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THE NATIONAL HUMAN RIGHTS COMMISSION DECREE 1995: A REVIEW

BY

DR. R. O. OLAOLUWA*

INTRODUCTION

The existence of modern man and the present nation state is based on the principle that all human beings are born free and equal in dignity and rights.¹ All human relations are based on what people perceive as their rights. This perception often leads to peaceful coexistence between individuals and Nations and also often leads to quarrel between individuals and wars amongst peoples and Nations. The first and the second world wars broke out as a result of violation of human and peoples rights. Civil wars are known to have been fought² among other considerations, as a claim to certain rights.

One of the purposes of the United Nations is to achieve international cooperation in solving international problems of economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.³ The United Nations Organisation hopes to achieve this by promoting higher standards of living, full employment and conditions of economic and social progress and development, universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, gender, language or religion.⁴ It also enjoins the pledge of all members to take joint and separate action in co-operation with the organisation for the achievement of the purposes provided for in the Charter.⁵ In furthering the hope and the aspirations of the United Nations, the Economic and Social Council of the UN was mandated to set up Commissions in economic and social fields and for the promotion of human rights.⁶

The UN Commission on Human Rights, a subsidiary of the economic and social council, was set up in "nuclear" form in 1946⁷ and as a full Commission later that same year.⁸ Under ECOSOC Resolution 9 (11), the Commission was directed to submit proposals, recommendations and reports to the Council regarding:

- a) an International Bill of Right;
- b) International Declarations or Conventions or Civil Liberties, the Status of women, Freedom of Information and similar matters;
- c) the protection of minorities;

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1. Art. 1 Universal Declaration of Human Rights. G.A. Resolution 217 (III) 1948
2. Okeke C.N. The Theory and Practice of International Law in Nigeria, Fourth Dimension Publisher, Enugu, 1986 P.
3. Art. 1 (3) United Nations Charter, 1945
4. Art. 55 United Nations Charter, 1945
5. Art. 56 United Nations Charter, 1945
6. Art. 68 United Nations Charter, 1945
7. Resolution of Ecosoc 5 (1) of 16 February, 1946
8. Resolution of Ecosoc 9 (11) of 21 June, 1946

- d) the prevention of discrimination on grounds of race, sex, language or religion; and
- e) any other matter concerning human rights not covered by items (a), (b), (c), and (d).⁹ It should be noted that the UN Commission on Human Rights, since its creation has performed above board and some of its achievements include preparation of such instruments as Universal Declaration of Human Rights, 1948; International Covenant on Economic, Social, and Cultural Rights, 1966; International Covenant on Civil and Political Rights, 1966; Optional Protocol to International Covenant on Civil and Political Rights 1966, among others.

In Africa, the African Charter on Human and Peoples' Right was prepared in sharp reaction to violation of human rights as these violations have become a disturbing feature in the African continent.¹⁰ The beauty and uniqueness of the African Charter on Human and Peoples' Right is that it does not only provide for individual and collection rights and duties but set up an African Commission on Human and Peoples' Rights to promote Human and Peoples' Rights and to ensure their protection in Africa.¹¹

The African Commission on Human and Peoples' Rights consists of eleven (11) members, elected by secret ballot by the Assembly of Heads of State and Government of OAU for a re-electable six year period.¹² According to the African Charter on Human and Peoples' Right, the Commission shall elect its Chairman and Vice-Chairman for a two year period and shall be eligible for re-election. The Commission shall lay down its rules and procedure and seven members shall form a quorum. In case of equality of votes, the Chairman shall have a casting vote. The Secretary of the OAU may attend the meetings of the Commission but shall neither participate in deliberations nor be entitled to vote. The Chairman of the Commission may, however, invite him to take the floor.¹³

The functions of the African Commission include among others, promotion of Human and Peoples' Rights, particularly, collecting documents, undertaking studies and researches on African problem in the field of human and peoples' rights, organising seminars and Symposia and conferences, disseminating information, encouraging national and local institutions concerned with human and peoples' rights and, should the case arise, giving its views or making recommendations to Governments. They also include formulation and laying down of principles and rules aimed at the solution of legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base legislation.

- 9. United Nations Action in the field of Human Rights, UN. New York, 1988 P.15.
- 10. Esiemokhai E.O. Human Rights in International Law 2n Ed 1992 P. 10.
- 11. The African Charter on Human and People's Rights: Eze Osita. Human Rights in African - Some selected problem. NIIA. Macmillan Nig. Publisher Ltd 1984 P. 244
- 12. Art. 31, 33, 36. African Charter on Human and People's Rights.
- 13. Art. 42. African Charter on Human and People's Rights.

The rule of procedure of the African Commission is elaborate and allows it to resort to any appropriate methods of investigation into allegations of violation to human and peoples rights and it may hear and receive communications not only from State parties but from the OAU Secretary-General or any other person capable of enlightening it,¹⁴ Art. 56 of the African Charter sets out standards to which communications relating to Human and Peoples' Rights violations other than from State parties must conform.

THE NATIONAL HUMAN RIGHTS COMMISSION

The National Human Rights Commission was established in 1996 pursuant to the National Human Rights Commission Decree, 1995¹⁵. The National Human Rights Commission inaugurated by the government at Abuja on the 17th June, 1996 is in fact a concerted response to demands of international instruments on Human Rights¹⁶ particularly the recommendations by the Vienna Conference on Human Rights (1993) that each country should establish a Human Rights Commission.¹⁷

The purposes of the Commission are spelt out in the preamble to the Decree as follows:

- (a) To facilitate Nigeria's implementation of its various Treaty obligations
- (b) To create an enabling environment for extra-judicial recognition, promotion and enforcement of all rights recognised and enshrined in the 1979 Constitution, as amended, and under other laws of the land, and,
- (c) To provide a forum for public enlightenment and dialogue on and to limit controversy and confrontation over allegations of human rights violation by public officers and agencies and to reaffirm the sacred and inviolable nature of human and other fundamental rights.

THE COMPOSITION AND NATURE OF THE COMMISSION

The National Human Right Commission Decree in S.2 (1), establishes the Commission as a body corporate with a governing council comprising sixteen (16) members. The governing Council is responsible for the discharge of the functions of the Commission. S.2 (2) of the Decree provides that the council shall consist of:-

- 14. Chapter III, African Charter of Human and People's Rights.
- 15. Decree No.22 of 1995 Federal Republic of Nigeria Official Gazette No.82. Lagos 6th October, 1995.
- 16. See Art. 2(1) International Covenant on Economic, Social and cultural Rights 1966; Art. 2 International Covenant on Civil and Political Rights 1966; Nigeria is now a party to the above two International instruments on Human Rights - Source: UN.
- 17. Ayo Obe "What a Human Rights Commission require" // Constitutional Rights Journal October-December 1966 P.36.

- a) "a Chairman who shall be a retired Justice of the Supreme Court of Nigeria or the Court of Appeal or a retired Judge of the High Court of a State;
 - b) a representative each of the following Federal Ministries, that is - (i) Justice (ii) Foreign Affairs, (iii) Internal affairs;
 - c) three representatives of registered human rights organisations in Nigeria;
 - d) two legal practitioners who shall not have less than ten years post qualification experience;
 - e) three representatives of the media, at least, two of whom shall be from the private sector;
 - f) three other persons to represent a variety of interests; and
 - g) the Executive Secretary of the Commission"
- S.3 of the Decree deals further with personnel the Commission, and provides that the Chairman and members of the Commission shall be persons of proven integrity and shall be appointed by the Head of State, Commander-in-Chief of the Armed Forces, on the recommendation of the Attorney-General of the Federation. The Commissioners are appointed and hold office for a term of five years and may be reappointed and hold office for a further term of four years and no more while the Executive Secretary shall be appointed and hold office for a term of five years and no more.

The Executive Secretary is the Chief Executive of the Commission.¹⁸

A member ceases to hold office if - (a) he becomes of unsound mind or (b) he comes bankrupt or makes a compromise with his creditors, or (c) he is convicted of a felony or of any offence involving dishonesty, or (d) he is guilty of serious misconduct in relation to his duties.¹⁸

Strangely enough in the same breath the Decree in the second part of that section 4 provides that:

"A member of the council may be removed from office by the Head of State, Commander-In-Chief of the Armed Forces if he is satisfied that it is not in the interest of the public that the member should remain in office."²⁰

As could be seen from the above, it is only a single person, the Head of State, who can constitute the council of the Commission by his appointment and with him lies the power to remove any of the council members if he is

18. 5.7(1) National Human Rights Commission Decree (NHRCD) No. 22 of 1995.

19. Ibid s.4 (1)

20. Ibid s.4 (2)

satisfied that such removal is in the interest of the public, whose fundamental rights such removed members are supposed to promote, protect and safeguard.

FUNCTIONS AND POWERS OF THE COMMISSION

The Decree²¹ provides for a wide range of functions ranging from publishing reports from time to time on the state of human rights protection in Nigeria to such matters as monitoring and investigating all alleged cases of human rights violations in Nigeria and making appropriate recommendation to the government for the prosecution and such other actions as it may deem expedient in each circumstances. The functions also include assisting victims of human rights violations in seeking appropriate redress and remedies on their behalf.

The Commission has responsibility for matters relating to the protection of human rights as guaranteed by the 1979 Constitution, as amended, the African Charter on Human and Peoples' Rights and other International Treaties on Human Rights to which Nigeria is a signatory²².

The powers of the Commission are wide as the Decree provides that the Commission shall have power to do all things which by the Decree or any other enactment are required or permitted to be done by the Commission and to do such other things as are necessary or expedient for the performance of its functions²³.

It is surprising to find in the Decree a provision empowering the council to appoint directly, and either on transfer or on secondment from any public service in the Federation, such number of employees to assist the Commission in discharging any of its functions²⁴. The commission is empowered to determine its conditions of service including pensions and gratuities, as are appropriate for its employees with the approval of the Attorney-General of the Federation. The secretariat of the National Human Rights Commission started functioning only in October, 1997.²⁵

FINANCIAL PROVISIONS

The Commission was established and maintains a fund which shall be applied towards the discharge of its functions under the enabling Decree. The two main sources of income of the Commission, apart from gifts of land, money or money's worth, are:

- a. such sums provided by the government; and
- b. any fees charged for services rendered by the Commission²⁶.

The Commission is required to prepare an annual budget to be submitted, not later than 30th September, for the approval of the Federal Executive Council through the Federal Attorney-General and it should also tender an annual report on its activities and administration to the Federal Executive Council through the

21. Ibid s.5

22. Ibid.

23. Ibid

24. Ibid. s.8

25. Justice Paul Nwokedi (Rtd) Chairman, National Human Rights Commission.

26. S. 12 National Human Rights Commission Decree

Attorney-General of the Federation. The Attorney-General of the Federation is empowered to give directives and regulations as he deems to be necessary or expedient for giving full effect to the provisions of the Decree²⁷. The National Human Right Commission Decree has a schedule providing for proceedings of the council and other miscellaneous powers. The schedule provides for a nine (9) member quorum for the council. Its meetings must be summoned once a month by the Chairman who presides at such meetings. In his absence, the council can elect a member to preside and the decision of the council are reached by simple majority. The council may appoint one or more committees to carry out on its behalf such functions as the council may determine.

III THE RELEVANCE OF THE NATIONAL HUMAN RIGHTS COMMISSION

The issue of relevance of the National Human Rights Commission can be examined from two perspectives depending on its perceived meaning. Firstly, it can be understood to mean the representation of the hope, aspirations and effort of the Nigerian Nation in achieving full promotion and protection of human rights entrenched in the Constitution of the Federal Republic of Nigeria 1979, as amended, the African Charter on Human and Peoples' Rights, the Un Charter on Universal Declaration of Human Rights and other International Threties on human rights to which Nigeria is a signatory. On the other hand, it may be understood to mean the fulfilment of the objectives of the Commission given its autonomy, modus operandi, relationship between it and the government among other considerations!

Considering the former perspective, we have said earlier in this paper that the inauguration of the National Human Rights Commission is a concerted response to demands of international instruments and covenants that each country should establish a Human rights Commission²⁷. To this extent, it could be said that Nigeria has moved a step forward in its declared battle for the promotion and protection of Human Rights in a country where many millions of its people have accepted violation of rights as part and parcel of life.

On the latter perspective, it is necessary to examine relevant provisions of the National Human Rights Commission decree before a reasoned opinion could be expressed.

AUTONOMY AND LIMITS OF POWER

For an organ, such as the National Human Rights Commission to be autonomous, it has to be independent and enjoy total freedom from governmental control in the performance of its statutory and legitimate functions. Human Rights and fundamental freedoms are often violated by the government and its accredited agents especially the law enforcement agents.

All the members of the Commission are appointed by the Head of State on the recommendation of the Attorney-General of the Federation²⁸ and can be removed only if the Head of State is satisfied that it is not in the interest of the

27. Ibid s.17,18

28. See Note Nos. 16 and 17.

public that the member should remain in office.²⁹ The question that arises here is "who is the public and why is the public not allowed to exercise its power of removal?" It is hereby suggested that a mechanism should be evolved allowing the public to control the appointment and removal of commission members. Moreso in this case, there is no procedure to remove a member of a Commission, that in essence, should be the last hope of those whose rights are grossly violated. The structural framework of the National Human Rights Commission was constituted only by the Head of State. This procedure of appointment instead of election of Commission members is a mere administrative exercise instead of democratic principle which provides a better alternative procedure for constituting such an important Commission. Election should have been used instead of appointment of Commission members. This could be done by allowing individuals to contest for such positions in the professional Associations mentioned in the Decree or request the Associations of such professional bodies to present the number of such persons allotted to their profession. The ministries representatives, should be nominated or appointed by the minister of such ministries. The three members not belonging to any profession could be appointed by the Head of State or President as the case may be.

The governing council is not allowed to elect its own Chairman from among its members and the Executive Secretary is not only appointed by the Head of State, but he is made the Chief Executive of the Commission³⁰ leaving the chairman with the powers only to preside at council meetings. The Commission should be allowed to elect its officers for a fixed term and the Chairman should be the Chief Executive of the Commission.³¹

On the removal of members of the Commission, the Head of State should not have been given such powers of removal of Commission members. Instead, if in the unanimous opinion or a qualified vote of the other members a member of the Commission has ceased to carry out his functions for any cause other than absence of a temporary nature, the Commission shall then declare the seat of that member to be vacant. The same should apply in the event of death or resignation of a member of the Commission.³²

The function and power of the Commission are too general providing for no concrete way by which the common man could benefit save for its power to make recommendations to the Federal government for new policies or for prosecution. It should have been expected that recommendation are made to the government for new policies on Human Rights but when gross violations are established, recommendation for redress should be directed to that other organ that can give immediate redress, be it the police or the court of law.

From our analysis above, it is clear that the National Human Rights Commission is substantially subsumed under the control of the Head of State and other officers of the Federal government, hence does not enjoy any autonomy.

29. s.2(3) (b) National Human Rights Commission Decree.

30. Ibid s.4 (2)

31. Ibid s.7

32. See Art. 42 African Charter on Human and Peoples Rights.

THE NATIONAL HUMAN RIGHTS COMMISSION AND NON-GOVERNMENTAL ORGANISATIONS (NGO)

An NGO is an organisation, not established or financed by the government. The only link with the government is the government licence for it to operate by way of registration.

The National Human Rights Commission as presently constituted is a Federal government organ responsible for promotion and protection of Human Rights in Nigeria.

While Nigeria should continue to satisfy that demand and while more efforts should be put into placing Human Rights issues in broader perspective in Nigeria, the Commission should remain a National Commission. It should continue to enjoy government financial support for the obvious reasons that such support should be seen as a right in itself for those whose fundamental rights and freedoms are being violated.

The activities of the National Human Rights Commission should be expanded to include being an umbrella body to all Human rights organisations especially the NGOS. It should also have a direct link with the African Human Rights Commission, the UN Human Rights Commission and other Human Rights Commission and Organisations in other countries and other regions of the world.

The present arrangement which resembles a government parastatal should be changed to allow for more independence in the likeness of a court of law. The National Human Right Commission should be independent just like any of the major organs of government with the principle of checks and balances applied to it. Without its independence in performing its functions it will be suffocated by government bottlenecks and at the end of the day its success will not be assured.

CONCLUSIONS

The creation of a National Human Rights Commission in Nigeria under a military government which has never been known to be generous in the release of funds to the judiciary, education, health and many other areas in the social sector is commendable.³⁴ If the Commission diligently and dutifully performs the obligations, it is bound to irritate and challenge the government in its violations of the rights of the weak, poor and the oppressed people in Nigeria. Government's magnanimity in setting up such a body is therefore commendable.

Secondly, the Commission in its present set up lacks autonomy because the power of appointment and removal from the Commission's council lies with the Head of State; it is financed by the government, the Commission's

33. See Art.33 International Covenant on Civil and Political Rights, 1966.

34. s. 12(2) (b) National Human Rights Commission decree what a Human Right Commission requires.

accounts are audited by government and the Attorney-General of the Federation can make directives and regulations to alter the functions and powers of the Commission.

It is thereby suggested that the Council of the Commission should be constituted not by the Head of State but through the improved mechanism of the decree itself as herein proposed. All the professional members of the Commission should be elected by those professional bodies already represented while the Head of State should only appoint those members without any professional learnings. The Head of State should not have the power to remove any member. The Council itself should be made to exercise such powers based on a laid down regulation for such exercise.

The appointment of offices of the Commission should be left for commission members to decide by election and the Commission should be allowed to prepare its rules of procedure. Remuneration of the Commission's members should be from the Consolidated Revenue Fund so as to ensure impartiality and independence in performing its functions.

Thirdly, the relationship between the Commission and the government should be cordial so as to ensure the flow of information and improvement in its activities. However, the status and role of the commission should be widened so as to place all Human Rights NGOs under the tutelage of the National Human Rights Commission. The Commission should be empowered to directly have links with all government ministries, parastatals, the police and the courts of law and the private sector on all matters concerning promotion, protection and violation of fundamental rights and freedoms.

The present situation whereby the Commission will have to channel all actions through the federal government in the form of recommendation on issues such as violation of Human Rights ~~Commission~~ will constitute undue delay. It is trite that a right delayed is a right denied.

Furthermore, the National Human Rights Commission is presently operating only at Abuja, the FCT. However, little is known about its existence and activities especially by the very strata of the Nigerian populace that are much in need of its services. It is hereby suggested that as a matter of urgency, the commission should aim to have offices not only at every state capital but at every local government headquarters.

This is the only way, the services of the commission can be brought nearer to the people. In addition, the Commission should embark on more public enlightenment to make itself and its activities known to the people by organising frequent symposia, producing and distributing leaflets on its activities and by using the mass media, radio and television to greater effect.

Lastly, the National Human Rights Commission Decree No. 22 of 1995 should be amended to accommodate the suggestions elucidated in this paper so that Nigeria will be a better place to live-in in the twenty-first Century.