

**Towards Effective Recognition and Enforcement of Awards by the
Nigerian National Human Rights Commission in Human Rights
Cases**

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Abstract

Protection of human rights is a universal phenomenon. Many national and international laws, conventions, and other instruments on human rights are handy in the protection of such rights. Unfortunately, much as the protection of human rights is internationally recognised, the practice and procedure for the enforcement of such rights have been a serious cause of concern in human rights cases. The aim of this paper, therefore, was to examine issues in litigating human rights cases vis-à-vis recognition and enforcement of awards made by the National Human Rights Commission in human rights cases. The specific objectives of the paper were to examine the jurisdiction of courts in the enforcement of violation of human rights; recognise the various inalienable fundamental human rights in Nigeria; and identify the powers and functions of the National Human Rights Commission of Nigeria with regard to human rights cases. The paper adopted a doctrinal method with an examination of relevant statutory provisions and case law. It has been found that there are conflicting decisions of superior courts of record regarding the jurisdiction of courts in human rights cases, and this has an adverse effect on the principle of judicial precedent. It was also found that the amendment to the National Human Rights Commission Act has engendered recognition and enforcement of human rights cases by the National Human Rights Commission.

The paper recommended that in making awards by the Commission, the requirements of a valid award must be strictly adhered to so as to prevent or

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minimise a challenge to the validity of the award. It was also recommended that the general public should be sensitised and enlightened through periodic seminars, workshops, conferences, and media of the opportunity provided by the National Human Rights Commission Act to ventilate their grievances.

Key words: Awards, Enforcement, Human Rights, Procedure

I. Introduction

The universality of protection of fundamental human rights is not in doubt. Many national and international laws, conventions, and other instruments on human rights are handy in the protection of such rights. This is evident from Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as altered), bothering on protection of fundamental rights; African Charter on Human and Peoples' Rights made in Banjul on the 19th of January 1981 and which has been domesticated in the Nigerian Laws and now embodied in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act;³ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world; International Covenant on Civil and Political Rights; and Universal Declaration of Human Rights 1948, which declared Human Rights as a common standard of achievement for all peoples and all nations. Unfortunately, much as the protection of human rights is internationally recognised, the practice and procedure for the enforcement of such rights have been a serious cause of concern in human rights cases. While human rights cases are litigated in courts of competent jurisdiction, other established and statutory commissions and tribunals are also engaged in the enforcement of human rights cases upon awards being rendered by such commissions or tribunals. One of such commissions is the National Human Rights Commission (hereinafter simply referred to as "the Commission" for ease of reference) established by the effect of section 1 of the National Human Rights Commission Act.⁴ The Commission was established for the protection of human rights, dignity, and freedoms.

³ *Cap A9 Laws of the Federation of Nigeria 2004.*

⁴ *Cap N46, Laws of the Federation of Nigeria, 2004 (as amended).*

II. Fundamental Rights Under The Nigerian Constitution

The inalienable fundamental human rights of the citizen are embodied in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as altered). Thus, the Constitution guarantees the following fundamental rights as inalienable:

- Right to life;⁵
- Right to dignity of human person;⁶
- Right to personal liberty;⁷
- Right to fair hearing;⁸
- Right to private and family life;⁹
- Right to freedom of thought, conscience and religion;¹⁰
- Right to freedom of expression and the press;¹¹
- Right to peaceful assembly and association;¹²
- Right to freedom of movement;¹³
- Right to freedom from discrimination;¹⁴and
- Right to freedom to acquire and own immovable property anywhere in Nigeria.¹⁵

III. Litigating Human Rights Cases

Human rights cases are a class of their own. This is not unconnected with the fact that cases on human rights' violations are not only a universal phenomenon but they are also inalienable and occupy a special space in a nation's organic law. Despite the universality, inalienability and inviolability of human rights: a lot of issues constitute bottlenecks in the enforcement of human rights cases. And of

⁵ Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 33.

⁶ Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 34.

⁷ Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 35.

⁸ Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 36.

⁹ Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 37.

¹⁰ Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 38.

¹¹ Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 39.

¹² Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 40.

¹³ Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 41.

¹⁴ Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 42.

¹⁵ Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 43.

all the banes confronting effective enforcement of human rights cases, not on the list is the jurisdictional issue. While judicial authorities are plethora that both the Federal High Court and State High Court (and High Court of Federal Capital Territory) have concurrent jurisdiction over human rights being breached, being breached, or likely to be breached, there appears to be conflicting decisions as to whether the concurrent jurisdiction of the Federal High Court and State High Court stands if the party is the Federal Government or any of its agencies or whether the violation arose from the management and operation of the Federal Government or any of its agencies.

A. Concurrent Jurisdiction of the Federal and State High Courts in Human Rights Cases

In an unambiguous demonstration, the Constitution¹⁶ confers special jurisdiction on a High Court to have original jurisdiction to hear and determine any fundamental right case. For ease of reference, section 46 of the Constitution provides that any person who alleges that any of the provisions of Chapter IV of the Constitution has been, is being, or is likely to be contravened in any state may apply to a High Court in that state for redress, and such High Court shall have original jurisdiction to hear and determine any application made to it in that regard for the enforcement of the right within that state.

By the above provision of the Constitution, it presupposes that both the State and Federal High Court have concurrent jurisdiction on fundamental rights cases, and this is the position in *Muse v. Economic and Financial Crimes Commission*¹⁷ and *Grace Jack v. University of Agriculture, Makurdi*.¹⁸

It is unfortunate to note that despite what appears to be settled as position that either the Federal or State High Court has jurisdiction to hear and determine human rights cases, subject to instituting such case(s) in the High Court where the infringement or breach occurred, is occurring or about to occur, there are

¹⁶ Constitution of the Federal Republic of Nigeria 1999 (as altered) - Section 46.

¹⁷ (2015) 2 NWLR (Pt. 1443) 237 @ 259.

¹⁸ (2004) 5 NWLR (Pt. 865) 208.

authorities to the effect that consideration must be given to both the parties and subject matter also, and not only the nature of the case.

B. Conflicting Decisions on Jurisdiction and the Interpretation of “High Court” in Human Rights Cases

For there to be an effective and reliable judicial precedent capable of engendering a sound and efficient principle of *stare decisis*, judicial authorities must be consistent in their application. Despite the fact that enforcement of fundamental rights has its special procedure encapsulated in the Fundamental Rights (Enforcement Procedure) Rules 2009 and the clear provision of section 46 of the Constitution, which posits that enforcement of fundamental rights can be instituted before a High Court situate where the right has been, is being, or is likely to be contravened, there are still conflicting decisions of our courts. In *Grace Jack v. University of Agriculture, Makurdi*,¹⁹ the Supreme Court had cause to interpret the words “High Court” under section 46 of the Constitution to mean both the Federal High Court and the High Court of a state and held that both the Federal High Court and the High Court of a state have concurrent jurisdiction in matters of the enforcement of a person’s fundamental rights. The same position was upheld in a plethora of judicial authorities. Thus, in *Ifeanyi Ihim v. Cyril Maduadwu*,²⁰ the Supreme Court held that fundamental rights of the citizens are contained in Chapter IV of the Constitution and anyone whose rights have been, are being, or are likely to be contravened has unfettered access to a High Court for redress. And by High Court, section 46(3) of the 1999 Constitution defines it to mean “the Federal High Court” or “the High Court of a State.” It would negate the principle behind the guarantee of fundamental rights of a citizen if there is to be any obstacle placed in the path of enforcing these rights.²¹

However, in *Prince Abdulrasheed Adesupo Adetona & Ors. v. Igele General Enterprises Ltd.*,²² the Supreme Court, per Muhammed JSC, posited and held that

¹⁹(2004) 5 NWLR (Pt. 865) 208 @ 205 & 229.

²⁰ (2021) All FWLR (Pt. 1093) 2077 @ 2104 paras C –G.

²¹ See also *Economic and Financial Crimes Commission (EFCC) v. Wolfgang Reintl* (2020) 1 SC (PT III) 153 @ 177 – 184; *Inspector Gabriel of the Commissioner of Police Monitoring Unit, Lagos v. Evangelist (Mrs) Helen Ukpabio & 3 Ors* (2022) 1 – 2 SC (Pt. I) 137 @ 157 – 161; *Federal University of Technology Minna, Niger State & Ors v. Bukola Oluwaseun Olutayo* (2017) 12 SC (Pt. I) 1.

²² (2011) 1 – 2 SC (PT II) 1 @ 29 – 30.

the exercise of the jurisdiction by the Federal High Court in human rights cases is where the fundamental right breached falls within the matters on which that court has jurisdiction. Thus, fundamental rights arising from matters outside the jurisdiction of the Federal High Court cannot be entertained by the Federal High Court. It was further held that a High Court of a state lacks jurisdiction to entertain matters of fundamental rights where the alleged breach of such matter arose from subject matter which falls within the exclusive jurisdiction of the Federal High Court as provided by section 251 of the Constitution.

This is based on the position that once the Federal Government or any of its agencies is involved in a matter concerning their actions in civil causes or matters as per section 251 (1) (p), (q), and (r) of the Constitution, the causes or matters shall be heard and determined exclusively by the Federal High Court on the authorities of *Inegbedion v. Ojemen*,²³ *ABIEC v. Kan*,²⁴ *NEPA v. Edeghero*,²⁵ and *Oloruntoba-oju v. Dopamu*.²⁶

Above shows that there are conflicting decisions of the Supreme Court on whether both the state and Federal High Court have concurrent jurisdiction in matters of enforcement of fundamental rights.

C. Resolving Conflicting Decisions in Matters of Enforcement of Fundamental Rights

As posited above, there appear to be conflicting decisions of the Supreme Court in matters of enforcement of fundamental rights. Unfortunately, the law on the resolution of conflicting decisions of a higher court equally appears unsettled. Thus, in *Adegoke Motors v. Adesanya*,²⁷ the Court of Appeal held that where there are two conflicting decisions of a higher court, the lower court is free to choose which of the decisions is to follow.²⁸ However, in *Council, Federal University of Technology Akure v. Ajidahun*²⁹ and *Osakwe v. Federal College of*

²³ (2013) 8 NWLR (Pt. 1356) 211.

²⁴ (2013) 13 NWLR (Pt. 1370) 69.

²⁵ (2002) 12 SCNJ, 173 @ 183.

²⁶ (2008) All FWLR (Pt. 411) 810 @ 833 -834.

²⁷ (1988) 2 NWLR (Pt. 74) 108 @ 121.

²⁸ See also *Badau v. INEC* (2008) All FWLR (Pt. 435) 1794 @ 1820.

²⁹ (2013) All FWLR (Pt. 700) 1369 @ 1386.

Education (Tech) Asaba,³⁰ it was held that where there are two conflicting decisions of a higher court, the latter in time will prevail.³¹

From the above analysis, it appears that recent decisions support the position that the latter in time will prevail where there are two conflicting decisions of a higher court, and the lower court must kowtow to it rather than choosing from the two conflicting decisions.

IV. Establishment, Powers and Functions of the National Human Rights Commission in Human Rights Cases

The National Human Rights Commission was established by section 1 of the National Human Rights Commission Act, 1995.³² The Commission is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name. The Act was amended in 2010 by the National Human Rights Commission (Amendment) Act 2010 to accommodate and provide for, among other things, the independence in the conduct of the affairs of the Commission, the funds of the Commission to be a direct charge on the Consolidated Revenue Fund of the federation, the establishment of a Human Rights Fund, and the recognition and enforcement of the awards and recommendations of the Commission as decisions of the High Court.

Section 5 of the Amended Act provides for the functions of the commission, all bothering on recognition and enforcement of violation of human rights both nationally and internationally.

The powers of the Commission are as contained in section 6 of the Amended Act. Thus, the Commission has power to conduct its investigation and enquiries as appropriate. It can also institute civil actions in the exercise of its functions. The Commission also has power to appoint any person to act as an interpreter in any matter brought before it and can determine damages or compensation payable in relation to any violation of human rights.

³⁰ (2010) All FWLR (Pt. 522) 1601.

³¹ See also *Okpozo v. Bendel Newspaper Corporation* (1990) 5 NWLR (Pt. 153) 652 @661.

³² Which is embodied in *Cap N46, Laws of the Federation of Nigeria 2004*.

It suffices to say that the Commission now has enormous powers and responsibilities to deal with all known laws, declarations, and conventions on human rights and other international human rights instruments and can even make appropriate determinations of any complaint lodged before it upon investigation as it relates to human rights.

The commission also has the power to make awards and recommendations, and those awards and recommendations are recognised as binding and enforceable upon following proper procedure.

V. Commencement and Hearing of Human Rights Cases before the National Human Rights Commission

Fundamental rights enforcement cases are commenced before the Commission by a complaint lodged through a letter addressed to the Commission or any of its officers or commissioners or any of its offices anywhere in Nigeria alleging violation or threat of violation of human rights of the complainant. The complaint may also be sent electronically or through regular mail. The complaint shall be addressed to the Executive Secretary and contain a detailed and comprehensive statement on the actions or violations complained of and the reliefs sought from the Commission. And once the complaint is received, the Executive Secretary of the Commission shall direct appropriate officers of the Commission to notify the parties named in the complaint.³³

The complaint may either be lodged in person or by a person acting on his or her behalf. The rules also allow a complaint to be made orally, in which case it shall be reduced into writing by the person receiving it, who shall read over and explain the contents of the complaint to the complainant to his understanding.³⁴

It is the responsibility of the Governing Council of the Commission³⁵ to decide on complaints of violation of human rights received, and the Council may delegate any of its roles to the Executive Secretary or any other person or expert designated by it with respect to the preparation, investigation, or mediation of complaints.³⁶ However, decisions on any case, complaint, or petition shall be

³³ See Order 58 of the Standing Orders and Rules of Procedure of the Commission.

³⁴ Standing Orders and Rules of Procedure of the Commission - Rule 59.

³⁵ Hereinafter referred to as "the Council".

³⁶ Standing Orders and Rules of Procedure of the Commission – Order 65.

made by the Council. It suffices to say that the Council cannot delegate the function of decision-making in respect of any case, complaint, or petition.

In the consideration of a complaint, the Commission may resort to arbitration, conciliation, mediation, amicable settlement, enquiries, hearings, or such other forms of contentious dispute resolution as it deems appropriate.³⁷

A. Preliminary Investigations and Evidence

Upon receipt of a complaint, the Executive Secretary shall direct appropriate officers of the Commission to notify the parties named in the complaint and undertake preliminary investigations on the matter, and the Commission shall cause the complaint to be transmitted to the named respondents for their response or observations. The Respondent has a maximum of 14 days to respond to the complaint, while the complainant has a maximum of 5 days to reply to the response or observation of the respondent if the Commission considers it appropriate. The progress report of the preliminary investigation shall be forwarded to the Council by the investigating officer not later than 45 days after receipt or registration of a communication by the Commission, and if the complaint is resolved at the level of preliminary investigation, the Council shall adopt a decision and award remedies reflecting the agreements reached by the parties. However, if the complaint is not resolved at the level of preliminary investigation, the council may direct further investigations.³⁸

The Commission shall consider the evidence submitted or received from the parties if the complaint is worthy of consideration and shall rely on the evidence as may be required to prove the allegations or violations, and such evidence may include both oral and documentary evidence. The Commission is also entitled to take judicial notice of facts that are publicly or notoriously known or such facts as may be judicially noticed by a court of law under the Evidence Act.³⁹

After a preliminary investigation, the Commission may refer the parties to such mechanisms of amicable settlement as conciliation, mediation, or arbitration.⁴⁰

³⁷ Standing Orders and Rules of Procedure of the Commission – Rule 66 (3).

³⁸ See generally Rules 74 and 75 of the Standing Orders and Rules of Procedure of the Commission.

³⁹ Rule 76 of the Standing Orders and Rules of Procedure of the Commission.

⁴⁰ Rule 78 of the Standing Orders and Rules of Procedure of the Commission.

Upon receipt of a complaint or of its own motion, the Council may conduct an inquiry or cause an inquiry to be conducted where it appears that particular events have caused or are capable of causing gross, massive or systemic violations of human rights or crimes of a human rights nature; or where several complaints relate to or indicate a pattern of violations arising from the same situation or facts and affect a class of victims; or where in the opinion of the Council, a complaint or set of complaints raise matters of broad public interest or issues of significant policy; or upon the application of a party or parties to a complaint; or at the request of the Attorney General of the Federation or Attorney-General of a state in respect of issues within the legislative competence of the federation or of the state as the case may be; or upon the order of a court of competent jurisdiction directing it to undertake an inquiry.

The Council has the final and exclusive competence to determine all cases and complaints submitted to the Commission, and such decision of the Council may be adopted by unanimous consent of members of the Council present and voting. But where there is no unanimity, the decision of a simple majority of members present and voting shall constitute the decision of the Council, and in the event of a tie, the Chairman shall have a casting vote.

Any member of the Council who disagrees with the decision of the majority shall be entitled to prepare a separate or dissenting opinion providing the bases and reasons for his dissenting opinion. Any order or award made or approved by the Council shall be extracted by the Executive Secretary of the Commission and authenticated with the seal of the Commission as the order of the Council under the authority of the Chairman.⁴¹

VI. Recognition and Enforcement of Award by the Commission

Of all the amendments made by the National Human Rights Commission (Amendment) Act 2010, the provisions relating to recognition and enforcement of awards by the Commission are topical and need a thorough evaluation.

Section 22(1) of the Amended Act provides that an award or recommendation made by the Commission shall be recognised as binding and is enforceable by the court.

⁴¹ Order 81 of the Standing Orders and Rules of Procedure of the Commission.

Section 22(2) of the amended Act defines court in section 22(1) quoted above to mean “the Federal High Court or the High Court of the Federal Capital Territory, Abuja, or the High Court of a state.”

It could, therefore, be seen that the Commission has power to make an award or recommendation as it relates to fundamental rights and which award or recommendation is capable of being recognised and enforced, just like the judgement of a court of law. And it is in this regard that the Governing Council of the Commission, having carefully considered the National Human Rights Commission Act as amended, adopted the Standing Orders and Rules of Procedure of the Commission (otherwise called “the Rules”) pursuant to sections 2(6), 6(1)(a) & (g), and 23 of the Amended Act, which establishes a Governing Council of the Commission with the responsibility of discharging the functions of the Commission and powers to make regulations as it deems necessary or expedient to give effect to the provisions of the Act. By the objectives of the rules, the Rules supplement the National Human Rights Commission of Nigeria in accordance with the provisions of the Act as amended. In the absence of any provision in the rules or in case of any doubt as to the interpretation of the provisions of the rules, the Governing Council of the Commission shall decide on the matter in question. It should be noted, however, that since the Rules are made for the procedure of the Commission, just as the rules of courts, where there is a conflict between the Rules and the Act, the latter shall prevail.

An award, once made, must be voluntarily obeyed and complied with by the parties since the award must be recognised and binding, and it is when it is not complied with that the question of enforcement arises.

Upon rendering an award, the decision of the Council shall be enrolled under the seal of the Commission and be promptly communicated to those affected, who shall be obliged to obey and respect them within such time as the Council may indicate. In the event of non-compliance, the Commission shall register the decision with the High Court to be enforced by the court as a decision of the High Court in consonance with section 22 of the National Human Rights Commission (Amendment) Act, 2010, which vests the High Court with jurisdiction to enforce the award or recommendation made by the Commission.

Section 22 of the amended Act is a clear indication that an award of the Commission is recognised and enforceable as a decision of a High Court. Thus, once the Council has decided on a particular complaint and made an award, the party relying on the award and who intends to enforce same is expected to approach the High Court, either by himself or through a lawyer or court bailiffs/sheriffs, for the execution of the award. The execution can be by way of attachment and sale of property of the judgement debtor or arrest and detention of a judgement debtor. Execution can be carried out on the bases of an award releasing a detained or restricted person, payment of compensation or any other legal remedy or redress. And of course, it could be on the basis of an injunction to bar the commission of a wrong, restitution, or declaration.⁴²

VII. Requirements of a Valid Award

Since the award of the Commission is binding and enforceable, it can be likened to an arbitral award, and therefore, the general requirements of a valid award are expected to apply to any award made by the Commission. An award made by the Commission is expected to meet both formal and substantive requirements of a valid award. Therefore, as formal requirements of an award, an award must be in writing and duly signed and sealed by the Chairman of the Council, Executive Secretary, or any other commissioner so assigned. The reason for the award must be stated, and the date and place of the award must be clearly indicated. And to enforce the award, it must be duly certified by the Commission.⁴³

An award is the climax of the Commission's task in the determination of complaints on fundamental rights' infraction. Hence, for an award to be valid, it must comprise a decision of the Commission on the matters complained of bothering on fundamental rights. Such an award, as a matter of substantive requirements, must be cogent, complete, certain, final, and enforceable.⁴⁴

⁴² See sections 8.3.4 and 9 of the National Human Rights Commission Complaint Treatment Procedure Manual 2017 (otherwise known simply as "the Manual").

⁴³Wong Fook Keong, "The Arbitration Award (a Talk for IEM Members)"<https://www.myiem.org.my/assets/download/PMTD_Talk_TheArbitrationAward_121206.pdf>Accessed on 10 January, 2024.

⁴⁴ *Ibid.*

A cogent award is one that contains an adjudication of the matter in dispute and not merely an expression of hope, expectation, or opinion. It, therefore, implies that the award must be logical, clear, and unambiguous. It must be based upon convincing and consistent reasoning premised upon facts of the complaint.

A complete award is the one which deals with all the issues in dispute, and the Commission does not adjudicate on issues not submitted to it; otherwise, the Commission would be acting *ultra vires* its power. An award must also be certain in the sense that it must be clear *ex facie* as far as the nature and extent of the duties and obligations imposed by it on the parties concerned. If the effect of the award is uncertain or ambiguous, it may be susceptible to challenge. For certainty of an award, it should be capable of standing alone and not requiring reference to any other material for explanation as to its contents. The language used must not cause any doubt in the reader's mind as to the obligation or rights of the parties. If the award pertains to payment of monetary compensation, it must be clear who is to pay and to whom, when the payment is to be paid, and precisely how much is to be paid and in what currency.⁴⁵

VIII. Conclusion and Recommendation

This paper situates the place of the award of the National Human Rights Commission in human rights cases. Discussions on the status of the award and its enforcement cannot be overemphasised in view of the amendment to the National Human Rights Commission Act, which has empowered the commission to make binding and enforceable awards. Equating the Commission's award with the decision of the High Court requires an evaluation in as much as the Commission is not a court of law created by the Constitution.

The extensive powers of the Commission with its numerous functions have also been examined, while the court's jurisdiction on human rights cases *vis-a-vis* conflicting decisions thereto have also been dealt with. It is recommended that in making awards by the Commission, the requirements of a valid award must be strictly adhered to so as to prevent a challenge to the validity of the award. An award must be compelling and convincing in its reasoning and must deal with all

⁴⁵ *Ibid.*

issues properly submitted to the Commission. There must be no scope for doubt as to the tenets and intent of the award, and an award should be capable of being complied with.

It is also recommended that the general public should be sensitised and enlightened through periodic seminars, workshops, conferences and media of the opportunity provided by the National Human Rights Act to ventilate their grievances bothering on violation of fundamental rights through the Commission since the Commission can render a binding, recognised and enforceable award.