

Towards a Constitutional Entrenchment of the Right to the Security of Persons in Nigeria

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Abstract

In the last decade, the Nigerian state has become a serious security risk for the lives and property of citizens, who have become vulnerable to kidnapping, terrorism and insurgency attacks. The unabated insecurity situation interrogates the ability of the Nigerian state to perform its primary obligation of protecting citizens' lives and properties. Persons are unable to enforce their right to security of persons due to gaps in the legal framework. Relying on doctrinal research method and social contract theory, this study examined the Constitution to determine whether there are grounds for the enforcement of the right to security of persons. It found that although the right to life, right to personal liberty, right to dignity of the human person are similar to the right to security of persons, they do not offer sufficient protection for the current security challenges. The African Charter on Human and People's Rights contains the right to the security of persons as an individual and collective right and is enforceable in Nigeria by virtue of its ratification and domestication in Nigeria. However, it is not a constitutional right, suggesting the need for constitutional amendment to entrench a distinct right to the security of persons in Nigeria.

Keywords: Right to the security of persons; Fundamental rights; Constitution; Social contract.

1.0 Introduction

Human rights¹ have become a recurring issue and have continued to elicit domestic and international concern all over the world. Human rights observance has become a condition precedent for consideration for financial aid, debt write-offs, debt rescheduling or moratoria, and no effort is spared by cash-strapped developing countries, including the Nigerian government, to impress their human rights profile on rich donor countries and organizations.

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¹ Fundamental Rights (Enforcement Procedure) Rules 2009, Order 1 Rule 2. The Rules was made by the then Chief Justice of Nigeria, Idris Legbo Kutigi, to replace the 1979 Rules, which provides that human rights include fundamental rights.

Today, human rights records are an inescapable index for assessing the performance of any government, as human rights aim to create a world in which human beings can live in peace and security. Violations of human rights are therefore, threats to personal security considering the relevance of personal security to human existence. Human security is concerned with survival, daily life and dignity of human beings. It is pivotal to development and the developmental agenda of any organisation.² Economic growth and investments can only thrive in a secure environment in Nigeria, and the prosperity of human beings and the nation is premised on freedom from anxiety or fear. The quality of personal security is thus, a great assurance that guarantees human, economic and national growth.

The major function of government in a society is to provide protection for lives and property. This is a reciprocal action which the government deliver to its citizens for paying their taxes to the government. The reciprocal actions between the government and the citizens are often captured in the constitutive instrument of the state. Like most civilized countries of the world, the constitution of federal republic of Nigeria 1999 as (amended) as amended recognize and provides for certain fundamental rights accruable to citizens. The fundamental rights provisions are contained in Chapter IV Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) which comprises of Sections 33 to 46 of the Constitution. These sections contain specific types of fundamental rights including: the right to life, right to fair hearing, right to freedom from discrimination, right to freedom of assembly, etc. This study shall examine the fundamental right provisions of the Nigerian Constitution to determine the extent to which it incorporates the citizen's right to protection from its government. This research shall argue that if government can ensure that right to security of persons is guaranteed under the law rather than drawing inferences from right to life and personal liberty, it will reduce the risk to national security. If Nigerians are shielded from the dangers or injuries they encounter daily, the less the threat to national security. Agitations, in different quarters and tribes are threats to security in Nigeria. This makes the clamour for security of person in Nigeria a worthy call for consideration by all stakeholders, and particularly, government at all levels in Nigeria. In recent times, the concept of human security has been introduced even in international agenda³ as a response to new threats emerging with new global order that could affect not only the state or groups but also individuals. Human

² This is irrespective of whether it is a government or human beings in the society.

³ United Nations Development Programme, *Human Development Report 1994 of the United Nations Development Programme* (Oxford University Press, 1994).

security is an emerging concept which is concerned with the security of the persons or individuals, rather than sole focus on institutions of the state.

This paper is divided into seven parts. The first section is the introduction, which gives background information of the subject matter and set out the objectives of the paper. Part two lays out social contract as the theoretical underpinning justifying the responsibility of the government to guarantee security of persons. Part three examine the expression of right to security of persons in international legal instruments. Part four examine the existing fundamental rights contained in the constitution to consider the ones that are of similar construct with the right to security of persons. Part five considers the prospect of personal security as a stand-alone fundamental right. Part six proceeds to make a case for a constitutional and statutory recognition for the right to personal security in Nigeria. Part seven is the conclusion of the paper. It summarises the findings of the paper and makes a forward-looking resolution of the subject under discussion.

2.0 Social Contract Theoretical Underpinning for the Right to Security of Persons

The social contract theory provides explanation regarding the constitutive basis for the state and its citizens' interaction. The theory was first developed by Thomas Hobbes.⁴ Later political philosophers like John Locke, Jean Jacques Rousseau and Samuel Pufendorf further advanced and popularized the theory.⁵ The theory, social contract is an imaginary depiction of the state of human existence, referred to as "the state of nature", before the emergence of a governed civilized society. Life was described to be "solitary, short, nasty and brutish" during the state of nature.⁶ It was a case of man for himself, where only the strong capitalizes on the weakness of others for their survival. It is this devastating condition that led the collective action of establishing the leviathan, a personality or institution with stronger power, tasked with the duty of upholding law and order in the society.

The social contract therefore became a means through which the leviathan, who is the sovereign, guarantees the collective security interest of the people.⁷ In return, the governed are obligated to pay taxes, levies or other form of tribute to enable the sovereign facilitate its

⁴ Thomas Hobbes, *Leviathan. Great books of the Western World* (RM Hutchins, 1952) 23.

⁵ See, Kazeem Olaniyan, 'The Natural Law School: Another Viewpoint' in Adewale Taiwo & Ifeolu J Koni, eds. *Jurisprudence and Legal Theory in Nigeria* (Princeton, 2019) 169, 183-189.

⁶ GB Sadler, 'The States of Nature in Hobbes' *Leviathan*' (Fayetteville State University, Government and History Faculty Working Papers 9, 2010) 5.

⁷ TN Nawzuoke, *Introduction to Human Rights Law* (Copycraft Intl, 2006) 12.

mandate.⁸ The sovereign is solely endowed with the entire coercion paraphernalia of the state, including: the police, public prosecutors, military and other paramilitary formations, towards the enforcement of laws, administration of justice and imposition of penal sanctions against defaulting members of the society who cause security breach to individuals and the state.

In modern day society, the social contract reached between the government and the governed places an arduous duty on the state of establishing effective mechanisms to guarantee the security and safeguard of its citizens from persistent exposure to damage arising from criminal activities. It is unheard of that an individual, group or entity should become too strong to be brought under the coercive powers of the state. This is core basis for which the people repose confidence and surrender a measure of their right to the state, in order to obtain shelter from imminent harm. Security of lives and property therefore becomes an entitlement which the people expect from the government. What appears to be a reflection of the social contract theory in Nigeria is captured in Section 14 (2) of the Nigerian Constitution. This point will be discussed in details in part 6.0 of the paper.

3.0 International Recognition of the Right to Security of Persons

Nigeria is signatory to international conventions and treaties which guarantees right to personal security of individual, this convention and international treaties are recognized in the country's constitution under chapter IV which makes provisions for the protection of the fundamental rights of all persons. We shall examine some of the critical provisions at the international level that have been recognised in the country, which gives a pathway for the needed personal security.

The right to liberty and security of person is contained in the United Nations Universal Declaration of Human Rights (UN UDHR). The UN UDHR provides that, every individual is entitled to the right to life, liberty and security of person.⁹ It has accordingly been noted that this provision has been the foundational basis for the institutional entrenchment of human rights into the framework of global governance in view of the fundamental and universalized reception of these rights.¹⁰ The aforementioned provision of the UN UDHR captured three distinct form of human right as one in one provision- the right to life, right to personal liberty and the right to security of persons. The implication is that this is regarded as a conjoined right that could be enforced together. The breach of one variant of this right could be regarded as a breach of the compound right. It is to be noted that the

⁸ D Brautigam, 'Building Leviathan: Revenue, State Capacity and Governance' *IDS Bulletin* [2002] (33) (3) 10.

⁹ Universal Declaration of Human Rights 1948, Article 3.

¹⁰ R Jolly and DB Ray, *The human Security Framework and National Human Development Reports: A Review of Experiences and Current Debates* (National Human Development Report, Occasional Paper, 2006) 5. <http://hdr.undp.org/sites/default/files/nhdr_human_security_gn.pdf> accessed 28 April 2021.

first two of these tripartite compound rights are distinct and stand-alone as rights under Sections 33 and 34 CFRN respectively. However, the third variant of these rights is not expressly provided for under the CFRN.

Although the UN Declaration of 1986 is not on its own a legally binding instrument. However, many of its provisions are also provided for in legally binding instruments, such as the United Nations Charter and the International Covenants on Human Rights, and principles like nondiscrimination and State sovereignty which are part of customary international law and binding on all States.¹¹

Another international instrument that recognizes the right to personal security as a distinct right, is the Convention on the Elimination of all forms of Racial Discrimination (CERD). According to the fundamental obligations laid down in Article 2 of the Convention, States parties are obliged to undertake measures to ensure the prohibition and elimination of all forms of racial discrimination and to guarantee the right of every individual, irrespective of their race, colour, national or ethnic origin. State parties are also to guarantee every individual the enjoyment of equality before the law, particularly with regards to the enjoyment of the right to security of person and guarantee State protection from violence or bodily harm against the persons, either perpetrated state actors, individual, group or institution.¹³

The first Convention is the International Convention on Civil and Political Rights (ICCPR) contains a body of orthodox civil liberty rights which are generally referred to as first generation rights.¹² It is targeted at providing shield for victims against violations of their human right by state and non-state actors.¹³ The modus operandi of the convention is to impose a duty to uphold and safeguard citizens from suffering a breach of these rights.¹⁶ The ICCPR also have similar provision that touches on the right to personal security. It is therein provided that every individual is entitled to the right to liberty and security of person. It went further to expound this right into contemplation of non-subjection to arbitral arrest and detention, deprivation of liberty only on terms and procedures recognized by established legal framework.¹⁴ The common factor amongst the three international instruments examined thus

¹¹ United Nations High Commissioner for Human Rights, 'Frequently Asked Questions on the Right to Development Fact Sheet' (2016) <www.ohchr.org/Documents/Publications/FSheet37_RtD_EN.pdf> accessed 16 January, 2021 ¹³ CERD, Article 5.

¹² These rights include: right to life, liberty, property, freedom of conscience and religion, movement and assembly.

¹³ F Kichmeier, 'The Right to Development- Where do we stand' (Friedrich-Ebert-Stiftung Occasional Dialogue on Globalization 20, 2006) <<https://library.fesde/pdf-files/iez/global/50288.pdf>> accessed 1 January, 2021. ¹⁶*ibid*.

¹⁴ ICCPR, Article 9 (1).

far, is that apart from their recognition of the right to security of persons, they also conceptualize the right to security of person, not as a stand-alone right, but as a conjoined right with other variants of rights.

Based on the examination of the various international instrument in this section, it is obvious that international law recognizes citizens' enjoyment of the right to security. Although Nigeria is a signatory and party to these various conventions, they do not automatically become applicable in Nigeria merely on the basis of that fact. Nigeria operates a dualist system of international law. This implies that international conventions or instruments signed by Nigeria does not become applicable in Nigeria until they are ratified and domesticated by the National Assembly. This is by virtue of Section 12 CFRN. In the case of *Abacha v. Fawehimwi*,¹⁴ the Supreme Court also upheld this position of the law. It has been held that undomesticated treaties have no force of law and of non-binding effect in Nigeria country and citizens until they are enacted into law in Nigeria.¹⁵ Hence, in applicable cases, Nigerian courts will shy away using it as a basis for providing judicial remedy to litigants.¹⁶

It may be argued that based on the well-established principle of international law of treaty, a state party to a treaty cannot use its domestic law as a basis for abdicating from its treaty obligations. However, Nigerian courts are constrained from considering and giving force to international laws. This is more so as the international treaties in question purports to confer a right on persons who require the court to make pronouncement upon such rights and enforce them. Another point to consider is whether it was within the contemplation of the international conventions in question for its provisions to be self-enforcing on state parties without further ado. The answer could be clearly inferred to be in the negative. This is because, based on the wordings of the conventions, the provisions which create body of rights for the enjoyment of citizens of state parties stipulates that state parties to the conventions should ensure to give effect to the provisions of the conventions. In other words, the conventions are generally meant to serve as a spur on or persuasion for state parties to establish legal and institutional framework at the domestic level in order to give effect to the objectives of the conventions. Thus, state parties are only bound in honour and not a matter as of course to uphold the provisions of the conventions. Until such conventions are concretized or crystalised into domestic legislative format, domestic courts cannot give effect to their provisions. This is the basis for the recent

¹⁴ (2000) 6 NWLR (Pt. 600) 228.

¹⁵ See the case of *Nnaji v. NFA & Anor.* (2010) LPELR-4629 (CA).

¹⁶ *Tolani v. Kwara State Judicial Service Commission & Ors.* (2009) LPELR-8375 (CA).

Court holding in the case of *Aero Contractors Co. (Nig) Ltd. v. Oguine & Ors*,¹⁷ that the Montreal Convention for the Unification for Certain

Rules relating to International Carriage by Air 1999 is the applicable law on air travel in Nigeria by virtue of the provision of Section 77 (1) and (2) Civil Aviation Act 2006 which received and domesticated the convention into the *corpus juris* of Nigeria.¹⁸

4.0 Fundamental Rights Similar to Right to Personal Security in Nigeria

Fundamental Rights are natural but inalienable rights of every person in Nigeria. Chapter IV of CFRN contains fundamental right provisions and guarantee same in Nigeria. These include: right to life;²³ right to dignity of human person;¹⁹ right to personal liberty;²⁰ right to fair hearing;²¹ right to private and family life;²² right to freedom of thought, conscience and religion;²³ right to freedom of expression;²⁴ right to peaceful assembly and association;²⁵ right to freedom of movement;²⁶ right to freedom from discrimination;²⁷ right to acquire and own immovable property in Nigeria.²⁸ Section 44 CFRN 1999 restrains the government from compulsory acquisition of the private property of an individual without adequate recompense thereto. This section shall briefly examine the fundamental rights provisions in the constitution that are closely related to the personal security. The fundamental rights in issue are those ones that aims to protect the human person. These include: the right to the dignity of the human person, right to personal liberty and the right to life.

4.1 Right to Life

One of the fundamental rights which the constitution seeks to protect is the right to life. It has been described as the most prized gift on earth.²⁹ Indeed it is the highest, sacred, sacrosanct and most important of all the fundamental rights.³¹ As rightly observed by the court, in the case of

¹⁷ (2018) LPELR-46764 (CA).

¹⁸ See also the case of *Virgin Atlantic Airways v. Amaran* (2018) LPELR-44785 (CA). ²³ CFRN 1999, Section 33.

¹⁹ *ibid.* Section 34.

²⁰ *ibid.* Section 35.

²¹ *ibid.* Section 36.

²² *ibid.* Section 37.

²³ *ibid.* Section 38.

²⁴ *ibid.* Section 39.

²⁵ *ibid.* Section 40.

²⁶ *ibid.* Section 41.

²⁷ *ibid.* Section 42.

²⁸ *ibid.* Section 43.

²⁹ *C.O.P. Taraba State & Anor. v. Dabo & Anor* (2019) LPELR-47215(CA). ³¹ *IGP & Ors v. Ikpila & Anor* (2015) LPELR-40630(CA).

C.O.P. Taraba State & Anor. v. Dabo & Anor.,³⁰ this obviates why the right to life is the first fundamental right provision in the constitution.

In Africa, the emergence of life often attract celebration, while the loss of life is accompanied with grief and sorrow. The importance attached to life is underscored by the names given to a new born baby. The Igbos name their children “*Nduka*”; which meaning “life is supreme”. In African tradition human beings are essentially metaphysical forms of expression. The purpose of the human physical form, as asserted by Akinowo, is that the *Ifa* corpus on the subject is the transmission of certain spiritual values to the inhabitants of the earth through human beings.³¹ Hence, the Yoruba name their child “*Babatunde*”; meaning “father has come back” after the death of a prominent person in the family. The point being made here is that, life is sacrosanct, when it is lost, it is irreversible. It is on account of this sacredness that the Supreme Court in *Bello & Ors v. Attorney-General of Oyo State*,³² strongly condemned the execution of an accused who had been convicted of armed robbery and sentenced to death by the High Court, but whose appeal against the execution was pending at the Court of Appeal. This action was filed at the instance of the relatives of the deceased. The Supreme Court denounced the action of the respondent as wrongful and unconstitutional.

The premium which Nigerian confers on the right to life transcend the bounds of the constitutional provision to other statutory enactments in the country which strengthen and compliment the constitutional provision on right to life. This is reflective of the settled point of law which is to the effect that the Constitution only serve as broad framework of governance while other laws are superstructure to supplement the constitution.³³ One instance is the provision of Section 327 Criminal Code criminalises attempted suicide. In other words, the law does not only seek to protect individual from other persons, it also seeks to protect individual against oneself. Apart from attempted suicide, another instance which Nigerian law upholds the sanctity of life is in the case of prohibition of euthanasia. Euthanasia is a practice which confers on a person the choice to be allowed to die peacefully instead of prolonged suffering for a terminal diseases or ailment.³⁶

The taking of one’s life, whether by suicide or euthanasia, is evidently abhorrent in most African tradition. For instance, persons who commit suicide in traditional Igbo societies are not given

³⁰ (2019) LPELR-47215(CA).

³¹ Anthony I Asiwaju and John Kofi Fynn, *Akan History and Culture* (Longman Publishers, 1982) 30.

³² (1986) 5 NWLR (Pt. 45) 828.

³³ *Director S.S.S. v. Agbakoba* (1999) 3 NWLR (Pt. 595) 314, 357. ³⁶ Criminal Code Act, Section 311.

proper burial but are disposed in the “evil forest”.³⁴ The practice in traditional Yoruba society is that, in a case where suicide is committed in the community, there would be need to offer sacrifice to the gods in order to cleanse the land of the abomination. The offering of human sacrifice or the *Elesin Oba* customary practice of Oyo kingdom which requires the king’s horseman to commit suicide, in order to be buried alongside a demised *Alaafin* are practices which has transcended into oblivion.³⁵ These customary practices can hardly surpass the validity test for customary law in present day Nigeria. Adherence to such obnoxious practice would see it being declared null and void for being repugnant to natural justice, equity and good conscience. Neither is it likely to surpass the inconsistency and public policy test by virtue of its contradiction with the constitution and other statutory enactments.³⁶

The entire constitutionally protected fundamental rights inures in humans. As such one has to be alive in order to be capable of assessing or seeking to protect against the breach of any other fundamental rights accruable from the constitution. In fact, any other fundamental right of a person cannot be breached if the person loses his right to life, as most of the fundamental rights are only applicable to natural persons. The fundamental right provisions of the Constitution are generally applicable to persons. Section 18 of the Interpretation Act person means natural and corporate entities. In the case of *First Bank & Ors. v. A.G Federation & Ors.*,³⁷ the Supreme Court held that an artificial person cannot maintain an action for breach of fundamental right to personal liberty. In an earlier decision, the Court of Appeal, in the case of *Okechukwu & Anor. v. EFCC & Ors.*,³⁸ held that an artificial person can maintain an action to enforce the fundamental right to fair hearing. The question of which of the decisions is superior or hold a more binding effect does not arise, as there is nothing contradictory about both decisions. The inference to be drawn from the decisions is that, fundamental rights that are applicable to persons by virtue of their humanity cannot be inputted and enforced by an artificial person. For instance, the right to life, personal liberty, freedom from inhuman treatment, freedom of movement, freedom of thought, conscience and religion, and freedom from discrimination are practically not exercisable by entities with artificial personality, as these acts can only be performed by humans. Specifically, a corporate entity exists in perpetuity, hence, it cannot be

³⁴ FU Okafor, *Igbo Philosophy of Law* (Fourth Dimension Publishers, 1982) 14.

³⁵ Peter C Lloyd, ‘Political and Social Structure’ in Saberu Oladeni Biobaku, ed. *Sources of Yoruba History* (University Press, 1987) 205.

³⁶ See, High Court Law of Akwa Ibom State 2000, Section 15 (1). Similar provision abounds in the High Court laws of the various states of Nigeria.

³⁷ (2018) LPELR-46084(SC).

³⁸ (2014) LPELR-24079(CA).

said that a company has been deprived of its right to life. The right to privacy and ownership of immovable property only inures on citizens. An artificial person does not come within contemplation of the requirement for citizenship as contained in Section 25-27 CFRN 1999 (as amended). However, other fundamental rights, such as: fair hearing, freedom of expression, freedom of association, freedom from compulsory acquisition of property accruable to artificial persons.

Section 33 (1) CFRN 1999 provides that every person is entitled to the right to life. Therefore, a person shall not be intentionally deprived of this right. With exception of legally recognized justification, the intentional deprivation of a person's life is a breach of the right to life of such person. The legal justifications are contained in the constitution and some other statutory enactments. Some of these instances include: execution of a capital sentence following a judicial penal conviction for an offence; application of reasonable force in the defence of property; effecting arrest; prevention of escape from lawful captive and suppression of riot, uprising and mutiny. Therefore, causing the death of a person through means outside the aforementioned exceptions amounts to a breach of the fundamental right to life of that person, as guaranteed by the constitution. The sanctity of life demands that, even though the deprivation of a person's right to life is based on the exceptions of judicial pronouncement, utmost care and cautious has to be taken to ensure that it is done according to the dictates of the law so as not to enter death sentence on an innocent person.³⁹ Thus, where a defence for a fundamental right to life claim is hinged on any of the constitutionally allowed exceptions, the burden of proof lies on the respondent who deprived another person's right to life to demonstrate to the court that there are lawful justification or excuse for causing the death of that person.⁴⁰

The enforcement procedure of fundamental rights, as captured in Section 46 (1) CFRN 1999, has a tripartite sphere of application. That is: in the instance when the right "has been" breached; when the right "is being" breached; and when there is a likelihood of its breach. In other words, the constitution seeks to protect the fundamental rights after, during and before it is infringed upon. Consequently, the remedial objective for breach of fundamental right is curative, interceptive and preventive. This tripod approach to fundamental right enforcement is applicable to all the fundamental right provisions in the constitution including the right to life.

³⁹ *Nuforo v. State* (2015) LPELR-25994(CA). See also the cases of *Garba v. State* (2011) 14 NWLR (Pt. 1266) 98, 124; *Ajakaiye v. State* (2015) 8 CAR 396, 406.

⁴⁰ Per Georgewill, JCA in the case of *IGP & Ors. v. Ikpila & Anor.* (2015) LPELR-40630(CA) (p. 52 para. A).

At this point, the critical question to consider is whether the fundamental right to life realistically has a three-dimensional enforceability. In considering this question, the court, in the case of *Ezeadukwa v. Maduka & Anor*.⁴¹ stated that this constitutional right to life “ends the moment its owner is killed or murdered because he is no longer alive to enforce the right”. It went on to state that the right is not enforceable on the basis of the first two legs, but can only be enforced under the third leg, which is, in the instance when there is likelihood of its infringement. This was the basis for the court’s decision that dependents of a dead person cannot enforce the right to life of their benefactor. In the much later case of *Uzoukwu & Ors.*

v. Ezeonu II & Ors.,⁴² the Supreme Court reiterate the position that the fundamental right to life is only realistically enforceable personally on the third count, where the applicant perceives sufficient overt acts by the respondent principally and unequivocally targeted at infringing upon his right to life.

It is to be noted that the decisions in the *Ezeadukwa* and *Uzoukwu* cases were decided based on the provisions of the 1979 Constitution and the Fundamental Rights (Enforcement Procedure) (FREP) Rules, 1979, being the prevailing legal framework the enforcement of fundamental right as at when the cases were decided. The relevant provisions for the actions were Section 42 (1) CFRN 1979 and Order 1 Rule 2(1) FREP Rules 1979. Those two provisions do not enable the enforcement of fundamental right in instances where the right of a person “has been” or “is being” breached because the person in whom the right inheres is not alive to assert his right to life. The provisions only contemplate the enforceability of the third leg of instances where the fundamental right of a person “is likely to be breached” because that is the only instance where such right can be enforced personally by the holder of such right.

The CFRN 1999 and the FREP Rules 2009 which came to replace their 1979 counterparts created an innovation enables the enforcement of fundamental right to life of a person that “has been” or “is being” breached through a third party, usually the dependents of the deceased. This is in view of the expansive definition given to the term, “applicant” as contained in the FREP Rules 2009.⁴³ Paragraph 3 (e) of the preamble to the FREPR, 2009 provides that an “applicant” include any person who commences a fundamental right action or on whose stead the action

⁴¹ (1997) LPELR-8062(CA).

⁴² (1991) 6 NWLR (Pt. 200) 708, 784.

⁴³ See specifically, Order 1 Rule II of the FREP Rules 2009.

was commenced. This is a clear departure from the 1979 position where fundamental right enforcement is personal to the right bearer.⁴⁴ Paragraph 3 (e) of the preamble to the FREPR, 2009 has effectively placed fundamental right actions under the special category of public interest litigation. As such any person who has been negatively affected by the deed of the respondent(s) can effectively maintain a fundamental right action in the stead of the right bearer. It is immaterial that the applicant has not suffered some personal injury or possesses any personal grievance to warrant commencing the action.⁵²

In the case of *Agupugo & Anor. v. PSC & Ors.*,⁵³ the court held that the applicants, widow and mother of the deceased victim of the unrestrained handling of firearms by a police officer, are persons who are affected by the deed of the 5th respondent. Hence, the applicants can enforce the fundamental right to life of the deceased and obtain damages thereto.

An examination of the legal progression of the protection of the fundamental right to life has demonstrated that the constitution is not only reactionary but also precautionary in the protection of the right to life of citizens. There is the temptation to hold the perception that the fundamental right to life can only be protected when it “has been” or “being breached”, otherwise after there is a loss of life. Surprisingly, this has been the prevailing perception in the legal circles, as reported cases of enforcement of the fundamental right to life has been in situations where there is a loss of life. There is hardly an existing case to the knowledge of this researcher where the enforcement of fundamental right to life action has been commenced on the ground that there is a likelihood of its breach. Legal practitioners would preferably bring supporting facts of likelihood to breach a right to life under Section 34 or 35 CFRN 1999, with rights to dignity of the human person and personal liberty, respectively. The African Commission on Human Rights has demonstrated that this is realisable, when it declared that indiscriminate arrests, incarceration and torture amounts to a breach of the right to life captured in Article 4 African Charter on Human and Peoples Rights (ACHPR).⁴⁵

It has been argued, and rightly so, that the clause “every person has a right to life” as contained in Section 33 CFRN 1999 can stand independently and maintain a cause of action prior to the

⁴⁴ *Faith Okafor v. Lagos State Government & Anor.* (2016) LPELR - 41066 (CA) (Pp. 13 -14, Para. A - B). ⁵²*Mrs. Precious Omonyahuy & Ors v. The Inspector General of Police & Ors.* (2015) LPELR–25581. ⁵³(2020) LPELR-50592(CA).

⁴⁵ See the decision of *World Organisation Against Torture, Lawyers' Committee for Human Rights, Jehovah Witnesses, Inter-African Union for Human Rights /Zaire*, Communication 25/89, 47/90, 56/91, 100/93 para 43.

occurrence of death.⁴⁶ Understanding Section 33 CFRN 1999 at this rate both offers protection of life and provision of remedial respite for the unlawful deprivation of human life. The fundamental right to life would lose its full worth if it is only realisable upon the loss of life. No amount of damages can make up for human life. Assuming but not conceding that certain monetary damages can compensate for loss of human life, it is worthless to the right bearer who is now dead. It is the dependents of the right holder that take benefit of the “monetary worth” of the right holder’s life. This realisation of this point would suggest that premium should be given to the proactive measure, which is the protection of the right to life of individual before it is snuffed out. The court should also be receptive to fundamental right to life claims on the ground of likelihood of breach and award adequate damages as appropriate.

Also, an independent application of the clause, “every person has a right to life”, implies that somebody, of necessity has the duty of depriving the right owner of such right and to protect it from being infringed upon by a third party. The government is constitutionally saddled with the primary responsibility to security of lives and property of citizens.⁵⁶ The traditional method where the fundamental right to life is only enforceable against the government when its agent is directly involved in the breach of such right and no more, is not satisfactory in the actualisation of the constitutional conferment of the monopoly of armed force on the government and the duty to protect lives of citizens. It is therefore submitted that, a purposive interpretation of combined provision of Sections 14 (2) and 33 CFRN 1999 would impose liability on the government for its failure to protect the lives of citizens for breach or likelihood of breach of right to life by non-state agents which the government has failed to prevent the breach of such right. If this approach is adopted, it would mean that there would be no need to create the right to personal security in Nigeria. But this is not the reality on ground. Hence, it is only apt that the right to personal security should be created.

4.2 Right to Dignity of the Human Person

The Constitution, in Section 34, guarantees to everyone the right to dignity of human person and accordingly the Constitution prohibit torture, slavery or servitude and forced or compulsory labour. In *Amakiri v. Iwowari*,⁵⁰ the applicant, a journalist, was arrested for publishing news critical of the then Military administrator of Rivers State. The respondent, who is the Aide-de-camp of the governor, stripped Amakiri naked, gave him 24 strokes of the cane, shaved his hair and beard with old rusty razor blade and then locked him up. In a civil action brought

⁴⁶ AO Enabulele, ‘The Right to Life or the Right to Compensation Upon Death: Perspectives on an Inclusive Understanding of the Constitutional Right to Life in Nigeria’ *Journal of Sustainable Development Law and Policy* [2014] (3) (1) 99, 100. ⁵⁶Section 14 (2) CFRN 1999. ⁵⁰ (1974) RSLR 5.

against Amakiri, Justice Alagoa awarded damages in favour of the applicant. The court also expressed similar judicial resentment to infraction of right to human dignity in *Alhaja Abibatu Mogaji & Ors v. Board of Customs & Excise & Anor.*⁴⁷ In that case, the custom officials harassed the market men and women with horse-whips, guns and other lethal weapons on the pretext of looking for prohibited goods and articles. Adefarasin, C. J. disapproved this display of brute by saying that, to carry out a raid with those weapons thereby causing the injury of persons while making arbitrary distraint of wares without proper inquiry to determine the origin of those wares, amounts to inhuman and degrading treatment.⁴⁸

It has been argued that the use of *haddi* lashing as punishment for certain offences under the Penal Code constitutes a degrading treatment. Similar thing applies to stoning to death or corporal punishment for certain offences committed under the Sharia law in operation in certain Northern part of Nigeria.⁴⁹ It is however arguable whether corporal punishment administered by teachers to pupils constitutes a degrading treatment. The court could have had the opportunity to pronounce on this in *Ekeogu v. Aliri*⁵⁰ but for the Public Officers

Protection Act which shields the teacher as a public officer because the action was not brought within three months allowed by law. In that case the appellant/teacher was standing at the door to his classroom with a cane and was flogging the children while they were entering the classroom, probably at their heads or backs. When the respondent/pupil came, the cane landed on her eyes and permanently damaged it. Other laws which tend to complement this right includes the Evidence Act⁵¹ which prohibits the use of torture, coercion or other deceptive techniques in taking a confessional statement, the Trafficking in Persons (prohibition) Law Enforcement and Administration Act 2003, which forbids, among others, procurement of person(s) for prostitution or pornography, kidnapping, slave dealing, etc. within or outside Nigeria.

The right to dignity of the human person is clearly distinct from right to personal security. The right to dignity of the human person is basically concerned about the subject matter of torture, slavery, servitude and forced or compulsory labour. It does not contemplate harm that may be

⁴⁷ (1982) 3 NCLR 552.

⁴⁸ *ibid.* 561-562.

⁴⁹ Timothy Akinola Aguda, *The Judiciary in the Government of Nigeria* (New Horn Press, 1983) 46.

⁵⁰ (1992) 2 NWLR (Pt. 179) 258.

⁵¹ Evidence Act 2011, Sections 28 and 29.

visited on citizens through armed attack by non-state agents, as is the case with breach of personal security. It does not mean that non-state agents which breach the personal security of citizens do not employ torture, slavery, servitude or forced labour on their victims. In fact, there are reports to the effect that insurgent groups such as Boko Haram, Herdsmen, etc. kidnap their victims, forced them to cook, farm and supply farm proceeds to them. They even subject their victims to torture, maim and kill them in the event that they are unable to pay ransom to regain their freedom. Notwithstanding this similarity in approach, victims may only institute a fundamental right to dignity of the human person against their assailant if they can. Such action cannot be brought against the government for the atrocities of the assailant on the grounds that the government failed to protect the citizens against attack from their assailant.

4.3 Right to Personal Liberty

The right to personal liberty is one of the most basic of all rights and is secured under Section 35 of the Constitution of Nigeria 1999 (As Amended). The right cover a wide range of issues such as pre-trial right to silence,⁵² right to be informed of accusation in writing and in the language understood by the person arrested or detained,⁵³ and the need to bring a person arrested or detained to court for trial within a reasonable time⁵⁴ or be granted bail.⁵⁵ In the case of *Ateze v. Momo*,⁵⁶ Hurley S.P.J. stated that “restraint of liberty may be exercised by physical force amounting to an assault, or by the apprehension of such force, or by submission to legal process”. It has been further held that a mistaken belief in the employment or existence of a legal process which causes the person to submit to police invitation could rightly be regarded as a restrain of liberty.⁵⁷

The right to personal liberty seeks to protect against the restraints of a person’s freedom to move or confinement of a person to a secluded space. As noted above, in the course of breach of personal security, non-state agents usually perpetrate acts which could best be suited as a restraint on the personal liberty of their victims. It is not in doubt that the agents of breach to personal security employ kidnapping and hostage taking as part of their stock in trade. In the well-known instances of kidnap of Chibok girls, Daphchi girls and Kankara boys, the victims were held hostages in Sambisa forest and other unknown location for several days and even

⁵² *Daniel Sugh v. State* (1988) 2 NWLR (Pt. 77) 475; *Oyegbami v. AG Federation* (1982) 3 NCLR 895. See also: KO Amusa, ‘The Right of Silence of an Accused Person in Nigeria’ *Nigerian Law & Practice Journal* [1999] (3) (1) 18.

⁵³ *Effiom v. The State* (1995) 1 NWLR (Pt. 373) 507.

⁵⁴ *Ogueri v. The State* (2000) 5 WRN 227.

⁵⁵ *Eda v. COP Bendel* (1982) 3 NCLR 219; *Enwere v. COP* (1993) 6 NWLR (Pt. 299) 333.

⁵⁶ (1958) NRNL 127, 130.

⁵⁷ *Aigoro v. Anebunwa* (1966) NNLR 87.

years. This can readily qualify as breach of personal security. However, Boko Haram and the herdsmen are arm wielding entities which are regarded and readily identifiable for any court process to be served on or subjected to the jurisdiction of the court. Their belligerent disposition implies that they cannot be dealt with by civil process but their belligerence can only be matched with equal force by the government which has been constitutionally conferred with the monopoly of force. More so, a fundamental right claim for the breach of the right to personal liberty cannot be brought against the federal or state government for the act of kidnapping or hostage taking perpetrated by non-state actors. What the right to personal security seek to achieve is to make government face the legal liability for failing in its responsibility to protect citizens from falling victims in the hands of non-state actors which breach their personal liberty and personal security.

5.0 Prospect of Personal Security as a Distinct Fundamental Right

By virtue of Nigeria domestication of the ACHPR in compliance with Section 12 CFRN

1999, the ACHPR forms part of the extant laws in Nigeria.⁵⁸ Fundamental human rights as defined in Order 1 Rule 2 of the FREP Rules 2009 include those rights contained in the ACHPR.⁵⁹ The expansive definition given to fundamental rights makes it appear inconsistent with Chapter 4 of the constitution. However, by virtue of the decision of the court in the case of *Abia State University v. Anyaibe*⁶⁰ the FREP Rules has been pronounced to “have the same force of law as the constitution”. It therefore means that the provisions of FREP Rules are complementary to the Constitution and the provisions of both statutes have a side-by-side application.⁶¹ In view of the foregoing, the body of rights created under the ACHPR have the same status as the fundamental rights created under Chapter IV of the Constitution.

It is noted that the ACHPR contains more body of fundamental right than CFRN 1999. While there are 12 fundamental rights provided in CFRN 1999,⁶² the ACHPR contains 28.⁶³ ACHPR did not just provide for individual rights; it is also uniquely known for its recognition of collective right of a people. This wide recognition of the body of fundamental rights the ACHPR has gained recognition as a statute which has abridged any dichotomy that may have been in existence between certain classes of rights.⁶⁴ The ACHPR has, therefore, successfully

⁵⁸ *Ogugu v. The State* (1994) 9 NWLR (Pt. 366) 1.

⁵⁹ EP Amechi, ‘Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, in Ensuring Access to Justice for Victims of Environmental Degradation’ *Law, Environment and Development Journal* [2010] (6) (3) 320, 320.

⁶⁰ (1996) 1 NWLR (Pt. 439) 646, 661.

⁶¹ *Ugwumadu v. University of Nigeria* [2001] 3 WRN 181.

⁶² CFRN 1999, Sections 33-44.

⁶³ ACHPR, Articles 2-29.

⁶⁴ P de Vos, ‘A New Beginning? The Enforcement of Social, Economic and Cultural Rights under the African Charter on Human and Peoples’ *Law, Democracy & Development* [2004] (8) (1) 1-10.

established that human rights are indissoluble and mutually reliant on one another towards the attainment of a particular goal.⁶⁵

Amongst other body of right contained in ACHPR, the ACHPR recognizes the right to security of persons. The ACHPR recognizes the right to security of persons both as an individual right and as a collective right. Article 6 ACHPR which captures the right to security of persons in the later sense, provides that: “every individual shall have the right to liberty and to the security of his person”. On the other hand, Article 23 (1) ACHPR recognizes the right to security of people as a collective right. It provides that: “all peoples shall have the right to national and international peace and security”. The ACHPR further

places the collective right to security on a higher pedestal when it provides that individual rights and freedoms shall be upheld with deference to collective security of the people.⁶⁹ Despite this clear and specific recognition of the right to security of persons as an individual and collective right, it still suffers the same fate which the related rights in the Constitution suffers. In other words, while the right to security of people is enforceable in Nigeria through the fundamental right procedure, such action cannot be brought against the government except agents of government responsible for the breach of that right. Hence, person who claim their right to personal security has been breached by Boko Haram, Niger Delta militants, Killer herdsmen, secessionist agitators, and other non-state belligerent actors can only obtain legal remedy if they can subject these gun wielding entities to the civil process of court. Of course, this does not accord with reality. Here against, the government which is responsible for the protection of lives and properties is let off the hook of liability for its failure to meet up with its constitutional responsibility of protecting lives and property.

6.0 Constitutional and Statutory Justification for Personal Security Right

There is no clear constitutional guarantee for the right to security in Nigeria. This notwithstanding the provision of Section 14 (2) CFRN which is to the effect that the government has a paramount obligation to guarantee the security of lives and property. Section 14 (4) CFRN provides that the government should ensure that it extracts the loyalty and a sense of belonging from its citizens. The implication of this provision is that the government is to exercise overwhelming power that would subject all of its citizens and residents to its authority.

Whereas a government is reduced to the point where so many of its citizens take up arms to cause chaos and otherwise make the state ungovernable, it means the government has failed in the performance of its obligations that forms the essence of a modern state and relevance of government in the state.

⁶⁵ H Quane, ‘A Further Dimension to the Interdependence and Indivisibility of Human Rights? Recent Development Concerning the Rights of Indigenous People’ *Harvard Human Rights Journal* [2012] (25) 49. ⁶⁹ ACHPR, Article 27(2).

The recent times situation in Nigeria where there is proliferation of arm and weapons in the hands of persons outside the control of the state paraphernalia. State entities are supposed to have the sole possession of arms and ammunition in the state. Even in circumstances where weapons are in the possession of non-state actors, it should be such that should be under the authorization and control of the state. And the state should be in a position to retrieve such weapons from individuals in the undesirable event of its misuse. In the event of perpetration of violence and wanton killings as a result of proliferation of arms in the possession of uncontrollable no state agents, it means the state has failed to guarantee the citizens right to life and right to security.

The provisions of Section 14 (2) CFRN is not regarded as a right in the strict sense of the word. This is because of the non-justiciability clause that is contained in Section 6 (6) (c) CFRN. The said provision is to the effect that the courts of the land are precluded from exercising judicial powers on the provisions of Chapter II of the Constitution. In other words, a litigant cannot maintain a legal cause of action on the basis of the said chapter of the constitution. The effect of the non-justiciability clause is that Chapter II of the Constitution is regarded as mere aspirational principles which the government should direct its policies and laws towards their attainment.⁶⁶ In the case of *Uzuokwu v. Ezeonu II*,⁷¹ the court gave judicial endorsement to the fact that these rights are neither fundamental nor justiciable. The irony of the situation is that the constitution which referred to Chapter II rights as being the “fundamental objectives” or core essence for the creation of the state. Since the courts are precluded from giving judicial impetus or enforcement of those rights, it realisation, therefore, boils down to political will and desire, which are readily absent in the Nigerian context.

From the wordings of Section 14 (2) CFRN, “security and welfare” appears to be what the people are entitled to, for which purpose that have elected the existence of government amongst themselves to uphold. This provision creates a corresponding right and duty between two parties- the citizens and the government. While the people are entitled to their security and welfare, the government has the obligation to uphold and protect that right either from itself or other internal and external forces. Notwithstanding the non-justiciability provision, it is inconceivable that the law would create a right without creating a corresponding duty or obligation on the duty bearer in favour of the right holder. This argument finds its theoretical

⁶⁶ Ben Nwabueze, *Ideals and Facts in Constitutional Making* (Spectrum Books, 1993) 260. ⁷¹ (1991) 6 NWLR (Pt. 200) 708, 761–762.

basis in the Hohfeld analysis of the jural nature of rights. Oniemola and Tasie⁶⁷ have agreeably relied on the Hohfeld analysis of the jural nature of rights to argue in favour of the enforceability of the Chapter II of the Constitution. According to Hohfeld,⁶⁸ right *stricto sensu* gives rise to duty as a jural correlative. It therefore means that a statutory creation of legal duty on an entity, as it is the case in Section 14 (2) CFRN, implies that a right has been conferred on another entity.⁶⁹ A right, thus, becomes redundant when the institution which is empowered to compel a duty bearer to protect such right or provide reasonable compensation to make up for its inability to uphold such right in the undesirable event that such right has been breached. In the case of *Bello v. AG Oyo State*⁷⁰ the Supreme Court had on the basis of the Latin maxim: *ubi jus ibi remedium*,⁷¹ provided a remedy where it perceived that there was an existing right which has been breached.

Another argument in favour of the justiciability of Section 14 (2) CFRN is the contractual flavour surrounding the creation of the state. A contract is an agreement which creates legally enforceable rights and duties of parties.⁷² Treitel⁷³ has simply defined it as promise(s) which the court is bound to enforce. According to Tobi JCA (as he then was) it creates reciprocal legal obligation to do or refrain from doing a particular thing.⁷⁴ The constitution as a whole, particularly Section 14 (2) is contractual statute which captures the rights and obligations of the contractual parties- the citizens and the government. It contains the essence of a valid contract. The four essential elements of contract as conceptualised under Common law are: offer, acceptance, consideration and intention to create legal relationship.⁷⁵ The preamble of the constitution captured the agreement template when it stipulates that “we, the people” have agreed to form a country known as Nigeria. Section 14 (1) captures the formation of government from amongst the people and the people depositing the residue of their collective powers on the government. Whereas an individual undergoes through the elective process for an elective

⁶⁷ P Oniemola, and O Tasie, ‘Engendering Constitutional Realization of Sustainable Development in Nigeria’ *Law and Development Review* [2020] (13) (1) 159, 183.

⁶⁸ WN Hohfeld, ‘Some Fundamental Legal Conceptions as Applied in Judicial Reasoning’ *Yale Law Journal* [1913] (23) (1) 16-59.

⁶⁹ S Kalla, ‘In Defence of Hohfeld’s Analysis of Fundamental Legal Conceptions’ *Journal of the Indian Law Institute* [1985] (27) (1) 110-116.

⁷⁰ (1985) NWLR.

⁷¹ “Where there is a right, there is a remedy”.

⁷² Itsay Sagay, *Nigerian Law of Contract* (2nd edn Spectrum Book, 2000) 1.

⁷³ Guenter Heinz Treitel, *The Law of Contract* (6th ed. Oxford University Press, 2004) 1.

⁷⁴ *Orient Bank (Nig) Plc. v Bilante International Ltd.* (1997) 8 NWLR (Pt. 515) 37, 76. See the more recent case of *Atoyebi v. Barclays Bank Plc. & Anor.* (2015) LPELR-26025(CA), where the term ‘contract’ was given a more extensive definition.

⁷⁵ *Zenith Bank v. Kanu & Anor* (2020) LPELR-51136; *Oscar & Anor v. Isah* (2014) LPELR-23620(CA); *Rabilu v. Usman* (2016) LPELR-40233(CA); *Majekodunmi v. National Bank of Nigeria* (1978) 3 SC 119.

position and is elected into government, it signifies an acceptance of the offer of leadership. The consideration for holding an elective position is that the government has to guarantee the security of lives and property. It is this power which the government now possess, courtesy of the people's donation, that it is required to be responsible for guaranteeing the peoples security and welfare. On the other hand, the people also have a consideration to furnish, in terms of payment of ensuring the prompt payment of taxes to assist the government in financing the cost of effective governance and administration of government machineries.⁷⁶

Clearly, the element of intention to create legal relationship between the government and citizens is express and inferred by the clear wordings of the constitution. The constitution is the organic and supreme law of the land.⁷⁷ Every entity and government are bound to comply with its provisions and any other law expressing contradictions thereto, is liable to be set aside.⁷⁸ The interesting point is that Sections 14 (2) and 24 (f) CFRN, which captures the consideration that is to be performed by both parties to the contract are both contained in Chapter II of the constitution which have been declared non-justiciable by Section 6 (6) (c) CFRN. However, it has been argued that Chapter II provision can still be enforceable, irrespective of the provision of Section 6(6)(c), if such right under Chapter II is commenced by an external legislative enactment that has given impetus to such specific Chapter II right.⁷⁹ The Supreme Court has affirmed this view in *Olafisoye v. FRN*,⁸⁰ where it was stated that the combined effect of Item 60(a) of Part I of the 2nd Schedule to the 1999 Constitution and 15 (5) CFRN culminates into “a totally different package which leaves Chapter II a toothless bull dog which could only bark but cannot bite”, thereby making “Chapter II clearly and obviously justiciable”.

The truism of the aforementioned judgement of the Supreme Court is founded on the fact that the National Assembly has gone ahead to enact various taxation legislative Acts towards the realisation of the fiscal objectives of Section 24 (f) CFRN. The various tax legislations have form a basis for government to exact the contractual consideration of tax from its citizens and residents of the state.⁸¹ Since the legislature has been recognised as the body responsible for the enactment of a separate law on which basis specific economic, social and cultural rights, as

⁷⁶ CFRN 1999, Section 24 (f).

⁷⁷ (2016) LPELR-40013(SC) 77, Paras. A-C

⁷⁸ See, Section 1(3) CFRN 1999; *A.G. Abia State v. A.G. Federation* (2006) 16 NWLR (Pt. 1005) 265.

⁷⁹ Yemi Akinseye-George, *Improving Judicial Protection of Human Rights in Nigeria* (Centre for Socio-Legal Studies, 2012) 38-39.

⁸⁰ (2004) 4 NWLR (Pt. 864) 580.

⁸¹ RA Agresta, 'International Tax Planning as a Business Driver' *Penn State Journal of Law & International Affairs* [2017] (5) (2) 538, 540.

contained in Chapter II of the constitution are to be realised, it therefore means that the people would have to depend on the altruistic nature and willingness of their legislative representatives to enact a law which will recognise citizens' right to personal security. The realisation of this right by legislative enactment implies that the state is duty bound to offer protection for such right and persons who alleged that such right has been or is being infringed upon have the locus to approach a court of competent jurisdiction in order to obtain such protection or obtain compensation from the state for failure to protect such right. The reality on ground is that the legislature feels otherwise in enacting a separate law to protect the right to personal security which ought to be the consideration to be performed by the state in the contract it had with citizens. Whereas citizens have furnished consideration that is yet to be reciprocated by the state, it means that the state has breached the contract it had with its citizens. In the ordinary parlance of common law of contract, this would warrant a repudiation of the contractual agreement between contracting parties. It is therefore not strange that Nigeria experiences tax apathy, avoidance and evasion because the people do not seem to get the dividends of social deliverables that would warrant their continuous payment of tax. At the extreme of this situation is continuous secessionist clamour from various quarters for the termination or division of the Nigerian states as the contractual framework that put up the state together no longer serves the basic interest of citizens which is the protection of lives and property.

7.0 Conclusion

The findings of this study show that amongst the various fundamental rights contained in Chapter IV of the Constitution, there are certain specific fundamental rights such as the right to life, right to dignity of the human person, right to personal liberty which are similar to the right to personal security. However, the right to life as provided under Section 33 of the Constitution does not contemplate the security of the person to be free from all forms of violence from either public or private sources. Similar interpretation applies to the right to dignity of the human person and right to personal liberty. The basis for this is the doctrine of '*expressio unius est exclusion alterius*', meaning that the express mention of a thing excludes any other thing not mentioned.

As much as the existing fundamental right provide some respite, they do not guarantee sufficient protection for victims of security breach. Also, relatives or dependents of persons murdered or persons injured in insurgent attacks on communities cannot sue the Federal Government of Nigeria for its failure to provide security or protect their loved ones pursuant to the provision of section 14(2)(b) of the Constitution. The non-justiciability of the provisions of section 14(2)(b) CFRN 1999 is the major clog in the enforcement of right to security provisions

presently entrenched in the Constitution. Apart from the aforementioned limitations to the fundamental rights guaranteed in section 33-44 of the 1999 Constitution, section 45(1) of the same Constitution permits further limitations or derogations from the rights secured in section 37, 38, 39, 40 and 41 by any law 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 freedoms of other persons.

The limitations suggest the need for the provision of specific fundamental rights provision on the right to security of persons in Nigeria. This study considered the prospects and avenue through which this can be achieved. The study considers the ACHPR as an instrument towards the entrenchment of the right to security of persons can be enforced in Nigeria. Specifically, Articles 6 and 23 (1) of the ACHPR provide statutory guarantee for the protection of the right to security of persons as an individual and collective right respectively. By virtue of the ratification and domestication of the ACHPR in Nigeria, it has the effect of an Act of the National Assembly. Therefore, ACHPR captures the right to personal security, it therefore becomes an enforceable right in Nigeria. However, these recognition under the ACHPR lacks constitutional flavour and does not offer sufficient protection like the body of fundamental rights contained in the constitution. It is therefore imperative that there is a constitutional amendment of the fundamental right provisions to insert the right to security of persons as one of the fundamental rights in Nigeria. This will enable an easy enforcement and protection of the lives of citizens who are vulnerable to the high insecurity rate currently experienced in Nigeria.