



The strongest threat to the respect and observance of human rights are acts of impunity

Aniema Ralph-Naale¹, Jessica A A Andrew-Jaja²

¹ Faculty of Law, Rivers State University, Port Harcourt, Nigeria

² Public of Law, Rivers State University, Port Harcourt, Nigeria

Abstract

Impunity manifests in blatant acts of corruption, bad governance and human rights abuses by public officials and those in power. This attitude pervades the executive, legislature, and judiciary as well as federal, state and local governments of states. This paper described violations of human rights as a result of acts of impunity, as a global issue, though it resonates in some countries more than others. Impunity relates to the impossibility of bringing the perpetrators of human rights violations to account. This selective application of justice has rubbed off negatively on ordinary citizens who also use power and wealth to violate human rights and evade justice. It has fostered corruption, bribery, lack of diligence, absence of due process and citizen's disregard for public officials, public procedures and public property in Nigeria. It remains that no State where acts of impunity violate human rights constantly and the people remain helpless can develop. This paper identified the issue of violations in Nigeria and concludes that the inability of a State to respect, protect and fulfill the obligations over human rights of its people, not only means that such a State is a failed state but also that the people need political change.

Keywords: Impunity, human rights, threats, bad governance, constitution

Introduction

The fight against impunity is inextricably linked to the exercise and enjoyment of human rights. Impunity fosters and perpetuates acts of corruption and bad governance. Effective mechanisms to check acts of impunity remain indispensable to achieve effective access to independent and impartial justice and to guarantee human rights.

^[1] Thus, international law recognizes the need to protect the human rights of people. However, has the inclusion of human rights concepts and principles into the language of international relations caused a change in States over prevailing acts of impunity?

^[2] Have State Constitutions in several parts of the world prevented brazen acts of impunity from affecting human rights negatively? Impunity of government has been a major issue both at national, regional and international levels, despite legal provisions protecting human rights. This paper examines the difficulties acts of impunity cause on human rights and evaluates the extent to which the international community statutorily protects human rights and rejects impunity. The rule of law allows for the actualization of rights and privileges of components of the State and civil society. If a State fails to meet the obligations of its social contract, underdevelopment and disempowerment of the citizens will be the outcome, and underdevelopment breeds lawlessness, which manifests in conflict, corruption, anarchy, impunity and several other vices among the citizens.^[3]

According to the preamble to the Universal Declaration of Human Rights (UDHR) 1948, it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.^[4] Therefore, continuous acts of widespread impunity are a product of a failed state where the rule of law is not enthroned, where individuals pursue their selfish interest as against the collective interest of the people and the State. Primarily, the State has the

responsibility to maintain social order and protect and preserve individual's rights, liberty and property.

Human rights protection

In setting out recognized human rights, the UDHR 1948 provides in article 1 that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'^[5] By this provision, it is established that even before legal protections were made over human rights, man possessed these rights and is expected to protect them by reason and conscience. Human rights are therefore universal. They are foreign to no culture and native to all nations.^[6] Since they are accepted by all States and peoples, they apply equally and indiscriminately to every person and are the same for everyone everywhere.^[7]

Today, the universality of human rights is borne out of the fact that majority of nations, covering the full spectrum of cultural, religious and political traditions, have adopted and ratified the main international human rights instruments.^[8] The UDHR 1948 was adopted by the UN General Assembly on 10 December 1948 as a result of the experience of the Second World War.^[9] With the establishment in 1945 of the United Nations, the UDHR 1948 provides the first authoritative elaboration of the term 'human rights', as used in the UN Charter.^[10]

But despite the presence of several human rights documents, States continue to experience human rights violations. Violations of human rights including torture, suppression of freedoms, arrest and detention without trials, abuse of rule of law and due process, excessive lawlessness, extra-judicial executions, arbitrary expulsion from school and dismissal from work without fair hearing, joblessness without social security, unpaid salaries; pensions and gratuities, violations

of women's rights, misappropriation of public resources, weak and inefficient oversight mechanisms still exist in many countries.

States owe certain duties where human rights are concerned. The obligation to respect human rights means that States are obliged to refrain from interfering in the enjoyment of rights of individuals and groups. The obligation to protect requires States to protect individuals against abuses by non-state actors, foreign state agents, or state agents acting. The obligation entails both a preventative and remedial dimension. A State is thus obliged to enact legislations protecting human rights; to take action to protect individuals and also to ensure access to impartial legal remedies when human rights violations are alleged. The obligation to fulfill requires States to take positive action to ensure that human rights can be realized. The extent of the obligation to fulfill varies according to the right concerned and the State's available resources.^[11]

In performing these functions, the International Bill of Rights; supplemented with many specific binding instruments, which include both substantive human rights norms as implementing provisions for complaints, reporting and inquiry procedures and other matters, form what are usually referred to as basic human rights treaties and includes

1. International Covenant on Civil and Political Rights (ICCPR) 1966
2. Optional Protocol to the ICCPR (OP-ICCPR) 1966
3. Optional Protocol to the ICCPR aiming at the abolition of the death penalty (1989)
4. International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966
5. Optional Protocol to the ICESCR (OP-ICESCR) 2008
6. International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1965
7. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979
8. Optional Protocol to CEDAW 1999
9. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984
10. Optional Protocol to CAT (OPCAT) 2002
11. Convention on the Rights of the Child (CRC) 1989
12. Optional Protocols to CRC on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography 2000
13. Optional Protocol to CRC on a communications procedure 2011
14. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (known as the Migrant Workers Convention (ICRMW) 1990
15. Convention on the Rights of Persons with Disabilities (CRPD) 2006
16. Optional Protocol to CRPD 2006
17. International Convention for the Protection of All Persons from Enforced Disappearance (CED) 2006 etc.^[12]

Thus, it is not the nonexistence of laws that cause human rights violations but the disregard of law and of reason and conscience in dealing with another person.

Impunity: The greatest threat to human rights

Impunity refers to 'exemption from punishment; immunity from the detrimental effects of one's actions'^[13] This means

no sanction for bad conduct, no punishment for misdeeds and no regard for due process. Impunity can be likened to an unmitigated and an uncontrolled emancipation, freewill and free choice. Okogbule stated that it is not uncommon to find provisions of law conferring these rights and privileges of impunity on political and other leaders in a constitutional or legislative provision. Although the justifications for the existence of such provisions vary from country to country, it is self-evident that they enable the incumbent or person in power to operate as though he were above the law.^[14]

Impunity means the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, and if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.^[15] The definition of impunity encompasses all human rights violations regardless of its gravity.^[16] In Nigerian common parlance, impunity refers to 'nothing go happen.' This attitude pervades the executive, legislature, and judiciary as well as federal, state and local government agencies, officials and parastatals.

This selective application of justice has rubbed off negatively on the ordinary citizens who also use power and wealth to violate human rights and evade justice. It has fostered corruption, bribery, lack of diligence, absence of due process and citizen's disregard for public officials, public procedures and public property.^[17] Due to arbitrary misapplication on written laws by governments and persons in power to endorse violations of rights, the UDHR 1948 takes a bold step to provide against its use, to violate any human right, and rebukes acts of impunity. Article 30 of the UDHR 1948, expressed that 'nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.'

A fundamental tenet of modern constitutionalism is that nobody, regardless of his status in society, is above the law.^[18] Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the areas of justice, by ensuring that those suspected of violations of law are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to enable the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.^[19]

The problem of executive dominance in Africa is not only true of highly centralized constitutions such as that of Cameroon but also under quite liberal constitutions such as those of Ghana, Namibia and South Africa. The imbalance in power among the three branches of government often means that the judiciary is not as independent as it should be and therefore cannot freely antagonize the executive, especially when dealing with issues closely related to the constitution and including election malpractices, corrupt acts and other forms of power abuses. Executive lawlessness has become very common in countries such as Cameroon, DR Congo, Niger, Eritrea, Nigeria and Zimbabwe. This means that the problem of impunity is not peculiar to Nigeria. Impunity is a global phenomenon, which has attracted the attention of the global community over the

years and steps have been taken towards its amelioration, albeit unsuccessfully in many countries.

Impunity emanates from the failure of the legal framework of States. Discriminatory laws and policies, where rights of citizens are violated without a proper system of redress has become the norm in many states. This failure and inability of the State system to punish perpetrators of crime and to assuage the suffering of the victim, is probably the reason for the high prevalence of impunity in most states, globally.^[20] In Uganda, the leadership is one that is disconnected from the needs of its citizens. Bad governance characterized by huge embezzlement of public funds and other vices has resulted in the dysfunction of state's systems and a general breakdown of public services and complete disregard for human rights. As a consequence, the citizens have lost faith in their leadership.^[21]

The situation in Venezuela is similarly pitiful. The country is bedeviled with a growing gap between the rich and the poor and a worsening socio-economic environment, thereby hampering social equity and justice. The presence of organized crime, combined with an enormous number of firearms in civilian hands and impunity, as well as police corruption and brutality, have entrenched violence in the society.^[22] Impunity creates low expectations towards the administration of justice on the part of the Venezuelan people.^[23] Russia is also engulfed by an atmosphere of impunity. The Russian political system tends to benefit the well-to-do at the detriment of the masses. There is a preference for cultivating access to influential people rather than adhering to formal and legalistic procedures and norms. The situation breeds constant threat to freedom of expression owing to infringement on journalists' fundamental rights to seek, receive, and share information. The Russian government though aware of criminal occurrences, makes inadequate substantial legal measure to investigate unresolved cases of killings in order to bring culprits to book.^[24] Human rights issues including extrajudicial killings in Chechnya by local government authorities; enforced disappearances by government authorities; pervasive torture by government law enforcement personnel that sometimes resulted in death and sometimes involved punitive psychiatric incarceration; harsh and life-threatening conditions in prisons; arbitrary or unjust arrest and detention; political prisoners; severe arbitrary interference with privacy; severe suppression of freedom of expression and media; blocking and filtering of internet content and banning of online anonymity; severe suppression of the right of peaceful assembly; increasingly severe suppression of freedom of association continue to affect the people of Russia.^[25]

Impunity and human rights violations in Nigeria

In Nigeria, human rights issues including unlawful and arbitrary killings by both government and non-state actors; forced disappearances;^[26] torture and prolonged arbitrary detention in life-threatening conditions particularly in government detention facilities; infringement on citizens' privacy rights; criminal libel; substantial interference with the rights of peaceful assembly and freedom of association, corruption; lack of accountability concerning violence against women and girls; trafficking in persons, including sexual exploitation and abuse by security officials; gender crisis; and forced and bonded labor continue to go unchecked.^[27]

The government often takes steps to investigate alleged abuses but fewer steps to prosecute officials who commit violations of human rights. Impunity remains widespread at all levels of government. Arbitrary deprivation of life and other unlawful or politically motivated killings have been reported against the government or its agents. The national police, army, and other security services used lethal and excessive force to disperse protesters and apprehend criminals and suspects and engage in extrajudicial killings. Authorities generally did not hold police, military, or other security force personnel accountable for the use of excessive or deadly force or for the deaths of persons in custody.^[28] Allegations of widespread abuses by SARS officers, have been ongoing in Nigeria for some years and in late 2017, citizens began a social media campaign '#EndSARS' to document physical abuses and extortions by SARS officers and demanded that SARS units be disbanded. This campaign culminated in the post Covid-19 lockdown '#EndSARS' October 20, 2020, killings of many youth, and till date, no one has been held accountable for those deaths.^[29] The Nigerian government repeatedly claims that it does not condone human rights violations by security forces, including the police, yet the authorities are not doing enough to stop human rights violations by and to bring suspected perpetrators to justice.^[30] Impunity allows vulnerable convicts and person awaiting trial to die in prisons and be thrown into the ground like animals. There is no reliable statistics on the total number of prison deaths during any given year.^[31]

The extensive abuse of presidential powers in Africa has also been facilitated by the general lack of effective constitutional measures of accountability and the numerous presidential immunities which enable leaders to escape responsibility for their crimes and wrongs against human rights. The Nigerian political class is bedeviled with impunity. Political leadership has been that of self-service and the pursuit of selfish and personal goals, rather than the broader national interests. The political class subverts the laws and violates the Nigerian Constitution at will. Even the ICPC (Independent and Corrupt Practices Commission) and the EFCC (Economic Financial Crime Commission) do not wield enough powers to being the leaders to Justice.^[32] Years of bad governance have resulted in instability and the weakening of State's institutions. Hence, impunity is now an art of government, permeating the various arms and levels, including the judiciary. Bad leaders are honored and bestowed with the highest awards of the land and with various chieftaincy titles. They exploit this false social rightness to inflict injury on others and do not answer to the law. Only a few are sanctioned and punished.^[33]

We may further ask where the International Criminal Court stands, and its role in combating impunity. The ICC cannot handle all cases of human rights affecting all countries. States are by their own recognition bound by principles of law and reason to promote human rights. The ICC has provided a useful platform of action to deal with the prosecution of crimes under its mandate. The domestication of the Rome Statutes is therefore imperative in Nigeria, so that the country can work in tandem with other members of the international community.^[34] Also, the ICC deals with the cases that have been referred before it by a State Party to the Rome Statute, by the UN Security Council acting under Chapter VII of the UN Charter, or by the Prosecutor acting *proprio motu* with the authorization of the Court or one of

its pre-trial chambers or on the basis of information received from individuals or organisations. ^[35] The ICC first deals with the admissibility ^[36] of the cases before moving to the trial stage. The suspects or accused persons enjoy all the rights related to fair trial. ^[37] The jurisdiction of the ICC may also be challenged by an accused or a State Party. ^[38]

Where the international community arises against Nigerian human rights abuses, the Nigerian government repeatedly claims that it does not condone human rights violations by security forces, including the police. Yet, the authorities do not do enough to stop human rights violations by law enforcement officials and bring suspected perpetrators to answer for wrongs done, ^[39] even as the Nigerian Supreme Court recently held in *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*, ^[40] that for as long as Nigeria remains signatory to the African Charter on Human and Peoples Rights and other international treaties on human rights, the Nigerian courts will protect and vindicate human rights entrenched in them ^[41].

Conclusion

Impunity manifests in blatant acts of corruption, bad governance and human rights abuses by public officials and those in power. This has correspondingly resulted in institutional deficiencies, bad governance and has entrenched negative socio-political culture. Impunity manifests in criminal disrespect of electoral laws and processes. Politicians and other public office holders rig elections without regard for rules or rights. They engage in forgery, killing and unabashed violations of bureaucratic processes and several human rights violations. The imbalance in power among the three branches of government results in the inability of the Judiciary to be independent and to uphold the constitution and human rights from power abuses and acts of impunity.

There is therefore the need for states to recollect the essence of the social contract which was a surrender of innate rights to be protected by the government in return for legitimacy. The inability of a state to respect, protect and fulfill the obligations over human rights of its people not only means that such a state is a failed state but also that the people need political change.

References

1. IACHR, Resolution 1/17 Human Rights and the Fight against Impunity and Corruption (September 12, 2019) Inter-American Commission of Human Rights <<https://www.oas.org/en/iachr/decisions/pdf/resolution-1-17-en.pdf>> accessed 12 July 2023.
2. John Gerald Ruggie, *Human Rights and the Future International Community* (The MIT Press, 2016) 95.
3. Bolaji Owasanoye, Olayinka Akanle, and Olayemi S Samuel, *Impunity in Nigeria: Knowledge, Attitude and Perception Findings from a National Survey* (Human Development Initiatives 2014) 6.
4. UDHR 1948, Preamble.
5. UDHR 1948, art 1; David Robertson, *A Dictionary of Human Rights* (Routledge 2013) 267.
6. Kofi A. Annan, former Secretary-General of the United Nations, Address at the University of Tehran on Human Rights Day, 10 December 1997 <<https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>> accessed 12 July 2023.
7. United Nation Human Rights Office of the High Commissioner, What are Human Rights? <<https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>> accessed 12 July 2023.
8. Inter-Parliamentary Union, *Human Rights Handbook for Parliamentarians* N° 26 (2016 Inter-Parliamentary Union and the United Nations, Office of the High Commissioner for Human Rights) 21-22.
9. United Nations, *Universal Declaration of Human Rights* <<https://www.un.org/en/universal-declaration-human-rights/>> accessed 12 July 2023; D Akande and Others, *Human Rights and 21st Century Challenges: Poverty, Conflict and the Environment* (Oxford University Press 2020) 20; Marcus Duwell and Gerhard Bos, 'Human Rights and Future People – Possibilities of Augmentation [2016] (15) (2) *Journal of Human Rights*, 231.
10. Inter-Parliamentary Union (n8) 42; Office of the High Commissioner for Human Rights, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (Professional Training Series No 9, United Nations, 2003) 2.
11. Inter-Parliamentary Union (n8) 32, 33.
12. Inter-Parliamentary Union (n8) 43, 44; Kevin R Carriere, Amnesty International, 'Threats to Human Rights: A General Review' [2014] (7) (1) *JSPP*, 1.
13. Garner BA, *Black's Law Dictionary* (10th edn Thomson Reuters, 2014) 876; *The New Lexicon Webster's Dictionary of the English Language* (Lexicon Publications Inc, 1995) 487.
14. Nlerum S Okogbule, 'Combating Impunity in Africa through the Mechanism of the International Criminal Court: Challenges and Prospects' [2009] (5) (1) *The Journal of Jurisprudence and Contemporary Issues*, 36
15. Sandra Krahenmann, 'Definitions' in F Haldemann and T Unger (ed) *The United Nations Principles to Combat Impunity: A Commentary* (Oxford University Press, 2018) 34.
16. Krahenmann (n15) 37.
17. Owasanoye and Others (n3) 5-6.
18. Charles Manga Fombada and Enyinna Nwauche, 'Africa's Imperial Presidents: Immunity, Impunity and Accountability' [2012] *African Journal of Legal Studies*, 91.
19. Naomi Roht-Arriaza, 'Principle 1. General Obligations of States to take Effective Action to Combat Impunity' in F Haldemann and T Unger (ed) *The United Nations Principles to Combat Impunity: A Commentary* (Oxford University Press, 2018) 47.
20. wasanoye and Others (n3) 8.
21. Owasanoye and Others (n3) 8.
22. Amnesty International, *Venezuela - The Faces of Impunity: A Year After The Protests, Victims still await Justice* (Executive Summary AMR 53/1239/2015, March 2015) <<https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5518f9041>> accessed 12 March 2021; Amnesty International, *Venezuela: Impunity in the Face of Lethal Policy of Social Control* (Public Statement 18 February 2021 AMR 53/3632/2021) 1-2 <<https://www.amnesty.nl/content/uploads/2021/02/Ven>

- ezuela-Impunity-in-the-face-of-lethal-policy-of-social-control.pdf?x59525> accessed 20 March 2023.
23. Owasanoye and Others (n3) 10.
 24. Owasanoye and Others (n3) 8; Bureau of Democracy, Human Rights and Labor, Russia 2018 Human Rights Report (Country Reports on Human Rights Practices for 2018 United States Department of State) 2-3 <<https://www.state.gov/wp-content/uploads/2019/03/RUSSIA-2018-HUMAN-RIGHTS-REPORT.pdf>> accessed 12 March 2023; IFJ, 'Russia: IFJ calls on Russian government to end impunity for crimes against journalists' IFJ (05 November 2020) <<https://www.ifj.org/media-centre/news/detail/category/press-releases/article/russia-ifj-calls-on-russian-government-to-end-impunity-for-crimes-against-journalists.html>> accessed 12 March 2023; FIDH, Chechnya Terror and Impunity: A Planned System FIDH Report March 2002 <<https://www.refworld.org/pdfid/46f146340.pdf>> accessed 12 March 2023.
 25. Bureau of Democracy (n24)
 26. Human Rights Watch, Broken Systems: Dysfunction, Abuse, and Impunity in the Indian Police (Human Rights Watch 2009) 11-12; Akande and Others (n9).
 27. Nigeria 2018 Human Rights Report, Executive Summary <<https://www.state.gov/wp-content/uploads/2019/03/Nigeria-2018.pdf>> accessed 9th March 2023
 28. Ibid.
 29. Uwazuruike Allwell Raphael, '#EndSARS: The Movement against Police Brutality in Nigeria' [2020] UCLAN Harvard Human Rights Journal <<http://clon.uclan.ac.uk/35527/3/35527%20EndSars%20%281%29.pdf>> accessed 12 March 2023; Congressional Research Service, 'Nigeria: #EndSARS Protests against Police Brutality' CRS INSIGHT IN11525 (October 27, 2020) 1-2.
 30. Amnesty International, Nigeria: Time to End Impunity Torture and Other Violations by Special Anti-Robbery Squad (SARS) (Amnesty International Nigeria 2020)
 31. Nigeria 2018 Human Rights Report (n27) 10
 32. Ibid.
 33. Owasanoye and Others (n3) 13; Nigeria 2019 Human Rights Report <<https://www.state.gov/wp-content/uploads/2020/02/NIGERIA-2019-HUMAN-RIGHTS-REPORT.pdf>> accessed 12 March 2021
 34. Okogbule (n14) 42, 43.
 35. Rome Statute, articles 13, 14, 15; Mangu AM, 'The International Criminal Court, Justice, Peace and the Fight against Impunity in Africa: An Overview' [2015] (2) (XL) Council for the Development of Social Science Research in Africa, 11.
 36. Rome Statute, art 17.
 37. Rome Statute, arts 55, 67.
 38. Rome Statute, art 19; Mangu (n35) 11.
 39. Amnesty International, Nigeria: Time to End Impunity Torture and Other Violations by Special Anti-Robbery Squad (SARS) (Amnesty International Nigeria 2020) 18-19.
 40. [2019] 5 NWLR (Pt 1666) 518.
 41. Ibid at 598, Paras B-C.