the purpose of suppressing a riot, insurrection or mutiny.

The import or effect of the above section is that, under the Constitution, a person has right to life. Therefore, right to life is not to be deprived unless after the due process of law and in the execution of the sentence of a court for the criminal offence for which the person has been found guilty in

Nigeria. However, there is no contravention of right to life, if a person dies as a result of the use, of such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary for the defence of any person from unlawful violence, defence of property, to effect a lawful arrest, to prevent the escape of a person lawfully detained, purpose of suppressing a riot, purpose of suppressing insurrection, or purpose of suppressing mutiny.

Section 34 (1) (2) of the Constitution makes provision for the respect and dignity of the human person. Accordingly:

(a) No person shall be subjected to torture or to inhuman or degrading treatment;
(b) No person shall be held in slavery or servitude,
(c) No person shall be required to perform forced or compulsory labour.

subsection (2) provides, ñforced or compulsory labourò does not include:

(a) any labour required in consequence of the sentence or order of a court;
(b) any labour required of members of the armed forces of the federation or the Nigeria Police Force in pursuance of their duties as such;
(c) in the case of persons who have conscientious objections of service in the armed forces of the Federation, any labour required instead of such service;
(d) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
(e) any labour or service that forms part of:
    i) normal communal or other civil obligations for the well-being of the community;
    ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly; or
    iii) Such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.

Self-Assessment Exercise 3.1.

Miss Onwubere is a Youth Corper. She was directed to climb the Zuma rock in Abuja during the Orientation exercise. She rolled down the rock and died as a result. The family has sued the Federal Government and the Director General of the NYSC to court. The family claimed that their daughterôs right to life has been deprived, a gross violation of Section 34 CFRN 1999.

Advise the family on their chances of success at the court.

3.2 Right to Personal Liberty and Fair Hearing

Section 35(1-7) CFRN 1999 provides,

1. Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law:
   (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
   (b) by reason of his failure to comply with the order of a court to ensure the fulfillment of any obligation imposed upon him by law;
   (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
   (d) in the case of a person who has not attained the age of eighteen years, for the purposes of his education or welfare;
   (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants for the purpose of their care or treatment or the protection of the community; or
   (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsions, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto;

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

35(2) any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

35(3) any person who is arrested or detained shall be informed in writing within twenty-four hours and in a language that he understands of the facts and grounds for his arrest or detention.

35(4) any person who is arrested or detained in accordance with subsection (1) (c) of section 35 shall be brought before a court of law within a reasonable time, and if he is not tried within a period of:-

(a) two-months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; in the case of a person who has been released on bail, he shall without prejudice to any further proceedings that may be brought against him, be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

35(5) In Subsection (4) of this section, the expression ña reasonable time means:

(a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers; a period of one day; and

(b) in any other case, a period of two days or such longer period as in the circumstances may considered by the court to be reasonable.

35(6) any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, ñthe appropriate authority or personsòmeans an authority of person specified by law.

35(7) nothing in this section shall be construed:

(a) in relation to Subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and

(b) as invalidating any law by reason only that it authorized the detention for a period not exceeding three months of a member of the armed forces of the Federal or a member of the Nigeria Police Force in execution of a sentence imposed by an Officer of the Armed Forces of the Federation or of the Nigeria Police Force, in respect of an offence punishable by such detention of which he has been found guilty.

Section 36 is the section on right to fair hearing. Section 36(1) provides: In the determination of his Civil rights and obligations, including any question or determination by or against any government authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal establishment by law and constituted in such manner as to secure its independence and impartiality.

36(2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers an any government or authority power to determines questions arising in the administration of a law that affects or may affect the civil rights and obligation of any person if such law:

(a) Provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that persons; and

(b) Contains no provision making the determination of the administering authority final and conducive.

36(3) the proceedings of a court of the proceedings of any tribunal relating to the matters mentioned in 36(1) including the announcement of the decisions of the court or tribunal shall be held in public.

36(4) whenever any person is charged with a Criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal: provided that:

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interest of justice;

(b) If in any proceedings before a court or such tribunal, a Minister of the Government of the Federation or a Commissioner of the Government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangement for evidence relating to that matter to be heard in private and shall take such other actions as may be necessary or expedient to prevent the disclosure of the matter.

36(5) every person who is charged with a Criminal offence shall be presumed to be innocent until he is proved guilty provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

36(6) every person who is charged with a Criminal offence shall be entitled to:

(a) be informed promptly in the language that he understands and in detail of the nature of the offence;

(b) be given adequate time and facilities for the preparation of his defence;

(c) defend himself in person or by legal practitioners of his own choice;

(d) examine, in person or by his legal practitioners, the witnesses called by the prosecution behalf any court or tribunal and obtain the attendance and carryout the examination of witnesses to testify on his before the court or tribunal on the same conditions as those applying to the witnesses by the prosecution; and

(e) Have, without payment, the assistance of an interpreter if he cannot understand the language used a trial of the offence.

36(7) When any person is tried for any criminal offence, the court or tribunal shall keeps a record of the proceedings and the accused person or any person authorized by him in that behalf shall be entitled to obtain copies of the judgement in the case within seven days of the conclusion of the case.

36(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

36(9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredient as that offence save upon the order of a superior court.

36(10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

36(11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

36(12) Subject as otherwise provided by this Constitution a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written laws; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

Self- Assessment Exercise 3.2

Oyakhiromiena raped Ofulue-Chika and has been charged to court. He does not understand English Language and denied access to a lawyer. What are the rights of Oyakhiromiena at the trial.

3.3 Right to Private Family Life, Freedom of thought, conscience and Religion

Section 37 provides for the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

Every person has right to private and family life. Therefore, the privacy of a personôs home, correspondence, telephone conversation, telegraphic and other forms of communication must not be invaded without lawful justification and according to law.

Where one person or public authority trespasses or invades the privacy of the home of our individual such individual may be entitled to sue for trespass and so forth. An invasion of private life may amount to defamation, or other tort or crime. A person so defamed may sue under the defamation law or other relevant tort and recover damages, except the defendant has a defence. Action may also be brought in criminal law.

On the other hand, however, public personalities are public property. Thus, they are often in the news and the details of their private lives are discussed by the press. So long as the publication is not defamatory, or it is true or there is some other defence, the press is usually face to make such publications. Often times, such press publicity is good promotion for the image and business of these public personalities. Some of them simply love being in the limelight and will always want to be in the news, than to be forgotten by the people, which may happened, such as, when the press embarks on an embargo on the publicity of any public personality.

Section 38(1) provides, every persons should be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom either alone or in community with others, and in public or in private to manifest and propagate his religion or belief in worship, teaching, practice and observance.

38(2) No person attending any place of education shall be required to received religious instruction or to take part in or attend any religious ceremony or observance of such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian.

38(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

38(4) nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

The Nigerian Constitution guarantees the right to freedom of thought, conscience and religion. A person is therefore free to believe, or change his religion, and alone or in community with others, and in private or in public manifest and propagate his religion, or worship, teach and practice his religion.

Under the Constitution, a person has the right of freedom of thought, conscience and religion. In a multi-religious country like Nigeria, the need for this freedom cannot be over-stressed. The people of Nigeria are multi-religious, but the government machinery, organization, or institution is secular. The constitution in section 10 prohibits government from adopting a state religion.

Self-Assessment Exercise 3.3

Mr. Afeez Abdulafeez Balogum is of the Islamic faith. He wants to change to the Christian faith and his state government vehemently warned him not to do so as the state is purely Islamic. Afeez does not know what to do and he has come to you for advice.

Using Constitutional sections; advise Afeez on his rights on the above issues.

3.4 Right to Freedom of Expression and the Press

39(1) every person shall be entitled to freedom of expression, including freedom to hold opinions and receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions.

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorized by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society.

(a) for the purpose of preventing the disclosure of information received in confidence maintaining the authority and independence of courts or regulating telephone, wireless broadcasting, television or the exhibition of cinematography films; or

(b) Imposing restrictions upon persons holding office under the Government of the Federations or of the State, members of the armed forces of the Federation or member of the Nigeria Police Force or other Government security services or agencies established by law.

The Nigeria Constitution guarantees freedom of expression to every individual and the press. A person therefore has freedom to hold opinions as he will, and to receive, and impart ideas and information without interference. A person shall within the provisions of any Act enacted by the National Assembly be free to own, establish and operate any medium for the dissemination of information, ideas and opinions.

In **Archibishop Okogie v A. G. Lagos** State and in **Adewole & Ors v Jakande** the courts held: that the word ñmediaò is not limited to the press, but includes any medium for imparting and receiving information and it includes schools and that the right to freedom of expression and the press includes the right to own a private school to receive and impart ideas and information without interference. The Right to Liberty of expression and the press means two broad things:

1. Right to freedom from prior censorship or restraint of publication
2. But not freedom from the legal consequences of an unlawful, criminal, mischievous or defamatory publication

In the words of the eminent English jurist **Sir William Blackstone** (1723 ï 1780)

> ñ*The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publication and not in freedom from ensure for criminal matter when published. Everyman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the Press: but if he publishes what is improper, mischievous, or illegal, he must face the consequences of his temerity.*

The right of freedom of expression and the press as guaranteed in the constitution is prima facie sufficient to protect the press. Comparatively, though the United States Press freedom is provided in absolute words to the effect that ñCongress shall make no law abridging the freedom of the Press. Yet in practice and in reality there are statutory enactments which limit press freedom. Thus, the constitutional provision whilst permitting free speech does not provide

immunity for every possible use of language. In **Frohwerk v. US.** the Supreme Court of the United States said:

> ñ*We venture to believe that neither* ***Hamiliton,*** *nor* ***Madison****, nor any other competent person then or later, even supposed that to make criminal the counseling of murder with the jurisdiction of Congress would be an unconstitutional interferences with free speech"*

In reality, therefore there is no difference in the position of the law as regards freedom of the Press in the United States, United Kingdom and in Nigeria. In Nigeria, the constitution on the other hand permits restriction of press freedom, for instance:

1. For the purpose of preventing the disclosure of information received in confidence, that is, classified matters or officials secrets.
2. For the purpose of maintaining the authority and independence of the courts, that is, the law of contempt of court.
3. For the purpose of preventing former or present public office holders under the government of the Federation or of a State or Local Government or members of the armed forces or other security services from divulging classified information or official secret, they received in the course of service to the nation.

   Furthermore, the provision of the right to freedom of expression and the press, do not invalidate any law that is reasonably justifiable in a democratic society in the interests of:
4. defence
5. Public safety
6. Public order
7. Public morality; such as, by laws prohibiting obscenity and harmful publications
8. Public health; or
9. For the purpose of protecting the rights and freedoms of other persons, for instance, against defamation and other harmful publications, and so forth.

Ordinarily though by ethics of the profession a journalist is not to disclose his source of information, however, under the constitution, disclosure may be required in the interest of the State, such as, in the interest of defence, public safety, public order and so forth. Where a journalist is required to disclose his source of information in the interest of the State, he withholds such information at his own risk.

At common law, only four relationships enjoy the privilege of non-disclosure of information that has been received in confidence. These classes of persons enjoy privilege and cannot be compelled at law to disclose information against the other. These relationships are:

i. lawyer and clients
ii. Wife and husband
iii. Informant and government

New York Times Co v United States. The Attorney General of the United States sought an injunction against the New York Times, the Washington post and other newspapers to stop the publication of certain alleged Pentagon papers. The U. S. Government failed to show that the publication would cause immediate and specific damage to the security of the nation. The United States Supreme Court held: that the application for injunction to stop the publication would be refused. Similarly, in **Twentieth Century Fox Music Corp Aiken** the United States Supreme Court said that:

> *"A prior restraint on expression comes to… court with a heavy presumption against its unconstitutionality".*

Thus, the courts are usually suspicious of laws, which impose restraints on freedom of expression, prior to publication, including onerous licensing requirements, or laws requiring permits before public assembly and speeches can be made. Ordinarily, courts strictly interprets such laws to see that they must be laws that are reasonably justifiable in a democratic society. **In Red Lion Broadcasting Co v. Federal Communication Co mmission,** the US Supreme Court said that:

"Congress need not stand idly and permit those with licenses to ignore the problems which beset the people or to exclude from the air waves anything but their own views of fundamental questions".

4.0 CONCLUSION

It is impossible to conceive of a modern society operating without the benefit of the rule of law as enshrined in the Constitution or worthy the carefully formulated principles, standards and rules that keep the social complex from disintegration; indeed the intricate problems arising in an urban society cannot be dealt with in the absence of statutes, courts, legislatives, executive, policemen and other legal personel of justice.

5.0 SUMMARY

In this unit, you have learnt about the fundamental human rights and the various issues therein. We have taken section 33 to 38 in this unit; we shall conclude the rest in the next module.

6.0 TUTOR –MARKED ASSIGNMENTS

Discuss in detail the provisions of section 36 of the 1999 Constitution of Nigeria and its legal implications.

7.0 REFERENCES / FU RTHER RE ADINGS

Malemi, Ese. (2006) *The Nigerian Constitutional Law*, Princeton Publishing Co. Lagos, Nigeria

The 1999 Constitution of Federal Republic of Nigeria

Lord Denning (1948), Freedom under the Law, Steven & Sons Ltd., London.

Adigun Vs. A. G. Oyo State (1987) 1, NWLR, Pt 53, at 678

Entrick vs Carrington (1558) All ER 211

Human Rights Law (Noun) Law 241

MODULE 2

INTRODUCTION

UNIT 1: FUNDAMENTAL HUMAN RIGHTS II

CONTENT

1.0 INTRODUCTION

The 1999 Constitution of Nigeria, like all previous constitution, provides for fundamental rights. To this end, there are about sixteen fundamental rights. No person is to be deprived of these rights unless after the due process of law and in the execution of the sentence of a court for a criminal offence for which the person has been found guilty in Nigeria. In this unit,

we shall be concluding on the remaining fundamental rights as enshrined in the constitutions. We have already discussed the first sets of rights in the previous unit.

2.0 OBJECTIVES

At the end of this unit, it is hoped that you should be familiar with the entire fundamental human rights as contained in chapter four of our constitution. It is also believed that you will know your constitutional rights in case you are confronted by any law enforcement agents, and defend yourself adequately.

3.0 MAIN CONTENT

3.1 Right to Peaceful Assembly/ Association and Right to Freedom of Movement

Section 40 of the Constitution provides inter-alia, that; Every person shall be entitled to assemble and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests, provided that the provisions of this section shall not derogate from the powers conferred by this constitution in the Independent National Electoral Commission with respect to political parties to which that commission does not accord recognition.

Every person is entitled to peacefully assemble and associate with other persons to pursue, protect and advance lawful interests and objectives. A person may therefore form or belong to any political party, trade union or any other association, be it political, social, or economic, in the pursuance of lawful interests.

The heading to this fundamental right reads:

ñRight to Peaceful Assembly and Associationò Which means that right is not granted to any person to assemble for un-peaceful or other unlawful purposes. Laws reasonably justifiable in a democratic society may therefore empower the police to stop or disperse an un-peaceful gathering, or a potentially explosive gathering and; empower a body to register

political, social and economic associations and bodies. However, laws which aim to interfere with the right to peaceful assembly and association are usually strictly interpreted by the court.

In **Adewole vs Jakande**, it was held that the purported abolition by the Lagos State Government of fee paying private schools was an infringement of the right to peaceful assembly and association of the children, as they would thereby be forced to go to other schools, such as public schools, which were not their choice.

Section 41(1) of the Constitution provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part therefore, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit there from. Nothing in the above section shall invalidate any law that is reasonably justifiable in a democratic society:

(a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria.

(b) providing for the removal of any person from Nigeria to may other country to:

    i) be tried outside Nigeria for any criminal offence, or
    ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty;

Provide that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

The constitution guarantees to every Nigerian citizen freedom of movement to move freely anywhere and to live in any part of the country he wishes. Based on this constitutional right, no citizen of Nigeria shall be expelled from Nigeria, refused entry into Nigeria, or refused exit from Nigeria, such as by seizing his passport.

Under normal circumstances, it is unconstitutional and wrongful to prevent a citizen from exercising any of the above rights. He may bring an action for the infringement of any of these rights. However, there are exceptions to the rights to freedom of movement. Therefore, a law that is reasonably justifiable in a democratic society may impose restrictions in the residence or movement of persons who has committed crime, in order to prevent him from escaping or leaving Nigeria, a person reasonably suspected to have committed a criminal offence in order to prevent him from escaping or leaving Nigeria, in order to remove any person from Nigeria to any other country to be tried outside Nigeria for any criminal offence; or to undergo imprisonment outside Nigeria in execution of a sentence of court of law in respect of the criminal offence of which he was found guilty.

Self-Assessment Exercise 3.1.

Discuss in full the provisions of sections 40 and 41 of the 1999 Constitution.

3.2 Right to Freedom from Discrimination and Right to Acquire and Own Immovable property.

Section 42(1) provides that a citizen of Nigeria of a particular community, ethnic group, and place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject.

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other Communities, ethnic groups, place of origin, sex, religions or political opinions.

42(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth;

42(3) Nothing in subsection (1) shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the state or as a member of the armed forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.

The Constitution provides for right to freedom from discrimination, for whatsoever reason, for instance, on ground of a personûs community, ethnicity, place of origin, circumstances of birth, sex, religion or political opinion etc.
Therefore, a Nigeria citizen shall not be subjected to discrimination, but shall be accorded equal treatment with others irrespective of whether the person is a man or a woman. In **Philips vs. Martin Marretta corporation,** a company regulation which denied employment to women with pre-school age children was held to be unconstitutional and invalid for being discriminatory against women with infant children.

In **Reed vs. Reed**, the United States Supreme Court held that an Idaho State law which gave arbitrary preference to fathers over mothers in the administration of their childrenûs estate was discriminatory and cannot stand in the face of the fourteenth Amendment of the constitution of the United States made on July 28, 1968, which states that citizenship rights be abridged, and each person is to enjoy equal rights and protection under the laws of the United States of America. Furthermore, in the case of **Brown vs Board of Education**, the U.S. Supreme Court held inter alia: that the provisions of separate educational institutions for different races was discriminatory and unconstitutional.

However, a law is not invalid if it imposes restrictions with respect to appointment of any person to any office under the state such as a minimum age stipulation or to membership of the Armed Forces or other

government security service established by law or for election to any public office and so forth.

Furthermore, government may also implement special programmes and measures to assist specific categories of people who are under particular disabilities, disadvantages, or less opportune communities and minorities to enable them catch up, or properly participate in the development of a modern and united country. In similar vein, laws which confer maternity benefits on women are not discriminatory.

Section 43 states that, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

Self –Assessment Exercised 3.2

Ade is from Ogun State. He intends to relocate to Katsina State of Nigeria because he has acquired five bed room flats in that state. The commissioner for Information of Katsina told him that he is not entitled to reside and own houses in Katsina State.

Ade wants to sue the State government on the infringements of his rights above. Advise Ade.

3.3 Compulsory Acquisition of Property, Restriction and Derogation from Fundamental Rights

44(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:

(a) requires the prompt payment of compensation therefore; and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

(2) Nothing in subsection (1) of this section shall be construed as affecting any general law:

(a) for the imposition or enforcement of any tax, rate or duty;
(for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence;
(c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts.
(d) relating to the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of being wound-up.
(e) relating to the execution of judgements or orders of court
(f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
(g) relating to enemy property
(h) relating to trusts and trustees
(i) relating to limitation of actions
(j) relating to property vested in bodies corporate directly established by any law in force in Nigeria
(k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry.
(l) providing for the carrying out of work on land for the purpose of soil-conservation; or
(m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.

(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

The Nigerian Constitution provides that government shall not compulsory acquire the movable or immovable property of any person for public purposes or public use in any part of Nigeria, except in the manner and for the purposes prescribed by a law. Therefore, confiscating property from one private individual and granting it to another individual is not acquisition for public purposes under the provisions of the Nigerian Constitution. However, any law that empowers the State to acquire private property for public purposes must also provide for:

1. The prompt payment of adequate compensation therefore; and
2. Give to any person claiming such compensation, right of access to a court of law or tribunal or body having jurisdiction over such matter in that part of Nigeria for the determination of his of his interests in the property and the amount of compensation. The instances and exceptions where interest in or right to property may be temporarily interfered with or lost under general law are listed in sub-section 2 of this section.

Finally, the entire property in and control of all minerals, oils and natural gas on, under or upon any land or territorial water is vested in the Government of the Federation, which shall manage them in the manner prescribed by law by the National Assembly.

45-(1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society:

(a) in the interest of defence, public safety, public order, public morality or public health; or
(b) for the purpose of protecting the rights and freedom of other persons.

(2) An act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution; but no such measures shall be taken in pursuance of any such Act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency.

Provided that nothing in this section shall authorize any derogation from the provisions of section 33 of this Constitution except in respect of death resulting from acts of war or authorize any derogation from the provisions of section 36(8) of this Constitution.

(3) In this section, a ñ**period of emergency"** means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 305 of this Constitution.

Though the constitution guarantees fundamental rights on one hand, on the other hand, it hereby provides for restrictions on fundamental rights and grounds on which it can take away, derogate, or limit the exercise of fundamental rights in the interests of the State by laws which are reasonably justifiable in a democratic society on the grounds of:

1. defence
2. public safety
3. public order
4. public morality
5. public health; or
6. for the purpose of protecting the rights and freedom of other persons.

Self-Assessment Exercise 3.3

Discuss the Provisions of Sections 44 – 45

3.4 Special Jurisdiction of High Court and Legal Aid

46-(1) Any person who alleges that any of the provision of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

(2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this Chapter.

(3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section.

(4) The National Assembly:

(a) may confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section; and

(b) shall make provisions-

i) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view to

enabling him to engage the services of a legal practitioner to prosecute his claim, and

ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

Any person who alleges that his fundamental rights are guaranteed in the constitution has been; is being, or is likely to be contravened in any part of Nigeria, may apply to a High Court for redress, that is:

1. The Federal High Court, or
2. The High Court of a State,

Government should be according to law; that is, civil laws that are reasonably justifiable in a democratic society. Government is to act within the limits of its legal powers. In the words of **Candido Ademola-Johnson J,** as he then was in **Tony Momoh v Senate** where any arm of government:

ñExceeds such powers or acts in contravention of it or in conflict with the provisions of the constitution, it would be the duty of the judiciary to put it in check at the instance of any aggrieved partyò

The Nigerian Constitution also makes provision for the offering of financial assistance or legal aid to those who qualify for such aid under the Legal Aid Act.

Self-Assessment Exercise 3.4

Mr. Andrewôs rights were infringed upon in Lagos State. Which court has jurisdiction to hear the matter and where will Andrew commence his actions.

4.0 CONCLUSION

The position of chapter four of the 1999 Constitution in Nigeria is of immeasurable importance. Domestic application of these laws is an index for measuring how civilized a country is and it requires a good judiciary to enforce these rights and so set the pace for the happiness and orderliness of society.

5.0 SUMMARY

If you have understood this unit, you should now be able to explain what fundamental human rights provisions are, under Sections 33-46 of the Constitution and the attitude of Nigeria courts to fundamental human rights provisions.

6.0 TUTOR-MARKED ASSIGNMENT

What are the roles of the judiciary in upholding fundamental human rights?

7.0 REFERENCES /FU RTHER READINGS

Malemi, Ese. (2006) *The Nigerian Constitutional Law*, Princeton Publishing Co. , Ikeja - Lagos, Nigeria

Nigeria 1999 Constitution

Shugaba vs Minister of Internal Affairs (1981) 2, NCLRL 159

Reed vs Reed (1971), U. S. A. L104

Brown vs Board of Education (1954) U.S. A. 347

UNIT 2: VIOLATIONS OF FUNDAMENTAL HUMAN RIGHTS

1.0 INTRODUCTION

No modern society can exist without a system of laws. The institution of law is therefore crucial to the social organization of human beings. A modern society is not the state of nature where according to Thomas Hobbes, life was solitary, nasty, brutish, short and chaotic. So, laws are needed to control and regulate manôs excesses in a democratic society.

2.0 OBJECTIVES

At the end of this unit, you will able to see

- one or two cases where human rights were violated,
- the consequences of violating these rights,
- the courtôs role when these rights are violated
- Compensation for oneôs rights being violated.

3.0 MAIN CONTENT

3.1 Fundamental Human Right Cases

The fundamental rights of Nigerians are enshrined in the Nigerian Constitution and various international treaties to which Nigeria is a signatory. Since 1948 when the Universal Declaration on Human Rights was passed at the United Nations, various governments all over the world have adopted its ideals in their constitution. The Nigeria nation is no exception.

Human rights are part of the common heritage of all mankind without discrimination on grounds of race, such religions or other differences. These rights, common to all mankind, have a long history, many of them finding their origin in religious teachings. But now at present, they have been formulated more comprehensively than ever before and agreed to by all people from all parts of the world.

In Nigeria, those rights are contained in section 33-44 of the 1999 constitution. The rights contained in those sections above are not unlimited in nature as the Constitution provides that most of the rights shall not invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons.

It should be noted at this juncture that, whenever a military regime in Nigeria is in place, one of their first actions in office is to promulgate laws in a manner that derogates from the essence of the fundamental human rights. For instance, the Federal Military Government (Supremacy and Enforcement of Powers) Decree, Constitution (Suspension and Modification) Decree, and the Federal Military Government (Supremacy and Enforcement of Power) Decree, State Security (Detention of person) Decree, are all examples of laws violating the various human rights in Nigeria. The impression one gets therefore, is that every military rule is an emergency and its activities are outside the realm of the law. But this is not always true.

It is in the light of the above that justice Belgore of the Supreme Court of Nigeria said in the case of **A. G. Federation vs. Sode (1990) 1, NWLR pt. 128, P.500 that:**

> *"One military regime comes in, whether by their being handed over power by democratically elected government or through act of a coup de'etat and the effective governance is being exercised by such regime whether defacto or dejure, effect must be given to the ouster. No military regime claims to respect laws inimical to its policy. Perhaps I shall make the point cleaner by asserting that even though courts are not happy with ouster clauses in decrees and edicts. It should be borne in mind that a military regime will be an anomaly if it decides to govern by the entrenched rights as contained in chapter IV of the constitution of the Federal Republic of Nigeria 1979, in fact the military came and suspended and modified those constitutions. At the time material to the orders now in question, Decree 10 of 1976 and Decree No. 37 of 1968 clearly ousted the jurisdiction of the court in respect of any act done in the forfeiture of assets. It made irrelevant all the protective provisions of other laws and the constitution and indeed this includes the Constitution itself.*

If the above statement represents the approach of the courts to the military, then the sustenance of human rights is bereft of all hopes. What happens where the military orders that all judges of the Supreme Court be clamped into detention under Decree 2 of 1984? Would the courts simply fold their arms and watch helplessly in the face of such tyranny and assault on the bench? The jurisprudential effect of the above case is that the military believes that they could trample on all rights and expect protection from the courts.

The positivistsônotion that laws are the command of the un-commanded commander to which the dictum breeds tyranny and anarchy, could bring the judiciary into disrepute and public ridicule. However, one takes solace

in the fact that the ingenuity of Nigerian judges has not been stilted by ouster clauses or such ominous provisions. There are a number of cases where the justices of the Supreme Court have faced great responsibility of ensuring compliant with the rule of law. For example in **Garba vs. Federal Civil Service Commission (1988)** I**, NWLR pt. 71, P. 447, SC**; the court held that the government is bound to comply with the provisions of a decree before it can rely in the ouster jurisdiction contained therein. The Supreme Court held further that the act of the Respondents in dismissing the Applicant from office during the pendency of the action was contemptuous of the judiciary and could not stand.

Justice Kayode Eso JSC as he then was stated:

> *"The Military in coming to power is usually faced with the question as to whether to establish a rule of law or a rule of force. While the later could be justifiably a rule of terror, once the path of law is chosen, the military arm of government, the militia, which is an embodiment of legislature and executive, must in humility, bow to the rule of law, thus permitted to exist. The rule of law knows no fear; it is never lowered down it can only be silenced by the only arm that can silence it, it must be accepted in full confidence to be able to justify its existence".*

Self-Assessment Exercise 3.1

Look for the case of Garba vs FCSC (1988) I, NWLR, mention the names of the justices that presided in the case, names of the counsel to the parties, the name of the court, who read or delivered the lead judgment, and what were the facts in issue in that case.

3.2 Violation: Consequences of Disobedience

A court of law has many ways of enforcing its judgements generally. In the case of Government of **Gengala State vs Tukuri** Nnaemeka-Agu JSC, as he then was, considered the various methods of execution of judgments, to wit: a judgment for possession of land may be enforced by a writ of sequestration or a committal order, a judgement for delivery of goods may be enforced by a writ of sequestration or writ of committal and a judgement

ordering or restraining the doing of an act may be enforced by an order of committal or writ of sequestration against the property of the disobedient person.

Where in the enforcement of fundamental rights the court awards damages in the favour of a litigant, a proper method of enforcement by way of the writ of fieri facias (A writ of execution addressed to the sheriff and requiring him to seize property of debtor in order to obtain payment of a judgment debt, interest and costs). Where the party condemned in damages is an individual or non-government body, it is quite easy to enforce the same. But where damages is payable by the State, there are problems in levying execution against State property. Order V, Rules 5 Judgment (Enforcement) rules provides thus:

> *"Property in the custody or under the control of any public officer in his official capacity shall be liable to attachment in execution of a judgment with the consent of the Attorney-General and property in custodia legis shall be liable also to attachment by leave of the court.*

The problem is that the Attorney-General may view his position as one in which his first allegiance is to the executive rather than the government as a whole. He may refuse to give his consent, in which case the judgement creditor may seek a writ of mandamus to compel the performance of the duty. Or where he does not refuse outright he could cause considerable delay in issuing his consent. As a matter of practice, if one applies for his consent his first action is to call on the erring public officer to pay up. It is only after they refuse to pay that he issues his consent to the writ of attachment.

Another useful method of enforcement is the issuance of a committal order arising from contempt proceedings. Once again, it is easier to enforce the order against individuals as opposed to government functionaries. The experience of Justice Yaya Jinadu is a case in point. It was the case of ***Garba v Federal Civil Commission.*** During the period when the case was pending in court, Mr. Garbaôs appointment was terminated by one Mr. John Oyegun, the then Permanent Secretary, and

Ministry of Internal Affairs. Garbaôs lawyer complained to the court that the sack amounted to undue interference with the administration of justice. So a contempt application was filed against the said Mr. Oyegun. When the contempt proceedings came up before the court, Mr. Oyegun refused to appear. Despite series of adjournments, the contemnor refused to appear or comply with the court order to withdraw the offensive sack letter. The State counsel resorted to all sorts of tricks to excuse the absence of his client by claiming that he could not locate the contemnor. The court was unable to effect its orders either through its bailiffs or even Counsel representing the contemnor. On the final adjourned date neither the contemnor nor his counsel was in court. The contempt proceedings died a ñnaturalò death. His Lordship in a letter he forwarded to the Chairman, Advisory Judicial Committee on the matter, has this to say:

"I believe the judiciary has an important role to play in this country as it is the last hope of the common man. The judiciary has to be firm, fair and courageous and must not employ any form of double standard. It is not right in my view to regard or treat the courts of justice as an extension of the Federal Ministry of Justice. I cannot condone any attempt to destroy the judicial system in this country using me as scapegoat"

The approach of Justice Jinadu is a way of bringing it home to the functionaries of government that judges are not to be taken for a ride. He paid a price so that other colleagues may be better placed in the administration of justice. It might after all be better if one does not lend its weight to injustice than remain on a job which at the end of the day could only be sustained by integrity with the generality of the people.

It is important that the courts should constantly strive to ensure that their judgments are not treated with levity or brought to ridicule through an exercise of arbitrary or abuse of executive power.

The Supreme Court in Federal Government Civil Service Commission V Laoye would not allow destitution to be drawn in the enforcement of judgments against the state or the individual. The court said that:

> *"One aspect of our much vaunted equality before the law is that all litigants be they private persons or government functionaries, approach the seat of justice openly and without any inhibitions or handicap… In the unequal combat between those who possess power and those on whom such power bears, the courts primary duty is protection from the abuse of power".*

There is the need to protect the ordinary citizenry from an over-zealous and protective Ministry of Justice and make it truly reflective of its role. The Ministry of Justice properly so called must take the word ñJusticeò more seriously and seek to pursue the interest of the individual and the state and create a conducive balance between the various interests. In ***Attorney-General of the Federation v The Nigerian bar Association (Lagos and Ikeja)*** the Attorney-General sought to restrain the legal practitioners of the Lagos and Ikeja branches from carrying out their treats to boycott the courts. The legal practitioners impressed on the State to respect judicial orders.

Honourable Justice Adeyinka on June 10. 1992 granted an interim injunction as prayed by the Attorney-General. However, on July 2, 1992 when the Judge gave a more detailed ruling the court set aside his earlier order. His Lordship went on to chide the Attorney-General for being a party to attempts to bring court orders to ridicule. His Lordship stated that

> *"For the Attorney-General to be a party to the ridicule and disparagement of the court is reprehensible". He added.*

> *"If citizen follow government's bad example and refuse to obey court orders, it will lead to not only the disruption of the due administration of justice and the transition to civil rule programme, but also to chaos, anarchy and ultimate dismemberment of the Federal Republic of Nigeria.*

Also in the case of ***Dr. Beko Ransome Kuti v President Ibrahim Babangida*** *and others,* the plaintiff sued the Federal Government seeking a declaration that his arrest and detention was unlawful and claimed 15 Million Naira as damages. Owolabi, J. held that the detention order issued in respect of the plaintiff under the hand of the Vice President Consequent upon the illegal arrest of the applicantôs fundamental rights. Of more fundamental and was a violation of the applicantôs fundamental rights. Of more fundamental importance was the posture of the judge as regards the enforcement of his orders. He held that even if he had concluded that the detention orders were not defective. He would still have rejected it along with the governmentôs counter affidavit because of the governmentôs persistent refusal to obey the order of the court for the production of the applicant.

This bold assertion on the part of the judiciary is welcomed and portends a good omen for the efforts at enforcing fundamental human rights decisions. If the judiciary had merely folded its arms as if it had suffered a technical knockout in a boxing duel, then it would have gone into slumber and the death knell would begin. Judges must be bold and forthright in their views. Cases on fundamental human rights must be treated with the dispatch which proceedings under the Fundamental Rights (Enforcement Procedure) Rules 1979 envisage. Fundamental rights cases should not be listed like any other matter but dealt with expeditiously. In this way, the courts would accord greater respect to themselves, the law and the fundamental rights. A man who does not respect himself cannot call on others to accord him the same respect. As Justice Arthur T. Vanderbilt explained.

ñé It is in the courts and not in the legislature that citizens primarily feel the keen, cutting edge of law. If they have respect for the work of the courts, their respect for the law will survive the shortcomings of every other branch of government; but if they lose respect for the work of the courts, their respect for the law and order will vanish with it to the great detriment of the societyò

Another important step in judicial enforcement of its own decisions is found in the case of ***Gloria Mowarin v. Nigerian Army and others.*** In that case my Lord, Honourable Justice Francis Owobiyi declared the detention of the applicant as illegal and unconstitutional and quashed the detention order. He took a rather ingenious approach to the issue without offending the ouster clause in Decree No. 2 of 1984. The detention order was expected to be signed by the Vice President, but the office was non-existent when the Vice purportedly signed the detention warrant. The state refused to comply with the order to release of the detainee, but rather filed a notice of appeal and sought a stay of execution. In his ruling on the application for stay, his Lordship said *inter-alia.*

ñI have never known of any case in which the court has ordered the release of a detainee under the *Habeas Corpus* procedure or that of the Fundamental Rights (Enforcement Procedure) Rules 1979 and the detaining authority has lodged an appeal against the order of release and asked for a stay of execution pending the determination of the appeal lodged by it while not carrying out the order of courté The conduct of the Respondents/Applicants herein does not give much comfort as regards the rule of law and it is nothing to write home about.

Self- Assessment Exercise 3.2

What are ouster clauses? Can the courts by silenced Decrees with ouster clauses provisions.

4.0 CONCLUSION

It is impossible to conceive of a modern society operating without the benefit of the rule of law as enshrined in the constitutions or worthy the carefully formulated principles, standards and rules that keep the social complex from disintegration indeed the intricate problems arising in our urban society cannot be dealt with in the absence of statutes, courts, legislatures, executive, policemen and other personnel of the justice systems.

This discourse so far brings us to the role of courts in the enforcement of judicial decisions on fundamental human rights. There is need to protect the ordinary citizens from an over-zealous and unprotective state. Justice must be seen to be done in all cases.

5.0 SUMMARY

In this unit, you have learnt about the role of judges in enforcing judicial decisions, the courts role in enforcement of fundamental human rights, violation of fundamental human rights, and cases involving fundamental human rights. An understanding of the importance of role of the courts in enforcing fundamental human rights cannot be sufficiently stressed.

6.0 TUTOR- MARKED ASSIGNMENTS

As the Temple of justice, the courts are last hope of the common man. Discuss this statement in the light of the role of courts in the enforcement of fundamental human rights in Nigeria.

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UNIT 3: THE ROLE OF LAW ENFORCEMENT AGENTS IN CRIME INVESTIGATIONS

CONTENTS

1.0 INTRODUCTION

Conceptually, criminal investigation comprises those incidental acts of law enforcement officers arising from the statutory duties imposed in them, particularly, as it relates to the prevention and detention of crime. It involves a systematic collection of information about crime and the assembly of physical and testimonial evidence within the frame work of the law in order to identify the perpetrators of crime and provide evidence for a successful prosecution of criminal suspects.

Criminal investigation is defined as an art carried out by professionally trained detectives who are usually not in uniform. Apart from discovering the authors of a criminal act after the commission of crime, detectives surreptitiously stake out site of likely criminal activities in order to catch them in the act. They are sometimes involved in undercover activities, penetrating criminal syndicates or pose as people willing to commit illegal act (Agent provocateur). So in this unit, we want to look at the tools law

enforcement agents use to uncover criminal activities in the process of investigation.

2.0 OBJECTIVES

The main objective of this unit is that, at the end, you should be able to find out the various tools and techniques that law enforcement agents use to catch criminals in the very act of devilish activities.

3.0 MAIN CONTENT

3.1 Tools for Criminal Investigation

The discovery of the author(s) of crime during criminal investigation has remained an exclusive field of police professionalism. Detectives earn their respect by busting serious crimes, to the admiration of the public. It does not involve any magical or metaphysical trick but simple techniques and application of some basic tools, which are capable of unlocking some investigative leads. This includes trained personnel, scientific aids, interrogation tools and information data, to mention but a few.

(A) Trained Personnel:

The Criminal Investigation Department (CID) of every police jurisdiction is a special department that requires personnel, whose intelligence and mental alertness must be a function of their education and professional training, considering the increasing challenges posed by science and technology, particularly in the area of information technology, law and psychology. Unfortunately, the various developing police jurisdiction like ours, apart from the mandatory basic training for police officers, there appear to be no special training for detectives before their first deployment. Most of the detectives (so called) are simply assigned to criminal investigation departments and expected to learn ñon the jobò Some personnel are however, later sent for detective courses locally and some have had external training abroad. The choices of who went for those training abroad are randomly made because the force cannot afford to send all the officers. Thus, only few officers have benefited from such oversea or local detective training. Also, the training facilities in the local detective colleges are either inadequate or obsolete, such as well

equipped research libraries, computers and surveillance equipment. Consequently, the introduction of modern concepts in criminal investigation is still at its lowest level of development. The deployment of staff in such colleges is often on punishment rather than routine. Thus, qualified lecturers are not attracted due to lack of motivation and the available ones hardly give their best due to frustration.

Another problem is that most of the lucky beneficiaries of such training were often not deployed where their professional training would be maximally utilized. The result is that a large percentage of detectives in criminal investigation department lacked the basic specialist training.

The importance of trained personnel in criminal investigation cannot be over emphasized in view of sophistication of criminals and the increasing challenges posed by science and technology. The police force is expected to organize more local and foreign courses, seminars and workshops focused on crime detection, particularly anti-fraud course, modus operandi, handwriting, modern fingerprint devices, and prosecution and computer database. The courses are also expected to cover criminal intelligence gathering and surveillance. Training in law, psychology, criminology and other social sciences would also help the investigator acquire the requisite professional skill in the science and art of interrogation. He is expected to be logical and sound in his reasoning process; able to construct hypothesis and draw conclusions in problems relating to crime. The intuitions and spiritual alertness of a detective could provide inspiration or illumination where hypothesis fails. An investigator in the words of Swanson is therefore, õsomeone with a strong professional training and solid experience who, by carefully completing every appropriate step in an investigation, leaves nothing to chance. By doing so, he or she forfeits no opportunity to develop evidence.

Through such professional training, the investigator develops strong degrees of self-discipline, use of legally approved method, a systematic and scientific method of inquiry, wide range of contacts across many occupations, use of experts from any different fields and the requisite professional ethics in crime detection. Untrained personnel are

professionally empty. They constitute liabilities to criminal investigation and easily resort to use of crude and illegal methods that are detrimental to police image.

(B) Scientific / Technical Aids

The modern police largely require other technical or scientific methods such as identification by means of fingerprint, the analysis of stains and the microscopic examination of materials connected with crime and photographs to assist him in criminal investigation. These aids or instrumentation includes all the technical aids like the modus operandi, lie detector, communication system and surveillances equipment such as telephoto lens and detective dyes; Searching apparatus such as x-ray unit, metal detector and other investigation tools are devices by which perpetrators of crime are examined and identified.

The application of these scientific aids and their usage are associated mainly with physical evidence. By this, the part of the ñcorpus delictiò may be established in certain crimes. Example, the cause of death in homicide or nature of drug in narcotics violation. They may be used to link the suspect to the scene of crime by showing that the material found at the scene possesses the same constituents as the material associated with the suspect. These Scientific aids are more readily available and better applied in well-developed crime laboratories.

The Crime Laboratories

The forensic laboratory is the major criminal laboratory where scientific tests are carried out to establish a triangular link between the suspect, the scene of crime and the victim. A standard forensic laboratory consists of the following sections: Mobile unit ï (made up of scene of crime officer), Photography, Ballistic/Tools marks, Documents, Chemistry, Biology, Fingerprints, Polygraph examination/voice identification. The crime laboratory is expected to assist an investigator to establish an element of the crime, link the crime scene to the victim or criminal. Corroborate or disprove an alibi, induce an admission or a confession, exonerate the innocent or confirm the guilt of the accused and provide expert testimony in court.

(C) Interrogation Techniques:

Interrogation techniques remains one of the most valuable tools by which detectives skillfully question unwilling witnesses and suspects to obtain an anticipated reply. It is a prerequisite for professionalism in the act of criminal investigation. Successful application of interrogation technique yield results that are often viewed with magical suspicion by those who do not understand the working system.

Its importance is predicated on the fact that no criminal suspect is willing to give away himself, even when caught in the act. The ability of police to secure an admission depends therefore on the craft, logic and psychological insight of the investigator, the skill of which is acquired through practice, training and research. Unfortunately, this investigative tool is least regarded and understood by those that practice it because of the absence of an enabling environment for its proper development and application. It is against this background that much space is devoted to this tool to cure the ignorance and deficiency of detectives in its application.

(D) Data of Crime and Criminals

The responsibilities of detectives, according to Tarling and Burrows includes, (1) the collection of information about criminals and maintenance of records of criminal activities. (2) The collection and preparation of information from those records and to interview suspects to collect evidence to present to court. Achieving this according to Harper is a highly artful activity that underscores the use of information technology (IT). It requires the storage of data relating to crime and criminals particularly of data relating to crimes that have resulted to prosecution and or court sentence. In relation to detective work, Information Technology (IT) could make this easier.

It is pertinent to note that habitual criminals who have been convicted, discharged or escaped from prison custody commit about eighty percent of the serious crimes. Among them are the hardened and deadly criminals that belong to vicious criminal gangs of armed robbers and assassins. They unconsciously develop a modus operandi. (Mode of operation) that

intelligent detectives will always remember and go for through their criminal records. Such records have remained an invaluable tool in criminal investigation. Where they are available, they enable detectives to access records and files of criminals. The dossiers of information once produced, the work of criminal investigation becomes interesting and easy, particularly- interrogation. By this, investigation is conducted with increased efficiency and professional competence. Where these records fail to provide the necessary investigative leads, the investigation may be frustrating and unfruitful.

Most advanced police jurisdictions have well developed and computerized information date of crime and criminals. Detectives obtain the fastest investigative leads, particularly in crimes of violence or serious fraud by reference to such data. Since mostly non-emotional offenders commit these crimes, a detective armed with a complete dossier of a criminal suspect could quickly apply a logical interrogation technique; by showing that the guilt of the subject can be or is established by evidence independent of the suspects statement.

When a burglar Yousef Boughaddon murdered Robert Symons 45, in his London home in Cheswick West London in October 20, 2004, the investigation and prosecution was made easy by the suspectõs dossier, which revealed that he was first convicted of burglary in 1997. in May 2001, he dragged a woman out of a basement window as he made off with her handbag, and in September that year, he was caught as he tried to drive off in a Saab convertible, punching the owner in an attempt to escape. He received a five and half year jail term in 2002 for burglary and dangerous driving but was freed on license on September, 2004.

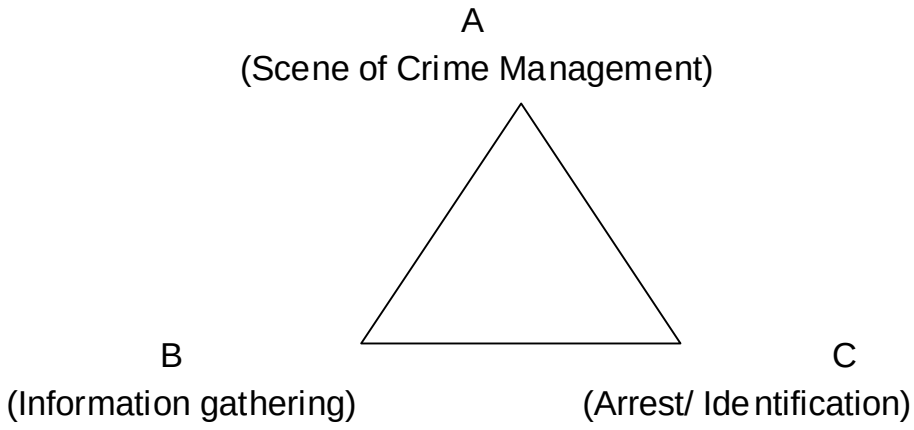
Two weeks later he was back on the street stealing a Mercedes Benz compressor to fund his 180-9 a week crack drug habit. In the early hours of October, 20, 2004, he spotted Mr. Symons Lexus car in the driveway of the family house in Cheswick, and used a bent car aerial to undo the front door latch. He was in the kitchen when Mr. Symons woke and came down stairs where Bouhaddon killed him.

Self-Assessment of Exercise 3.1

Mention and discuss three tools for crime investigation

3.2 Stages of Criminal Investigation

Once a criminal offence is committed, the police may be alerted through distress telephone calls or verbal complaints at the police stations or through the observation of patrol officers. Anti crime patrol teams are often dispatched quickly to track down the culprits while in action. By their quick response, the criminals may be arrested, killed or forced to retreat. However, in some cases, due to logistics and other circumstances beyond their control, the trial is almost cold or non-existent by the time the patrol arrive with the culprits having gone some minutes earlier. The investigations into the crime are in three stages, represented in what may be referred to as Crime Detection Triangle (CDT).



(A) Scene of Crime Management

The scene of crime is the location or place where the criminal act, real or imaginary took place. This is where the foundation for the success or failure of the investigation is laid. Here, detectives formulate various theories of crime and attempt to answer question such as, ñhow was the crime committed?, ñwho are the likely authorsò It is important to note that the peculiarity of any scene of crime is dependent on the nature of crime, location and modus operandi of the criminals. Modern criminal in their sophistication ensure that they left no traces behind, particularly in cases of culpable homicide, burglary, theft or fraud. The body of the deceased victim may be hidden or destroyed. Articles or objects used in the commission of the offence/crime may also not be available around the scene. Where the entry is constructive, evidence of entry or exit may be absent. Fingerprints or marks may be concealed by use of hand gloves. Also, document relating to the crime may be missing or totally destroyed.

Crime scenes vary in regard to the amount of physical evidence that is ordinarily expected to be recovered; a murder scene will yield more than a yard from which a lawn mower was stolen, or cover wider area than where the victimôs body was found. It is hard sometimes to determine the crime scene when a victim is abducted from a shopping mall parking lot, raped by an accomplice while the other one drives the van around, and then taken to a secluded area, removed from the van, further abused and executed and the body is dumped into a ravine. In the view of Henry C. Lee, criminal incidents may have more than one crime scene. The primary scene is the location where the initial offence was committed; the location of all subsequent connected events is secondary scene. If there are multiple crime scene locations, the primary and secondary scenes may be located in different jurisdictions, a situation requiring a high level of cooperation and informational changes between agencies. Notwithstanding, the successful gathering of any physical orscientific evidences from the scene depend very much on the skillful actions of the detectives.

(B) Information Gatheri ng:

Whenever crime is committed with or without a clue, detectives at the scene of crime must simultaneously gather information from inmates, neighbors and other members of the public who may have knowledge of the crime, but may or may not be involved or incriminated. The purpose is to obtain some investigative leads, which most times are invaluable. The information gathering stage of any criminal investigation is another important stage of criminal investigation and, must of necessity start from the scene. This is the stage envisaged by Judges Rule 1;

> *When a police officer is trying to discover whether or by whom an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained".*

Because the police is not entitled to any reply, the ability of the detective to obtain such information would depend or his skill and proficiency in the art of interview and interrogation.

Information can be gathered by talking to informants and witnesses. Obtaining information at the scene immediately the crime occurred may be very hard. In a violent crime, emotions may be very high. The crowd as earlier noted may cause considerable confusion. It is not unusual in such situations for witnesses to be lost, or their versions of what happened altered by contamination through contact with the crowd. In such an emotionally charged atmosphere, plain cloth detectives could initiate discussions that can elicit an investigative lead from the crowd. If there are suspects arrested, conduct custodian interrogation, search special scene and re-interview witnesses on an ñas-needed basisò

At the scene of major crimes, such as bank robberies and culpable homicides members of the press are often eager to obtain information from police officers and witnesses, creating no small amount of confusion and sometimes producing erroneous reports. Information at the scene must be carefully managed. If their presence will in any way jeopardize operations, it should not be allowed. They may take photographs or make reports of

their observation while legally at the scene, but reports or information that would endanger people or adversely affect the investigative process, both they and their supervisors should be notified of the possible consequences. The general practice is to supply relevant information to the media, if they will not be prejudicial to the investigation or the fair trial of the defendant.

(C) Arrest and Identification of Suspects:

The arrest and identification of a criminal suspect is one of the major objectives of criminal investigation. However, what constitutes a successful investigation depends on various perceptions. According to Swanson:

> *In the public's mind that status is attained when the perpetrator is arrested, property recovered, and the person charged is subsequently convicted. In the administrative terms, success is achieved when the offence is accorded one or two classifications. It may be "exceptionally cleared", in that a factor external to the investigation, such as a complainant's refusal to testify, results in no charge being filed against a suspect; or it may be "cleared by arrest", which occurs when the perpetrator has been arrested and there is sufficient evidence to file a formal charge. Here it must be observed that not every arrest results in prosecution; the police can and do make mistakes, or the evidence may be found legally insufficient".*

In most crimes the criminal is simply unknown, with no traces left behind and no informant or eyewitness to give an investigative lead. The investigator is faced with various mental theories about the crime, the criminals, their modus operandi and motives. He puts together all available oral, physical and scientific evidence relating to the crime. Whenever a link of the crime to a real or likely suspect(s) is established, the investigator is faced with the problem of identification and arrest of the real or likely suspect.

The arrest of a criminal suspect is, therefore, an intricate aspect of criminal investigation. It is often not as easy as it appears. A suspect may be arrested in different ways depending on the circumstances at the scene of the crime. The arrest could be made during or immediately after the criminal act. Otherwise, a suspect can be arrested by invitation to the police station, or any where with or without warrant, depending on the nature of the offence. Where the suspect is of a vicious armed gang or notorious fraud star in hiding, the arrest may involve some elements of surprise, hence detectives must make adequate preparation before embarking on the mission. The team must be fully armed and in good number with a clear sketch, showing the particular house where the suspect is hiding or residing; his photograph if possible and a good pointer whose identity must be protected. Any mistake of address and identity of the suspect may be fatal to the investigation. Also where there is no information data married with good planning, the detectives/operatives may be exposed to serious danger. The failure of such operation could put the suspect away for a longer period.

The best approach is good intelligence and surveillance without which the real suspects may be put on the run. Except where the suspectôs identity is well-known, random arrests during raids do not always achieve the desired result. In some instances, the suspect may be mistakenly rounded up in such raids and released because of lack of information and proper identification.

Self-Assessment Exercise 3.2

With the aid of diagram discuss the Stages of Criminal Investigation

3.3 Undercover:

Undercover or Sting Operation is another aspect or stage of criminal investigation that encompasses the gathering of information, arrest and identification of suspects. It involves detectives posing as thieves in areas where thieves and fences were believed to congregate, with the objective of steering those who wanted to dispose of stolen property to undercover

ñstorefrontsò where their attempts to sell the property could be videoed. The other aspect of ñundercoverò or ñcoverò investigation is entrapment. Example, a police officer posing as a drug dealer who after repeated and intense solicitation finally prevails upon an initially resistant individual to buy a quantity of drug. In this technique, detectives often pose as people willing to do some illegal acts, such as buying drugs, receiving stolen property, soliciting prostitution etc.

Undercover agents in our jurisdiction are referred to as agentsô provocateur. This is someone, usually a police officer, though not always, who secretly engaged as a spy to join the commission of a crime by inducing or inciting the actual offender or offenders to commit the offence; while his real purpose is to procure evidence against the offender through him.

Laws regulating underco ver operation:

The principal sources of regulation for sting operations and related undercover work are the common law defence of entrapment, the due process clause. The ñentrapment and due process defence, include:

(a) The ñpredispositionò or ñsubjectiveò approach which considers whether the defendant was predisposed to commit crime. If so, the defence of entrapment is not available regardless of how the government acted.

(b) ñThe conduct of the authoritiesò or objective test which focuses on the behaviour of the government officials ï the American Law Instituteôs Penal Code provides that ñif the government employs methods of persuasion or inducement which creates a substantial risk that such an offence will be committed by persons other than those who are ready to commit itò. Entrapment has occurred regardless of the defendantôs criminal proclivities,

The argument for and against the predisposition test were set in **Sherman v. United States,** where Chief Justice Warren contended that ñto determine whether entrapment has been established, a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal. ñIf the government is not allowed to respond to a defendantôs claim for an inducement with evidence of predisposition, Warren warned, it would suffer a significant ñhandicap in showing that the crime was due to the defendantôs readiness to commit crime rather than government importuningò. In response, Justice Frankfurterôs dissenting opinion in Sherman argued vigorously against a test, which permitted the government to show evidence of predisposition:-

No matter what the defendantôs past records and present inclinations to criminality, or the depths to which he has sunk in the estimation of society, certain police conduct to ensnare him into further crime is not to be tolerated by an advanced societyò.

In **Jacobson v United States,** On September 24, 1987 Petitioner Keith Jacobson was indicted for violating a provision of the Child Protection Act of 1984. Pub L. 98-292 Statute. 204 (Act) which criminalized the knowing receipt through the mail of a visual depiction that involves the use of a minor engaging in sexually explicit conduct. Petitioner defended on the ground that the government entrapped him into committing the crime through a series of communication from undercover agents that spanned the 26 months preceding his arrest. Petitioner was found guilty after a jury trial. The court of Appeal affirmed his conviction, holding that government had carried its burden of proving beyond reasonable doubt that the petitioner was predisposed to break the law and hence was not entrappedò.

The US supreme court in reversing this decision, noted from the case of **Sorrels v United States**, that ---

Artifice and stratagem may be employed to catch those engaged in criminal activities. The government may not punish an individual for an alleged offence which is the product of the creative activities of its own officials.

Where the government has induced an individual to break the law and the defence of entrapment is at issue, the prosecution must prove beyond reasonable doubt that the defendant was deposed to commit the criminal act prior to first being approached by government agents. Had the agent offered petitioner the opportunity to order child pornography through the mails and petitioner who must have presumed to know the law and had promptly availed himself of his criminal opportunity. It is not unlikely that his entrapment defence would have warranted a jury instruction. This did not happen in the case of Jacobson. By the time petitioner finally placed his order, he had already been the target of 26 months of repeated mailing and communications from Government agents and fictitious organizations. The court viewed that although he had become predisposed to break the law by May 1987, the Government did not prove that this predisposition was independent and not the product of the attention that the government had directed at petitioner since January 1985. In the words of Slobogin, the crux of the courts concern in this case is that the government went too far and ñabused ñthe processes of detection and ñenforcementò by luring an innocent person to violate the law.

In Denmark, some types of undercover works are subject to judicial oversight. Section 754 (a) ï (c) of the Danish Code of Civil and Criminal Procedure provide that the police pursuing an investigation may not induce some one to commit a crime unless there is ñan especially corroborated suspicionò that the crime is being or will be committed, other means of investigation are inadequate, and the suspected crime involves punishment of more than six years or is a second drug offence. Such inducement must be authorized by a court issued-warrant except in emergency situations in which case the matter must be presented to the court within 24 hoursò. This warrant-based procedure is apparently not required for ñdecoy operationsò(e.g such as government agent standing on a street corner posing as a prostitute or someone willing to sell drug) which do not involve investigating a particular individual.

In our jurisdiction the common use of police as agent provocateur have been subjected to serious criticism. Since the intention of inducing or taking part in the crime, is to collect evidence against the culprits, he is not a party to the offence or an accessory. In other words, he does not fall under section 7 or 10 of the Criminal Code; and so not an accomplice. In the area of evidence, the evidence of an agent provocateur does not required corroboration or warning as a matter of law, but in the ***Queen v. Israel David & Ors*** it was emphasized that the use of agent provocateur is fraught with danger to the innocent and the rule of law. Hence, the court has to warn itself that it is unsafe to convict upon the uncorroborated evidence of an agent provocateur.

Self- assessment Exercise 3.3
What do you understand by undercover or sting operation

3.4 Investigation of Computer Crime

With the increasing use of webs and other internet facilities, information technology has been a viable means of business transactions. The benefits of this have exposed a dark side of this information frontier ï Computer crimes and abuses. It is astonishing, therefore, to note that there is an unending list of crimes associated with the use of computer. The categories of these crimes as listed by C. H. Conely and J. T. McEwen include:

(a) Internal Computer Crimes e.g Trojan horses, packet snifters, salami techniques, back doors, logic bombs, and virus
(b) Telecommunication crimes, e.g Hacking, illegal bulletin boards, and misuse of telephones systems
(c) Computer manipulation crime, e.g Embezzlement and fraud.
(d) Support of Criminal Enterprises, e.g Database to support drug distributions, database to keep records of client transactions, gambling and prostitution, money laundering.

(e) hardware and Software Thefts, e.g Software piracy, theft of computers, theft of microprocessor chips, theft of trade secret

(f) Invasion of Privacy, and Related issues, e.g Sexually explicit material, cookies etc.

These crimes which encompasses, internet scams, network intrusion, computer vandalization, intellectual property violations, corporate crimes, etc expose the police to greater challenges in their investigation due to advanced technology and the sophistication of criminals. The problems associated with their investigation also include, the failure of victims to report because of adverse publicity that may be involved and the inability of police officers to accurately differentiate among computer equipment and peripherals. The difficulty in the detection sometime arises because, the trial is often cold, records may be at minimum, key people to interview may have gone on to other jobs and the investigator may not recognize key evidence or know what to ask for due to lack of training and experience.

Computer Crime Scene:

Where a computer or user is involved in a crime, the computer crime evidence may be seized by the execution of a search warrant. The warrant should include information about the computer, data storage devices (including internal and external hard drives) floppy disks, tape backups, modem programs, software manuals, user notes, hard-copy output and any peripherals that may be of concern to the investigators, such as scanners. Removing non-investigative personnel from computers and terminals is a high priority, to prevent tampering or destruction of electronic evidence. A computer expert, either an investigator specialized in this field or a civilian with necessary expertise, should be consulted for assistance in specifying what is to be searched for by the warrant and also in seizing it. The computer related equipment and materials should not be touched or moved until thoroughly documented by photography or videotaping. The screen must be photographed to secure the information on it. It is important that the keyboard should not be used in a premature attempt to locate evidence. Unplug the computer after photographing and ensure that

all wiring connections are tagged with notes to show where they were connected. The serial number of all equipment should be recorded. The hard disk should be secured for transportation to prevent damage.

Retrieving and presenting data that has been processed electronically and stored in the computer is done by digital forensic analysis. Thus, special care must be given to the recovery of electronic data to ensure the accuracy and integrity of this metaphysical evidence. Seized computers should never initially be rebooted using their own disks. The next step is to create a bit-copy or an image or to reproduce all the data on the hard drive, even if the data are invisible to the operating system or had apparently been deleted. Seized hard disks should be write-protected with a jumper, and the system should then be rebooted with a clean boot disk.

It is important to note that the user can install a ñtrapòie. A custom- written software program that will automatically run whenever the machine is booted. The trip looks for specific trap files, and if those files were not present, the program would delete the incriminating data. An ñencryptionò technique can also prevent access to phones and computers. It is used to store passwords on home computer, store credit card numbers in ñonline walletsòand secure e-commence transactions. Notwithstanding, the use of ñ*crystanalysis software,*ò can be used to break encryption devices. Example, a cryptanalysis tool called Lophtcrack could be used to break Window NT. Password sec urity.

Investigators should be aware of the tools that are unique to computer criminals. A careful forensic analysis of such tools in a system may produce useful leads or connect the suspect to the crime scene and become an important tool for prosecution. At the very least, familiarity with such tools can help an investigator recognize their effects. He should also be aware of the methods and importance of protecting information, largely by making it inaccessible to unauthorized users, thereby preventing computer firewalls encryption, and password.

It is against the background of the above complexities that the mandatory computer literacy for police officers and men in Nigeria is highly justified. Indeed, the level of computer literacy required for police officers to meet the challenges of computer crime investigation is high. Officers should be exposed to more training on the investigative techniques and the internet world by providing cyber cafés in Area Commands and Divisions.

Self –Assessment Exercise 3.4

There are many kinds of Computer Crimes. List and discuss at least five types of this crime known to you.

4.0 CONCLUSION

In this unit; we have looked at the role of law enforcement agents in crime investigation. We concluded by saying that it is very important that law enforcement officers should be well trained in computer and modern techniques of investigating crime. This is against the backdrop that police officers training in computer literacy is still very low in Nigeria.

5.0 SUMMARY

The role of the law enforcement agents in detecting crime cannot be overstressed. The various tools discussed in this unit are very important to the men and women of the law enforcement agents in Nigeria. They can only work successfully and effectively if all these tools are at their disposal.

6.0 TUTOR-MARKED ASSIGNMENTS

Many high profile killings had taken place in Nigeria over the years without any trace to the perpetrators of these heinous crimes. The police and other law enforcement agents are helpless. List and discuss the causes of their helplessness in crime detection and proffer long lasting solutions.

7.0 REFERENCES/FUR THER RE ADINGS

Celestine, I. N. (2008). *Police Interrogation in Criminal Investigation*, Halygraph Nig. Ltd., Minna, Nigeria

Counsel at Interrogation, Yale Law Journal Vol. 23.

George, L. K. & Laurin, A. W. (1980). *Introduction to Law Enforcement,* Sweet & Macwele, London.

Yomi Onoshile: *"Scientific Criminal Investigation Detection and Prosecution.*

UNIT 4: ENFORCEMENT PROCEDURE FOR HUMAN RIGHTS VIOLATIONS

CONTENTS

1.0 INTRODUCTION

The cases of human rights violations top the agenda of states, whether at the local or international levels. Without human rights, man is nothing but a slave to the society; to this end, issues relating to human rights have since the end of the cold war regained ascendancy in the international discourse. In this unit therefore, we want to take a practical look at the procedure that a person whose rights have been infringed upon or violated either by government or its agencies or by individual, has to take to have his rights enforced in the appropriate court, either Federal or State High Courts.

2.0 OBJECTIVES

At the end of this unit you would have known the various:

- Orders and rules relating enforcement rights;
- Courts vested with jurisdiction to entertain human rights cases;
- Application forms for the appropriate order sought by a victim of violation of rights;
- Time frame for application and response to such application; and
- Consequences for failure to comply with the order of court.

3.0 MAIN CONTENT

3.1 Fundamental Rights (Enforcement Procedure) Rules

ORDER 1
Application for leave

2.(1) Any person who alleges that any of the Fundamental Rights provided for in the Constitution 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.

(2) No application for an order enforcing or securing the enforcement within that State of any such rights shall be made unless leave therefore has been granted in accordance with this rule.

(3) An application for such leave must be made exparte to the appropriate Court and must be supported by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by an affidavit verifying the facts relied on.

(4) The applicant must file, in the appropriate court, the application for leave not later than the day preceding the date of hearing and must at the same time lodge in the said Court enough copies of the statement and affidavit for service on any other party or parties as the court may order.

(5) The Court or Judge may, in granting leave, impose such terms as to giving security for costs as it or he thinks fit.

(6) The granting of leave under this rule, if the Court or Judge so directs, shall operate as a stay of all actions or matters relating to, or connected with, the complaint until the determination of the application or until the Court or Judge otherwise orders.

Time for applying for leave

3.(1) Leave shall not be granted to apply for an order under these Rules unless the application is made within twelve months from the date of the happening of the event, matter, or act complained of, or such other period as may be prescribed by any enactment or, except where a period is so prescribed, by any enactment or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the Court or Judge to whom the application for leave is made.

(2) Where the event, matter, or act complained of arose out of a proceeding which is subject to appeal and a time is limited by law for bringing of the appeal, the Court or Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

ORDER 2

1.(1) When leave has been granted to apply for the order being asked for, the application for such order must be made by notice of motion or by originating summons to the appropriate court, and unless the court or Judge granting leave has otherwise directed, there must be at least eight clear days between the service of the motion or summons and the day named therein for the hearing. Form No. 1 or 2 may be used as appropriate.

(2) The motion or summons must be entered for hearing within fourteen days after such leave has been granted.

(3) The motion or summons must be served on all persons directly affected, and where it relates to proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any act in relation to the proceedings or to quash them or any order made therein the motion or summons must be served on the

registrar of the court, the other parties to the Judge is made, on the Judge.

(4) An Affidavit giving the names and addresses of, and the place and date of service on all persons who have been served with the motion of summons must be filed before the motion or summons is listed for hearing, and, if any person who ought to have been served under paragraph (3) of this rule has not been served, the affidavit must state the fact and the reason why service has not been effected, and the said affidavit shall be before the court or Judge on the hearing of the motion or summons.

(5) If on the hearing of the motion or summons the Court or Judge is of the opinion that any person who ought to have been served with the motion or summons has not been served, whether or not he is a person who ought to have been served under paragraph (3), the Court or Judge may adjourn the hearing on such terms, if any, as it or he may direct in order that the motion or summons may be served on that person.

Statements and Affidavits

2.(1) Copies of the statement in support of the application for leave under Order 1 rule 2(3) must be served with the notice of motion or summons under rule (3) of Order 2 and subject to paragraph (2) of this rule, no grounds shall be relied upon or any relief sought at the hearing of the motion or summons except the grounds and relief set out in the said statement.

(2) The Court or Judge may, on the hearing of the motion or summons, allow the said statement or be amended and may allow further affidavits to be issued if they deal with new matters arising out of any affidavit of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits he must give notice of his intention and of any

proposed amendment of his statement to every other party, and must supply to every such party, copies of such further affidavits.

(3) Every party to the application must supply to any other party copies of the affidavit which he proposes to use at the hearing.

Several applications relating to the same infringement

3. Where several applications relating to the infringement of a particular Fundamental Right are pending against several persons in respect of the same matter, and on the same grounds the applications may be consolidated by order of the Court or Judge hearing the applications.

ORDER 3

Application to quash any proceedings

1. (1) In the case of an 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 motion or summons 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 or Judge hearing the motion or summons.

(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 on their removal into the court which heard the application.

ORDER 4

Application for production and release of person detained

1. (1) In the application where the applicant complains of wrongful or unlawful detention, the court or judge to whom the application is made exparte may make an order forthwith for his release from such detention, or may.

(a) Direct that an originating summons as in the Form 2 be issued or that an application therefore be made by notice of motion, as in the Form 3; or

(b) Adjourn the exparte application so that notice thereof may be given to the person against whom the order for the release of the applicant is sought.

2. The summons or notice of motion must be served on the person against whom the order for the release of the applicant is sought and on such other persons as the Court or Judge may direct, and, unless the Court or Judge otherwise directs, there must be least five clear days between the service of the summons or motion and the date named therein for the hearing of the application.

3. Every party to an application under paragraph (1) of this rule must supply to every other party copies of the affidavits which he proposes to use at the hearing of the application.

2. Without prejudge to rule 1(1), the Court or Judge hearing an application where the applicant complains of wrongful or unlawful detention may, in its or his discretion, order that the person restrained be produced in court, and 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 complainant, or any other person responsible for his detention, for the production in court of the person under restraint.

3. Where an order is made for the production of a person restrained, the Court or Judge by whom the order is made shall give directions as to the Court or Judge before whom, and the date on which, the order is returnable.

4.(1) Subject to paragraph (2) and (3) of this rule, an order for the production of the person restrained must be served personally on the person to whom it is directed.

(2) 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 must be served by leaving it with any other person or official working in the office of the police officer, or the prison or office of the superintendent or the office of the public official to whom the order is directed.

(3) If the order is made against more than one person, the order must be served in manner provided by the rule on the person first named in the order and copies must be served on each of the other persons in the same manner

(4) There must be served with the order in Form 4 for the production of the person restrained a notice (in the Form 5 stating the Court or Judge before whom, and the date on which the person restrained is to be brought.

Return to the Order for release

5. (1) the return to an order for the release of a person restrained must be endorsed on or annexed to the order and must state all the causes or justifications of the detained of the person restrained.

(2) The return may be amended, or another return substituted therefore, by leave of the Court or Judge before whom the order is returnable

Proceedings as hearing of motion or Summons after order has been returned

6. When a return to the order has been made, the return shall first be read in open court and an oral application then made for discharging or remanding the person restrained or amending or quashing the return, and, where that person is brought up in court in accordance with the order, his legal representative for the State or for any other official or person restraining him. The legal representative for the person restrained will then be heard in reply.

7. An order for the release of a person restrained shall be made in clear and simple terms having regard to all the circumstances.

ORDER 5
Right of any other person or body to be heard

Any person or body who desires to be heard in respect of any application, motion, or summons, under these Rules, and appears to the Court or Judge to be a proper person or body to be heard, shall be heard notwithstanding that he or it has been served with the copy of the application, motion, or summons.

ORDER 6
Orders which the court can make, and effect of disobedience

1. (1) At the hearing of any application, motion, or summons under these Rules, the Court or Judge concerned may make such orders, issue such writs, and give such directions as it or he 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 to which the complainant may be entitled.

(2) In default of obedience of any order made by the Court or Judge under these Rules, proceedings for the committal of the party disobeying such an order will be taken. Order of Committal is in Form 6.

APPENDIX

FORM NO. 1

NOTICE OF MOTION FOR AN ORDER ENFORCING A FUNDAMENTAL RIGHT (ORDER 2 RULE 1 (1)

In the Federal High Court/High Court é é é é é .é é é é é é é é é .. State

In the matter of an application by é é é é é é é é é é .é é é é é é .. for an order for the enforcement of a Fundamental Right

and

In the matter of é Applicant

Take notice that pursuant to the leave of the Federal High Court at é é é .é é é é é é é é é é é é é é é ..é é é é é .é ./ High Court of é é é é é é é é é .é é State (or the Honourable Justiceé ..é é é ...) given

on the é é é é é .. day of é é é é é . 2010 é é é é é .. the é é é ..é é é ...High Court will be moved on the é é é é é é é é é é é é é ...é é .. day of é é é é é é é é .. 2010é é é ., or so soon thereafter as counsel can be heard on behalf of é é é é é é é é é é é é é é é é é é é .é é é é . (for an order that é é é é é é é é é é é é é é é é é é é ..é é é é é é é é ..) é .é .. in terms of the relief sought in the statement accompanying the affidavit in support of the application for leave to apply for the order on the grounds set out in the copy statement, served herewith, used on the application for leave to apply for such order.

And take notice that on the hearing of this motion the saidé é é é . will use affidavit of é . and the exhibits therein referred to.

And also take notice that the é é é é é é é é é é é é é é é .. High Court (or the Honourable Justice é é é é é é é é é .é é é é é é é é .) by order dated é é é é é é é é é é .. directed that all proceedings in (or on) the said é é é é é é é é é é .é é é .. be stayed until after the hearing of this motion further order)

Dated the é é é é é é é é é é é .. day of é é é é é é é .2010 é é

(Signed)
Applicant or his legal Representative

To é é é é é é é é é é é é é é é
Respondent or his Legal Representative
Notice ï Delete the High Court which is not applicable

FORM NO. 2

ORIGINATING SUMMONS ORDER 2 RULE 1(1), AND ORDER 4 RULE 1(1)

In the Federal High Court at é é é é é é é é é é .é é é é é é é é é .. High Court of é é é é é é é é é é é State é é é é é é é é ..... Division

Suit Noé é é é é é é é .

(in the matter of é é é é é é é é é é .é é é é é é é é é é é é é ..é ..) between A. B. é é é é é é é é é é é é é é é é ..é Plaintiff

and

C. D é ...é Defendant

To C. D. of é é é é é é é é . in the é é é é é é é .. of é é é é é é é é ...

Let the defendant, within 14 days (or if the summons is to be served out of the jurisdiction, insert here the time for appeara nce fixed by the order giving leave to issue the summons and serve it out of the jurisdiction after service of this summons on him, inclusive of the day of service, cause an appearance to be entered to this summons, which is issued on the application of the plaintiffé é é é é é é é é é é of é é é é é é é é é é é é é é é ..

By this summons the plaintiff claims against the defendant é é .é é é ..é é é (or seeks the determination of the Court of the following questions, namely, é . or as may be)

If the defendant does not enter an appearance, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

Dated the é é é é é é é é é é é é .. day of é é é é é é é .2010é é é é .

Note: This summons may not be served later than twelve calendar months beginning from the above date unless renewed by order of the court.

This summons was taken out by é é é é é é é é é é é é é é é é é é .....
of
é é
é
the solicitor for the plaintiff whose address is é é é é é é é é é é ....
é é
é é
é . (or where the plaintiff sues in person) this summons was taken out by

the said plaintiff who resides at é ..
é é
é é ..

DIRECTIONS FOR ENTERING APPEARANCE

The defendants may enter an appearance in person or by a solicitor by handing in the appropriate forms, duly completed, at the Federal High Court at é é é é .
é .. or the High Court of é é é é é é é é é é é é é é é é é é é ..é é é State sitting at
é .
(Delete Court which is not applicable)

For Service On   Judge

é é é é é é é é é é é é ..
Defendant or Solicitor acting for me

FORM NO. 3

NOTICE OF MOTION FOR AN ORDER FOR THE PRODUCTION OF PERSON DETAINED (ORDER 4 RULES 1 (1)

In the Federal High Court at é é é é é é é é é é .é é é .é /the High Court
of é é é é é é é é é é é é é é é é é State

Suit Noé é é é é é é é .

In matter of A. B.

and

In the matter of an application for the release of person detained.
Take notice that pursuant to the direction of the Honourable Justice é é é é é . Of the Federal High Court at é é é é é é é .é é é é /or of the High Court of é é é é é é é é é é é é é é é é é . State the High Court will be moved on the é é é é é é é . Day of é é é é . 2010 é é é ., or so soon thereafter as counsel can be heard on behalf of é é é é é é é é é .. for an order directed to é have the body of the said
é é é é é é é é é é é é é é é é é é é before the High Court at é é é é é at such time as the Court or Judge may direct upon the grounds set out in the affidavits of the said é é é é é é é é é é . and é é é é é é é é é é é .. and the exhibits therein respectively referred to sued on the application to the Honourable Justice é é é é é é é é é é . (on the High Court) for such order copies of which affidavits and exhibits are served herewith.

And take notice that on the hearing of this motion the said é é ..é é é é .. will

use the affidavits of himself and the said é é é é é é é é é é é é é é é
é é é é é é é é é é é and the exhibits therein referred to.

Dated the é é é é é é é é é é é é .. day of é é é é é é é .2010 é é .é é

(Signed)
Applicant or his Legal Representative

Note: Delete the High Court which is not applicable

To é é é é é é é é é é é é é é é é é
The Officer or person who has custody of person detained.

FORM NO. 4
ORDER FOR PRODUCTION OF PERSON DETAINED
[ORDER 4 RULE 4 (4)]

Suit No. é é é é é é é é ..

In the matter of the Enforcement of the Fundamental Right

In the matter of detention of é .
é ...é é é é é é Applicant

To the Superintendent of é é é é é é é é é é é é .. prison or other person having custody of é ...é .
é ..
é at é é é é é é é é é é ..

We command you that you produce in the Federal High Court at é é é é é /or in the High Court of é é é é é é é é é . State at é é é é é é .. on the day and at the time specified in the notice served with this order the body of é é é ... being taken and detained under your custody as is said, whatsoever name he may be called therein, that our Court (or Judge) may then and there examine and determine whether such cause is legal, and have you there then this order.

Witness this é é é é é é é é é é é é é é day of é é é é é é é . 2010é é

é é é é é é é é é é é .
Judge

Note: Delete the High Court which is not applicable

To é é é é é é é é é é é é é é é é
The Officer or person against who order is sought

FORM NO. 5

NOTICE TO BE SERVED WITH THE ORDER FOR THE PRODUCTION OF PERSON DETAINED [ORDER 4 RULE 4(4)]

Suit No. é é é é é é é é ..

In the Federal High Court até é é é é é é .é é é .é é é /or the High Court
of é é é é é é é é é é é é ..State at é é é é é é é é é é é é é é ..

In the matter of the Application of é é é é é é é é é é é é é é . (If in a cause already begun, here insert the title, not otherwise)
Whereas this Court (or the Honourable Justice é é é é é é é é é é é) has
made an order directed é é é é é é é .. (or other person having the custody of é é é é é é é é é é . if so) command him to have the body of é é é é é ..
é é é é é é é é before the said Court at é é é é é é é é é é . 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 é é é é é é é é é é é é é é . before the court (or before the Judge aforesaid) on the é é é é é é é day of é é é é .. 2010é é é é at é é é é .. Oôclock 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 on 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 writ).

Dated the é é é é é é é é é é é .. day of é é é é é é é .2010é é é é

(Signed)
Applicant or his Legal Representative

Notice ï Delete the High Court which is not applicable

FORM NO. 6

ORDER OF COMMI TTAL
[ORDER 6 RULE 1 (2)]
(Heading as in Action)

Suit No. é é é é é é é é ..

Upon motion this day made unto this Court by counsel for the plaintiff and upon reading (an affidavit of é é é é é é é é é .. filed the é é é é é é . Day of é é é é é é é é é 2010 é é é é é .., of service on the defendant é é é é é é .. of a copy of the order of the Court dated this é é é é é é é day of é é é é é é é . 2010é é é é .., and notice of this motion).

And it appearing to the satisfaction of the Court that the defendanté é é é é . Has been guilty of contempt of court in (state motion):

It is ordered that for his said contempt the defendant 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 defendant é é é é é é é .. complies with the following terms, namely, é é é é é é é
é ..

Dated the é é é é é é é é é é é .. day of é é é é é é é .2010 é é é é

é é é é é é é é é é

Judge

4.0 CONCLUSION

Human Rights are a universal concept. It is an interest right which no law can invalidate. This unit has discussed the various order and rules relevant to the enforcement of human rights violations or infringement. The various application forms were also highlighted to enable you appreciate the right form to use in case you are confronted with fundamental rights violation issues.

5.0 SUMMARY

In this unit, we dealt in details with the different types of form one needs to use when human rights violations are complained of by a victim. Form No. 1 is for notice of motion for an order enforcing a Fundamental Right, Form No. 2 for originating summons, Form No. 3 Notice of Motion for an order for the production of person detained, form No. 4 Order for production of person detained, and form No. 6, order of committal.

6.0 TUTOR-MARKED ASSIGNMENTS

Mrs. Adebayo Youngman has been arrested by the Nigeria Police for an alleged participation in a peaceful protest organized by NOUN Students. All efforts to secure her release by the student authority have proved abortive.

You have been directed to apply for the enforcement of Mrs. Adebayo Youngôs Fundamental Human Rights. Draft the notice for the enforcement order, what is the appropriate form to use and in which court would you file your action.

7.0 REFERENCES /FU RTHER RE ADINGS

Olakanmi & Co. (2007). *Handbook on Human Rights, LawLords Publications*, Abuja, Nigeria

Sokefun, J. A. & Others, (2006), *Human Rights Law*, NOUN Course Material.

UNIT 5: NATIONAL POLICY ON COMPENSATION TO VICTIMS OF CRIME

CONTENTS

1.0 INTRODUCTION

Justice is not a one-way-traffic. It is not justice for the appellant only. Justice is not even a two-way traffic. It is really a three-way traffic: Justice for the appellant accused of a heinous crimes of murder, justice for the victim, the murdered man, the deceased, ñwhose blood is crying to heaven for vengeanceò and finally justice for the society at large- the society whose social norms and values had been desecrated and broken by the criminal act complained of.

2.0 OBJECTIVES

At the end of this unit, you would able to find out how:

- Justice becomes a three-way-traffic;
- The various codes make provision for compensations to victims of crimes.
- Judgement for compensation is entered;
- Customary law provides for compensation to victims of crime, and
- Rationale, basis for the payment of compensation to victims of crime comes about.

3.0 MAIN CONTENT

3.1 Policy and Compensation

The aim of criminal policy is to reduce criminality in the society by the formulation of such measures as will accomplish such aim. The main purpose of criminal science is to ascertain how best to fight against crime. It is to prevent crime. This has proved a mission impossible for Governments, of all ages and levels of civilization. It seems to me that three approaches have been adopted. First, by dealing with causes of crime, their removal or neutralization. Secondly by dealing with prospective delinquent, his education or deterrent. Thirdly, by the punishment imposed on the guilty. The total measures formulated to attain these objectives is regarded in criminal science as criminal policy. The etymological meaning of policy, is the consistent course of conduct adopted and pursued by government in respect of a particular measure in the interest of a generality of the people affected or likely to be affected. This may be effective through legislation or administrative process.

Although the criminal process is victim initiated, and there can be no determination of guilt and conviction without victim participation, the punishment of the offender pays very little regard to the inherent dominant participation of the victim. The sentencing policy in both the Criminal

Procedure Act, and the Criminal Procedure Code, pays very little and indeed less than marginal emphasis on the participation of the victim. The sentencing policy demonstrates a tendency towards deterrent, retributive and little rehabilitative punishments., the punishments attached to the offence by the Criminal Code and Penal Code are determined by its nature and gravity and its effect on the political and economic fortunes of the society.

The punishments at customary law which have been abolished also reflected a policy of retribution and deterrence towards further commission of the offence. It is interesting to note the advice of Lord Lugard to political officers who review Native Court sentences. He charged that..

ñé the form of punishment inflicted must be that which is most deterrent and most likely to suppress crime. Native Courts must be instructed that the restitution of stolen property, or of an abducted person is not of itself a sufficient penaltyé a punishment should always be added to restitutionò

Whereas a sentence is intended as a pronouncement of the punishment prescribed for the offence committed by the wrong doer, restitution, and compensation are qualification on the sentence enabling the offender to ameliorate the injury done to the victim by the wrong doer. Restitution or restoration in specie, enable the victim to be returned to the status quo ante before the injury was done to him. Compensation enables the victim to be sufficiently assuaged by money or in any other manner the injury done to him can be ameliorated. Thus the object of compensation is to heal the injury inflected by crime in so far as this can be done either by restitution in integrum by money or by apology. Compensation is an extension of the sentencing apology of the criminal law whose principal objective is to express the societyôs disapproval of the crime committed by

the offender, and the sympathy for the injury suffered by the victim. It is the most eloquent endorsement of the support for the victim.

We have attempted a definition or explanation of the terms which will recur in this unit to facilitate understanding of the subject matter. It may be necessary in the course of the discourse to expatiate on the terms to enable a composite treatment of the word, ñpolicyò, ñcompensationò, ñvictimò and ñcrimeò. It is now appropriate to discuss whether there is a National Policy for Compensation of Victims of Crime, and if there is none whether it is desirable to have any.

Self Assessment Exercise 3.1

would you agree that policies for compensation in Nigeria are adequate

3.2 Provisions Relating To Compensation To Victims Of Crime

The punishment prescribed in our Criminal and Penal Codes for culpability and liability for criminal offences are listed in section 17 of the Criminal Code, and Section 68 of the Penal Code. The Criminal Code lists them as death, imprisonment, whipping, fine and forfeiture. The Penal Code adds detention in a reformatory, and for offenders who are of the Islamic faith Haddi lashing as prescribed by Islamic Law in offense prescribed. Accordingly, although forfeiture is regarded as a punishment, none of the prescribed punishments listed above has the interest of the victim as its primary objective.

However, there are general provisions in both the Penal Code and Criminal Procedure Act which empower the court on conviction of an offender, or in respect of the Criminal Procedure Act even in lieu of conviction to award compensation to persons injured by the criminal acts of such offender.

Section 78 of the Penal Code provides as follows:

"Any person who is convicted of an offence under this Penal Code may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition to in substitution for any other punishment".

In accordance with these provisions compensation may be awarded in situations where the offender has been convicted of an offence and the award to the victim, can be made in addition to any penalty imposed on conviction. This is not the case with the exercise of powers vested in the Court under Section 299 of the Criminal Procedure Act. The section provides as follows:

"299. Upon the conclusion of the hearing the court shall either at the same or at an adjourned sitting give its decision on the case either by dismissing or convicting the accused and may make such other order as may seem just".

The words of this provision which are discretionary empower the court to make any order in relation to the victim of the offence prosecuted even where the charge in respect of which the offender is prosecuted has been dismissed, i.e. where he has not been found guilty. However, it would appear this is different from the general provisions cited and reproduced where the award of compensation to victims is firmly based on the principles of culpability of the offender for the criminal conduct resulting in the injury to the victim. It is therefore based on the fault theory. This is clearly brought out in Section 435 (1) of the Criminal Procedure Act which provides as follows:

435(1). ñWhere any person is charged before a court with an offence punishable by such court, and the court thinks that the charge is proved but is of opinion that having regard to the character, antecedents, age,

health or mental condition of the person charged, or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation the court may without proceeding to conviction make an order either:

(a) dismissing the charge; or

(b) discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear at anytime during such period not exceeding three years as may be specified in the orderò

Sub-section 2 empowers the court in addition to ñorder the offender to pay damages for injury or compensation for loss, not exceeding ten pounds or if a higher limit is fixed by an enactment relating to an offence that higher limité ò and also to pay costs of the proceedings as the court thinks reasonable. Where the offender is below the age of seventeen years and it is found that his or her parent has conduced to the commission of the offence, they will be liable in respect of the damages and costs.

This last mentioned provision is in respect of probation which is remedial in nature, and stricto sensu has an underlying benign philosophy. Nevertheless it is, like the earlier provisions, also based on the theory of established culpability and fault of the offender. However, it is correct to postulate that these provisions have considerations of the victim of the criminal act as their objective. But the limitation in the sum which can be awarded is and indication of the legislative policy towards compensation.

A noticeable feature of the provisions for the award of compensations is that the law is heavily weighted in favour of the accused who has been acquitted of a criminal offence. It is in his case that the procedure for

enforcement of the compensation awarded is prescribed. For instance a default in the payment of compensation awarded to the accused in case of false or vexations accusation attracts imprisonment. This is probably consistent with the constitutional presumption of innocence of persons accused of crime and to discourage malicious and frivolous accusations. On the other hand the costs which the court may order the convicted offender to pay in addition to any fine or penalty is subject to any express provisions made relating to the award of costs or compensation.

Self-Assessment Exercise 3.2.

Examine the various provisions of the Penal Code & CPA on compensation

3.3 Construction of Compensation Provision

A construction of the provisions of Section 78 of the Penal Code, Section 365 of the Criminal Procedure Code and Section 255 (1) of the Criminal Procedure Act, discloses a divergence, in the policy adopted in each criminal jurisdiction for the award of compensation to victims of crime. First to the Penal Code and Criminal Procedure Code.

The Penal Code and Criminal Procedure Code specifically use the words ñcompensationò in the appropriate sections, and also provide that such compensation is to be made to ñany person injured by his offenceò. This enlarges the categories of the victims of the offence and enables the award of compensation not only to the victim who has suffered directly from the conduct of the offender, but such other persons who are also directly from the conduct of the offender, but such other persons who are also directly adversely affected by the injury through the victim from earning is living compensation should contemplate those others. Such as his dependants, affected directly by the incapacitation. Compensation is to be awarded either in addition to or in substitution for any other

punishment, such as fines or imprisonment which are the prescribed punishments. Thus compensation simpliciter is not punishment and cannot be regarded as the punishments. It is to be awarded entirely in the interest of the victim. Section 365 of the Criminal Procedure Code brings out the policy clearly by providing that in addition to the imposition of a fine, the court may on conviction order the convicted person to pay costs in defraying expenses properly incurred in the prosecution, compensation for the injury caused by the person convicted, where substantial compensation is in the opinion of the court recoverable by civil suit, or medical expenses incurred by any victim of the offence, or compensation to any person who has suffered financial loss as a result of the offence.

The Criminal Procedure Code provides for the payment of compensation to persons who are subjected to arrest and prosecution without valid reasons. Section 255 (1), although supplemented by Section 260 of the Criminal Procedure Act is fairly difficult to reconcile. As we pointed out above, the word ñcompensationò is not used in the former section, although it is used in the latter. The costs which the court is empowered to award as it may seem fit in Section 255 (1) is to the prosecutor and not to the victim. The payment of compensation in the Criminal Procedure Act is in favour of the discharged offender and in relation to false and vexations charges. This can be enforced by the court with imprisonment in default. Although Section 260 (1) speaks of where the offender, having been ordered to make compensation, suffers imprisonment for non-payment thereof,ò There is no Section of the Criminal Procedure Act requiring a convicted offender to pay compensation, Section 257, which speaks of compensation provides that ñAny sum so awarded as compensation shall be specified in the order of discharge or acquittal, as the case may beé ò cannot be referring to a convicted offender. However, Section 260 (1) also cannot be construed as referring to costs in Section 255 (1) but to

compensation in sections 256 and 257 which refers to acquittals or discharged persons. Thus the Criminal Procedure Act contemplates payments of costs to the prosecutor. It does not seem to me that any compensation is envisaged in favour of the victim of a criminal offence. And this is so even where it is widely assumed that the court can rely on the provisions of Section 255(1) in relation to costs and 435(2) in relation to damages for injury or compensation for loss. The Criminal Procedure Act provides for the award of compensation of not more than one hundred naira, or fifty Naira, by a judge or Magistrates as the case may be against a private prosecutor, where the court considers that the private prosecutor had no reasonable grounds for bringing the prosecution. Where compensation is awarded on the ground that the charge brought against a discharged or acquitted offender is false, malicious, frivolous and vexatious, compensation of not more then twenty naira is to be paid to the accused by the person upon whose complaint the accused was charged.

Self-Assessment Exercise 3.3

How has the Courts interpret the provisions on compensations

3.4 Enforcement of the payment of compensation

Compensation awarded to victims of crime are recoverable as fines imposed on conviction or by means of civil action. However, where injuries are sustained as a result of crime, where the victim has cause to resort to civil action to recover payment of the compensation awarded, this will be taken into consideration in such civil suit. There is provision for appeal against costs awarded in favour of the victim. The Criminal Procedure Act provides that the victim of the offence may reject the compensation awarded and resort to his remedy by civil action. But the Criminal Procedure Act provides that acceptance of compensation awarded on conviction, constitutes a bar to recovery of compensation by civil process

in respect of the same matter. It seems to me also that serving of a term of imprisonment in default of the payment of compensation awarded constitutes bar to any action for the same injury.

There appears to be different policy in the recovery of compensation between the Penal Code and Criminal Procedure Code and the Criminal Code and Criminal Procedure Act. In both laws, compensation awarded is recoverable as fines. The Criminal Procedure Code goes further to permit those who have received compensation to being further civil suit relating to the same matter, but empowers the court to take into consideration any sum paid or recovered as compensation in the criminal action. The Criminal Procedure Act, also envisages civil proceeding for the recovery of damages resulting from injury committed for an offence. But this is only where the victim has rejected the compensation awarded by the court on conviction of the offender.

It appears that where the victim has accepted the compensation awarded by the court, his losses his right of action by civil proceeding for damages in respect of the same matter. It is curious to observe that the victim also loses his right of action even where the convicted offender suffers imprisonment in default of the payment of compensation ï a circumstance to which the victim has made no contribution.

It is obvious that the compensation provisions are clearly unsatisfactory in several respects. First the conditions for the award of compensation which are based on the guilt of the offender, have not taken into account the contribution to the commission of the offence by the victim. Secondly, the absence of any procedure for the quantification of damage and the amount to be awarded is a serious defect. Thirdly, the consideration of the award entirely by the trial court and regarding the award of compensation as part of the fine on conviction as a criminal punishment also detracts from the real purpose of the compensation. Fourthly, the policy of

constituting an award of compensation it accepted as a bar to civil remedy is an entirely erroneous policy which defeats its real purpose. Finally, the amount prescribed in the current provisions is completely out of step with current economic realities.

Self-Assessment Exercise 3.4.

What is the role of the state in enforcing payment compensation to a victim of crime?

3.5 Compensation to victims of crime at customary law

The fundamental objective of sanctions in customary criminal law is the restoration of the equilibrium in the society. Thus whether the offence is one against the society in respect of which the group is the victim, or it is against an individual who is the victim, the sanction imposed is an attempt at restoring peace among the inhabitants of the community. At customary law punishment was employed to express group solidarity and to uphold veneration of the sacred institutions of the community. This is the rationale for demanding a replacement in specie or restitution in many customary laws. For instance, although death penalty is the punishment for murder, where the offender is of the same family as his victim, the sentence was not usually carried out. However, where the offender is of the same group as his victim, a substitute was accepted instead of the execution of the offender.

Among the Kalabari/ Ijaw, if a slave killed a freeman, the victimôs family was entitled to demand from the family of the accused, not merely his surrender but a person of equivalent status to the victim. Punishments for adultery were in certain societies graduated to reflect the status of the victim. There are also societies where the suicide of the offender was the only approved punishment for homicide. This is because homicide was forbidden and no one could commit the act even against the wrongdoer. His self-execution is the only compensation to the community whose vital

and fundamental interest has been violated and to the victim who had no way of being satisfied. The element of compensation was the rationale behind subjecting an offender to be slave of the family of his victim. Largely because of the size of the many communities which were small, and their political organizations which were less organized, the attraction to come to compromises even in respect of violations of their prohibitions was dictated by their desire to preserve their unity and cohesiveness. However, the large and more politically organized societies manifested authoritarian sanctions. It would seem that compensation and restitution to the victim of crime were prominent features in the administration of criminal law at customary law. Hence, Lugard was prompted to advise political officers early in this century to impose deterrent sentences in order to suppress crime, and that ñNative Courts must be instructed that the restitution of stolen property, or of an abducted person is not of itself a sufficient penaltyé ò

As recent as 1953 Brooke J. observed that compensation was more often used in resolving criminal disputes in native courts than in professional courts. There is no doubt that restitution and compensation to victims of crime where the important features of criminal justice administration in customary law which were swept away by the abolition of customary criminal law in 1960.

We have endeavoured to outline the existing compensation provisions and their general effect on the victims of crime. These are the provisions expected to replace the accepted general notion that compensation was a dominant feature of criminal justice administration. Criminal justice administration at customary law was victim- initiated, and the offending party or his group ñrepairedò the loss or injury according to a prescribed schedule. Modern criminal justice administration relegates the victim to the position of a complainant to the society, which concentrates on social

defence, rehabilitation, deterrence and incapacitation as its remedy. Society which claims to be a victim, exacts the remedy. Thus the victim is doubly victimized, first by the wrongdoer, and second by the criminal process to which he is subjected. The general effect of the criminal process is that the victim suffers financial loss from the injury, caused by the offender, further financial losses due to attendance at the trial. The conviction and sentence of the offender resulting in his imprisonment may render compensation remote. The fines paid on conviction or imprisonment constitutes no benefit to the victim. The general view among the ordinary Nigerian is that only the Government will benefit from the fines or imprisonment, there is no benefit to his wife or children. As a result of this disadvantage, and the problems generally encountered in persuading the Police to initiate the prosecution of the offender, many victims opt not to initiate the criminal process to prosecute the offender by not informing the Police about the commission of an office. The net effect of this general mistrust in the capacity of the State to protect the citizen and recompense him for injury resulting from violation of prohibited conduct is the feeling, somehow justified, that the victim of crime do not receive ñappropriate justice in the courts.

Self-Assessment Exercise 3.5

Has the customary law been helpful in compensating victims of crimes?

3.6 Rationale basis for the payment of compensation to victims of crime

It is a cardinal purpose of criminal policy that anti-social conduct injurious to the society and the citizens must be prohibited on pains of punishment. The State has undertaken this duty of protection of the law abiding citizen, who on his part as a correlative enjoys the right to be protected by the

State. Thus the State has a duty to prevent crime by the formulation of appropriate effective criminal policy, and the breach of his duty confers on the citizen, victim of crime, the right to demand proper assistance. This duty of the State has been recognized by the European Convention on the Compensation of Victims of Violent Crimes (1984) which establishes in a limited scope, the duty of the State to provide compensation to the victims of violent crimes. The recent adoption by the United Nations General Assembly of the Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power, specifically enjoins member States to ñreview their practices, regulations and laws to consider restitution as an available sentencing option, in criminal cases, in addition to other criminal sanctions.

This is an invitation to countries where provisions for compensation to victims of crime are as inadequate as ours to make better provision.

Again the United Nations Declaration provides

ñWhen compensation is not fully available from the offender, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment or physical or mental health as a result of serious crime.

(b) The family, particularly dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.

The argument in favour of State obligation towards the victim and its responsibility to him for injury resulting from the breach of that obligation is not significantly different from the policy in indigenous law of redressing the injury of the victim and restoring the social equilibrium by awarding compensation to the victim. The modern State having taken over completely the protection of the citizen must also take over the remedies

hitherto available to him. This is why Dr. Nsereko has expressed it clearly when he suggested that:

ñProbably the sounder premise for state compensation is social solidarity, and the need to relieve victims from the consequences of crime by spreading the risk of crime to all members of the community. Unless victims are so relieved they may decide to vindicate themselves by taking the law in their own hands. The consequences of such private vindications cannot conduce to public good.ò

Although limited to unlawful arrest and detention, Section 35(6) of the Constitution 1999 provides:

ñAny person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or personé ò

This is constitutional support, for the award of compensation to the victim of crime. The confidence of the citizen in the criminal justice process will be restored and enhanced if he is assured that the injury inflicted on him by the offender will be reasonably compensated. It is therefore eminently desirable to have a national policy on compensation to victims of crime.

4.0 CONCLUSION

Traditional African judicial systems relied on payment of compensation to victims as a principal remedy in the administration of criminal justice. The existing provisions of the law which are intended to provide the same remedy have failed in many important respects. This is essentially because the nature of modern judicial process coupled with the inadequacy of the provisions made in respect of the compensation to victims of crime. The differences in the Criminal Procedure Act and the Criminal Procedure Code accentuate the differences in the criminal policies. The CPA has not provided for compensation to victims of crime. The costs to be awarded against the accused in certain cases are intended to be paid to the prosecutor.

5.0 SUMMARY

In this unit we took a look at various issues relating to compensation of victims of crime. We also found out that the dominant role played by the victim in the prosecution of the offender may be consistent with the prevailing concept of the criminal process and that will enable the State to satisfy its avowed constitutional function of protection for all persons within its territorial jurisdiction.

6.0 TUTOR-MARKET ASSIGNMENTS

Justice is not a one way traffic, not two way traffic, but three-way traffic, both to the accused victim and the state. Discuss.

7.0 REFERENCES / FU RTHER RE ADINGS

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MODULE 3

INTRODUCTION

UNIT 1: Concern of the Unit ed Nation w ith Human Rights and Funda mental Progra ms

UNIT 2: Crime On The Increase: Causes

UNIT 3: Aims And Objective Of Senten cing

UNIT 5: Judicial Characte ristics to Ind ividual Fundamental Human Rights in Ni geria

UNIT 4: Statutory Powers of the Police in Checkmating Criminal Activities

UNIT Concern Of The United Nation With Human Rights And Fundamental Progr ams

CONTENTS

1.0 INTRODUCTION

The concern of the United Nations with the promotion and protection of universal for respect and observance of, human rights and fundamental freedoms is an expression of the ever-increasing interest of the international community in ensuring that these rights and freedoms shall be enjoyed my all human beings, everywhere.

2.0 OBJECTIVE

The major aim of this unit is that at the end, you should be able to know the various clauses concerning human rights in the United Nations Charter, find out the universal declaration of human rights, the importance and influence of the Declaration and the Declarationôs relationship with international conventions.

3.0 MAIN CONTENT

3.1 Clauses concerning human rights in the United Nations Charter

As unanimously approved by the San Francisco Conference on 25 June 1945, the United Nations Charter makes reference to human rights and fundamental freedoms in a number of clauses. In the Preamble, the peoples of the United Nations express their determination ñto reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and smallò. The words, ñpromoting and encouraging respect for human rights and fundamental freedomsò and ñassisting in the realization of human rights and fundamental freedomsò appear, with slight variations, in article 1, on the purposes and principles of the United Nation; article 13, on the functions and powers of the General Assembly; article 62, on the functions and power of the Economic and Social Council; and article 76, on the

basic objectives of the International Trusteeship System. Article 8 provides that ñThe United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organsò. In article 56, all members of the United Nations pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of certain purposes, enumerated in article 55, which include the promotion of ñuniversal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religionò. In article 68 the Economic and Social Council is empowered to set up commissions ñin the economic and social fields and for the promotion of human rightsò.

3.2 Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948, ñas a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdictionò.

The Declaration consists of a Preamble and 30 articles, setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination. Article 1, which lays down the philosophy upon which the Declaration is based,

reads: ñAll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.ò Article 2, which sets out the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms, forbids ñdistinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other statusò

Article 3, a cornerstone of the Declaration, proclaims the right to life, liberty and security of person: rights which are essential to the enjoyment of all other rights. It introduces the series of articles (articles 4 to 21) in which the human rights of every individual are elaborated further.

The civil and political rights recognized in articles 3 to 21 of the Declaration include: the right to life, liberty and security of person; freedom from slavery and servitude; freedom from torture or cruel, inhuman or degrading treatment or punishment; the right to recognition everywhere as a person before the law; the right to an effective judicial remedy; freedom from arbitrary arrest; detention or exile; the right to a fair and public hearing by an independent and impartial tribunal; the right to be presumed innocent until proved guilty, freedom from arbitrary interference with privacy, family home or correspondence, freedom of movement and residence; the right of asylum; the right to a nationality, the right to many and to found a family; the right to own property; freedom of thought, conscience and religion; freedom of opinion and expression; the right to peaceful assembly and association; the right of everyone to take part in the government of his country; and the right of everyone to equal access to public service in his country.

Article 22, the second cornerstone of the Declaration, introduces articles 23 to 27, in which economic, social and cultural rights-the rights to which everyone is entitled ñas a member of societyò- are set out. The article characterized these rights as indispensable for human dignity and the free development of personality, and indicates that they are to be realized ñthrough national effort and international co-operationò. At the same time it points out the limitations of realization, the extent of which depends upon the resources of each State and of the international community.

The economic, social and cultural rights recognized in articles 22 to 27 include the right to social security, the right to work, the right to equal pay for equal work, the right to rest and leisure, the right to a standard of living adequate for health and well-being, the right to education, and the right to participate in the cultural life of the community.

The concluding articles, articles 28 to 30, recognize that everyone is entitled to a social and international order in which all human rights and fundamental freedoms may be fully realized, and stress the duties and responsibilities which each individual owes to his community. Article 30 warns that no State, group or person may claim the right, under the Declaration, ñto engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forthò in the Declaration.

3.3 Importance and influence of the Declaration

Since its proclamation in 1948, the Universal Declaration of Human Rights has become one of the best-known and most influential documents of all times. It has exercised a powerful influence throughout the world, both internationally and nationally. Its provisions have been cited as justification for actions taken by the United Nations and many other international organizations and have inspired the preparation of international human

rights instruments both within and outside the United Nations System. They have also been incorporated, or cited, in national constitutions, municipal legislation, and court decisions. There are also many instances of citation of the Declaration, or certain of its clauses, as a standard of conduct or as a yardstick by which to measure the degree of respect for and compliance with, international human rights standards.

On a number of occasions, the General Assembly has referred to the Declaration as a ñcommon standard of achievementò and as a basis for decisions calling upon Governments to take the necessary measures to promote respect for, and observance of, human rights and fundamental freedoms. In one of the earliest of these decisions, a resolution entitled ñEssentials of Peaceò adopted in 1949, the Assembly called upon every national ñto promote, in recognition of the paramount importance of preserving the dignity and worth of the human person, full freedom for the peaceful expression of political opposition, full opportunity for the exercise of religious freedom and full respect for all the other fundamental rights expressed in the Universal Declaration of Human Rightsé ò

In a resolution adopted in 1952, the Assembly emphasized ñthat the full application and implementation of the principle of non-discrimination recommended in the United Nations Charter and the Universal Declaration of Human Rights are matters of supreme importance, and should constitute the primary objective in the work of all United Nations organs and institutionsò. In one adopted in 1964, it invited all Governments to include in their plans for economic and social development. ñMeasures directed towards the achieve of further progress in the implementation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rightsò. In a third, adopted in 1966, it called upon

all States ñto strengthen their efforts to promote the full observance of human rights and the right to self-determination in accordance with the Charter of the United Nations and to attain the standards established by the Universal Declaration of Human Rightsò. On many occasions the Assembly has reaffirmed the historical significance of the Declaration and restated its adherence to the principles, values and ideas set out therein.

The Security Council has also invoked the Universal Declaration of Human Rights in its decisions, particularly those relating to the situation in Southern Africa. In 1963 the Council requested the Government of South Africa ñto cease forthwith its continued imposition of discriminatory and repressive measures, which are contrary to the principles and purposes of the Charter and which are in violation of its obligations as a Member of the United Nations and of the provisions of the Universal Declaration of Human Rightò. In 1972 it condemned repressive measures which had been taken against African labourers in Namibia and called upon the Government of South Africa ñto end immediately these repressive measures and to abolish any labour system which may be in conflict with the basic provisions of the Universal Declaration of Human Rightsò. In the same resolution the Council called upon all States whose nationals and corporations were operating in Namibia ñto use all available means to ensure that such nationals and corporations conform, in their policies of hiring Namibian workers, to the basic provisions of the Universal Declaration of Human Rightsò.

In the Proclamation of Tehran, adopted by the International Conference of Human Rights in 1968, the Conference solemnly proclaimed that ñthe Universal Declaration of Human Rights States a common understanding of the peoples of the world concerning the inalienable and inviolable rights

of all members of the human family and constitutes an obligation for the members of the international communityò The Conference affirmed its faith in the principles set forth in the Declaration, and urged all peoples and governments ñto dedicate themselves to those principles and to redouble their efforts to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfareò

In more recent years there has been a growing tendency for United Nations organs, in their resolutions and decisions on human rights matters, to refer not only to the Universal Declaration of Human Rights but also to other parts of the International Bill of Human Rights: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. This is the case, for example, in resolutions adopted in 1972 on the employment of women in senior and other professional positions by the secretariats of organizations of the United Nations System, in 1973 on the education and responsibilities of youth, in the Declaration on the Protection of Women and Children, proclaimed in 1974; and in the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, promulgated in 1975.

3.4 Influence of the Declaration on international conventions

The International Covenants on Human Rights, adopted and opened for signature and ratification or accession by the General Assembly on 16 December 1966, define in precise legal terms many of the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and the permissible limitations or restrictions on the exercise of those rights and freedoms, and provide measures designed to ensure

their implementation. In addition, many of the principles set out in the Declaration have been elaborated and clarified in multilateral conventions which, citing the Declaration as their inspiration, deal with one or more particular aspects of human rights. For example, the right to equality and non-discrimination on the ground of race is ensured by the International Convention on the Elimination of all Forms of Racial Discrimination, based on article 2 of the Declaration; which the right to be free from slavery and servitude is ensured by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, based on article 4.

Furthermore, regional conventions have been prepared to promote and protect the enjoyment of human rights and fundamental freedoms by all individuals living in particular parts of the world. The European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, is such an instrument. It refers to the Universal Declaration of Human Rights in the opening paragraph of its preamble and sets out in its fourth preambular paragraph the resolution of ñthe Governments of European countries which are like-minded and have a common heritage of political traditions, ideas, freedom and the rule of law to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declarationò. It contains detailed provisions concerning most of the civil and political rights set out in the Declaration as well as provisions establishing, ñto ensure the observance of the engagements undertaken by the High Contracting Partiesò, a European Commission on Human Rights and a European Court of Human Rights.

Another such instrument is the American Convention of Human Rights, signed at the Inter-American specialized Conference on Human Rights at

San Jose, Costa Rica, on 22 November 1969. the Convention reiterates the General Assemblyôs view that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights; and sets out detailed provisions concerning all those rights and the means of guaranteeing their enjoyment by the peoples of the American continent. It recognizes two regional organs as being competent to deal with matters relating to the fulfillment of the commitments undertaken by the States Parties: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Several instruments applying to particular countries or territories, or to a region, also stem from the Universal Declaration of Human Rights. For example, the Final Act of the Conference on Security and Co-operation in Europe, held at Helsinki in 1975, provides that ñin the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rightsò. Other examples include the Trusteeship Agreement with Italy concerning Somaliland under Italian Administration of 1950, the Peace Treaty with Japan of 1951, The Special Statute Concerning Trieste of 1954 and the Charter of the Organization of African Unity of 1963.

4.0 CONCLUSION

In this unit, we have considered the concern of the U.N. with human rights and fundamental freedoms. The discovered that the rights and freedoms set out in the international covenants on Human Rights are not absolute and are in each case subject to limitations. The covenant on Civil and Political Rights, in particular, defines that legitimate restrictions on the rights which it sets forth by limiting them to those which are provided by law, are necessary to project national security, public order, public health or morals, or the rights and freedoms of others.

5.0 SUMMARY

Our focused in this unit was to look at the various clauses in the U.N. Charter, the importance and influence of the U.N Declaration and its relationship with other International Conventions.

6.0 TUTOR-MARKET ASSIGNMENTS

Article 3 of the U.N. Charter is in pari material with section 33 of the 1999 Constitution of the Federal Republic of Nigeria. Discuss.

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UNIT 2: CRIME ON THE INCREASE: CAUSES

CONTENTS

1.0 INTRODUCTION

Statistics can tell us that crime has increased enormously since the civil war in Nigeria. As new generations have grown up, they have thought about things differently, from those who went before; stagnation is bad; change is to be welcomed; we are all affected by the trends in thinking, in attitudes to and the groups in which we hue. Some changes that have taken place like the recent inventions and introduction of computer, and series of different communication gadgets in our society have caused increases in crime; this is not to say that all changes or trends are bad in themselves but some of their sue effects are what we shall be disbursing in this unit.

2.0 OBJECTIVES

The principal objective of this unit is to dissect the various causes why crime is on the increase in every society and perhaps proffer a lasting solution to them.

3.0 MAIN CONTENT

3.1 The Decline in Religious Belief

Decline in religious belief is a major factor contributing to the decline in our behavioural attitudes which in return give rise to the rates at which crime is committed.

Although every nook and cranny in Nigeria has been turned to places of worship by Christian, Islamic and the native religions faithful but stealing in its ramifications is increasing day in day out. Our grandparents although most of them did not go to church, or mosque and hold religious vigils during their own days but they regarded theft (i.e. stealing) and its species as morally wrong. They believed God was looking over their shoulders and could call them to account later. Meanwhile, it would be on their conscience but who thinks like that today?

Self-Assessment (Exercise 3.1)

3.2 What is Religious Belief?

Materialism

In our society nowadays, most of us are materialistic because we like to copy the Joneses in raising our living standards, add to our comfort, gadgets, and spending spree. We are not happy for out search for satisfaction; we have a car that goes but want a better one, then a second, then one for our wife, sons, daughters and again, one for each of them. Our religious bodies now preach prosperity and where that is not attainable they go in for sooth-saying and performance of miracles through diabolical power for their followers in attainment of their material standards.

The permissive age has brought a liberated attitude towards pornography i.e. a display of words or picture or both which is likely to arouse some people sexually: So also women and girls nowadays do attract most men

by dressing naked or half naked thereby leading to increase in the commission of offence of seduction and raping of women and girls by men of weaker minds.

Self-Assessment Exercise 3.2

How has materialism contributed to the increase in crime?

3.3 Family Fragmentation

Marriages are less popular than they used to be, what is left in marriages are mostly the pomp and pageantry that people achieved by it and not the oath they took to hold and love till death do them part in order to establish their homes. There is an increase in the number of divorce cases which then result in the suffering of innocent children.

Most young people who come before the courts are from broken homes which one finds out from social inquiry are children either from separated and divorced mother-who lived with various men. This position is different from what it was in the past when divorce, whether in accordance with the Marriage Act or Ordinance or under the Native Law and Custom, was less rampant because families spent more time at home then and children had strict discipline. If I have to point to one place where criminals are made, it is the home; those who are damaged by parental neglect cannot easily be put right by teachers, judges or social workers. Children brought up with form, concerned and united love are unlikely to go wrong.

In recent years, several children from good homes have committed crimes such as those involving in drugs, or being members of secret cults or both. If the above trends or changes in attitudes are the main causes of the increase in crime, leading to the congestion of our prisons, are we powerless in evolving changes? No, we must not assume everything always gets worse but all of us in the society including the public, the

courts, the judges and magistrates must accept the fact that ñCriminals Are Not Automataò, they are people with minds and can choose to act in one way or the other but we all must contribute our parts to see that whatever happens that place where any criminal will end up must be improved and be made worth living.

Self-Assessment Exercise 3.3

The marriage Institution has broken down in society, this has affected moral values, society decay. If you agree

4.0 CONCLUSION

The advent of the computer age and the internet facilities has contributed in no small measure to the commission of crime in over society. Young people and would be criminals have assess these facilities and at the end, execute what they have discovered on the net. The various communication gadgets have also aided crime perpetration and the society is not getting better for it, if anything at all. The society is paying heavily for these lawman. If not be noted however, that not all changes have adverse effect, there are positive effects that come with societal change.

5.0 SUMMARY

In this unit, we were able to time out the principal causes of crime in our society: there has been a decline in our religious belief. The quest for materialism is on the increase and marriages are less popular than they used to be in the past.

6.0 TUTOR-MARKED ASSIGNMENTS

Highlight and comment on the factors responsible for the increase in crime in over society.

7.0 REFERENCES / FU RTHER RE ADINGS

Sanda, A. A. (2007) Prison Decongestion over responsibility, Spectrum Books Ltd., Ibad an, Nigeria.

The Criminal Procedure Act

UNIT 3: AIMS AND OBJECTIVE OF SENTENCING

CONTENTS

1.0 INTRODUCTION

Sentencing is the post conviction stages the criminal justice process in which the defendant is brought before the court for imposition of sentence. Usually, a trial judge imposes sentence but in some jurisdiction, sentencing is performed by jury or by sentencing councils. However, before imposing sentence, the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him it he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

2.0 OBJECTIVES

The objective of this unit is to find out the major reasons whey courts impose sentence in offender when found guilty of the alleged crime.

3.0 MAIN CONTENTS

3.1 Reformation

Another word for reform is rehabilitation. There are defendants whom one feels should be helped up rather than struck down. This applies to many young or first offenders who can be tried alone and seldom with others. This system is an expensive but constructive alternative to imprisonment aimed at helping offenders to look into their lives to see what is wrong and how to put it right.

When considering whether to take a órefermôroam with a defendant, what information must a judge have? His previous convictions, the facts about his life in the social enquiry report in relation to his present offences, how many chances has he had in the past to commit same or similar offence? How did he respond? Does he want to be helped, or merely to keep his freedom? If he is set free, what risk is there to the society because a skilled housebreaker or an armed robber who is young may do enormous harm before he is caught but not a petty thief, a pick pocket or a man who ahs been violent on a single occasion.

In preferring to reform a criminal, a positive sentence is preferable: These are either attendance centres or day centres (for young people), community service and suspended sentence for matured culprits as practiced in advance countries where criminals could be easily traced by their home address. These types of Reformation could be adopted in our societies with modification, if introduced and practiced it with go a long way in decongesting our prisons.

Self-Assessment Exercise 3.1

What is rehabilitation? How is it used to help the criminal?

3.2 Deterrence

This is a system of punishment that discourages. The basis of deterrence is that the punishment meted to the criminals is aimed at deterring the criminal from repeating his offences or deterring others from committing similar offence.

Deterrent sentences are needed and applied when a type of crime is particularly prevalent and harmful. Examples of these are house breaking, robbery or attack on police officers, display of thuggery at football matches, violence against the public by miscreant or road transport thugs, rape and violence against children and theft of mobile phones which are now rampant in all parts of the country.

The types of punishment that deter are loss of liberty like imprisonment detention and youth custody because these types of punishment bite as deep and is feared as much because most criminals will like to consider alternative punishment like suspended sentences or fines.

In order to cope with this type of punishment our criminal procedure has to be modified, criminal cases have to be tried timorously and facilities like accommodation has to be provided and improved upon.

Self-Assessment Exercise 3.2

Has deference been helpful in discouraging criminals?

This is a penalty imposed on a defendant duly convicted of a crime by an authorized court. The punishment is declared in the sentence of the court. There are a number of different theories of punishment and different aims and purposes. The concept of retribution implies that a criminal merits his just punishment because he has done something morally or socially evil. The other concept of retribution is that the punishment should be related to the harm done by the crime rather than to the moral guilt of the criminal.

Whenever punishment is the object, the options are immediate imprisonment, youth custody, community services or a fine. These types of punishment point to loss of liberty i.e. being denied of one's pleasure and ordered about; living in squalid circumstances, community service is useful from various angles. The community benefits from the work, the defendant is reminded of his wrongs, the work and discipline are good for him but does not compare with loss of liberty because the work is done a few hours at a time but if the defendant fails to do the community work properly, he would be brought back to the court wherein he is sentence to prison resulting in the loss of his liberty.

In order to decongest our prisons, the courts and the prison authorities must consider the punishment of community service. Although in countries where this type of punishment prevails, defendants who are convicted of an offence punishable by provision of community service as punishment always come to serve their punishment from the homes but in this society where it is difficult to locate the abode of criminals and where absconding by criminals from justice is the order of the day, both the federal government, the state government and the local government must look into provisions of accommodation in their areas for the establishment of community prisons where prisoners convicted and sentence to community service will live and serve their various sentences by working in the community for days, weeks or months as the case may be.

Self-Assessment Exercise 3.3

What are the differences between rehabilitation and punishment?

3.4 Containment

There are some classes of offence where the habitual criminals such as house burglars, armed robbers, conmen, etc have to be removed from the community for long periods so as to protect others from them and act as a deterrent.

This type of punishment can take the form of extended sentences wherein the criminal would have forfeited his right to liberty.

This type of sentence has been out of fashion because of shortage of prison accommodation but it will be advisable if it is revisited and reintroduced, and more prison accommodations are provided for those whose punishment falls under this category.

Self-Assessment Exercise 3.4

What is Containment?

3.5 Imprisonment

The features of imprisonment are total loss of liberty, humiliation being in the hands of prison officers and at the mercy of fellow prisoners (both groups may contain sadists). The conditions in some prisons are degrading, the overcrowding, slopping out and so on. If one had a job outside, it is likely to be lost. Personal relationships are disrupted a wife or girlfriend may be lost. Personal relationships are disrupted, a wife or girlfriend may be unfaithful or even abandon a prisoner, alienating has children. The resultant effect of this is that a sensitive person may breakdown.

Prison has some deterrent effects on people. It prevents those imprisoned from offending against the community whilst they are inside. The effect of imprisonment in the man differs enormously from one to another. While a bank manager, an executive worker in a corporate organization may be devastated by the experience however short it is, a man or woman who

has had previous sentences will find it tiresome to be sent back but will try to settle down into the society.

Productive work should be available in all prisons for those who are fit and prisons made as self supporting as possible.

Those who have no trade should be taught one.

For prisoners with personality problems including addiction to alcohol and/or addiction to drugs, there should be group therapy not run by prison officers but by probation officers, psychologists and other skilled people.

While Nigeria could lead the black world with a new system based on enlightenment and fairness, we could protect the public by locking away the hopelessly and wicked ones who prey on them and yet give a helping hand to those who want it and deserve it.

Self-Assessment Exercise 3.5

Nigerian prisons are arrested. What solutions would suggest to decongest them?

4.0 CONCLUSION

It is the duty of judges and magistrates to decide which offender would go to jail as a result of their being sentenced to prisons, however, social inquiry reports are helpful in criminal cases- Judges could not do this jobs properly without referring to these reports.

5.0 SUMMARY

The major aims and objectives of sentencing the convicted criminal are to reform him to serve as deterrence to others, punish the offender, curtrail him and send him to a term of imprisonment.

6.0 TUTOR-MARKED ASSIGNMENTS

Discuss in detail why you think it is important to sentence an offender?

7.0 REFERENCES / FU RTHER RE ADINGS

Sanda, A. A. (2007) Prison Decongestion over Responsibility, Spectrum Books Ltd Ibada n, Nigeria.

The Criminal Procedure Act.

The Constitution Federal Republic of Nigeria 1999.

UNIT 4: STATUTORY POWERS OF THE POLICE IN CHECKMATING CRIMINAL ACTIVITIES

CONTENTS

1.0 INTRODUCTION

The enforcement of obedience to rules and regulation often times against the will of individuals has been the function of the state through the police and other law enforcement agencies. To achieve this in Nigeria, on how to check criminal activities, the police have been given enormous powers under the laws of the Federation. These include powers of arrest, detention and search and seizures, interrogation, bail, taking of measurements, prosecution and regulation of assemblies, etc.

2.0 OBJECTIVES

At the end of this unit, you should have discovered how the police and other law enforcement agencies checkmate crimes in the following ways:

- Powers to arrest and detain a suspect
- Powers of search and seizure

- Powers to grant bail
- Power to conduct prosecution

3.0 MAIN CONTENT

3.1 Powers of Arrest and Detention

Arrest: Arrest is the deprivation of a person's liberty by some lawful authority for compelling his appearance to answer a criminal charge or as a method of execution. .."it is the beginning of imprisonment. It's purposes are three-fold:

Preventive-where a man is arrested in order to terminate a breach of the peace;

Punitive - where it is resorted to in order to take a man before a magistrate or court of law to be punished or bound over, and

Protective - where a person is arrested for his protection. The arrest may be in execution of the order of the court.

Detention: This is the act of keeping a person in custody or confinement whether arrested or not, the purpose may be to bring him before a court of competent jurisdiction to answer to a criminal charge or otherwise prevent his movement. It may also be in the execution of a court order. The Police Act empowers any police officer to detain and search any person whom he reasonably suspects of having in his possession or conveying in any manner any thing which he has reason to believe to have been stolen or other wise unlawfully obtained.

Section 35(3) of 1999 Constitution is meant to protect and preserve the liberty of citizens and check the abuse of police powers of arrest. The Constitution thus provides that,

"Any person who is arrested or detained will be informed in writing within twenty-four hours (and in a language he understands) of the facts and grounds for his arrest and detention and shall be brought before the court of law within a reasonable time".

A full realization of the above constitutional objectives may not be possible in view of the wide powers of arrest granted to the police under the law. In defining "reasonable time" as can be seen later, the constitution did not take into full cognizance the peculiarity of the Nigeria Police, particularly, lack of scientific aids and other logistics requirements. All these tend to weigh against effective investigation of crime and the legal requirement of proof beyond reasonable doubt.

Self Assessment Exercise 3.1 Discuss the power of arrest the detention of the police

3.2 Powers of Search and Seizures

"The privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communication is hereby guaranteed and protected"

This constitutional protection notwithstanding, the police have very wide powers to conduct search on persons, premises and on a thing in order to recover any property that is stolen or unlawfully obtained or to obtain evidence to be used at the trial of an offender. The search may be with or without a warrant, depending on the offence, circumstances or subject matter of the search. The constitutionality of these powers derives from the

derogatory provisions of section 41 (l) of the 1999 constitution of the

Federal Republic of Nigeria which provide that:

"Nothing in section 37 (above) shall invalidate any law that is reasonably justifiable in a democratic society.

(a) In the interest of defence, public safety, public order, public morality or public health.

(b) For the purpose of protecting the right and freedom of other persons.

The powers of police to search may be construed from property law concept to mean trespass to constitutionally protected areas, such as privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communication. However, such police actions under this subject are covered by the wide powers granted to them under the Police Act. It may also extend to the use of surveillance techniques to physically penetrate such areas.

Search with warrant

Search warrant: This is an order in writing issued by a magistrate in the name of the state, authorizing an officer of the court, member of the police force or other person therein named to search and seize any property that may constitute the evidence for the commission of crime and to carry such things before the magistrate issuing the search warrant or some other magistrate to be dealt with according to law. The warrant may also authorize the apprehension of the occupier of the house or place where the items were found.

Historically, warrant based searches were considered as a tool of oppression from the government; a means of extending its powers of arrest searches and seizures. These warrants were sometimes issued by executive officers rather than a justice of peace without "probable cause" or reasonable ground. The English abuse of the warrant process in the colonies, according to Slobogin, more than any single factor led to the Fourth Amendment clause in the US Constitution which provides that; "No warrant shall issue but upon probable cause", supported by oath and affirmation and particularly describing the place to be searched and the person or thing to be seized".

The reason for this position is that the warrant assured the individual whose property is searched or seized of the lawful authority of the executing officer, his needs to search and the limits of his power to search. The most prominent reason the court gives for a warrant requirement was best stated by Justice Jackson in Johnson v. US.

The point of the fourth amendment is not that it denies law enforcement the support of the usual inferences reasonable men draw from evidence. Its protection consists in requiring that these inferences be drawn by a neutral and detached Magistrate instead of being judged by the Office engaged in the often-competitive enterprise of ferreting out crime.

Obtaining a Valid Warrant

In Nigeria, when a Police Officer decides to obtain a search warrant, he first prepares an application (information to grant Search Warrant), usually on oath and in writing, indicating the place to be searched, name of occupant and items to be searched for. Where the magistrate is satisfied by the information on oath, that there is a reasonable ground for believing that any

building, ship, carriage, receptacle or place..., is used for the commission of an offence or that a search of the premises will further the purpose of any investigation, inquiring or trail, the magistrate will issue a search warrant.

It is assumed from the above that the information on oath from the Police Officer applying for a search warrant must contain reasonable grounds that would satisfy the magistrate or judges in believing that there is in such place or premises anything connected with the commission of an offence or intended to be used to commit a offence. The existence of "reasonable grounds" in such information depends on the quality and quantity of the information which in our jurisdiction is neither verified by a neutral and detached magistrate or justice of peace but is based on inferences drawn by the Police Officer making the application. The general requirement of warrant applies to England, USA and other Commonwealth countries.

In the United States, once a Police Officer decides a search warrant is necessary, the first step is for him to prepare the application, affidavit and warrant. The application is reviewed by a supervisory office or by a prosecutor or in some instances by both, before they are submitted to a magistrate. After preliminary approval, the application goes to the court house or if the court is not in session to the home of the Judge. After examining the application and affidavit and perhaps querying the application, the magistrate must determine whether there is "probable cause" to believe that the listed items are connected with a criminal offence and that they are located at the place specified in the warrant. The officer may be permitted to add information during the review if the magistrate so wishes. Usually the judge, officer or both will initial the changes.

Probable cause to search exists when a prudent person would believe that the evidence or person to be searched is located at the place to be searched. It usually connotes something close to a greater level of certainty is higher than reasonable cause or suspicion. And in determining whether probable cause, reasonable suspicion or any other level of certainty exist, the quality or quantity of the information must be ascertained. The quality involves assessing the credibility of the information by looking at the source, its internal consistency and any other indicia of reliability it might present. While the quantity focuses on whether assuming its credibility, the information provides the requisite level of certainty e.g. probable cause or reasonable suspicion. Distinction here according to Christopher Slobogin is made between firsthand and second hand information. (The later sometimes called "hearsay):

The credibility is best ascertained if the person whose information is to form the basis of a given judgement can be questioned under oath, in front of or by the decision maker (here the magistrate). In this case, the police are the most credible hearsay informants followed by victims and other eye

witnesses ready to reveal their identities to the court. Bringing up the rear are the so-called "confidential informants" whose identities are usually kept secret to mai ntain their usefulness to the Police.

The requirement of "probable cause" for the issue of search warrant is no doubt aimed at curing the abuses and shortfalls of the objective test of reasonableness, as the information may be based on the subjective whims and caprices of the Officer concerned or a confidential informant that cannot be questioned under oath.

Similarly, under the Indian Code of Criminal Procedure, the police are generally required to obtain a warrant from a magistrate before undertaking a search. The magistrate is empowered to issue a search

warrant if he has reason to believe an item such as stolen property, counterfeit currency, a forged document, a false seal, or an absence object is' to be found in a particular place. The magistrate may authorize a search as well for any document or other thing necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding.

Execution of Search Warrant

There are numerous procedural similarities between various police jurisdictions in the execution of search warrants, possibly due to common derivation from British law, while the few differences are between the British and Francophone countries. The Nigerian law as the English has not fashioned a rigid exclusionary rule of evidence as the United States, to bar the fruit of an unjustified or improperly conducted search. There are, however, several issues that arise in connection with the execution of warrant.

The first issue is the "duration of execution of warrant and time of execution". In Nigeria, a search warrant may be issued and executed on any day including Sunday or public holidays and shall be executed between the hours of five o'clock in the forenoon and eight o'clock at night. The magistrate may at his discretion authorize the execution at any hour which he may endorse therein prior to its execution". Every warrant shall remain in force until it is executed or until it is cancelled by the court which issued it".

In the United States the duration and timing differ. The law requires that the warrant specify the time within which the warrant is to be executed, not to exceed tep days and limits the searches and arrest to daytime and evening (Le. 6.00am to 10.00am) unless the magistrate finds and states in the warrant, that there is reasonable cause to execute at some other time. The limitation of warrant duration here is meant to prevent the probable

cause which bolsters the warrant from going "stale". In Sgro v. United States, the delay of three weeks in executing warrant for search of intoxicant rendered the search invalid. The time of day requirement is meant to prevent unnecessary invasions of privacy and embarrassment.

The second issue is, "who are to be witnesses to the search? In Nigeria, a search warrant must be executed where possible in the presence of two or more respected inhabitants of the neighborhoods to be summoned by the person executing the warrant. Where the premises are occupied by women in "purdah" who are not the persons to be arrested, they should be allowed to leave if they so wish. The person executing the search warrant must show the warrant to the occupant of the premises. Theses citizens act or serve as watchdogs or impartial witnesses to minimize police abuse during a search. In practice, the officer executing the search must surrender himself to be searched by the occupant of the premises to ensure that the officer plants no incriminating item. Witnesses and the occupants of the premises are expected to endorse the warrant evidencing what was seized if any.

In India, there are similarities, except in extreme emergencies. An India officer cannot execute the warrant unless the home owner is present. Also, the search cannot take place unless two or more citizens are present as observers, known as 'panch witness's or' panche'. These are supposed to be responsible members of the community who are not interested in the outcome of the case. If no volunteers can be found, the police have authority to order the citizen to attend a search, failure of which results in criminal penalties. . The panches customarily search the police before the search is necessary on giving such authority to specify any particular property. Provided that the officer granting the authority has

reason to believe generally that such premises are being made a receptacle for stolen goods.

In India, prior judicial authorization may be dispensed with when a search is appropriate but exigent circumstances make it impracticable for the police first to obtain a warrant. If an Indian sub-inspector has reasonable ground to believe that something necessary for the investigation of an offence may be found in a particular place and cannot otherwise be obtained without undue delay, he may search on his own authority. Two safe guards, however, are included in the law to minimize the likelihood of abuse in the absence of prior judicial determination of probable cause.

First, the, sub-inspector must record in writing, before embarking on the search; the grounds for his belief of the need for haste and the specific items he expects to find. He must deliver his record promptly to the nearest magistrate, facilitating a limited judicial security of the officer's motives and information. Secondly, the sub inspector should conduct the search in person. Any delegation to a subordinate requires an explanation preserved in writing for later review by the magistrate.

Self-assessment Exercise 3.2

Do the police have the power to search and seize items?

3.3 Power to Grant Bail

Bail: This is the release from custody of officers of the law or court of an accused or convicted person who undertakes to subsequently surrender to

custody. It is a procedure by which a person arrested for an offence is released on security being taken of his appearance on a day and place certain. Bail may be granted by police to a suspect pending further investigation into a matter or by court after the suspect has been charged

to court, pending the determination of the case or to a convicted person, pending the determination of the appeal. The Police is granted wide powers under the law to grant bail to a suspect or accused. Under the Criminal Procedure Act, when any person has been taken into custody without warrant for an offence other than an offence punishable with death. Any officer in charge of a police station may in any case, and if it will not be practicable to being such person before a magistrate or justice of the peace having jurisdiction with respect to the offence charged within twenty four hours after he was so taken into custody inquire into the case, and unless the offence appears to such officer to be of serious nature, discharge the person upon his entering into a recognizance with or without sureties for reasonable amount to appear before a court at the time and place named in the recognizance.

Similarly, the Police Act empowers a police officer in -charge of a police station to grant bail to a suspect where a case does not appear to him to be of serious nature or where the investigation cannot be completed forthwith. This power relates to cases where the suspect was arrested without warrant. Where the suspect has been arrested with warrant, only the court can grant bail. And, where the offence is punishable with death penalty, the police cannot grant bail.

The requirement for bail is the "entering into recognizance or bond with or without sureties for reasonable amount. The police may therefore grant bail to a suspect on self-recognizance without a surety, where the ability of the suspect to appear at the stipulated time is not in doubt. Otherwise, a surety is required. In practice, a passport photograph of the surety is required and his residential address may be verified. This is particularly so, where the surety is unknown. Sometimes, the police may demand for a known surety where they doubt the suspect and his surety.

It is the responsibility of the suspect to meet these conditions: If a suspect remains in police custody after bail has been granted to him by the police because of his inability to fulfill the conditions of bail, his continued detention in police custody is not in contravention of the constitutional provisions. After all, "the law is that the police should provide bail for a detained citizen, but they are not further enjoined to help the citizen find the person to take him on bail - They have no duty to help the person find a surety or meet the conditions of bail, and any further stay in detention by the person until he meets the condition will not be unlawful.

The above argument appears to be the academic position. In practice, a prolonged stay of a suspect in police custody due to non-fulfillment of bail condition cannot form a good defence for an officer in any administrative query or civil suit, particularly where an allegation of corruption is attached. As regards the refusal of bail, the fact that investigation was still in progress is not a valid ground for refusing bail. Where such a suspect, if released on bail, is likely to interfere with police investigation, the' police may refuse bail.

It is unlawful for any person to refuse to submit to the taking and recording of his measurement, photograph or fingerprint impression and such person on refusal shall be taken before a magistrate who on being satisfied that such person is in lawful custody shall make such order as he thinks fit, authorizing a police officer to take such measurement or records.

Self-Assessment Exercise 3.3

Discuss on the ba il power of the police

3.4 Power to Conduct Prosecut ion

As a statutorily established force, the Nigeria Police in addition to the powers conferred on it under section 4 of Police Act also has the power to conduct prosecution. Section 23 of the Police Act provides:

> *Subject to the provisions of section 174 and 211 of the Constitution of the Federal Republic of Nigeria (which relates to the powers of the Attorney General of the Federal and the State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria) any Police Officer may conduct in person all prosecution before any court whether or not the information or complaints is laid in his name.*

Consequently, where a Police Officer conducting an investigation considers that there is sufficient evidence to justify the trial of an accused, he brings before the court a charge contained in a charge sheet or First Information Report (FIR) specifying the offence and prosecutes the case against the accused the power to institute criminal proceedings is therefore not exclusive to the Attorney General.

It is important to note that this power remains active and cannot cease until whenever the Attorney General of the Federation or State decides to exercise his power under section 174 and 211, that is to say, take over, continue, or discontinue the criminal proceeding. It is also wrong to argue that prosecution by the Police is restricted to offences triable in the magistrate court. Attempts to confine Police power of prosecution to the magistrate court was settled by the court of Appeal in the case of Federal Republic of Nigeria v. George Oshahon & Ors. The Court unanimously upheld the decision of the Federal High Court that by virtue of section 56 (1) and 57 of the Federal High Court Act, section 23 of Police Act and sect

174 (1) of the 1999 Constitution, a legally qualified Police Officer can file criminal charges and prosecute in all courts in the country.

A Police lawyer can now prosecute any offence, including murder, armed robbery cases, following the provisions of section 77 CPA in the Southern States. It has further been contended that except for offences the prosecution of which expressly require the consent of the Attorney General, it is not mandatory to refer Police case files to the office of the Director of Public prosecution for vetting and legal advice as is currently the practice. The FCT High Court Act and the various High Court laws and Rules grant right of audience to Police Officers.

By these powers, the Police can now carry out a legal action as a juristic establishment that can sue and be sued by its name. It can seek redress, defend any suit against it without recourse to or undermine the office of the Attorney General. The police legal sections have doggedly and successfully challenged some of these suits, especially those bordering on fundamental right application. The multiplier effect of this development is the development of police lawyers and the legal department at various levels, the decongestion of police cells and the reduction of the work load in the office of the Directorate of Public Prosecution.

4.0 CONCLUSION

The role of the police and other law enforcement agents in controlling crimes and criminal activities cannot be overstressed. For a safe and crime free society one needs a functional and effective police force. To this end, one can submit therefore that non-interference by the police in any meeting, rally or gathering depends on the peaceful nature. The apprehension of the police can be laid to rest, because the Criminal Code

has made adequate provision for taking care of the break down of law and order by criminals.

5.0 SUMMARY

In this unit, we dealt with the statutory powers of the police to checkmate criminal activities; through the powers of arrest and detention, powers to search and seize properties or stolen items, powers to grant bail to suspects and powers to prosecute them.

6.0 TUTOR-MARKED ASSIGNMENTS

Discuss in full the powers of the Nigeria police under the 1999 Constitution and the Police Act.

7.0 REFERENCES / FURTHER READINGS

THE POLICE ACT

THE NIGERIAN 1999 CONSTITUTION

THE CRIMINAL PROCEDURE ACT

THE CRIMINAL CODE

WITHSHINE VS. BARRETT (1965). ALL ER 271

DALLISION VS. CATTERY (1964) 2. ALL ER TI0

Nmerole, C. (2008). Police Interrogation in Criminal investigation,

Harlygraph Nig. Ltd. Tunggi Minna, Nigeria.

UNIT 5: JUDICIAL CHARACTERISTICS TO INDIVIDUAL FUNDAMENTAL HUMAN RIGHTS IN NIGERIA

CONTENT

1.0 INTRODUCTION

The striking features of fundamental rights provision in the Constitution is that they provide a just balance between the rights of the subject on the one hand and that of the government or state on the other (per Idigbe J. S. C, in the" All Nigeria Judges Conference in 1982).

Thus to the great jurist, "human rights" is more of an earthly concept. In Saude v. Abdullahi (1989) 4 NWLR (pt 116) 32 at 418 - 419, the court said: "I regard them as not just mere rights. They are fundamental. They belong to the citizen. These rights have always existed even before orderliness prescribed rules for manner they are to be sought.

"Indeed, human rights have to stand above the ordinary laws of the land. They are antecedent to the political society itself. HUl11an Rights are and must be, a primary condition to a civilized society. Thomas Paine one of the greatest thinkers of rights of man vilified governments without

constitutions for the reason that the Laws of such governments without constitutions for the reason that the Laws of such governments would be irrational and tyrannical. He said of the British system of government. "One of the vitest that can be set up "He went on: "Government without a Constitution for the want of a constitution in England to restrain and regulate the wild impulse of power, many of the laws are irrational and tyrannical and the administration of them vague and problematical.

The concept of "remedies" is clearly related to the concept of "right", as well expressed in the Latin maxim Ubi jus ubi remedium or "a remedy accrues only where there is a right Remedy "is the means employed to enforce or redress an injury".

2.0 OBJECTIVES

At the end of this Unit you should be able to:

- Explain what Human Rights are, their origin and the remedies for the
- breach of the rights.
- Differentiate between rights that are enforceable and the ones that
- cannot be enforced in the law court.

3.0 MAIN CONTENT

3.1 Constitutional Construction

Judicial attitude to individual rights in the 1999 Constitution is dictated by the principles which the courts do or should follow in the interpretation and construction of the provisions of the Constitution. Sir Udo Udoma JSC, said in Nafiu Rabiu v. The State (1981) 2 NCLR 293 at 326 that:

"The function of the Constitution is to establish a framework and principle of government, broad and general in the terms intended to apply to the

varying conditions which the development of our several communities must involve. Ours being a plural dynamic society, and therefore, more technical rules of interpretation of statues are to some extent inadmissible in a way so as to defeat the principle of government enshrined in the Constitution.. ..this court should whenever possible and in response to the demands of justice, team to the broader interpretation. It is my view that the approach of this court to the construction of the Constitution should be and so it has been one of liberalism, probably a variation on the theme of the general *maxim ut, res magis valeat quam pereat*. I do not conceive it to be the duty of this court so as to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provision will serve to enforce and protect such ends".

Nnamani, JSC followed suit in Bronik Motors Ltd V Wema Bank Ltd (1983) 6SC 158 that: "...a constitutional instrument should not necessarily be construed in a manner and according to rules which apply to Acts of Parliament. Although the manner of interpretation of a Constitutional instrument should give effect to the language used, recognition should also be given to the character and origins of the instrument. This should be the approach of the courts in construing all the provisions of the Constitution which entrenched individual rights.

Self Assessment Exercise 3.1 Report the case of Nafiu Rabiu v. The State

3.2 RIGHTS ENTRENCHED IN THE 1999 CONSTITUTION

The rights entrenched in the 1999 Constitution, just like those entrenched in the 1976 constitution, can be grouped under two broad headings

namely these which appeal to every person within our borders, and those claimable as of right by citizen. All these rights come under chapter IV of the constitution sections 32, 33 (1) 34, 35, and 36, 37, 38, 39, 40, 41, 42. All the rights stated in those eleven sections are assured to all citizen of this country. Section 33 (1) says that every person within our borders has the right to his life, while section 34 assures every such individual respect for the dignity of his person etc.

3.3 Samples of Judicial Attitude

The examination of this heading should begin by recalling the dictum of Eso JSC in Ariori and Ors V Elemor & ors (1983) ANLR 1 at 19 where he said: "Having regard to the nascence of our Constitution, the comparative educational backwardness, the socio-economic and cultural background of the people of this country and the reliance that is . being placed and necessarily have to be placed, as a result of this background on the courts, and finally the general atmosphere in the country, I think the supreme court has a duty to safeguard the fundamental rights in this country, which from its age and problems that are bound to associate with it, is still having an experiment democracy".

The following cases serve as a clear testing of attitude of the Supreme Court to the entrenched provision of the Rights to life:

In Aliu Bello V Attorney-General of Oyo State, the Oyo State Ministry of Justice sanctioned the execution of the appellant convicted of armed robbery but whose appeal was pending in the court of appeal. Aniagoli JSC gave vent to his deep annoyance at such flagrant breach of, the Constitutional Provision when he said (at pg 860).

"This is the first case in this country of which I am aware in which a legitimate Government of this country-past or present, Colonial or indigenous-hastily and illegally snuffed off the life of an appellant whose

appeal had vested and was in being, with no order of court upon the appeal, and with a reckless disregard for the life and liberty of the subject and the principle of the rule of law. The brutal incident has bespattered the face of the Oyo State Government with the paint-brush of shame".

These are strong words, but they indicate the abhorrence which the Supreme Court has against the illegal taking of life of any person within our borders outside the provisions of the Constitution and outside the procedural rules laid down.

In the Governor of Lagos State V Chief - Odumegwu Ojukwu and Anor. (1997) I,NWLR (pt 482) 429. The Supreme Court castigated the executive Lawlessness displayed by the Military Administration and, authority in ejecting the Respondent forcefully and unlawfully from his residence, it was a disrespect for the Rule of law which they (the military) claimed to be cornerstone of their administration. This made Oputa, JSC to observe as follows:

The rule of Law presupposes:

1. That the state including Lagos State Government is subject to the Law.
2. That the judiciary is a necessary agency of the rule of law.
3. That the government including the Lagos State Government should respect the right of individual citizens under the rule of law.

"I can safely say that here in Nigeria even under military government the Law is no respecter of persons, principalities, government or powers and that courts stand between the citizens and government alert to see that state or government is bound by the Law and respect the Law".

Whilst Eso JSC, who wrote the erudite lead judgement in Ojukwuûs case stated about the rule of law in these terms. "The essence of rule of law is that it should never operate under the rule of force or fear, to use force to effect an act and while under the marshal of that force seek the court's

equity is an attempt to infuse timidity into court and a sabotage of the cherished rule of law. It must never be".

Self Assessment Exercise 3.2 Has the court supported violence of rights in Nigeria, if not prove your case with decided cases

The decision of the executive is final discuss this in relation to Aliu Bello V Ag (Oyo State).

Another case that demonstrates the court's high regard for entrenched provision of the Constitution on the liberty of citizens is the case of Hon. Justice Nwachukwu. Nwachukwu was a High Court judge in Imo State. He was appointed Chairman of a commission of inquiry to look into certain contracts awarded by the government between 1979 and 1983.In the course of the proceedings of the commission Hon. Justice Nwa-Nwachukwu receives aé é é é é é é é .making an investigation whatever he ordered the arrest of Dickson Ikonne. There had been along history of mutual animosity between the two men, which had nothing to do with the proceedings or the subject of the commission. Ikonne applied to a High Court to quash the warrant of arrest, which the court did.

Subsequently, Hon Justice Nwa-Nwachukwu obtained leave to appeal against the order of the judge Ikonne then appealed to the Supreme Court. Aniagolu JSC in Dickson Ikonne V Commissioner of Polic and Hon Nanna Nwa-Nwachukwu (1986) NWLR 473 at 496 said

"It is clear from the faces of this matter on appeal that the judge, the Hon Justice Nnanna Nwa-Nwachukwu; had no valid legal reasons for issuing the warrant of arrest complained of in his appeal. The issue of the warrant of arrest was, in the circumstances of this matter or appeal, an abuse of legal process, an abuse of judicial authority, it is particularly painful that"

should come to this conclusion concerning a judge of the High Court, but the conclusion is inevitable having regards to the facts and circumstances of this matter on appeal.

"The conduct of the judge in issuing the warrant of arrest upon what was obviously a fictitious reason, had the undesirable effect of derogating the judiciary in the eye of the public and eroding the confidence of people in judicial process and the rule of law".

There is plethora of decided cases on the attitude of the court to individual rights or civil rights of individual entrenched in the 1999 Constitution.

4.0 CONCLUSION

The position of the judiciary in any community is of immeasurable importance. A good, efficient and incorruptible judiciary sets the pace for the happiness and orderliness of society. However, in the last two decades question of civil rights have come prudently within the focus of international communities. For that reason, domestic courts in many countries including Nigeria have started to expand their vista and to look at fundamental rights as rights which must be accorded universal recognition and in a very expansive area covered by international entreaties, conventions and international law.

5.0 SUMMARY

If you have comprehended this Unit, you should now be able to explain what the judicial attitude of Nigeria court is to fundamental Hman Rights and the relationship of Domestic Courts to international law, Convention and Treaties.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is the role of the court and the Nigeria Police in upholding the Fundamental Human Rights?
2. Can Treaties, Convention and International Law on Human Rights be enforced by courts in Nigeria?
3. The government does no wrong. Discuss this in ,relation to the case Of Nasiru Bello V Attorney General of Oyo State.

7.0 REFERENCES / FURTHER READINGS

Individual Rights under the 1989 Constitution, Edited by M. A. Ajomo and Bolaji Owasanoye.

Legal Thoughts: Essays in Honour of Prof. Babatunde Iluyomade edited by J. Ademola Yakuba.

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Akin Ibidapo-Obe, Essays on Human Right Law in Nigeria.

MODULE 4

INTRODUCTION

HISTORICAL DEVELOPMENT OF HUMAN RIGHTS

Unit I Definition: Meaning and Classes of Human Rights

Unit 2 Introduction to Human Rights and Civil Liberties

Unit 3 Historical Antecedents of Human Rights in Nigeria

Unit 4 Human Rights as a Universal Concern

Unit5 Fundamental Objectives and Directive Principles of State Policy; Fundamental Rights and Fundamental Right Cases

UNIT 1 DEFINITION: MEANING AND CLASSES OF HUMAN RIGHTS

1.0 Introduction

2.0 Objectives

3.0 Main Content

- 3.1 Classes of Human Rights
- 3.2 Ideology and Moral Rights
- 3.3 Human Rights: Historical Perspectives

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

"Human" means "relating to human beings", relating to members of the races *homo sapiens* men women, children.

'Right' refers to that which is just or correct, truth, fairness, justice, just or legal claim.

'Human Rights' mean the freedoms, immunities and benefits that according to modern values, all human beings should be able to claim as a matter of right in the society in which they live.

2.0 OBJECTIVES

Alter you have read through this unit you should be able to:

- define or explain the term "Human Rights"
- differentiate the nature and scope of human rights on the basis of ideology
- explain whether or not human rights are time and culture specific or universal
- give a historical account of the evolution of human rights from pre-modern age.

3.0 MAIN CONTENT

3.1 Classes of Human Rights

There arc different categories of rights which pertain to human beings. Some are immediately enforceable binding commitments. These latter rights arc reflective of the values of the community. Others arc regarded as merely specifying possible future patterns of behaviours. These rights savour of ethics and morality. Entitlement to them can only arise under specific conditions. Thus enforcement and sanction determine the characterization of any particular human rights.

3.2 Ideology and Moral Rights

Adherents of the natural law principles have said that certain rights exist as a higher law than the legal system or any positive law. Such rights are universal and absolute, irrespective of space and time. For example, the social contract theory postulates the existence of inalienable right to life, liberty and property, which serves as a powerful restraint on arbitrariness. The United Slates Declaration of Independence (1776) was a restatement of the Natural Law postulate.

Marxists have little place for human rights within the framework of the legal order. Tunkin emphasized: "conventions on human rights do not grant rights directly to individuals" the contents of human rights obligations are defined solely by the state in the light of she socio-economic advancement of the state.

Human rights means no more than that

a. all slates have a duty to respect the fundamental rights and freedoms of all persons within their territories.
b. states have s duty not to permit discrimination by reason of sex, ethnicity, religion or language: and
c. states have a duty to promot e universal respect for human rights and to cooperate with each other to achieve this objective.

Positive rights are contained the Legal System. It is discoverable from the system with or without moral or ethical consideration. Positivism has little place for human rights beyond these rights that are enshrined in the legal system. This is consistent with its doctrines of state sovereignty and supremacy of national jurisdiction. Following important development in the 20th century, as you will see later, some basic civil and political lights became universal constraints of powers of governments.

Such rights acquired recognition, meaning and effect irrespective of space and time. But note the following observations:

1. Economic rights were only desired,
2. Colonised peoples were hardly heard, and were denied of human rights especially right to freedom.
3 Economic inequalities of states was a non-issue

Certain issues also arose e.g.

- whether the concept of human rights differ in different culture; and
- whether human right are granted to all individuals, regardless of culture and by reason only of their membership of human race.

Perhaps it is human right, what the international community accepts as human rights,

3.3 Human Rights: Historical Perspectives

The global concept of Human Rights transcends any known period in history. History itself is full of event and struggle for rights by people all over the world at all times. The fight for the protection of Human rights still continues, and the main organization in the forefront is the United Nations Organisation and lately the African Union.

From Biblical history, we sec that the ancient Israelites made effort, at one time in Egypt, at another time in Babylon, to free themselves from slavery and bondage. Essentially, the concept is an evolution of revolt against authoritarianism, tyranny, slavery, discrimination and all other ways by which rights, which are innate to all human beings have been suppressed. Amongst the writers on Human Rights, the settled fact is that the human being, without any regard to time and space, is entitled to the exercise of some freedoms. These freedoms arc not granted by any

authority but they are paradoxically claimed and exercised by every human being as of right. These include freedoms of worship, speech, association, opinion and of the pursuit of happiness and worthwhile vocations and professions.

The list use of the word with an equivalent meaning of freedom was in the 24th century B.C. in the Lagash province of Samaria. Then the king of Lagash, Urukagina, had to come to the aid of his citizens against the tax collectors and the high Priests Urukagina had no other option but to chase the tax collectors and high Priests out of town in order to save his crown from protests from his subjects.

The Progenitor of Human Rights in Natural Law

This is the jurisprudential aspect of law that was developed by the ancient Roman and Greek Philosophers. Much of the content of literature on Human Rights, as we have them today, however, is an improvement on Roman Law by the Hellenistic stoic philosophers. At the time, Roman Law had what they called the Jus Gentium. These were the laws and rules basically for all mankind.

During the tyrannical period, the question of the "Rights of Man" became a slogan in the struggle against the injustices and indignities committed by some governments. These ñrightsò were termed "natural rights" and they were claimed to derive from "natural law", the law that ruled the universe.

The Stoic philosophers declared their unreserved conviction for a natural law which they said ruled over gods and men. Sophist's heroine, Antigone declared that there were laws higher than the royal laws and the kings' government. Through these laws, she contended that she and every human

being had certain rights which though could be violated by royal force yet they could never be cancelled or taken away.

The origin of natural law is ascribed to the old and indefensible movement for the progress and maintenance of eternal and immutable justice. This justice, d' Entreves said:

…is conceived as being higher or ultimate law, proceeding from the nature of the universe from the being of god and reason of man.

> ...Law in the sense of law of last resort is somehow above law making ... Lawmakers, are under and subject to law.

He concluded by saying that:

> …it was among the stoic philosophers of the Hellenistic age that the movement first attained a large and general expression and the expression became a tradition of human civility which runs continuously from the porch of the American Revolution of 1776 and the French Revolution of 1789é .

Aligning with d' Entreves, Bodin the celebrated French Jurist held that though the acts of the sovereign were ultimate yet the sovereign was bound by the laws of God and nature.

The Stoic's conception of natural law was strictly upheld by the Romans. Cicero's opinion was that natural law allows any part of it to be repealed entirely. We cannot be freed from its obligations by senate or people ". . .And there will not be different laws at Rome and at Athens or different laws now and in the future but one eternal unchangeable law will he valid for all nations and for all time."

Cicero's immutable natural law gave birth to human rights which down the ages up lo the present day have been the hall mark of constitutional provisions on fundamental human rights in different countries. All nations have tried to standardize their provisions on Human Rights though not all of them practice them lo the letter.

Human rights are natural rights which are conferred by natural law on every human beings and are:

> ...not the particular privileges of citizens of certain states but something to which every human being, everywhere, was entitled by virtue of simple fact of being human or rational.

These natural rights are the special gills to human beings by nature which are standard, immutable and universal. They are only comprehensible to human beings alone. About this Gaius Kzejiorfor noted that:

> ...men... could comprehend and obey this law of nature because of their possession of reason and capacity to develop and attain virtue. They were by this able to emphasize the notion of freedom and equality of all men.

These view of other writerôs are not different, most especially on its universality, immutability and uniqueness. In the words of Louis Henkin:

> Human rights arc claims which every individual has, or should have...to call them human suggest that they are universal. They are the due of every human being....They

do not differ with geography, history or culture, or ideology, political, or economic stage of development.

Gaius Kzejiofor highlighted the existence of some specific fundamental human rights in some ancient Greek city states even before the advent of the much talked about stoic philosophers. He mentions, for example, "Isogoria" being equal freedom of speech; Msotimia", being equal respect for all; "Isonomia" being equality before the law. These are all rights existing in the Bill of Rights of all civilized nations today.

4.0 CONCLUSION

You have defined human lights. You can then visualize human rights form the perspective of persons claiming them and also from the perspective of those whose duty it is to protect them. You have also seen the approach of the exponents of the principles of natural law, positivism, Marxism as the developing sates. Human rights exist social as social facts.

5.0 SUMMARY

In this Unit, you have learnt about what 'human Rights' is what is or what is not human rights may all depend on acceptance by the International community.

TUTOR-MARKED ASSIGNMENT

1. Define the term "Human Rights."
2. Compare and contrast the philosophy of human rights with the politics of human rights. (culled from: Mansell: *Public International Law* 2006).

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UNIT 2 INTRODUCTION TO HUMAN RIGHTS AND CIVIL LIBERTIES

CONTENTS

1.0 INTRODUCTION

The two hottest issues that are topmost on the agenda of slates whether on the domestic or on the international scene as of the present arc human rights and the question of environment. Human rights, because without human rights, man is nothing but a slave to the society. Issues relating to human rights have since the end of the cold war regained ascendancy in international fora and discourse. The subject is even more pertinent to Nigeria and indeed Africa as a whole where misrule and repression accompanied by gross human right violations have become an intractable problem over the decades.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- define and explain the term Human Right
- identify the various philosophies that led to the concept of Human Right
- distinguish between the various generations of human rights.

3.0 MAIN CONTENT

3.1 Definition of Human Rights

Various definitions of human rights abounds, some rather, too narrow and inadequate, others open-ended and imprecise for easy comprehension. According to Professor Osita Eze, "Human right represent demands proclaims which individuals or group make on society, sonic of which are protected by Law, while others remain aspirations lo be-attained in future.

Simply put. Human Rights arc inherent in man; they arise from the very nature of man as social animal. They are those rights which all human beings enjoy by virtue, of their humanity, whether black, white, yellow, malay or led, the deprivation of which would constitute a grave affront to one's natural sense of justice.

Human rights themselves are not a new phenomenon or a new morality. They have a history dated back to antiquity. The rights of man as expression of political philosophy may be traceable to the writings of early naturalists. Thomas Paine, Hobbes, John Tocke, Baron of Montesquieu, Jean Jacques Rousseau and Williams Kant to mention a

few. There were the times when the writings of publicist had great impact on law and the society within which the law operated. According to these philosophers, every individual within society possesses certain rights which are inherent and which cannot be wantonly taken away and for which man is beholden to no human authority. That the major reason for individuals coming together to form a government is to enable these rights lo be protected and fostered. Social contract, to which is traceable the origin of society itself is based on the concept of natural law to the effect that certain principles of justice are natural, thatôs, rational and unalterable and that the rights conferred by natural law are something lo which every human being is entitled by virtual of the fact of being human and rational.

Based on this philosophy, man has over the centuries struggled and got human Rights or their understanding of them, enshrined in the constitutions and political traditions of their various societies. As Frederick Douglas aptly put it, "Power concedes nothing without demand. It never did and it never will."

Many examples of the outcome of these struggles have undoubtedly influenced later Constitutional and legal development all over the world - the gical Magna Caila of England (1215), the United States Declaration, of Independence (1776.), the French Declaration of the Rights of man and the citizen (1789), and the American Bills of Rights of 1791 etc.

Apart from individual struggles, the world community as a whole has in recent times drawn attention, in important declarations, to the universality of human lights and adopted a number of durable conventions in which these declarations have been enshrined. The

first in the series was the Universal Declaration of Human Rights (1948). This is a declaratory statement of those basic inalienable and inviolable lights, though mainly of civil and political nature, to which men arc entitled. International Covenant and Civil and Political Right (1966) including its optional protocols; International Covenant on economic, Social and Cultural rights, The European Convention for the Protection of Human rights and Fundamental Freedom (1950); the inter-America Convention on Human Rights (1970) and the African charter on Human Rights (1981).

3.2 Classification of Rights

3 .2.1 The Concept Generation

Since 1997, when Karel Vasak introduced the concept of generations into the corpus of human rights discourse, the debate has taken many forms and shapes. Vasak traced the developments of human rights and concluded that, basically, rights arc three generations. The first he called *Iberte* (Liberty) i.e. Civil and Political Rights, the second he termed *egalite* (equality), which relates to Economic, Social and Cultural Rights; and the third he *termed fratenite* (solidarity), referencing to those rights that are held by the collectives in other words, " group or people's right. These classifications, sometimes described by a colour scheme of "blue" "red" and "green," arc based on three different philosophies. Each generation has its destructive characteristic but it suffices to note that the first generation rights are negative rights or immunity claims in citizen towards the state, in the sense that they limit the power of a government and protect peoples rights against its power. They relate to the sanctity of the individual and his rights within the socio-political milieu in which he is located. They imply that no government or society should act against individuals in certain ways that would deprive them of

inherent political or personal rights, such as the rights to life, liberty, and security of person, freedom of speech, press, assembly and religion.

3.2.2 Second Generatio n Rights

The second generation rights arc claims to social equality consisting of economic, social and cultural rights. They arc positive rights in that they enhance the power of government to do something to the person to enable her or him in some ways. They arc generally interpreted as programmatic clauses, obligating governments and legislature to pursue social policies, but do not create individual claims. They require the affirmative action of government for the implementation.

3.2.3 Third Generation R ights

Unlike the first two generation rights which focus largely on individuals, the third generation rights include the rights of people and groups. It has received increasing rhetorical affirmation at the international level though "only the people's rights to self-determination and to disposal of natural wealth, included in the international covenants have received authoritative acceptance in international law. Other group rights include ñthe right to development, the right to peace, the right to environment, the right tot ownership of the common heritage of mankind, and the light to communication.

SELF ASSESSMENT EXERCISE 3.0

What is Human Rights.?

40 **CONCLUSION**

Human Rights is a universal concept. It is an inherent right which no law can invalidate. This unit highlighted the definition and the different struggles by individual communities, group and the United Nations to make it a universal phenomenon.

5.0 SUMMARY

In this unit, you have learnt about

- the history of the evolution of Human Rights
- the definition of human rights
- the periodialisation of Human Rights
- the universality of Human Rights

6.0 TUTOR-MARKED ASSIGNMENT

1. Define the concept Human Right
2. Explain in detail the term periodisation of rights
3. Explain the concept generations of Rights
4. Human Right is only operational at the domestic level? Do you agree?

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UNIT 3 HISTORICAL ANTECEDENTS OF HUMAN RIGHTS IN NIGERIA

CONTENTS

1.0 INTRODUCTION

Nigeria did not have 1o fight a war to gain independence from the British. As a matter of fact it was proclaimed that independence was given to us on a "platter of gold". Equally so, we did not have to demand or fight a war for entrenchment of human rights in our Constitution. There was never a Lord Coke to press for anything of the soil.

There was no John Somers and no parliamentary wrangling. What the minority ethnic groups demanded was the right to self determination which they believe could offer them an escape route from the tyranny of the majority ethnic groups in the regions. The Commissions that investigated their fears went out of its way to recommend the entrenchment of fundamental palliative as a safeguard against alleged oppressive conduct by majority ethnic group.

2.0 OBJECTIVES

At the end of the unit, you should be able to:

- explain the historical antecedent of Human Rights in Nigeria
- identify the evolution of human rights from independence Constitution of 1960 to the 1999 Constitution of Nigeria
- identify the various ways in which the court has aided the entrenchment of the provisions of fundamental Human Rights in our various Constitutions.

3.0 MAIN CONTENT

The clamour for human rights in Nigeria dates back to the Colonial days before Nigeria attained independence in 1960. Colonialism was planted in Nigeria through three prong attacks:

In 1961, Lagos settlement wad ceded by King Dosumu of Lagos to the British, the Sokoto Emirate had been acquired by conquest, while the other were rest of the country was subtly acquired by the British through bilateral transfer of friendship and protectorate. Much later the acquired provinces of Northern and southern Nigeria were amalgamated by Lord Lugard in I9M and this brought under one government the various elements which now constitute Nigeria.

Since the emergence of the geographical entity known as Nigeria, it has had several Constitutions. Some of were fostered on her while others were fashioned with the participation of the diverse interests in Nigeria. The Clifford Constitution of 1922, like the ones that were to follow it, was entirely a Colonial Constitution designed to achieve specific objectives. None of the other pre-independence constitutions was designed with any formal or conscious objective to safeguard human rights. Indeed, it would have been most interesting to sec how a constitution with human

rights provisions would have been fashioned at a time slavery, forced labour international discrimination and accusation of movement were legitimate instruments in the lands of colonial administrators not only in Nigeria, but all over Africa. For example in most of Colonial Africa including Nigeria, European reserves were a no-go area to African natives except for cooks, stewards and domestic help. European clubs were exclusive for whites and admission to black natives was prohibited.

The Nigeria (Legislative Council) order-in-Council of 1946 was principally aimed at bringing the whole of Nigeria under one Legislative jurisdiction. The Nigeria (Constitution) order in-Council of 1951 was concerned essentially with the introduction of representative democracy into Nigeria's body polity. The system of governance tacitly embraced the principle of self determination, which the United Nations, in its charter of six year earlier, had adopted.

Nigeria forged ahead in Constitutional development, and with the various nationalist of the time, agitating for self- government, the need to introduce some elements of human rights into the country's constitution gained prominence. One factor which prompted this was the heterogeneous nature of the country and the fear of the minority that their survival would be threatened in a country dominated by three, major tribes - the Hausa, Igbo, and the Yoruba. The minorities therefore, urged the British Colonial government to allay their fears by the creation of stale for them before independence was granted. The British government's response was the minority commission under the chairmanship of sir Henry Willinks with a mandate to ascertain the facts about the fears of the minorities and suggest means of allying those fears.

The Commission did not, surprisingly, recommend the creation of more stales. Rather it recommended the entrenchment of fundamental rights provision in the Constitution, even (though the commission observed that such provisions would be difficult to enforce and sometimes difficult to interpret.

In spite of its observation, the Commission went ahead to recommend the provisions largely in its view that:
"Their presence defined beliefs widespread among democratic countries and provides a standard to which appeal may be made by those whose rights are infringed ....a government determined to abandon democratic courses will find ways of violating them but they are of great nature in preventing a steady deterioration in standards of freedom and the unobtrusive encroachment of a government on individual rights."

The above was the basis for the inclusion of fundamental rights in Nigeria independence Constitution of 1960. One may observe that by opting for the inclusion of fundamental rights in the country's constitution rather than create more states at that time, the British government tactfully left a legacy of agitation for the budding independent state.

As Prof J. D. Ojo observed:
"Only the threat of succession by (he Eastern Region forced Nigeria, in a panic mood, to split the country into 12 states on 27 May J967."

The fundamental rights provisions in the 1960 independence Constitution were contained in Chapter III of that Constitution. Sections 17 to 32. The full text of that chapter is similar in every respect to what was contained in the Bill of rights first adopted as the sixth schedule to the Nigerian (Constitution) order-in-Council, 1954 to 1958. However,

only 12 out of the 16 sections in that chapter positively recognized certain rights for protection. These are:

1.	Deprivation of life	Section	17
2.	Inhuman Treatment	"	18
3.	Slavery and Forced Labour	"	19
4.	Deprivation of Personal Liberty	"	20
5.	Determination of Right	"	21
6.	Private and Family Life	"	22
7.	Freedom of Conscience	ñ	23
8.	Freedom of Expression	ñ	24
9	Peaceful Assembly and Association	ñ	25
10.	Freedom of Movement Section	ñ	26

These rights have since then generally remained the same in substance except for minor alterations in arrangement, nomenclature and amplification here and there. For example, in the independence Constitution of I960 and the Republican Constitution of 1963, the right summarily referred to as the right against "Inhuman Treatment" has been altered to read the "Right to Dignity of the Human Person" in the 1979 and 1999 versions of the Nigeria Constitution. Also in 1963, fundamental rights were inserted in chapter III of the Republic Constitution, whereas under the 1979 and 1999 Constitution, the insertions are in chapter four. These changes in the arrangement do not affect the substance of the rights themselves.

SELF ASSESSMENT EXERCISE 3.0

Briefly explain the fears of the minorities in Nigeria before independence.

4.0 CONCLUSION

For Nigeria the Willinks Commission set up in 1958 by the British Colonial Government to look into the demands of the minorities recommended the adoption of some of the nouns of the 1948 Universal Declaration of Human Rights into the Nigeria Constitution as a panacea for fears expressed by the minority groups in the country. These norms were adopted and introduced into chapter III of the independence Constitution of 1960 as Fundamental Rights. These were subsequently entrenched in the 1963, 1979 and this 1999 constitution of the Federal Republic of Nigeria. In fact with the exception of just two, all the Articles of the Declaration found their way into the 1999 Constitution cither as fundamental Rights in chapter 4 or Directive principles of state policy in chapter 2.

Deliberations on Human rights Issues during the 1979 and 1999 Constitutional debate revolved around the intricacies of imposing economic and social rights as legal as against moral obligations on the government. It appeared that the Legal recognition of social and economic rights is an economic burden which the dominant and ruling elite in the country is most unwilling to shoulder.

5.0 SUMMARY

You have learnt in this Unit about, the history of Human Rights in Nigeria and how the Universal Declaration of Human Rights by the United Nation in 1948 impacted positively on the Constitutional development of Human Rights in Nigeria.

6.0 TUTOR-MARKED ASSIGNMENT

1. The Recommendation of the Williks Commission of 1958 solved the problem of the minority groups in Nigeria. Discuss.

2. Explain and Discuss why all the Nigeria Constitutions before the Independence Constitution did not have a provision for Fundamental Human Rights.
3. Democratic ideal was first introduced into Nigeria by the colonial master through the Nigeria (Constitution) order in Council of 1951. Discuss.

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UNIT 4: HUMAN RIGHTS AS A UNIVERSAL CONCERN

CONTENTS

1.0 INTRODUCTION

Declinations are mutually agreed upon, through general consensus - based on tests of states accepting them. They are legally binding in international law only if they become part of what is called Customary International Law through the constant practice of stales, the international community or of international institutions invoking their provisions over time.

The central declaration in international rights law is the Universal Declaration of Human rights (UDHR) adopted by the United Nation in I948. This Declaration is seen as the foundation of international human rights protection and subsequent international human rights laws. The UDHR is widely considered to be part of customary international law and therefore binding upon all stale as customs.

2.0 OBJECTIVES

At the end of this unit you should be able to

- explain the term universalization of Human Rights, the origin and the content of international human rights norms;
- understand the meaning of fundamental objective and directive principle of state policy; and
- contrast it with the meaning and provision of fundamental rights in the I999 Constitution.

3.0 MAIN CONTENT

Since the end of World War II in 1945, some scholars have observed two crucial instrument of state policy - the sword of armed forces and the shield of international law. Both have cast long opposing shadows on the foreign policy of nations. This makes another of the United Nations charter as "the cornerstones of contemporary Law." The Article requires all members of the United Nations to refrain in their International Relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations.

However, three years later, in 1948, the Declaration revolutionized the Human rights issues. States were now held responsible and accountable for any violations of the human rights of their citizen or foreigners under their control in war or peace time. The universilization of human rights .touched off the initial controversial debated on whether human rights conception was really universal or cultural relative. However, today there is a fair level of consensus that the human rights conceptions, particularly as documented in the various instruments of the Decimation

of Human Rights have "their roots in specific circumstances of the western society "and" are of western origin.

Consequently, right from the beginning and particularly in the 1960s and 1970s. Africa and Third World Countries in general "have argued that the philosophy and conceptions of human rights existed in other culture as well and equally deserved attention and recognition. Naturally what is embodied in the African and third world human rights conceptions include the notions of human dignity and worth, which exists in air societies, but which historically colonialism, slavery and imperialism had tended to ignore. This therefore, docs not mean that the core elements of the Universal Declaration of Human Rights of 1948 arc alien to non-Western Cultures including African cultures. Indeed, traditionally, African cultures "have given the greatest importance to the preservation of life and the promotion of human welfare". Hence the dead are given the most decent and solemn burial. It also explains the significance of ancestral worship which still prevails in most African countries.

The proclamation of 1948 by the United Nation gives the concept of human rights a Universal application. The declaration has found effective application in settling the problems of human rights violations in places like Kosovo, Sudan, Chad etc. where International attention was drawn due to internationalized national crises.

3.1 Content of International Human Rights Norms: A Hef Historical Survey

Before the Second World War, human rights have found protection in domestic courts. The National courts of each country gave expression to the protection according to the socio-economic problems and political demands

of the Stale at the point in time. There was no recourse to international norms however. Let us take the example of Great Britain which founded the Common Law. In 1215, the Magna Carter was signed at Runnymede, which is now Survey by King John of England and a committee of feudal barons. This could be the first instance of the British formalize and justiceablc Human rights provisions following on the pattern of the XII Tables in Ancient Rome. The XII Tables, be it noted, have been described by the poet, Livy, as "corpus onmis Romani viris" and "lons publici piivatique viris" and by another scholar, Tacitus as "finis acqui viris." In reality, the XII Tables were not so much "finis" as much as a fresh starting point for a new and vigorous legal development. The Table removed the uncertainty in law, placing all freemen irrespective of their birth or order, on equal footing in respect of legal light and duty - a real exposition of human rights.

The Magna Carter, for its part, declares:-

"No freeman may be taken or imprisoned or diseased of his freehold or liberties, or free customs or be outlawed or exiled or in any way molested or judged nr condemned except by lawful judgment or in accordance with the law of the land nor may justice be sold, or denied or delayed to any subject,. And the ' crown or its ministers may not imprison or coerce the subject in any arbitrary manner. "

SELF ASSESSMENT EXERCISE 3.1

Compute and contrast the Twelve Tables and Art 1,3,4,9, 17, of the Universal Declaration of Human Rights 1948).

The Petition of Rights and Bill of Rights provide inter alia -

a) no poison owing allegiance to the Crown may be committed to prison or detained by special command of the sovereign without any cause shown.

b) excessive bail or fines ought not to be required or imposed nor cruel and unusual punishment inflicted.

c) the Crown may not suspend laws or the execution of laws without the consent of Parliament, nor may it dispense with laws, or with their execution.

The 1688 revolution is usually regarded as the Glorious Revolution. Bloodless it was. Parliament was by an Act, signed by Williams of Orange (1650- 1702), empowered to protect the rights of the individual. In 1701, still during the reign of Williams of Orange, judges were given security of tenure and it was by this that they were able, finally, to establish their independence from the Government

In the 19th Century the Reform Act of 1832 extended voting rights to men of substantial properly, thereby widening voting rights. Fifty years late (that is in 1884), householders were granted the vote right. But the 19th century did not actually sec a total enfranchisement for Britain, for it was not until 1918, after the first World War, that women got voting lights. Even then, the right was for women of over 30 years and women over 21. Others had to wait till as recently as 1928, to have equal enfranchisement with men and their more older counterparts. This inward-looking phenomenon, in regard to fundamental human rights no longer had support after the Second World War or rather, after the Universal Declaration of Human rights as a global affair in 1948. Paine, in presenting his-book "Rights of Man" to George Washington in 1791 had prayed "that the rights of man may become universal". Those prayers were not to be answered until 1948, when the United Nations adopted the Universal Declaration of Human Rights. The

General Assembly of the United Nations adopted and proclaimed these rights by resolution 217 A (iii) of 10 December 1948.

On 4th of November 1950, the European Convention for the Protection of Human rights and Fundamental Freedoms was adopted by government signatories who were members of the Council of Europe. Great Britain was a party to (his Convention. The Convention was fashioned on the International Bill of Rights. The 66 Articles contain and consist of the first generation rights of life, that is, right to life, protection from torture, or degrading treatment, and also non-discrimination. Of importance to the advance of Human rights is the fact that United Kingdom citizens can enforce the rights at the European Commission and Court of Human Rights in Strasburg, France. This individual right to have assess to the court has been attained by United Kingdom citizens since 1966. This is laudable. Some day in Africa, a court, similar to the European Commission and Court of Human Rights, would be established under the African Charter to supplement the African Commission which, from all practical purposes has always appeared toothless and *a fortiori* impotent.

For these interested in statistics, the United Kingdom has been found guilt at the European Court of Human Rights abuses and of more breaches of the Convention than any other state apart of course from Italy, which holds the unenviable record of being adjudged guilty in practically every reference made to the court since 1966. Incidentally, such rights as non-discrimination, degrading treatment, protection from torture and use of corporal punishment in schools (which was abolished by the court in 1987) can be enforced by the United Kingdom citizens at the Commission and the court. Greece has the least of guilt- judgment by

the court and indeed, the lowest reference to the Court, followed by Denmark, Luxembourg has had no cases preferred against her.

In England, it is notable that the majority decision in *Liversidge v Anderson* has ceased to be the law. (See *R v Home secretary ex-parte Khawaja.* See also *Reg v Inland Revenue Commissioners Ex parte* Rosemanster Ltd. *(1980) AC 952; 1011.* The minority judgment of Lord Atkin has triumphed. The law has ceased to remain betrayed!

One would at this stage perhaps leave Europe and go to South Africa, where apartheid, up till the very recent, was valid law. The question of human rights was never raised in court, and if politically raised it was with impunity. The courts hardly, if at all, had any experience of hearing ordinary constitutional matters. The judges, even now, would rather wish to relieved of constitutional cases in post-apartheid South Africa.

The Inter-American Convention on Human Rights came into being in 1969. Known as the Inter-American Convention on Human Rights, it was within the Organisation of American States and of interest is charier VIII which, like the European Commission, sets up an Inter-American Court of Human rights.

The African Chatter is important, in any human rights quest in Africa generally and Nigeria in particular. In June 1981, the Heads of Slates and Governments of the Organisation of African Unity adopted the African Charter on Human and Peoples' rights. This was at Nairobi, Kenya.

The Chatter, which has been ratified by upwards of forty African states, guarantees, right to equality before the law, human dignity and inviolability, lit the words of Prof. Umozurike,

perhaps nowhere else is a continental organization for the protection and promotion o}' human rights more desirable than in Africa which has experienced some of the worst abuses of Human Rights.

Like it predecessors, the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms; the African Charter provides for political and civil rights as well as economic, social and cultural rights and group rights for the individual vis-à-vis the state.

There are 68 Articles in all and they also, apart form providing for rights, provide for duties (Articles 27-44) of the individual to the state. The Charter establishes the Commission which is to be within the Organization for African Unity and invest it with mandate inter alia to.

ñensure the protection of human and peoplesôrights under the conditions laid some by the (Present) charterò

The setting up of a Commission conforms with the norms of the Charter of the European Convention (Art. 19) and the American (Art 33) Convention but as earlier indicated, unlike the provisions of those other Conventions, the African Charter, apart from the provision of the Commission and vesting the Commission with a mandate, (chapter 11 of part II), there is, regrettably no provision for a court. It is clear therefore, that if the provisions of the Charter are to be given a real effect, the domestic courts of the member nation of the Organization of African United would, to an almost total extent, have to be relied upon. It is humbly submitted that for the Commission to be relied upon. It is believed, in any event, that it would prove an Herculean task for the Commission to ensure, in all the African States, the protection of human rights all by itself. Such assurance would have, firstly to be

predicated on the good faith of member nations. Good faith, may not prove a good guarantee for ensuring compliance with human rights, having regard to the political, social and economic statuses of the African States at present, especially when most of these states accept a veiled totalitarianism or neo-totalitarianism as the accepted norms.

Indeed that is what calls for the title of the piece, the enquiry must be whither the judiciary in these days that call for domestic application of human rights norms- quo vadis Nigerian judiciary?

4.0 CONCLUSION

In this Unit, you have been exposed to the rudimentary aspect of universalisation of human rights, the fundamental objective and Directive principle of state policy and provisions of fundamental rights which evolved from the Universal Declarations of Human Rights.

5.0 SUMMARY

At the end of this Unit, you have learned how to:

- Identify fundamental Rights as enshrine in the domestic Constitution of Nigeria i.e. 1999 Constitution of Nigeria.
- Various cultures ad tradition found placement in the universal declaration of human right of 1948
- The fundamental objective and directive principle of the state was influenced by the provisions of the Universal declaration of Human Rights and How UDHR has Universalized Human Rights.

6.0 TUTOR-MARKED ASSIGNMENT

Distinguished between fundamental objective and directive principle of the state and fundamental Rights.

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UNIT 5: FUNDAMENTAL OBJECTIVES AND DIRECTIVES PRINCIPLES OF STATE POLICY, FUNDAMENTAL RIGHTS AND FUNDAMENTAL HUMAN RIGHT CASES

CONTENTS

1.0 INTRODUCTION

There are other rights in the Constitution of 1999 other than the civil and political rights that deserve recognition and comment; these are fundamental objective and Directive principles of stale policy in chapter 11 of the Constitution. They were introduced into the Constitution for the first time in 1979. These are peculiar rights. Their peculiarity is that they ate not justifiable in the sense that any individual who claims that his right has been infringed in relation to any of them cannot go to count to vindicate such rights. These rights arc those to education, to work and earn remuneration, right to protection against unemployment, sickness disability or old age.

However, fundamental human rights are enshrined in the 1999 constitution. These fundamental Rights are sacrosanct and not liable to be abridged by any legislative or executive order. Individuals whose rights are violated can result to the law courts for the appropriate remedy. But those who suffer from breach of Fundamental Objective and Directive Principle of Stale Policy provision cannot do so.

2.0 OBJECTIVES

At the end of this Unit, you should be able lo:

- define and explain fundamental objective and Directive principles of the state.
- identify fundamental Rights as enshrined in the Constitution
- distinguish between fundame ntal objective and Directive principle of state and Fundame ntal Rights.

3.0 MAIN CONTENT

3.1 Definition of fundamental Objective and Directive Principle of State Policy

The Constitution of the federal Republic of Nigeria, 1999, Chapter II states:

It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive, or judicial powers, to confirm, observe, and apply, the provisions of this Chapter of this Constitution.

The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice. It is hereby, accordingly declined **that:**

a) sovereignty belongs to the people of Nigerian from whom government through this Constitution derives all its powers and authority.

b) the security and welfare of the people shall be the primary purpose of government; and

c) the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution."

The composition of the Government of the federation or of any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also command national loyalty, thereby ensuring that there shall be no predominance of persons from a few stales or from a few ethnic or other sectional groups in that Government or in any of its agencies.

The composition of the Government of a state, a local government council, or any of the agencies of such Government or Council, and the conduct of the affairs of the Government or Council or such agencies" shall be a carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of good health, employment for all the people of the federation

The motto of the Federal Republic of Nigeria shall be "Unity and Faith, Peace and Progress."

Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or lies shall be prohibited.

For the purpose of promoting national integration, it shall be the duty of the State to:

a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation;
b) secure full residence rights for every citizen in all parts of the Federation;
c) encourage inter-marriage among persons from different places of origin; or of different religious; ethnic or linguistic association or tics; and
(d) promote or encourage the formation of associations that cut across ethnic, linguistic, religious or other sectional barriers.

The State shall foster a feeling of belonging and of involvement among the various peoples of the Federation, to the end that loyalty to the nation shall override sectional loyalties.

The State shall abolish all corrupt practices and abuse of power.

The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution:

a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy,
b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
c) without prejudice to its light to operate or participate in areas of the economy, other than the major sectors of the economy manage and operate the major sectors of the economy,

d) without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the light of every citizen to engage in any economy activities outside the major sectors of the economy.

The State shall direct its policy towards ensuri ng:

a) the promotion of a planned and balanced economic development;

b) that the material resources of the nation arc harnessed and distributed as
best as possible to serve the common good,

(c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands *of* few individuals or of a group; and

(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

A body shall be set up by an Act of the National Assembly which have power: -

(a) to review, from lime to lime the ownership and control of business enterprises operating in Nigeria and make recommendations to the President on same; and

(b) to administer any law for the regulation of the ownership and control of such enterprises.

For the purposes of subsection (1) of Ibis section -

a) the reference to the "major sectors of the economy" shall be constructed as a reference to such economic activities as may,

from time to lime, be declared by a resolution of each Mouse of the National Assembly to be managed and operated exclusively by the Government of the Federation; and until a resolution to the contrary is made by the National Assembly, economic activities being operated exclusively by the Government of the Federation on the date immediately preceding the day when this section comes into force, whether directly or through the agencies of a statutory or other corporation or company, shall be deemed to bemajor sectors of the economy;

b) "economic activities" includes activities directly concerned with the production, distribution and exchange of wealth or of goods and services; and

c) "participate" includes the rendering of services and supplying of goods.

The State social order is founded on ideals of Freedom, Equality and Justice.

In furtherance to the social order:

a) every citizen shall have equality of rights, obligations and opportunities before the law;

b) the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced;

c) governmental actions shall be humane;

d) exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented; and

c) the independence, impartiality and integrity of court of law, and easy accessibility thereto shall be secured and maintained.

The State shall direct its policy toward ensuring that:

a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means or livelihood as well as adequate opportunity to secure suitable employment;

b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;

c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;

d) there are adequate medical and health facilities for all persons;

e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever;

f) children, young persons and the aged are protected against any exploitation whatsoever, and against moral and materials neglect;

g) provision is made for public assistance in deserving cases or other conditions and need; and

(h) the evolution and promotion of family life is encouraged.

1. Government shall direct its policy towards ensuring that there are equal adequate educational opportunities at all levels.

2. Government shall promote science and technology

3. Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide:-

a. free, compulsory and universal primary education;
b. free secondary education
c. free university education; and
d. free adult literacy programme.

The foreign policy objectives shall be:-

a. promotion and protection of the national interest;
b. promotion of African integration and support for African unity.
c. promotion of international co-operation for the consolidation of universal peace and mutual respect among all nations and elimination of discrimination in all its manifestations;
d. respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication; and
e. promotion of a just world economic order.

The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.

The State shall-

a) protect, preserved and promote the Nigerian cultures which enhance human dignity and arc consistent with the fundamental objectives as provided in this Chapter; and
b) encourage development of technological and scientific studies which enhance cultural values.

The press, radio, television and other agencies of the mass media shall at all limes be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the government to (lie people.

The national ethics shall be Discipline, Integrity, dignity of Labour, Social Justice, Religious Tolerance, Self-reliance and Patriotism.

It shall be the duty of every citizen to:

a. abide by this Constitution, respect its deals and its institutions, the National Hag, the National Anthem, the National Pledge, and legitimate authorities;
b. help to enhance the power, prestige and good name of Nigeria, defend Nigeria and render such national services as maybe requited.
c. respect the dignity of other citizens and the rights and legitimate interest of others and live in unity and harmony and in the spirit of common brotherhood;
d. make positive and useful contribution to the advancement, progress and well-being of the community where the resides.
e. render assistance to appropriate and lawful agencies in the maintenance of law and order, and
f. declare his income honestly to appropriate and lawful agencies and pay his tax promptly.

4.0. CONCLUSION

In this unit, you have been exposed to the other rights, the fundamental objective and Directive principle of state policy and right and fundamental human rights cases.

5.0 SUMMARY

At the end of this unit, you have learned the definition of:

- Fundamental objective and directive principle of state policy
- Fundamental rights and selected cases of fundamental human rights.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is fundamental Right?
2. Give one example of selected case of fundamental Human Rights.

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